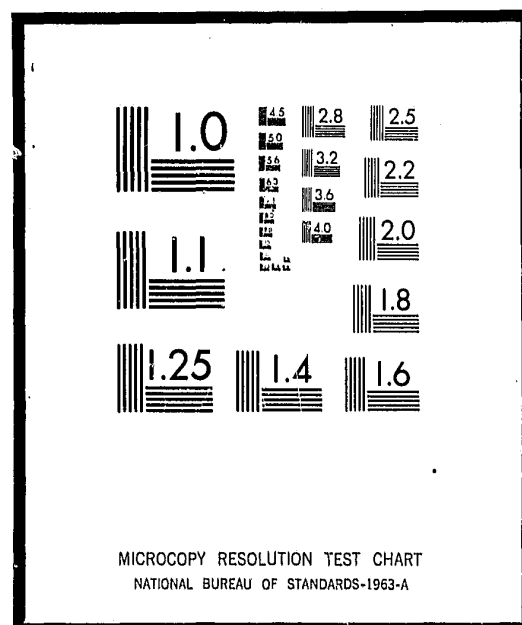


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Date filmed 5/2/75

#00996.00.000340  
ACCESSION NUMBER: 00996.00.000340  
TITLE: INDIAN JUSTICE PLANNING PROJECT 1971  
PUBLICATION DATE: 71  
AUTHOR(S): GRANT, J. B.  
NUMBER OF PAGES: 559  
ISSUING AGENCY: ARIZONA STATE JUSTICE PLANNING AGENCY  
SPONSORING AGENCY: LEAA  
GRANT/CONTRACT: 69 DF 024  
SUBJECT/CONTENT: INDIAN AFFAIRS  
RESERVATION CRIMES  
RESERVATION LAW ENFORCEMENT  
POLICE TRAINING  
TRIBAL COMMUNITY RELATIONS  
TRIBAL COURT SYSTEM  
TRIBAL HISTORY  
POLICE  
INDIAN JUSTICE  
SOUTHWESTERN STATES

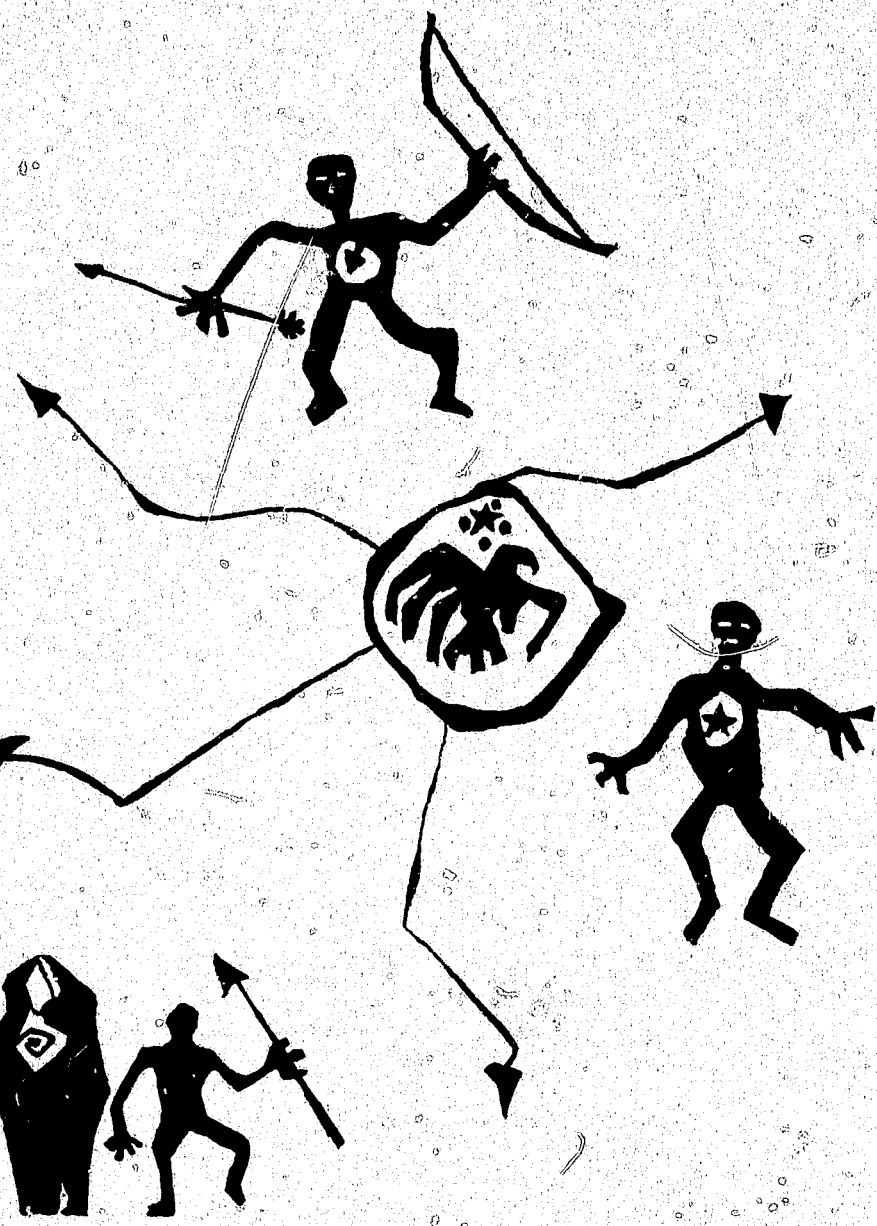
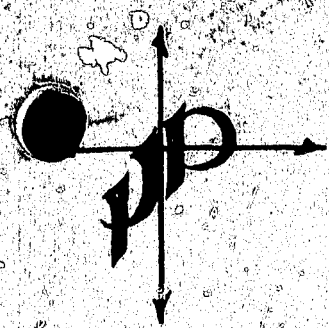
ANNOTATION:

TRADITIONAL INDIAN JUSTICE, TRIBAL SOVEREIGNTY, AND RESERVATIONS ARE DISCUSSED. FURTHER PLANS ARE DETAILED.

ABSTRACT:

THE STATE PLANNING AGENCY DIRECTORS OF ARIZONA, COLORADO, NEW MEXICO AND UTAH IN DEVELOPING THEIR COMPREHENSIVE STATEWIDE PLANS FOR LAW ENFORCEMENT, REALIZED THAT THE PROBLEMS, NEEDS AND PRIORITIES WHICH EXIST ON INDIAN RESERVATIONS WITHIN THEIR RESPECTIVE STATES DID NOT NECESSARILY PREVAIL THROUGHOUT THE REMAINDER OF THE STATE. AS THE CRIMINAL JUSTICE PROBLEMS CONCERNING THE 46 GEOGRAPHIC INDIAN RESERVATIONS IN THOSE FOUR STATES ARE UNIQUE AND VARIED, NOT ONLY FROM THE SURROUNDING NON- INDIAN COMMUNITIES BUT FROM RESERVATION TO RESERVATION, THE FOUR SOUTHWESTERN STATES JOINED TOGETHER IN THIS PIONEERING EFFORT TO PLAN WITH TRIBAL LEADERS FOR THE IMPROVEMENT OF LAW ENFORCEMENT ON EACH OF THE RESERVATIONS. THE OPINIONS OF LITERALLY HUNDREDS OF INTERVIEWEES AND CONFEREES GO TO MAKE UP THE INDIVIDUAL STATE AND TRIBAL PLANS. STATISTICS WERE OBTAINED FROM TRIBAL COUNCILS AND FROM THE BUREAU OF INDIAN AFFAIRS. TRIBAL LEADERS AND KNOWLEDGEABLE EMPLOYEES OF FEDERAL, STATE AND LOCAL GOVERNMENTS WERE INTERVIEWED TO OBTAIN THE BEST POSSIBLE CROSS-SECTION OF INFORMATION AND OPINIONS UPON WHICH TO BASE THE PLANS. EVERY EFFORT WAS MADE TO INVITE AND STIMULATE THE PARTICIPATION OF TRIBAL LEADERS IN THE PLANNING PROCESS. WE TRUST THAT WE HAVE BEEN SUCCESSFUL AND THAT THE PLANS ARE INDIAN PLANS FOR INDIAN PEOPLE.

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dine' da-ho-Ahci'

THE PEOPLE WILL JUDGE! These simple words, broadsided in Navajo on the cover, connote the pictograph message of the American Eagle surrounded by American Indian Justice in transition. They also describe the future of the American Indian now gaining recognition and realization; the right to participation, involvement and to self determination. They characterize the research and the plans contained between these covers and in the Indian Justice Planning Project itself.

The cover art and that of the state and Navajo section fly leaves was executed by Lawrence R. Ahvakana, an Eskimo from Anchorage, Alaska. Larry Ahvakana has completed his third year at the Institute of American Indian Arts in Santa Fe where he came after a year at the Cooper Union in New York City. He plans to attend the Rhode Island School of Design in Providence during the coming year.

# INDIAN JUSTICE PLANNING PROJECT 1971

## FOREWORD

It is hoped that an understanding of the contents of this study will bring a realization to the reader that the problems, needs and priorities of Indian tribes are unique and that plans and programs to improve the criminal justice system as it exists on Indian reservations must be examined and evaluated with that uniqueness in mind.

Indian cultural patterns and traditions have no counterpart among the rest of American society and, while the American Indian seeks to make accommodation for the relative newcomer, for his dominant culture, and for his alien system of laws and their enforcement, he alone must determine his own path to the future. Only with awareness, a measure of understanding, a recognition of the venerability of more ancient governments and with persistent aid in those areas determined by the aid recipients as most critical to their needs, can the original American achieve those simple things guaranteed him by his citizenship.

James B. Grant  
Director  
Indian Justice Planning Project



## PREFACE

The Indian Justice Planning Project came into being through the efforts of the state planning agency directors of Arizona, Colorado, New Mexico and Utah who, in developing their own comprehensive statewide plans for law enforcement, quickly realized that the problems, needs and priorities which exist on Indian reservations within their respective states did not necessarily prevail throughout the remainder of the state.

As the criminal justice problems concerning the 46 geographic Indian reservations in those four states are unique and varied, not only from the surrounding non-Indian communities but from reservation to reservation, the four southwestern states joined together in this pioneering effort to plan with tribal leaders for the improvement of law enforcement on each of the reservations.

The Indian Justice Planning Project was funded by the U. S. Department of Justice, Law Enforcement Assistance Administration and by the following state agencies: Arizona State Justice Planning Agency, Colorado Law Enforcement Assistance Administration, New Mexico Governor's Policy Board for Law Enforcement and the Utah Law Enforcement Planning Council. The respective directors of those state planning agencies who serve as the board of directors of this project are Mr. Albert N. Brown, Chairman, Mr. G. Nicholas Pijoan, Secretary, Mr. Norman Mugleston and Mr. Robert B. Andersen. Liaison is

maintained with the Law Enforcement Assistance Administration through the Director of Region V of LEAA, Mr. Norval Jesperson and through Mr. V. A. Adams who occupies the Indian Desk of LEAA.

The Indian staff members of the project who have labored long hours and without whose expertise this project would not enjoy the success and support it has achieved are Mr. Michael E. Nez, Navajo, police specialist, Mr. Wilfred R. Petit, Quinalt, corrections specialist, Mr. Martin K. Wheelock, Oneida, administrative-training officer, and Mrs. Lena Tsiosdia, Navajo, secretary.

Others who have contributed to these pages are Mr. William T. MacPherson and Mr. Joe C. Castellano, court systems consultants. Professor William C. Canby, Jr. of the College of Law, Arizona State University and his student researchers, Barry De Rose, Robert Thrasher, John Moore, Lester Schiefelbein, Gerald Wolf and Kent Ware contributed most of the research found in Part I as it pertains to the tribes in Arizona and Utah. Mr. Robert L. Bennett, formerly U. S. Commissioner of Indian Affairs and now Director, American Indian Law Center, University of New Mexico School of Law, guided his all Indian student research committee in their research efforts which are also contained in Part I of this study. Those committee members are Vincent L. Knight, Yvonne T. Knight, Douglas Deanor, Douglas Nash, Demetrie Augustinos, Leslie Chapman, Lannie Sigler, Ben Chavez and John Silko. Mr. Don Klein, formerly of the Navajo Prosecutor's Office and presently with the American Indian Law Center has contributed material on Indian Country and Checkerboard Areas.

Fort Lewis State College in Colorado and the Museum of New Mexico Research Laboratory have generously made their libraries available to the project.

The opinions of literally hundreds of interviewees and conferees go to make up the individual state and tribal plans contained in Part II of this study. Statistics were obtained from tribal councils and from the Bureau of Indian Affairs who were most cooperative in making them available to us. Tribal leaders and knowledgeable employees of Federal, state and local governments were interviewed in order to obtain the best possible cross-section of information and opinions upon which to base the plans.

Every effort was made to invite and stimulate the participation of tribal leaders in the planning process. We trust that we have been successful and that the plans contained herein are Indian plans for Indian people.

## C O N T E N T S

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## INTRODUCTION: "The People" and this Study

Decision making is a tenuous art at best. It can only achieve success if the decision maker possesses and utilizes the best possible information upon which to base his decisions. He cannot be led astray by previous misconceptions, improper tools or faulty yardsticks if he is to avoid disaster.

The Omnibus Crime Control and Safe Streets Act of 1968 has created a new set of decision makers. Those who will determine who shall receive what for the purpose of funding law enforcement programs. It is not an enviable task which they assume, but it is a task which provides the opportunity to play a significant role in reversing the trend of crime in this country.

To understand the problem is essential - and it is to that end that this study was made. To possess sufficient and accurate information is necessary - and it is to that end that this study is presented in this fashion. While it was the stated purpose of the Indian Justice Planning Project to develop the comprehensive plans set forth in Part II of this study, it would be to little avail if the decision makers were to examine those plans in the limited light of their own cultural background and experiences.

While not intended nor offered as a learned treatise to the serious scholar of Indian affairs and history, Part I of this study should serve to acquaint the reader with a brief history of the peoples with whom this study deals, with traditional justice forms from which the present state of Indian justice has evolved

and with the peculiar legal status of the American Indian and his government. It will examine the major legislative enactments with which the Indian must deal on a continuing, daily basis and it will describe the unique resources and limitations imposed upon the Indian in his constant struggle toward self-government.

Part II of this study contains 38 individual tribal plans in four state sections. The comprehensive state plans reflect a composite of those tribal plans within that state. The Navajo plan is set out in a separate section. While the seat of Navajo tribal government is located in Window Rock, Arizona, the reservation lies partially within the states of Arizona, New Mexico and Utah. The directors of those state planning agencies have previously agreed in principle to joint funding of those Navajo applications which would affect the entire reservation significantly.

The theme of this study and the course chosen by the Indian Justice Planning Project is reflected on the cover -- THE PEOPLE SHALL JUDGE.

## PART I

### I

#### HISTORICAL ORIGIN OF TRIBES

##### IN

#### ARIZONA, COLORADO, UTAH AND NEW MEXICO

"They all go naked as their mothers bore them, and the women also, although I saw only one very young girl," reported Christopher Columbus in his journal for October 12, 1492, after making his landfall in the West Indies. "Some of them paint their faces, some their whole bodies, some only the nose. They do not bear arms or know them, for I showed to them swords and they took them by the blade and cut themselves through ignorance."<sup>1/</sup> Columbus was certain that he had arrived at an island off the mainland of Asia, or even in the fabled Indies themselves. The name he gave these people, Indians, has remained in use to this day.

Among themselves, of course, the American Indians had no name to distinguish their race from any other, and they had no knowledge that other varieties of mankind might exist.<sup>2/</sup> Usually an Indian group called itself simply "the people," although sometimes a descriptive adjective was added. Such descriptive

<sup>1/</sup> The Journal of Christopher Columbus 24 (1960).

<sup>2/</sup> P. Farb, Man's Rise to Civilization as Shown by the Indians of North America from Primeval Times to the Coming of the Industrial State 3 (1968).

names -- Chiluk-ki (Cherokee), "the cave people," and Hopitu (Hopi), "the peaceful people" -- were sometimes adopted by European settlers. Many names come from epithets given one Indian group by another. The Sioux Indian's contemptuous description of one of its neighbors as Shahiyena, "speakers of an unintelligible language," resulted in our calling these people Cheyenne.<sup>3/</sup>

#### Travelers From Another Continent

From the time Columbus found the Indians in the Western Hemisphere, questions have been raised concerning their evolution and origin. Myths, legends, and far-fetched tales of Indian migration and travel have been told. Only recently, however, have archeologists and historians been able to conclusively demonstrate the historical origin of the American Indian.

Remains of a pre-Homo Sapiens type of man have never been found in the Western Hemisphere. It is now generally accepted that man did not evolve in North or South America but first crossed into present-day Alaska from northeastern Asia at least 12,000 to 15,000 years ago, and possibly long before that.<sup>4/</sup> During the Wisconsin glaciation of the Ice Age, when much of the water of the oceans became congealed in the great icepack glaciers, sea levels fell and at times were from 250 to 300 feet lower than they are today. As the

<sup>3/</sup> E. R. Service, Profiles in Ethnology (1963).

<sup>4/</sup> A. Josephy, Jr., The Indian Heritage of America 37 (1968).

waters receded, a land bridge connecting northeastern Asia and Alaska came into existence, varying in width but extending on occasion almost 1,000 miles from north to south across an area that is now covered by the Bering Strait and its adjoining seas. The Bering land bridge at its maximum expanse of treeless tundra was as wide as approximately one-third the distance across the present-day United States.<sup>5/</sup>

The people who moved into the Western Hemisphere, and stayed, may have arrived in a single, protracted migration, in two or more migrations at widely separated times, or in many different groups at different periods over a long span of time. Most likely they were small hunting groups, simply following herds of game animals, and unaware that they had passed from one large land mass to another.<sup>6/</sup> The climate during the interglacial periods of the Ice Age was warm and damp. Vegetation flourished, the pace of life was leisurely, and there was an ample supply of woolly mammoths, giant sloths, bears and great elk.<sup>7/</sup>

Physically, the Indians who traveled the Bering land bridge resembled Asians more closely than they did any other major physical type in the Old World. Resemblance is closer to the marginal mongoloids of Indonesia, west

<sup>5/</sup> Id.

<sup>6/</sup> A. Josephy, Jr., supra, n.4, at 38.

<sup>7/</sup> A. Marriott and C. Rachlin, The Story of the American Indians 15 (1969).

central Asia, and Tibet than to the central ones of Mongolia, China, or Japan.<sup>8/</sup>

#### Migration Down From The Alaskan Coast

What happened after man first reached Alaska is related to the question of when he arrived there, and is the subject of continuing studies of the Bering land bridge and the Ice Age itself. One theory suggests that an early migration, perhaps the first, occurred prior to 25,000 years ago, peopling the land bridge and ice-free parts of Alaska. From the latter region, hunting groups moved slowly along the northern coast of Alaska or up the Yukon and other river valleys, carrying with them stone age implements derived from those in use earlier on the plains of Eurasia.<sup>9/</sup> The great ice sheet, spreading westward from the Hudson Bay area, would have stopped the nomadic peoples in the neighborhood of the Mackenzie River Valley in Canada, but there, as well as at places further west, they and the game animals they were following would have been able to turn south and from time to time find ice-free valleys, which acted like avenues, drawing them on. Eventually, the different groups moved down the eastern side, or perhaps both sides, of the Continental Divide, hunting game along the cordillera into Central and South America and wandering eastward after animals across the plains and through the forests and lowlands of both continents.<sup>10/</sup>

<sup>8/</sup> H. Driver, Indians of North America 5 (1969).

<sup>9/</sup> A. Josephy, Jr., supra, n.4, at 38.

<sup>10/</sup> Id.

Meanwhile, behind these early Indian wanderers, glacier action sealed the routes they had followed south from Alaska and isolated them for thousands of years from the people who had remained in that northern region. During that time, the Bering land bridge was submerged and then reappeared. When the land was again above water, new peoples bringing more advanced material traits from Asia may have crossed into Alaska. By about 15,000 to 12,000 years ago, passage was again opened between Alaska and more southern areas of the continent, and migrations south may have occurred again in northwestern North America. The land bridge disappeared for the last time 10,000 years ago, ending all overland travel from Asia to America.<sup>11/</sup>

#### Southwestern And Great Basin Indian Tribes

The Indians of the Southwest and the Great Basin that inhabited Arizona, Colorado, New Mexico and Utah belong to some of the largest and best known tribes in the United States today. The Arizona tribes of prominence whose historical origins will be discussed are: Apache, Cocopa, Havasupai, Hopi, Maricopa, Hohave, Papago, Pima, Walapai, Yavapai and Yuma. The Utah tribes include Southern Paiute, Western Shoshoni and the Ute. In Colorado are found the Ute and in New Mexico are found the Pueblo and Apache. The Navajo<sup>12/</sup> are found

<sup>11/</sup> Id. at 39.

<sup>12/</sup> Navaho can be spelled two ways: the phonetic spelling with an h, which assures correct pronunciation, or the Spanish spelling with a j. The latter has been adopted by the United States Government, and a few years ago the Navaho Tribal Council officially adopted the j-spelling.



in all four states and their immense reservation extends today over parts of Arizona, Utah and New Mexico.

The tribes associated with the Southwest are, in some cases, relative newcomers and, in others, descendants of peoples long in the area. In the West, along the lower Colorado River, are Havasupais (canyon-dwellers near Arizona's Grand Canyon), Walapais (or Hualapais), Mohaves, Yumas, and Cocopas, all of the Yuman branch of the Hokan linguistic stock. The Hokan stock is one of the older ones on the continent, and Yuman speakers are ancient inhabitants of the Southwest. In addition, Yuman-speaking Yavapais live in western Arizona, while along the middle Gila River dwell the Yuman-speaking Maricopas.<sup>13/</sup> The Athapaskan-speaking Apaches living in southeastern Arizona and southern and northern New Mexico and the Navajos reached the Southwest sometime between A.D. 1000 and 1550.<sup>14/</sup> The Navajo people numbering more than 12,000 are the largest tribe of Indian in North America.<sup>15/</sup> The rest of the tribes in the Southwest all have roots that reach far back into the area's prehistory. In southern Arizona are the homelands of the two tribes of the Ute-Aztecan linguistic family: the Pimas of the Gila and Salt rivers, and the Papagos, who live south of the Gila.<sup>16/</sup> The Hopis, also of the Ute-Aztecan family,

<sup>13/</sup> A. Josephy, Jr., supra, n.4, at 148.

<sup>14/</sup> Id. at 161.

<sup>15/</sup> L. Gilpin, The Enduring Navajo v. (1968).

<sup>16/</sup> E. Dale, The Indians of the Southwest 18 (1949).

dwell in the mesa country of northeastern Arizona,<sup>17/</sup> while in west-central New Mexico are Zunis, who speak their own distinctive Zunian tongue, so far not related with certainty to any other linguistic family. Farther east, in the valley of the Rio Grande in north-central New Mexico, are Pueblos, divided into two general linguistic stocks: speaking Tewa, Tiwa, and Towa tongues of the Tanoan stock are the people of Taos, Picuris, Nambe, Jemez, and other pueblos (towns); seven additional Pueblo groups, including those of Acoma, Laguna, Cochiti, and Zia speak Keresan, which may be related to Hokan. Because of their many similar traits which stem from a generally common heritage, the Hopis, Zunis, and Pueblos are usually grouped together under the common term Pueblo, the Hopis, Zunis, and Keresan-speaking peoples of Acoma and Laguna in western New Mexico being considered western Pueblos, and the Keresan and Tanoan peoples of the Rio Grande Valley being regarded as eastern Pueblos.<sup>18/</sup>

Although archeologists cannot agree on when man entered the Southwest, certain finds, particularly at sites in peripheral areas like Tule Springs, Nevada, hint at the presence of inhabitants of a Pre-Projectile Stage 11,000 or more years ago. Big game hunting groups left behind spear points of the Sandia, Clovis, and Folsom types that range in age from approximately 10,000 to perhaps 20,000 years old. Such relics have been found at the Lehner, Naco and Ventana Cave sites in southern Arizona.<sup>19/</sup>

<sup>17/</sup> W. H. Oswalt, This Land was Theirs 348 (1966).

<sup>18/</sup> A. Josephy, Jr., supra, n.4, at 149.

<sup>19/</sup> Id. at 150.

The Great Basin of the North American West extends principally across Utah and Nevada from the Rockies to the Sierra Nevada. Most of the peoples of the Great Basin were Shoshonean-speakers of the Uto-Aztecan language family. In northern and eastern Utah were bands of Utes.<sup>20/</sup> Various groups of Shoshonis lived in the northern sector of this territory and Southern Paiutes extended across most of the southern and western parts of the region. In addition, around the western most shores of the Great Salt Lake were the Gosiutes.<sup>21/</sup> Early evidence of Shoshonean-speaking people moving into the Great Basin is gleaned from a theory advanced by linguistic scholar Walter W. Taylor. About 6,000 years ago, members of the Uto-Aztecan language stock came south, following the western slopes of the Rockies, and spilling various of their groups into the areas, including the Great Basin, along which they passed. The offshoots who stayed in the Great Basin, it is suggested, moved southwestwardly across it, colliding with or splitting the Holkaltecon-speakers (certain California tribes and the Arizona tribes of the Colorado River) whom they displaced and drove westward.<sup>22/</sup>

#### Languages of Southwestern Indians

A Study of the languages of the Southwestern tribes can throw considerable light on what happened to the people who spoke them. Language characteristics,

<sup>20/</sup> W. Rockwell, The Utes a Forgotten People 11 (1956).

<sup>21/</sup> A. Josephy, Jr., supra, n.4, at 125.

<sup>22/</sup> Taylor, "Archeology and Language in Western North America," 28 American Antiquity 71 (1961).

for instance, provide clues to early links between different peoples, help indicate the approximate time and place in which people were once located, point to centers of dispersion, and illuminate migrations, divisions, contacts, past associations, and content of prehistoric cultures.

The following classification shows the principal languages spoken by the different Southwestern Indian groups at the time of European contact with them:

- I. Athapascan  
Apache and Navajo in Arizona and New Mexico.
- II. Hokan  
Havasupai, Maricopa, Mohave, Hualapai, Yavapai, and Yuma in Arizona.
- III. Uto-Aztecan  
Ute in Colorado and Utah. Bannock, Gosiute, Paiute, Shoshoni in Utah. Hopi, Pima, and Papago in Arizona.<sup>23/</sup>
- IV. Keresan  
Acoma, Cochiti, Laguna, San Felipe, Santa Ana, Santo Domingo, and Zia Pueblos of New Mexico.<sup>24/</sup>

<sup>23/</sup> H. Driver, supra, n.6, at 17.

<sup>24/</sup> J. W. Powell, Indian Linguistic Families 159 (1966).

- V. Tonoan  
San Juan, Santa Clara, Pojoaque, Nambe, Sandia,  
San Ildefonso, Tesuque, Jemez, Taos and Picuris  
Pueblos of New Mexico.<sup>25/</sup>
- VI. Zunian  
Zuni Pueblo of New Mexico.<sup>26/</sup>

Apache

In discussing the historical origin of the Apache Indian of Arizona, it must be noted again that this tribe belongs to the Athapaskan group and, together with the Navajo, forms the most southerly representation of this linguistic stock. Originally, the Apache and the Navajo were one people. When these two tribes separated, and for what reason, is unknown.<sup>27/</sup> The Apache call themselves "nde" meaning "the people."<sup>28/</sup> The term "Apache" was first used in the last decade of the sixteenth century by the early Spaniards in New Mexico.<sup>29/</sup> Linguists feel "Apache" is a corruption of a Zuni word meaning enemy.<sup>30/</sup>

<sup>25/</sup> Id. at 197.

<sup>26/</sup> Id. at 214.

<sup>27/</sup> F. Lockwood, The Apache Indians 4 (1938).

<sup>28/</sup> Hoijer, "The Southern Athapaskan Languages," 40 American Anthropologist 86 (1938).

<sup>29/</sup> G. Hill, Folklore of the Apache Indians 1 (1956).

<sup>30/</sup> Az. State Teachers College Bulletin, The Apache 5 (1939).

Ethnologists recognize two main divisions of the Apache tribes on the basis of linguistics -- the eastern and western groups. The eastern division includes the Jicarilla (Llanero and Ollero), Lipan and Kiowa-Apache, while the western division comprises the Chiricahua, Mescalero and Western Apache.<sup>31/</sup> The Western Apache, in turn, are divided into groups: the White Mountain, Cibecue, San Carlos and Northern and southern Tonto. In the past, these peoples ranged over portions of Arizona, New Mexico, Colorado, Utah, Oklahoma, Texas and Kansas and south into the Mexican states of Sonora, Chihuahua and Coahuila.<sup>32/</sup>

The Apache tribes had evidently drifted from the north during the pre-historic period, probably along the eastern flanks of the Rocky Mountains. When Coronado encountered them in 1540 under the name Querechos, they were in eastern New Mexico and western Texas, and they apparently did not reach Arizona until after the middle of the sixteenth century.<sup>33/</sup> Apache history from approximately 1600 appears to be one succession of raids upon the Spanish territories and, after the United States Government had supplanted that of Mexico in the Southwest, the wars with the Apache constituted some of

<sup>31/</sup> G. Goodwin, The Social Organization of the Western Apache 1 (1969).

<sup>32/</sup> 1 Handbook of American Indians North of Mexico 63 (F. Hodge ed. 1907).

<sup>33/</sup> J. Swanton, The Indian Tribes of North America 329 (1952).

the most sensational chapters in military history.<sup>34/</sup> Best known perhaps is the half-century of warfare beginning in 1835. The Anglos were about to occupy the Indians' lands and the Apache fought for survival. The recital of this war is one of heroism, strategy, sometimes of folly, always of the guile of the famous chiefs -- Eskiminzin, Cochise, and Mangus Colorado -- and the young renegades -- Geronimo, Nackey, and The Apache Kid. This colorful and sensational chapter of Apache history ended with the surrender of Geronimo in 1886.<sup>35/</sup>

#### Cocopa

The Cocopa Indians, a Yuman-speaking people, represent the single remaining group of a series of important tribes that occupied the delta of the Colorado River in aboriginal times. The Cocopa name is derived from Kwi-ka-pa, the Mohave name for this tribe.<sup>36/</sup> The meaning of the word is unknown. Located south of the route to California and east of the area of Spanish missionary activities in Baja California, they were until recently (1950) little

<sup>34/</sup> Az. State Teachers College Bulletin, supra, n.26, at 5-6.

<sup>35/</sup> D. Kelly, A Brief History of the Cocopa Indians of the Colorado River Delta 159 (1950).

<sup>36/</sup> Rogers, "An Outline of Yuman Prehistory," 1 Southwestern Journal of Anthropology 181-82 (1945).

disturbed by the expansion of European culture and, for the same reason, little known to students of the American Indian.<sup>37/</sup>

According to archeologist Malcolm Rogers, a crude civilization appeared without known predecessor in the lower valley of the Colorado River about 800 A.D. The pottery found at this (horizon) (and the culture that it represents) has been termed Yuman I.<sup>38/</sup> Though the history of the Cocopa may be traced to Yuman I times, it is currently believed Yuman-speaking people first came into the lower Colorado valley between 1000 - 1450 A.D.<sup>39/</sup>

Regardless of the exact date of origin, there is no evidence of a sharp break in the development of Yuman culture, and it must be assumed that the river tribes that were encountered by early Spanish explorers were the descendants of people who had occupied the Colorado valley and adjacent territory for many centuries. The most important of these tribes were the Mohave, Yuma, and Cocopa.<sup>40/</sup>

#### Havasupai

The Havasupai call themselves Havasuwaipa, blue-green water people.<sup>41/</sup> The tribe belongs to the Yuman branch of the Hoka linguistic stock, being

<sup>37/</sup> T. Bahti, Southwestern Indian Tribes 63 (1968).

<sup>38/</sup> D. Kelly, supra, n.31, at 160.

<sup>39/</sup> Id.

<sup>40/</sup> L. Spier, Havasupai Ethnography 98 (1928).

most closely connected with the Walapai and next with the Yavapai.<sup>42/</sup> The Havasupai separated from the Walapai in 1200 A.D. to seek refuge from potential enemies, moving to the very bottom of the Grand Canyon. Today they are still the most isolated tribe in the United States. Their reservation in Havasu Canyon can be reached only by foot or horseback over two long trails that lead down from the rim.<sup>43/</sup>

Historical evidence that the Havasupai travelled to their present home from central Arizona is taken from the name of a series of caves. The Cosnino caves on the upper Verde River, near the northern edge of Tonto Basin, were named by the Havasupai for a traditional former occupancy.<sup>44/</sup>

Padre Garces, in 1776, was the only Spaniard to visit the tribe. Contact with Anglos did not begin until 1850,<sup>45/</sup> and dealings with the tribe have been slight and unimportant since then.

#### Hopi

The Hopi Indians of northeastern Arizona are the westernmost tribe of pueblo people. Hopi is a contraction of Hopitch, their tribal name, which means "the peaceful ones."<sup>46/</sup> The Hopi constitute a peculiar dialectical

<sup>42/</sup> T. Bahti, supra, n.33, at 69.

<sup>43/</sup> J. Swanton, supra, n.29, at 351.

<sup>44/</sup> T. Bahti, supra, n.33, at 69.

<sup>45/</sup> Id. at 38.

<sup>46/</sup> J. Swanton, supra, n.29, at 352.

division of the Shoshonean branch of the Uto-Aztecan linguistic family, and they are the only Shoshoneans, as far as is known, who ever took on a pueblo culture.<sup>47/</sup> The precise origin of the Hopi is unknown, nor is it known why they live in so many independent communities. Their own origin myths tell of the people inhabiting three underworlds (Kivas in the north, east, and south) before emerging into the present one. The settlement of land is explained in terms of individual clans which wandered about and occupied many sites prior to settling in their present villages.<sup>48/</sup>

The ancestors of the Pueblo Indians once occupied an expansive territory in Utah, Colorado, Arizona, and New Mexico.<sup>49/</sup> The Pueblo had built a complex way of life through the centuries; their ancestral roots reached back into the years before the beginning of the Christian Era. In the middle of the sixteenth century this cultural epoch was waning.<sup>50/</sup> Caucasian influence, a prolonged drought, and changes in the pattern of river flow accounted for the abandonment of hundreds of villages; others were evacuated or destroyed because of inter-Pueblo warfare and because of the depredations by Ute, Apache,

<sup>47/</sup> T. Bahti, supra, n.33, at 38.

<sup>48/</sup> P. Farb, supra, n.2, at 77.

<sup>49/</sup> R. Simpson, The Hopi Indians 5 (1953).

<sup>50/</sup> P. Farb, supra, n.2, at 77.

Navajo and Comanche groups. The Hopi occupied eight of the remaining Pueblo villages located atop high mesas.<sup>51/</sup>

The original Hopi pueblos were situated on four mesas. Atop First or East Mesa was the town of Walpi. Middle or Second Mesa held the three villages, each under its own chief, of Shipaulovi, Mishongnovi, and Shungopovi. Third Mesa contained only the unofficial capital of Oraibi. Jeddito Mesa housed both the communities of Awatobi and Kawaiokuh.<sup>52/</sup> Omitting Awatobi, which was destroyed by the Hopi themselves in 1700, and with the possible exception of Oraibi, none of these towns occupies its sixteenth century site.<sup>53/</sup> The first pueblos were built on foothills and in 1700 the Hopi built new villages on adjacent higher mesas for defense against Spanish attacks.

#### Maricopa

The Maricopa and Mohave, along with the Cocopa and Yuma, are the remaining tribes of eight closely related groups which occupied the Colorado River and lower Gila River valleys. The "missing" four lost their tribal identities when they merged with the existing tribes.<sup>54/</sup> They shared a common language -- Yuman -- and a common culture.

<sup>51/</sup> R. Simpson, supra, n.45, at 5.

<sup>52/</sup> 1 Handbook of American Indians North of Mexico, supra, n.28, at 560.

<sup>53/</sup> T. Bahti, supra, n.33, at 63

<sup>54/</sup> Id. at 65.

Maricopa is the Spanish version of the Yuma (or Pima) name for this tribe. The native name is Pipa meaning "men" or Pipatsje ("people").<sup>55/</sup> Prior to the sixteenth century, the Maricopa resided on the lower Colorado River. Their location on the Colorado was believed to be in Halchidhoma Indian country north of the Cocopa.<sup>56/</sup> This is a forty mile strip of land from below Parker to above the Trigo Mountains.<sup>57/</sup>

Incessant tribal warfare with the Yuma and Mohave in pre-Spanish times forced the Maricopa from their Colorado River home and they gradually drifted eastward along the Gila River.<sup>58/</sup> In 1605, Juan de Onate found the Maricopa below the mouth of the Gila River. A century later, Father Kino encountered the tribe above the Gila.<sup>59/</sup> During the 1800's the Maricopa were joined by the remnants of other Yuman tribes which had also been driven out of their lower Colorado River territory. These tribes were the Halchidhoma, Kohvana, Holyikawamai and the Kaveltcadom (also called the Opa or Cocomaricopa).<sup>60/</sup>

<sup>55/</sup> L. Spier, Yuman Tribes of the Gila River 11 (1933).

<sup>56/</sup> Id. at 14.

<sup>57/</sup> Id. at 11.

<sup>58/</sup> J. Swanton, supra, n.29, at 356.

<sup>59/</sup> T. Bahti, supra, n.33, at 65.

<sup>60/</sup> 1 Handbook of American Indians North of Mexico, supra, n.28, at 806.

Former identities were lost and they were referred to collectively only as Maricopa. Together, these Colorado River Yumans allied themselves with the Pima for protection against their common enemies. In 1857, the Yuma, along with the Mohave and Yavapai, attacked the Maricopa near Maricopa Wells, Arizona. With the aid of the Pima, the Maricopa routed the Yuma and their allies, 90 of the 93 Yuma warriors being killed. After this disaster the Yuma never ventured up the Gila River into Maricopa territory.<sup>61/</sup>

#### Mohave

The Mohave Indians, the most populous and warlike of the Yuman tribes,<sup>62/</sup> lived in small villages on both sides of the Colorado River -- though chiefly on the eastside -- extending from its emergence at the Grand Canyon southward as far as Parker.<sup>63/</sup> The Mohave population was concentrated in an area which included all of the Mohave Valley, now a part of California, Nevada, and Arizona. Today, the Mohave occupy roughly the same territory they did four centuries ago.<sup>64/</sup> The name Mohave, according to Swanton,<sup>65/</sup> appears to have come from the native word hamakhave which means "three mountains" and refers to three sharp pointed peaks near Needles, California.

<sup>61/</sup> Id. at 919.

<sup>62/</sup> G. Smith, The Mohave Indians 1 (19 ).

<sup>63/</sup> T. Bahti, supra, n.33, at 63.

<sup>64/</sup> J. Swanton, supra, n.29, at 356.

<sup>65/</sup> G. Smith, supra, n.58, at 2.

Because they were able to function as a very strong nationalistic political organization, the Mohave kept the surrounding tribes in a state of continual anxiety.<sup>66/</sup> They maintained friendly relations with the Yuma, Chemehuevi, Western Apache, and Yavapai. They regarded the Pima, Papago, Maricopa, and Cocopa as traditional enemies.<sup>67/</sup>

Historically, Hernando de Alarcon in 1540 was the first Spaniard to reach Mohave territory. Juan de Onate met them in 1604 and Padre Garces found them at the villages of Pasion, San Pedro, and Santa Isabel in 1775-76.<sup>68/</sup> Pasion was a group of rancherios on the east bank of the Colorado, below the present Fort Mohave. San Pedro was on or near the west bank of the Colorado, about eight miles northwest of Needles, California. Santa Isabel was a group of rancherios situated at or in the vicinity of the present Needles.<sup>69/</sup>

#### Navajo

Navajos call themselves Dine (The People).<sup>70/</sup> Navajo comes from the Tewa word Navahu meaning "cultivated fields."<sup>71/</sup> The Navajos are members

<sup>66/</sup> T. Bahti, supra, n.33, at 64.

<sup>67/</sup> J. Swanton, supra, n.29, at 357.

<sup>68/</sup> Id. at 356.

<sup>69/</sup> L. Kelly, The Navajo Indians and Federal Indian Policy 1 (1968).

<sup>70/</sup> T. Bahti, supra, n.33, at 31.

<sup>71/</sup> L. Kelly, supra, n.65, at 1.



of the Athabascan language group which migrated from Asia to the northwest Pacific coast of North America some thirteen to sixteen hundred years ago. Anthropologists estimate that as early as A.D. 700 groups of these Athabascans began a gradual migration to the southwestern United States.<sup>72/</sup> The route or routes they took, the frequency of their migration, the number of people involved, are all unknown. Probably they arrived in the Southwest by A.D. 1000, but the first definite signs of their presence date from the years 1450-1550.<sup>73/</sup>

The way of life of each Athabascan band was modified by its contact with other tribes. The Navajo were particularly influenced by the Pueblo Indians; weaving, agriculture, painting, ceremonial rituals, and matrilineal clans were some of the new traits they acquired. As agriculture grew in economic importance, the Navajo became less nomadic and began to settle in small communities near their fields.<sup>74/</sup>

A first mention of the Navajo, distinguishing them from the Apache, is found in the writings of Father Zarate-Salmeron in 1626. This Franciscan related that the Jemez Pueblos spoke of people living north of them between the Chama and San Juan Rivers (northeastern New Mexico) as Apaches of "Navaju."<sup>75/</sup>

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<sup>72/</sup> Id.

<sup>73/</sup> T. Bahti, supra, n.33, at 31.

<sup>74/</sup> E. Spicer, Cycles of Conquest 211 (1962).

<sup>75/</sup> Id. at 212.

In 1745, the Franciscans made an attempt to establish missions among the Navajo of the Mount Taylor region (60 miles northeast of Albuquerque). The Navajos came to the missions and listened to the missionaries for a time. They accepted food which was obtainable at the missions, but when supplies ran short and it was apparent that the missions were becoming poorer through lack of support from the Franciscan organization, the Navajos lost interest.<sup>76/</sup>

When the Americans assumed jurisdiction of New Mexico in 1846, they sought to control the Navajo by establishing military posts in their country. Without understanding the political makeup of the tribe, the United States military signed peace treaties with several "chiefs." Actually, these "chiefs" were merely headmen whose authority did not extend beyond their own small bands. Bands which had not negotiated treaties continued their raiding on Anglo, Spanish, and other Indian settlements.<sup>77/</sup> By 1863, Navajo depredations became so serious that a military force under Colonel Kit Carson was dispatched to subdue the tribe. Carson accomplished this objective not through military engagements but by wiping out the economic basis of Navajo life. Livestock was slaughtered and crops, fruit trees, and hogans were completely destroyed.<sup>78/</sup>

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<sup>76/</sup> T. Bahti, supra, n.33, at 32.

<sup>77/</sup> C. Kluckhohn and D. Leighton, The Navajo 40 (1946).

<sup>78/</sup> Id.

Two thousand Navajo had surrendered to Carson at Fort Canby (Defiance) by March of 1864. On March 6, 2,400 persons, 30 wagons, 400 horses, and 3,000 sheep and goats began the 300 mile journey to their place of confinement at Fort Sumner on the Pecos River in southeastern New Mexico. Some 8,000 men, women and children eventually made the "long walk" to captivity.<sup>79/</sup> Conditions at the Bosque Redondo reservation were miserable, and more than 2,000 Navajos died from disease before the government decided the relocation plan was a failure. The Navajos were allowed to return to their homeland in 1868. This move was prompted not so much by humane motives as economy; it would be cheaper to help the Navajo become self-supporting than to keep them in confinement.<sup>80/</sup>

From a population of 9,000 in 1869,<sup>81/</sup> the Navajo tribe has grown so that today it numbers over 100,000 persons. The Navajo occupy 15,132,000 acres of reservation land, roughly the area of West Virginia, primarily in the northeastern corner of Arizona, but extending slightly into the northwestern corner of New Mexico<sup>82/</sup> and into southeastern Utah.

<sup>79/</sup> T. Bahti, supra, n.33, at 33.

<sup>80/</sup> II Handbook of American Indians North of Mexico 41 (F. Hodge ed. 1907).

<sup>81/</sup> T. Bahti, supra, n.33, at 34.

<sup>82/</sup> R. Underhill, Social Organization of the Papago Indians 1 (1939).

#### Pima and Papago

Spaniards crossing what is presently southern Arizona in the middle of the sixteenth century encountered a race of Piman-speaking Indians living in a desert land area two hundred miles long by two hundred and fifty miles wide. This Indian desert home lay like a roughly shaped diamond, with its long axis along the present international boundary. Its boundaries were outlined by water courses: at the north, the Gila River; at the south, the little Altar River; at the east, the San Pedro River flowing north to the Gila. At the west, the driest part of the land touched the Gulf of California.<sup>83/</sup>

Indian inhabitants of this land were known as Pimas by the Spanish<sup>84/</sup> and by themselves as O-o-tam, meaning "people."<sup>85/</sup> They considered themselves one people<sup>86/</sup> but were divided into three tribes. The Papah-Ootam, or "Bean People;" sometimes called the "Desert People"<sup>87/</sup> who lived on the desert south of the Gila River and are known as Papagos. The extinct Sobaipuris resided on the Santa Cruz and San Pedro Rivers in southern Arizona and northern Sonora. The tribe of the Gila River called themselves Akimuct Ootam or "river people," an appropriate name for, according to their tradition, they have

<sup>83/</sup> Id.

<sup>84/</sup> Sen. Carl Hayden, A History of the Pima Indians and the San Carlos Irrigation Project 2 (1924).

<sup>85/</sup> R. Underhill, supra, n.78, at 1.

<sup>86/</sup> A. Joseph, The Desert People 3 (1949).

<sup>87/</sup> Sen. Carl Hayden, supra, n.80, at 2.

always lived near that river. The traditional name Pima is given to these Indians.<sup>88/</sup> The name is derived from the native phrase Pi-nyi-match which means "I do not know." It was given as the answer to all questions asked by the First Spanish explorers who assumed the Indians were telling them their tribal name.<sup>89/</sup>

Pimans (Pima and Papago) are the northernmost of an almost unbroken line of Uto-Aztecan speaking peoples, stretching from the neighborhood of Mexico City along the western edge of the plateau with extensions into the foothills and plains beneath.<sup>90/</sup> Bahti believes the Pima and Papago are most likely descended from the ancient Hohokam.<sup>91/</sup> A Pima word, "Hohokam" means "those who have gone." It is the name given to a remarkable agricultural people who occupied southern and central Arizona for about 1,500 years. Sometime after 1400 A.D., this culture, which had construed elaborate irrigation systems in the Gila and Salt River Valleys, declined and disappeared. Soon afterwards it was replaced by the Piman-speaking tribes.

The Spanish occupancy of Piman lands began with Father Kino's coming in 1667 and ended with the Gadsden Purchase by the United States in 1853.

<sup>88/</sup> T. Bahti, supra, n.33, at 62.

<sup>89/</sup> R. Underhill, supra, n.78, at 1.

<sup>90/</sup> T. Bahti, supra, n.33, at 62.

<sup>91/</sup> R. Underhill, supra, n.78, at 24.

In spite of this 166 years of influence, the natives neither died out, as occurred in California, nor were they completely Hispanized, as had taken place in Sonora. Anglo settlers were always few and Anglo influence discontinuous because of the sterile nature of the country and the Apache raids.<sup>92/</sup>

Early in the nineteenth century, the Pima were joined by the Maricopa, who left their former home because of constant oppression by the Yuma and Mohave. Although speaking distinct languages, the Maricopa and Pima have since dwelt together in harmony. They intermarry, and their general habits and customs are identical.<sup>93/</sup>

#### Walapai

Originally, the Pai occupied the area north of the Mohaves on the upper Colorado River. Prior to Spanish entry in the Southwest, they moved eastward into the plateau region of northeastern Arizona. From this original group there emerged three separate tribes -- Walapai, Yavapai, and Havasupai. Linguistically they are related to the Colorado River Yumans; culturally they more closely resemble the Southern Paiute.<sup>94/</sup>

<sup>92/</sup> II Handbook of American Indians North of Mexico, supra, n.76, at 252.

<sup>93/</sup> T. Bahti, supra, n.33, at 67.

<sup>94/</sup> II Handbook of American Indians North of Mexico, supra, n.76, at 899.

Walapai, also spelled Hualapai, is a corruption of the native name Hah-wah-hah-pai-yah meaning "pine tree people."<sup>95/</sup> Two hundred years ago, the territory of the Walapai included the area between the Bill Williams River and the Grand Canyon and west almost to the Colorado River.<sup>96/</sup> The Walapai was a small tribe whose total population did not exceed one thousand. Their tiny settlements, usually consisting of two or three families, were scattered over the arid plateau wherever a permanent water supply was located.<sup>97/</sup>

Contact with the Spanish was limited to one visit by Padre Garces in 1776. Anglos arrived on Walapai lands in 1852. Relations with Americans were strained and in 1866 broke out when miners and cattlemen began to appropriate Walapai springs and waterholes. To avoid bloodshed, the Indians were moved to the Colorado River and placed on the Mohave reservation.<sup>98/</sup> Unaccustomed to the heat in the low country, many sickened and died before the survivors moved back to their own land. During their two-year absence, however, their territory had been taken by Anglos and the Walapai, destitute, were forced to accept government rations in order to exist. In 1883, a reservation was set aside for

<sup>95/</sup> T. Bahti, supra, n.33, at 67.

<sup>96/</sup> Id.

<sup>97/</sup> Id.

<sup>98/</sup> Id.

them in their native country, made up of those areas which the Anglos found unsuited to their own needs.<sup>99/</sup>

#### Yavapai

The source of the word Yavapai is in doubt. It may have been derived from En-ya-va-pai-aa meaning "people of the sun" or Yawepe meaning "crooked mouth people" (i.e., "sulky").<sup>100/</sup> The tribe, which probably never numbered over 1,500, was divided into three subtribes: the Southeastern, Northeastern, and Western groups.<sup>101/</sup>

According to their tradition, the Yavapai once formed a single tribe with the Walapai, but intra-tribal hostilities brought about a split. After that time, the Walapai were regarded as enemies along with the Havasupai, Maricopa, and Pima. The Yavapai maintained friendly relations with the Western Apaches, particularly the Tonto band, with whom they frequently intermarried. As a result, the Yavapai have often and confusingly been referred to as Mojave-Apache and Yuma-Apache.<sup>102/</sup>

<sup>99/</sup> J. Swanton, supra, n.29, at 367.

<sup>100/</sup> E. W. Gifford, Northeastern and Western Yavapai 248 (1936).

<sup>101/</sup> T. Bahti, supra, n.33, at 68.

<sup>102/</sup> E. W. Gifford, supra, n.96, at 247.

Of all Yuman groups, the Yavapai were unique in inhabiting a vast territory embracing some 20,000 square miles, roughly 200 miles in its east-west dimension and 100 miles in its north-south dimension. This land area stretched from the Verde Valley to the Colorado River between the Gila and Bill Williams Rivers.<sup>103/</sup> In the 1860's their territory was invaded by Anglo prospectors and miners. Bloody feuds and massacres resulted, continuing until both the Yavapai and the Apache were subdued by General Cook in 1872. In 1875, one thousand Yavapai were placed at the Camp Verde army post and then moved to the San Carlos reservation. The Yavapai remained at San Carlos for twenty-five years and then began to drift back to their home country.<sup>104/</sup>

#### Yuma

The Yuma occupied the bottom lands on both sides of the Colorado River between territories held by the Cocopa and Mohave. The location of this settlement is 50 to 60 miles from the mouth of the Colorado River at and below the junction of the Gila River.<sup>105/</sup> The tribal name Yuma is derived from the Pima name lum for this tribe. The native name is Quechan, a reference to the

<sup>103/</sup> T. Bahti, supra, n.33, at 68.

<sup>104/</sup> J. Swanton, supra, n.29, at 369.

<sup>105/</sup> T. Bahti, supra, n.33, at 65.

trail they followed in leaving a sacred mountain from which all Yuman tribes are believed to have descended.<sup>106/</sup>

The Yuma were not recognized as a separate tribal unit before the visit of Father Kino in 1698.<sup>107/</sup> Hernando de Alarcon encountered the Yuma in 1546 when he sailed up the Colorado River to Yuma County. Alarcon did not, however, distinguish the Yuma from other Colorado River tribes.<sup>108/</sup> In 1779, the Franciscans sent Padre Garces with a military escort to establish missions in Yuma territory. The Indians, who had proved to be friendly when treated as equals, resisted this attempt to subjugate them. They were unwilling to give up either their land or independence in return for the dubious benefits of a new religion. In 1781, the Yuma destroyed the mission (located near the present town of Yuma) and killed the priests and soldiers.<sup>109/</sup>

Both prior to and after the California gold rush of 1849, any Anglo attempt to settle on Yuma lands met with opposition. The earliest difficulties arose when Anglos tried to establish a ferry service in competition with the Yuma. By 1850, the Americans were demanding protection from the Indians, and a military outpost was established at Camp Yuma. Hostilities soon broke out and the army proceeded

<sup>106/</sup> C. Forde, Ethnography of the Yuma Indians 104 (1931).

<sup>107/</sup> T. Bahti, supra, n.33, at 65.

<sup>108/</sup> Id. at 63.

<sup>109/</sup> Id.

to subdue the Yuma. Subsequently, a reservation was established for them in 1884.<sup>110/</sup>

#### Southern Paiute

The vast territory belonging to the Shoshonean linguistic stock of the large Uto-Aztecan family once stretched from the Cascades and Sierra Nevada Mountains to the northern plains, then southward almost to Mexico. With the exception of the Washos of California, it included all of the Indians in the Great Basin area -- the Shoshonis, the Paiutes, and the Utes.<sup>111/</sup> The Southern Paiute or true Paiute<sup>112/</sup> ranged over portions of western and southern Utah, northwestern Arizona, and southeastern Nevada.<sup>113/</sup> The origin of the Paiute name is uncertain although "true Ute" has been suggested as translation of the native name.<sup>114/</sup>

Archeologist Robert Euler attempts a reconstruction of the cultural history of the Southern Paiute through the use of the direct historical method and analysis of materials from more than 250 sites that indicate tribal occupation. The data permit the following hypotheses: "that the Southern Paiute were essentially a

<sup>110/</sup> V. Trenholm and M. Corley, The Shoshonis: Sentinels of the Rockies 3 (1964).

<sup>111/</sup> J. Swanton, supra, n.29, at 357.

<sup>112/</sup> Id. at 381.

<sup>113/</sup> T. Bahti, supra, n.33, at 46.

<sup>114/</sup> Euler, "Southern Paiute Archeology," 29 American Antiquity 379 (1964).

Desert culture people; that they entered the Southwest and southern Great Basin about A.D. 1150 or slightly earlier from the north; that they did not develop from any of the Pueblo groups in the area; and that they maintained their territorial occupancy until dispersed by European incursions between 1800 and 1860.<sup>115/</sup>

During the sixteenth and seventeenth centuries, the Southern Paiute came in contact with the Spaniards but significant relationships did not develop. The first attempt to describe this tribe systematically was made by Father Escalante, who transversed their territory in 1776. In 1863, after the annexation of Southern Paiute territory to the United States, their country was encroached upon and the tribesmen were in part removed to reservations, though by far the greater number remained scattered through their country.<sup>116/</sup>

#### Western Shoshoni

Great Basin tribes were not readily distinguishable because of their cultural and linguistic similarity. Yet, the Shoshoni Indians are unique in that they show the influence of three distinct cultures -- namely, the Basin, the Plateau, and the Plains. Their territory, separate from that of their kinsmen, the Paiutes and Utes, stretched continuously from the desert area of California, across central

<sup>115/</sup> J. Swanton, supra, n.29, at 382-83.

<sup>116/</sup> V. Trenholm and M. Corley, supra, n.106, at 3.

and northeastern Nevada, then across Utah and Idaho into Wyoming.<sup>117/</sup> Utah land occupied by the Western Shoshoni was in the northwest sector of the state.<sup>118/</sup> Just why these Indians were called Shoshoni is not known, for the significance of the term has been lost. Their Arapaho name, E-wu-ha-wu-si (People-who-use-Grass-or-Bark-for-their-Lodges), probably comes nearer explaining their tribal sign, a serpentine figure -- in reality the in-and-out motion used in weaving their shelters.<sup>119/</sup>

Since all Shoshoni originated in the Basin, the major division of the Shoshoni Nation into Western and Northern is more cultural than geographic. The Western Shoshoni, who had little contact with the outside world, clung to their original way of life, while the Northern Shoshoni show the influence of the Plains and Plateau. Historians state that when an Indian acquired a horse (the emblem of Plains' culture) he was considered a Shoshoni; if he found himself deprived of it, he was once again a Shoshoko (Walker or Digger).<sup>120/</sup>

The Western Shoshoni (Shoshokos) were recognized as such because they lacked organized bands as well as horses before the arrival of Anglos. The tribe included the little-known Snakes in the Blue Mountains of Oregon, the Panamints

<sup>117/</sup> J. Swanton, supra, n.29, at 405.

<sup>118/</sup> V. Trenholm and M. Corley, supra, n. 106, at 3-4.

<sup>119/</sup> Id. at 4.

<sup>120/</sup> Id.

of California, the Shoshoni of Nevada; the Gosiutes, Weber Utes, and Shoshoni in Utah, as well as the Smoke River Indians of Idaho.<sup>121/</sup> The Gosiutes formerly lived in the desert territory bordering the Great Salt Lake on the south and extending westward into eastern Nevada.<sup>122/</sup> Narratives of explorers generally waste few words on the Western Shoshoni, classing them indiscriminately as "diggers" and dismissing them with a few contemptuous words. They were affected materially by the discovery of the Comstock Lode. Although it was not in their territory, prospectors penetrated everywhere and stock was introduced which sorely affected the food supplies of the Western Shoshoni, ultimately causing armed conflict with the Anglo invaders.<sup>123/</sup>

#### Ute

Ute is derived from Yuta, the Shoshoni and Comanche name for the tribe. The native name is Nont'z, meaning "the people."<sup>124/</sup> Their traditional habitat was central and western Colorado and all of eastern Utah, including the eastern part of Salt Lake Valley and Utah Valley, extending into the upper drainage

<sup>121/</sup> R. Chamberlin, The Ethno-Botany of the Gosiute Indians of Utah 331 (1964).

<sup>122/</sup> J. Swanton, supra, n.29, at 410.

<sup>123/</sup> T. Bahti, supra, n.33, at 71.

<sup>124/</sup> J. Swanton, supra, n. 29, at 373.



area of the San Juan River in New Mexico.<sup>125/</sup> Before the Spanish influx in the latter part of the eighteenth century, the Ute tribe was divided into a loose confederation of seven bands. The Southern Utes who numbered about 1,000 consisted of three bands -- the Weeimucho, Mouache, and Capote. Between the Southern and Northern Utes dwelt the Tabeguache band which comprised 3,000 persons. The Grand River, Yampa, and Uintah bands of the Northern Ute numbered approximately 3,500 Indians. The seven bands together never exceeded a population of 10,000.<sup>126/</sup>

When Father Escalante traversed their territory in 1776, the Ute had no horses and lived in small family clusters subsisting by food collecting. At that time, there was no clear distinction between the Ute and the Southern Paiute, both of whom speak the Ute-Chemehuevi branch of Shoshonean. After acquiring horses in the early nineteenth century, however, the Ute of western Colorado and later of northern Utah became organized in loose bands of hunters. In the southern regions of Utah, however, the Ute-Chemehuevi remained afoot and became known as Southern Paiute.

From 1849 through the 1880's, Americans made -- and broke -- a series of treaties with the Utes. After Colorado became a state in 1876, a public

<sup>125/</sup> W. Rockwell, The Utes a Forgotten People 12 (1956).

<sup>126/</sup> T. Bahti, supra, n.33, at 71.

clamor was raised to remove the Utes to provide more land for Anglo settlers. Each demand resulted in a new treaty and less land for the Utes. Eventually, with the loss of their best hunting grounds, the Utes became dependent upon government rations during their early reservation years.<sup>127/</sup>

<sup>127/</sup> Id. at 72.

II

TRADITIONAL INDIAN JUSTICE

Law is a part of the culture of every Indian tribe. Edward B. Tylor, founder of the modern science of anthropology, defined culture as "that complex whole which includes knowledge, belief, art, law, morals, custom, and any other capabilities and habits acquired by man as a member of society."<sup>1/</sup> As a cultural component, law functioned as a tool of social control to dictate tribal behavior. The Indian justice system rewarded behavior which it favored or deemed right, and punished behavior not sanctioned by the tribe -- that which was wrong.

Traditional Indian justice was not a system based on formalized procedures and specialized roles. Individual clans determined and enforced their own laws. The Pueblo Indians in the southwest utilized perhaps the only slightly formalized judicial system. The clan chief decided most disputes, while the bow priest acted as the tribal executive arm.<sup>2/</sup>

Apache

Crime was not unknown in Apache society. Crimes included theft, the willful destruction of property, injury to others (either accidental or intentional),

<sup>1/</sup> P. Farb, supra, n.2, at 18.

<sup>2/</sup> Interview with Dr. J. Martin, Assistant Professor of Anthropology, Arizona State University, Tempe, Arizona, April 22, 1970.

trespass upon farming lands, incest, rape, murder and witchcraft. Each of these was settled in its own way. Theft was uncommon. It was said that only the poor stole. What little did take place was usually a woman stealing corn from another's food cache or from another woman's field. These were considered women's quarrels and left to them to settle, generally by the return of the stolen food. Occasionally a horse or cow was stolen. If the affair could not be settled, a subchief or other influential man was asked to arbitrate the dispute.<sup>3/</sup>

Damage to farm crops by stock breaking into fields was settled according to a recognized code. Upon payment of a blanket or buckskin or something of like value, the owner received the animal back. In rare cases an influential man was called in to settle the matter.

Accidental injuries caused by shooting or by being kicked by another's horse could be atoned for by payment of a buckskin, blanket, or quiver. The payment demanded was higher for accidentally caused deaths. Intentional injury, such as might occur in a fight, could also be settled by payment to avoid retaliation. The immediate relatives of those concerned would talk it over and agree on the compensation.<sup>4/</sup>

<sup>3/</sup> G. Baldwin, The Warrior Apaches 102 (1965).

<sup>4/</sup> Id.

Murder was not uncommon in pre-reservation days. Most of the killings were the result of arguments during or following drinking parties. When the Apache fought he usually fought to kill, and he frequently did. Murder could be settled by payment, thus avoiding a blood feud. These payments varied according to the social status of the victim, a wealthy or influential man bringing a higher compensation than a poor man. Payment was made by the maternal kinsmen of the murderer. Goods were piled up before the offended family until the amount was sufficient. Sometimes the payment was burned on the spot, sometimes it was taken home and used. If any horses given as payment were killed, their meat was eaten. In rare instances, when a murder was so brutal and inexcusable that even the killer's relatives could not condone it, the killer was given to the victim's family to kill on sight. This avoided revenge being taken on other relatives.<sup>5/</sup>

Apache young men and women were brought up under a strict moral code. Contact between the sexes was discouraged. Unwelcome male attentions even as slight as laying a hand on a woman's shoulder or foot, were offenses which could lead to trouble. If the woman complained to her parents or close relatives, payment could be demanded or the relatives might destroy property belonging to the offender, slashing a buckskin to pieces or killing a horse. The culprit, knowing himself to be in the wrong, had to submit to this. Such minor

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<sup>5/</sup> Id.

incidents as these on up through varying degrees of intimacy to rape could be atoned for by payment. If the victim of a rape became pregnant, her parents usually insisted on the guilty man marrying her.<sup>6/</sup> An Apache man punished his adulterous wife by cutting the lower part of her nose off. Because the husband was accuser, judge, and jury, an innocent wife often suffered this torture.<sup>7/</sup> In 1867, U. S. Army Captain Charles Smart reported that among Apache women he observed a few who had the cartilaginous part of the nose cut off, thereby spoiling their good looks. Captain Smart added that it was only those who had pretensions to beauty who were so mutilated.<sup>8/</sup>

Two major crimes, incest and witchcraft, were closely linked in Apache culture. Witches were thought to practice incest and therefore persons caught in incest were considered witches. Witchcraft was believed to cause illness and even death. Witches were feared and shunned. These two offenses were almost the only cases actually tried by a chief. The usual punishment was banishment or death. The basis for the Apache code of law was expressed in Apache terms as "getting even." Thus, an Apache got even for an injury or murder by being paid or by killing a member of the offender's family.<sup>9/</sup>

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<sup>6/</sup> Id. at 103.

<sup>7/</sup> A. Reagan, Notes On the Indians Of the Fort Apache Region 301 (1930).

<sup>8/</sup> C. Smart, Notes on the Tonto Apaches 419 (1867).

<sup>9/</sup> G. Baldwin, supra, n.126, at 103.

Cocopa

If a Cocopa husband found his adulterous wife and her lover together he probably would kill them both. The relatives of the slain man then had the opportunity to avenge his death. The husband and his relatives then fought with bows against the relatives of the deceased. If this contest was opposed by public opinion, men of the tribe rode on horseback between the warring parties to end the fight. A "truth speaker" made peace between the two families if either the husband or the slain man was an especially esteemed person in the tribe.<sup>10/</sup>

It was a married man's prerogative to have relations with other women -- usually a widow or unmarried women. If the wife becomes angered over this conduct, she could fight her husband's lover to the amusement of the entire tribe. The women did not attempt to kill each other but they pulled hair, wrestled, and pummelled.<sup>11/</sup>

The Cocopa headman, or "person good," lectured his people about once a month not to do wrong. He especially warned those persons who had a tendency to steal, kill or abduct a wife. If a person disobeyed the headman, relatives stood by the wrongdoer. Other tribal members separated these factions to

<sup>10/</sup> Gifford, "The Cocopa" 31 American Archaeology and Ethnology 293 (1934).

<sup>11/</sup> Id.

prevent fighting. There were no courts, jails or judges. All the Cocopa would assemble at night to discuss the incident.<sup>12/</sup>

Havasupai, Walapai, Yavapai

Being originally one Pai group, the Havasupai-Walapai-Havapai block of Indians shared a common culture. Because law was part of this culture, the systems of justice employed by these three tribes were quite similar. If a Pai man accidentally injured another, he would give a present to sooth injured feelings and to prevent retaliation. If a non-Pai murdered a Pai, the slain man's relatives would immediately revenge themselves on the murderer. When a Havasupai killed a Walapai, his relatives might pay a blanket, horse or buckskin to prevent his being killed in retaliation. A Havasupai chief would accompany his tribesmen to the Walapai to present these gifts. Similarly, the Walapai would offer to pay if one of their number killed a Havasupai.<sup>13/</sup>

The reason for divorce among the Pai usually was adultery. It was almost always the man who left his wife, either because she was the offender or because he preferred another woman. Usually the husband cut the hair of his adulterous wife two or three inches from her head and beat her as well. Then he killed a horse belonging to his rival or attempted to beat the man up. If the wife's partner

<sup>12/</sup> Id. at 298.

<sup>13/</sup> L. Spier, supra, n.36, at 253.

did not say anything about the dead horse, the affair could be forgotten and sometimes the two men could be friends again.<sup>14/</sup>

### Hopi

Social control was traditionally vested primarily in two agencies -- the extended family and the village as a whole. Within the family, the mother's brother, or in his absence any adult male of the household or clan, was responsible for the maintenance of order and the discipline of younger members. In the village, social control was exerted through gossip, public ridicule, social ostracism, and witchcraft. In addition, the village chief, the Outside Kiva Chief, the War Chief, and the Soyoku (Hopi and Hopi-Tewa bogeymen) had social control functions.<sup>15/</sup>

Gossip was the most common form of social control. Public ridicule of a person who behaved improperly was the special function of the Koyala, or clan society.<sup>16/</sup> According to Hodge,<sup>17/</sup> there seemed to be no punishment for crime except sorcery, to which, under Hopi law, all transgressions may be

<sup>14/</sup> C. Smithson, The Havasupai Women 5 (1959).

<sup>15/</sup> Dozier, "The Hopi-Tewa Of Arizona" 44 American Archaeology and Ethnology 339 (1954).

<sup>16/</sup> Id.

<sup>17/</sup> 1 Handbook of American Indians North of Mexico, supra, n.28, at 565.

reduced. There are traditions of imprisonment and the significant and mysterious disappearance of those accused of witchcraft.

### Maricopa

If a man found his wife in adultery, he would say calmly enough, "Perhaps she wants something to eat or wear that I can not give her," and let her go to her lover. He made no attempt to harm either of them. But he would never have anything to do with her thereafter.<sup>18/</sup>

Spier gives the following example to illustrate the attitude of a Maricopa man (x) towards his ex-wife and child.

X left his first wife, who took her infant son with her when she married a Kohuana. The Kohuana could not have been more fond of the boy had he been his own son. For instance, when the lad was returning from a visit to the Mohave, he injured his foot badly. His companions who came ahead reported that he might die of thirst in the desert. The Kohuana step father immediately rode out to fetch him. X would have nothing to do with his ex-wife. He always drove the lad away with a stick and extended this unkindness to his son's children. People now ask why those children care for X, now that he is old, since he treated them so badly, but they reply simply that he is their relative and needs their help.<sup>19/</sup>

Maricopa people greatly feared bewitchment. A malevolent shaman was slain if discovered. The shaman's relatives would not avenge his death because they knew he had caused the death of others. Spier found this type of slaying to be rather frequent.<sup>20/</sup>

<sup>18/</sup> L. Spier, supra, n.51, at 224.

<sup>19/</sup> Id. at 225.

<sup>20/</sup> Id. at 288.

### Navajo

Witchcraft was one of the basic tenants of the Navajo justice system. Belief in witches was universal. Seen from the view of the survival of the society as a whole rather than from that of the adjustment of the single individual, witchcraft functioned in two principal ways: it maintained a system of checks and balances, so that the ceremonial practitioners and the rich were kept from attaining too much power; and it was an implied threat against all socially disrupting action, strengthening in various ways social inhibitions consonant with native culture.<sup>21/</sup> Witchcraft lore affirmed solidarity by dramatically defining what was bad: namely, all secret and malevolent activities against the health, property and lives of fellow tribesmen. This sanction is reinforced by attributing to witches all the stigmata of evil: incest, nakedness, cruelty, bestiality, and other types of forbidden knowledge and actions. In essence, if a person is observed to be guilty of behavior which is considered antisocial, he is likely to have "heaped upon his head" the additional opprobrium that attaches to those suspected of witchcraft.<sup>22/</sup>

Both incest and rape were considered major Navajo sex crimes. To the Navajo, incest meant marrying a cousin or having intercourse with a member

<sup>21/</sup> C. Kluckhohn and D. Leighton, *supra*, n.73, at 247.

<sup>22/</sup> *Id.* at 249.

of one's own clan. The popular belief was that the incestuous would become insane; the penalty was to throw the guilty parties over a cliff. Rape of a young girl was considered a serious criminal offense. The girl's family demanded a heavy fine from the male's family, if they did not first pursue and kill the offender.<sup>23/</sup>

### Papago

The fear of being "spoken about" was the controlling factor in Papago society. In the intimate group, the affairs of everyone were wide open for inspection and any selfishness, dishonesty, treachery, or sexual looseness became common knowledge. The penalty was unpopularity among the neighbors who were one's only associates. They would slack in their food gifts; they would make excuses when asked to a working bee; they would warn against marriage alliances with the family. It was, in fact, the family that suffered and not the individual offender and therefore the family would reform him if possible or, at least, make good his lapses. There was little need for authorities to take action when the family machinery could be kept in order by public opinion. A potent aid to this gossip control was the fear of witchcraft. Every shaman was considered a potential worker of evil magic and therefore it was highly dangerous to offend him, his family, or those who might be paying him.<sup>24/</sup>

<sup>23/</sup> D. Coolidge and M. Coolidge, *The Navajo Indians* 70 (1930).

<sup>24/</sup> R. Underhill, *supra*, n.78, at 115.

The major offenses against society were incest (which meant connections with any known relative); the failure of a woman to segregate herself at menstruation or childbirth, and the practice of sorcery. Any of these were thought to bring calamity upon the whole community and, if whipping had been a Papago institution, we should expect these to be the first to merit it. However, whipping was rarely mentioned in this connection and the usual punishments were not meted out by man at all, but by the supernatural. Families who knew that any of their members were about to commit incest, or had done so, dealt with them by moral suasion and, if that failed, took them to the Keeper of the Meeting or the governor. If they still refused to separate, the only punishment was to force them to leave the family group. This was a serious economic misfortune and might be considered a punishment, though it was done only to avoid calamity for the family. The offenders were certain to be struck with illness or misfortune by supernatural means.<sup>25/</sup>

The woman who did not segregate herself brought on her community the danger of flood or lightning and therefore her relatives, particularly her parents, saw to it that she did her duty. If she deceived them, calamity could be averted by her confession and she was not punished, for confession removed the evil influence. But if she did not confess, a supernatural doom would overtake her, and some, or all, of her connections.<sup>26/</sup>

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<sup>25/</sup> Id., at 116.

<sup>26/</sup> Id.

The sorcerer was treated in an entirely different way: his was the case where the Papago performed an official execution. It is possible that sorcery was more frequent than other lapses for the Spanish records are full of it, and one Spanish priest is even said to have died of it. Vengeance in this case, however, was not left to the supernatural, though any good shaman was welcome to try and kill the evil one. When the sorcerer had proved himself a public menace by the number of deaths he was thought to have caused, the council would decree his death and send some young man out with a club to dispatch him. In the alternative, the villagers all together might lynch him, or several do the work on their own initiative and be thanked by the council. The record of the calendar stick is punctuated with such executions.<sup>27/</sup>

Murder, in the Papago view, was not a crime. It took place generally at the drinking feast or in a quarrel over a woman, and the victim's family then had a right to kill the murderer or a member of his family. The Keeper, governor and elders remonstrated with them and begged them not to make the village lose a man, but if they insisted, "no one would interfere." One instance was recited where the murderer had fled the country but his brother was still in the village. The victim's brothers came to the door of his house and told him: "We are going to kill you. Send your wife and children away." He sent them away and then came to meet his executioners. After his death, his wife tore down the house,

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<sup>27/</sup> Id.



according to the usual custom, and all the village united in rebuilding it for her at another place and in helping to support her for life.<sup>28/</sup>

There was considerably less scope for sexual offenses than in modern society and a man, particularly, had a great deal of freedom. If he conceived a sudden passion, he could always take the woman as an additional wife, after the proper preliminaries of divorce for a married woman or proposal for a maiden. There were official nights of saturnalia at the drinking feast and the maiden's dance when he could gratify a briefer desire. Homosexual tendencies were openly acknowledged and sanctioned. Yet, sexual offenses did occur. Rape is never mentioned and an illicit affair with a maiden was not important, but one with a married woman, without the proper divorce, was an infringement of the husband's property right. The husband could destroy or appropriate the lover's property and, if he killed him, would not be interfered with. A woman had less freedom and less consolation. There were no female transvestites and a woman could take advantage of the saturnalian feasts only with her husband's consent. She could have only one husband and, if she preferred another man, must be divorced and become a second wife. If her husband was having a love affair, she had no remedy but to scratch the other woman while the village looked on. When too much outraged, she could but return to her family.<sup>29/</sup>

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<sup>28/</sup> Id. at 117.

<sup>29/</sup> Id.

The chief offenses against property were theft, the moving of land boundaries, and food hoarding. Theft was a rare occurrence, since all had about the same amount of possessions and since families shared even with their laziest members. Theft was dealt with by the Keeper, who asked the offender's family to make restitution. Public opinion forced them to comply or lose their status in the community. The moving of land boundaries was dealt with in the same way. The two landholders concerned were summoned before the Keeper by his Leg and urged to come to an agreement. Sometimes the Keeper would suggest that they should divide the land under dispute and each find an extra plot further off. The hearing usually took place before all the elders and, because both were ashamed to show themselves quarrelsome, they accepted the decision. If one was recalcitrant without good cause, the council might ask him to leave the village. Food hoarding was recognized by all as a serious offense, but it was not punished. The offender was simply recognized as a public enemy and avoided to such an extent that he and his family suffered economically from lack of help and socially from loneliness and humiliation.<sup>30/</sup>

In summary, the community and officials acted principally as umpires and used no corporal punishment except in the killing of the shaman, which was regarded as an act of self defense. The punishments of admonition and banishment which they did administer fell not upon the individual offender, but on his whole family. A family, particularly a father and brothers, would not desert a man no

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<sup>30/</sup> Id. at 118.

matter what his behavior. If they could not reform him, they might, themselves, take him to the authorities for a severe lecture on the fact that he was ruining his family's position. They might share in this lecture for having failed to keep him in order. If he was so impossible that he must be asked to leave the village, one or more of the family would have to go with him -- since an individual could hardly exist alone -- or distant relatives must take him in. In any case, there was no thought of the penalty singling out the individual and leaving the family free. This was particularly true with supernatural vengeance; misfortune might strike any member of the family and not necessarily the culprit.<sup>31/</sup>

#### Western Shoshoni

Because the Comanche people are a branch of the Shoshoni tribe,<sup>32/</sup> the opportunity is afforded to glean from Comanche legal procedure the system of justice most likely used also by the Western Shoshoni.

Adultery was punished by taking or destroying the property of the guilty man. The woman is simply "thrown away" by her husband, although in theory her life is forfeited. The husband might also kill his wife or cut off her nose. Camp and ceremonial regulations were enforced and their violation punished by the (military societies), acting under the direction of the war-chiefs. Personal

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<sup>31/</sup> Id.

<sup>32/</sup> V. Trenholm and M. Corley, supra, n.106, at 3.

grievances were avenged by the injured party or by his nearest relatives without interference by the tribe.<sup>33/</sup>

#### Zuni Pueblo

It was related by a tribal elder that in the days of pre-history, witchcraft was even more strongly believed and feared than at the present time. The war chiefs, chosen by virtue of bravery displayed in battle, not only served as outpost lookouts who spread the alarm in case of impending attack, but also patrolled the villages after sundown. A villager found outside his house after dark was presumed to be a witch, else why would he (or she) be out when only witches roamed. The war chiefs would inquire of the hapless wanderer as to why he was not in his home, and lacking a satisfactory response, would summarily dispatch the "witch" by crushing his head.

Some years ago at Zuni, a man who had murdered his neighbor was ordered to spend half his time working his own fields and caring for his own family, and the other half of his time working and providing for the family of his victim.

In another Zuni case, a married woman was forcefully raped by an unmarried man who had followed her to the woods. She duly complained to tribal authorities and during the hearing before the Tribal Council, the aggressor was ordered to

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<sup>33/</sup> J. Richardson, Law and Status Among the Kiowa Indian 3 (1940).

make restitution to his victim by giving her a number of valuable items. He was also strongly admonished for his act and warned that if he repeated it, he would be ordered to pay twice this amount.<sup>34/</sup>

If a member of the Zuni tribe was found by the Tribal Council to be guilty of stealing a neighbor's sheep, he might be ordered to pay to the victim ten sheep. By the traditional use of restitutive rather than retributive justice, the transgressor was not only punished, the feelings of the victim assuaged, the community made aware that such offenses would not be tolerated and the community spared the expense of confinement, but perhaps most importantly, in the eyes of everyone concerned, complete atonement was achieved and the matter forgotten. The offender was restored as a fully contributing and participating member of the society.

#### Plains Indians

Standards of right and wrong varied widely from tribe to tribe, as did the procedures for punishing transgressors. In all Plains tribes, since they accorded highest status to those who demonstrated bravery and daring in battle, individual aggressive drives were vented against outsiders. The result is a pattern of crime unlike anything in white society. Offenses against property were insignificant because Indian society stressed cooperation and sharing. Hunger drove no one

<sup>34/</sup> Smith and J. M. Roberts, Zuni Law, A Field of Values, Papers of the Peabody Museum of American Archaeology and Ethnology, Harvard University, Vol. 43, No. 1, p. 52 (1954).

to steal where sharing was a cardinal virtue. And the very scarcity of personal possessions would make a stolen article too conspicuous to be used in a tightly knit society where everyone was constantly on view. Therefore, theft was virtually unknown, although some Indians had reputations for borrowing without first seeking the owner's permission. If the borrowed item were a horse, in a society which placed great value on horses for hunting and fighting and as symbols of affluence, the "borrowing" could lead to trouble.

Among crimes they regarded as serious, homicide, adultery and violations of communal hunt rules appear to have been the most prevalent among the Plains tribes. Here, also, the usual variations appeared. Among the Cheyennes violations of the sex code seem to have been infrequent, whereas among the Kiowas they were among the most frequent sources of trouble. Homicide did not occur so often as one might expect in a society that glorified the warrior, because intertribal warfare served as an outlet for aggressive drives. Violations of communal hunt rules much more frequently led to dissension. It was a very serious offense when one thoughtless individual frightened away game, causing the entire tribe to enter the winter short of meat, hides for new tipis, and robes to protect them from the fierce northerners.<sup>35/</sup>

<sup>35/</sup> Hogan, Indian Police and Judges, p. 12.

III

CONCEPTS OF TRIBAL SOVEREIGNTY

Spanish

The white man's knowledge of the Southwestern Indians began in the early sixteenth century. Among the first tribes met by Coronado and other Spanish explorers in the region were the inheritors of the Anasazi culture. At that time, the Pueblos -- from the Hopi and Zuni settlements in the west to the eastern Pueblo groups in the Rio Grande Valley -- numbered more than 16,000 people and dwelled perhaps in eighty settlements, each one politically autonomous.<sup>1/</sup>

Vitoria, a sixteenth century Spanish philosopher on the concept of international law, entertained deep thoughts on the political status of the Indians of the New World. Vitoria explained that the "aborigines" (Indians) were human and possessed a rational mind, thus they being rational creatures, as are all men, they cannot be denied the right of possession and domain. "It being premised, then, that the Indian aborigines are or were true owners, it remains to inquire by what title the Spaniard could have come into possession of them and their country."<sup>2/</sup> In response to the question, Vitoria believed

<sup>1/</sup> Alvin M. Josephy, Jr., Indian Heritage of America 161 (1968).

<sup>2/</sup> Vitoria, De Indis et de Ivre Bell: Reflecciones, 129.

that the Spaniards had a right to explore the New World, but had been given no right to title or dominion of Indian soil or Indian politics.<sup>3/</sup>

Vitoria's principles were followed by the Spanish Crown and the Pope, only ideally, however, for the Spanish conquistadores practiced a quite opposite theory -- that of dominion by conquest, and ruthlessly so! Even though the Spaniards as conquerers did not practice what was preached, the Crown soon incorporated these idealistic notions of Indian title and dominion into her laws, recognizing the Indian as an individual with rights as such. The Spanish Crown took the view that it was to be a protector of the Indians against the threats of local Europeans, its subjects as well.<sup>4/</sup>

The Spanish King was proprietor of all territories conquered in his name and was at liberty to dispose of them as he chose. They were distributed in several ways. Lands were conceded to the support of new towns and their citizens, for Indian pueblos, and to vassals who had served in the conquest of a new territory. Certain property was retained by the Crown under the title of "vacant or royal lands." It was these last which were made as grants to individuals, but with the understanding that final title was retained by the king. Grants were

<sup>3/</sup> G. Nicholas Pijoan, A Brief Historical Survey of the Legal Status of the American Indian, p. 2.

<sup>4/</sup> Ibid.

made for occupation and use, the subject taking the rents and profits, and normally a time limit was specified.<sup>5/</sup>

The Spanish governor of New Mexico was empowered to make both Spanish and Indian land grants in the name of the king.<sup>6/</sup> Related to the governor's land grant powers was his obligation to protect Indian properties from trespass and encroachment by Europeans. Carefully wrought legislation was designed to safeguard all native land which was actually used or occupied. With increased European population, the eighteenth century was a time of stress for the Indian communities, as the governors and alcaldes mayores, at best, ignored the laws while whites impinged upon pueblo lands, and, at worst, connived openly to exploit the natives.<sup>7/</sup> In all judicial cases involving Indians, the governor held exclusive jurisdiction, as well as the power to appoint defenders (defensores or curadores) in their behalf.<sup>8/</sup> The official Spanish policy towards the Pueblo Indians can, perhaps, best be described by the following excerpts compiled in 1939 by Herbert O. Brayer of the University of New Mexico from the Recopilacion de las Indias, law 1, title 2, book 6.<sup>9/</sup>

<sup>5/</sup> Marc Simmons, Spanish Government in New Mexico 78 (1968).

<sup>6/</sup> Ibid.

<sup>7/</sup> Ibid., p. 79.

<sup>8/</sup> Ibid., p. 67.

<sup>9/</sup> Felix S. Cohen, Handbook of Federal Indian Law 383 (1945).

"1. The Pueblo Indians of New Mexico were considered wards of the Spanish Crown.

"2. The fundamental legal basis for Pueblo land grants lies in the royal ordinances. The 1869 grants, purporting to convey land to the Indians are spurious.

"3. Only the viceroy, governors, and captains-general could make grants to the Indians, and only these officials had the authority to validate sales of land by the Indians.

"4. All non-Indians were expressly forbidden to reside upon Pueblo lands.

"5. The Spanish Government provided legal advice, protection, and defense for the Indians. Provincial officials had the authority to appeal cases directly to the audiencias in Mexico.

"6. The Indians had prior water rights to all streams, rivers and other waters which crossed or bordered their lands.

"7. The Pueblo Indians held their lands in common, the land being granted to the Indians in the name of their pueblo."

#### English

The English, unlike the Spanish, did not recognize the political independence of the Indians and had declared them to be vassals of the Crown. A vassal being a feudal tenant or conditional grantee, the Indian generally being the latter, with the Crown acting as grantor. The Indians were admitted to possess a right of occupancy or use of the soil, and in a sense they were permitted to exercise rights of sovereignty over it. However, they were denied the authority to dispose of the soil to anyone other than the Crown.<sup>10/</sup>

<sup>10/</sup> Piñon, supra, p. 3.

Britain claimed her title and absolute sovereignty upon the principle of international law that title is founded upon discovery and conquest. Thus, until the revolution, the Indian of the east was a vassal of the English Crown while those of the southwest enjoyed the status of ward under the guardianship of the Spanish Crown.<sup>11/</sup>

American

The basic Indian policy of the United States was formulated during the first decades of our national existence, as the Federal government sought solutions to the problems caused by the presence of the Indians.<sup>12/</sup> These problems were inherited from Great Britain when the new nation acquired its independence; they grew out of the given fact that the Indians were here when the white man arrived and that their presence on the land formed an obstacle to the westward advance of the white settlers.<sup>13/</sup>

From the beginning, three potential competitors for power were present: the Federal government, the states, and the Indian tribes. The Indian policy of the government was expressed in the formal treaties made with the Indian tribes,

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<sup>11/</sup> Ibid.

<sup>12/</sup> F. Prucha, American Indian Policy in the Formative Years (1962).

<sup>13/</sup> Id. at 2.

but it took shape primarily in a series of Federal laws to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontier.<sup>14/</sup> The power to regulate the Indian tribes was granted to the Federal government rather than the states.<sup>15/</sup>

The treaty making authority of the Federal government led to a conflict between state regulation of the Indian tribes versus Federal regulation. In Cherokee Nation v. Georgia,<sup>16/</sup> a suit was brought by the Cherokee Nation to enjoin the state of Georgia from Execution of state laws which would deprive the tribe of land granted to it by a Federal treaty. Chief Judge Marshall stated the position of the Indian tribe as follows:

"Though the Indians are unacknowledged to have an unquestionable, and heretofore, unquestioned right to the lands they occupy until that right shall be extinguished by a voluntary cession to our government, yet it may well be doubted whether those tribes which reside within the acknowledged boundaries of the United States can, with strict accuracy, be denominated foreign nations. They may, more correctly, perhaps, be denominated domestic dependent nations. They occupy a territory to which we assert a title independent of their will, which must take effect in point of possession when their right of possession ceases. Meanwhile, they are in a state of pupilage. Their relation to the United States resembles that of a ward to his guardian."<sup>17/</sup>

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<sup>14/</sup> Id. at 2.

<sup>15/</sup> U. S. Const., Art. 1, 8.

<sup>16/</sup> 30 U. S. 1 (5 Pet.) (1831).

<sup>17/</sup> Id. at 16.

Marshall founded the denial of the injunction on the premise "that the framers of our Constitution had not the Indian tribe in view when they opened the courts of the Union to controversies between a state or the citizens thereof, and foreign states."<sup>18/</sup>

Justice Johnson concurred in the result, but took the view that

"... they may be deemed a state, though not a sovereign state, at least while they occupy a country within our limits. Their condition is something like that of the Israelites when inhabiting the deserts . . . their right of personal self government has never been taken from them."<sup>19/</sup>

The position of the Indian tribes vis-a-vis the states and the Federal government came to light in 1832 in Worcester v. Georgia. The plaintiff, a missionary on the reservation and a citizen of Vermont, was arrested under a Georgia law which required all white residents to take an oath of allegiance to the state of Georgia and to obtain a license from the state. The Chief Judge stated the following:

"The Indian nations had always been considered as distinct, independent, political communities, retaining their original natural rights, as the undisputed possessors of the soil, from time immemorial, with the single exception of that imposed by irresistible power, which excluded them from intercourse with any other European potentate than the first discoverer of the coast of the particular region claimed . . . . /The settled doctrine of the law of nation is, that a weaker power does not surrender its independence -- its rights to self-government, by associating with a stronger, and taking its protection . . . .

<sup>18/</sup> Id. at 16.

<sup>19/</sup> Id. at 26.

"The Cherokee nation, then, is a distinct community occupying its own territory, with boundaries accurately described, in which the laws of Georgia can have no force, and which the citizens of Georgia have no right to enter, but with the assent of the Cherokees themselves, or in conformity with treaties, and with the acts of Congress. The whole intercourse between the United States and this nation is, by our Constitution and laws, vested in the government of the United States."<sup>20/</sup>

The holding of the court was to declare the law null and void, as contrary to the treaties and to the Constitution.<sup>21/</sup>

At the time Marshall was deciding the legal status of the Indians vis-a-vis the Federal and State governments, President Andrew Jackson was shaping a distinct and different executive policy, and on December 8, 1829, he directed a statement to Congress:

"Did the federal government have a right to sustain the Indians in their pretensions, he asked. His answer was unequivocal. The Constitution forbade the erection of a new state within the territory of an existing state without the State's permission. Still less, then could it allow a foreign and independent government to establish itself there. On these grounds, he told Congress, he had informed the Indians that their attempt to establish an independent government would not be countenanced by the Executive of the United States, and he advised them either to emigrate beyond the Mississippi or to submit to the laws of the state. . . . the solution was to set apart an ample district west of the Mississippi, to be guaranteed to the Indian tribes as long as they occupied it. There they could be taught the acts of civilization."<sup>22/</sup>

<sup>20/</sup> 31 U. S. 515, 559-61 (6 Pet.) (1832).

<sup>21/</sup> F. Prucha, American Indian Policy in the Formative Years, p. 244 (1962).

<sup>22/</sup> Id. at p. 238.

When Marshall's ruling on Worcester came out, President Jackson is quoted as saying, "the Chief Justice has made his ruling, now let him enforce it."<sup>23/</sup> Even though there has been uniform judicial acceptance of Worcester, the legislative and executive acceptance has been variegated.<sup>24/</sup>

Thus, the power struggle between the three divergent interests (the Federal government, the State government, and the Indians) became evident early in American history. With the concept of sovereignty in mind, the treatment of the Indian tribes must be traced from the days of treaties to the present day of civil rights legislation, for tribal sovereignty raises questions such as the requirements of constitutional due process in the tribal court and the applicability of sovereign immunity to tribal commercial activity. It seems clear, however, that the Federal courts would not today reaffirm Chief Justice Marshall's dicta. The Civil Rights Act of 1968, which requires tribal governments to respect most of the guarantees of the Bill of Rights, emphasizes this change in doctrine.<sup>25/</sup>

<sup>23/</sup> D. McNickle, They Came Here First, p. 245 (1949).

<sup>24/</sup> Kelly, Indian Adjustment and the History of Indian Affairs, 10 Ariz. L. Rev. 560 (1968).

<sup>25/</sup> The Indian: The Forgotten American, 81 Harv. L. Rev. 1818, 1822 (1968).

#### Dealing by Treaty

The treaty approach was derived from established British Policy in colonial days which was reaffirmed by the Continental Congress.<sup>26/</sup> The Northwest Ordinance of 1787 stated that:

"Lands and property shall never be taken from the Indians without their consent; and in their property, rights, and liberty, they never shall be invaded or disturbed, unless in just and lawful wars authorized by Congress; but laws founded in justice and humanity shall from time to time be made, for preventing wrongs being ~~done~~ to them, and for preserving peace and friendship with them."<sup>27/</sup>

The early philosophy of dealing with the Indians was based upon consent before any action would be taken against them. A treaty signed at Fort Stanwix in 1784 was the first treaty to become effective between former Indian subjects of the British Crown and the United States.<sup>28/</sup> This treaty meant that the six nations were willing and did settle their differences with "the thirteen fires" (thirteen colonies).<sup>29/</sup> They pledged themselves to the United States in exchange for protection.<sup>30/</sup> The treaty, signed by Coin Planter and other chiefs, guaranteed them the right to live in their ancestral homeland unmolested.<sup>31/</sup>

<sup>26/</sup> Kelly, Indian Adjustment and the History of Indian Affairs, *supra*.

<sup>27/</sup> F. Cohen, Handbook of Federal Indian Law, p. 69 (1942).

<sup>28/</sup> Id. at 145.

<sup>29/</sup> Id. at 145.

<sup>30/</sup> Id. at 146.

<sup>31/</sup> Id. at 146.



Based upon the constitutional provisions granting the treaty power,<sup>32/</sup> 363 treaties with about 200 tribes were negotiated and ratified between 1778 and 1871.<sup>33/</sup> The (legality and constitutionality of the) treaties had no greater legal force or effect than legislative acts of Congress.<sup>34/</sup> A subsequent treaty or legislative act of Congress would void a prior treaty for it is a well established principle of our constitutional law that a treaty may be abrogated or superseded by a subsequent act of Congress.<sup>35/</sup> While good faith may have caused Congress to refrain from making any changes in a treaty law, if it did so, its enactments become the law,<sup>36/</sup> for a person acquired no vested rights to the continual operation of a treaty and everyone is bound to obey the latest expression of the law.<sup>37/</sup> An Indian treaty could be modified by mutual consent.<sup>38/</sup>

<sup>32/</sup> U. S. Constitution, Art. VI, cl. 2.

<sup>33/</sup> I. Perthmann, Broken Peace Pipes, p. 146 (1964).

<sup>34/</sup> Federal Indian Law, U. S. Dept. of Interior, p. 24 (1958).

<sup>35/</sup> Id. at 25, n.159. See, for example, Foster & Elan v. Neilson, 2 Pet. 253, 314 (1829); The Cherokee Tobacco, 11 Wall. 616, 621 (1870); Hijo v. United States, 194 U.S. 315, 324 (1904); Johnson v. Browne, 205 U.S. 309, 321 (1907); Ex parte Webb, 225 U.S. 663, 683 (1912).

<sup>36/</sup> Id. at 25.

<sup>37/</sup> Id. at 25, n.161, Hijo v. United States, *supra*. For an instance where an Indian treaty provision superseded a prior act of Congress, see, Choctaw Indians, 13 Op. A.G. 354 (1870). See, also, La Abra Silver Mining Co. v. United States, 175 U.S. 423, 460 (1899).

<sup>38/</sup> Lattimer v. Poteet, 14 Pet. 4 (1840).

Congress could, however, repeal, modify, or disregard treaty commitments with legislation, including those made to the Indians.<sup>39/</sup> In upholding legislation contravening an Indian treaty, the Supreme Court in Lone Wolf v. Hitchcock<sup>40/</sup> said:

"The power exists to abrogate the provisions of an Indian treaty, though presumably such power will be exercised only when circumstances arise which will not only justify the government in disregarding the stipulation of the treaty, but may demand, in the interest of the country and the Indians themselves, that it should do so. When, therefore, treaties were entered into between the United States and a tribe of Indians it was never doubted that the power to abrogate existed in Congress, and that in a contingency such power might be availed of from consideration of governmental policy, particularly if consistent with perfect good faith toward the Indians."

Although the courts have recognized a liberal construction of treaty terms in favor of the Indians,<sup>41/</sup> this enforcement procedure was not necessarily always available, nor when a court decision was handed down was it necessarily followed by the legislative or executive department. Treaties were invalidated by hostilities.<sup>42/</sup>

<sup>39/</sup> Federal Indian Law, U. S. Dept. of Interior, p. 141 (1958).

<sup>40/</sup> Id. at 141, n.173. 187 U.S. 553, 565-66 (1903). See, also, Cherokee Tobacco, 11 Wall. 616, 621 (1870); Ward v. Race Horse, 163 U.S. 504 (1896); Thomas v. Gay, 169 U.S. 264 (1898).

<sup>41/</sup> United States v. Shoshone Tribe of Indians of Wind River Reservation in Wyoming, 304 U.S. 111 (1938).

<sup>42/</sup> Federal Indian Law, U. S. Dept. of Interior, p. 143 (1958), n.182. See, preamble to treaty of August 9, 1814, with the Creeks, 7 Stat. 120. Also, see, Leighton v. United States, 161 U.S. 291, 296 (1896). On what constitutes war between the United States and a tribe, see, Marks v. United States, 161 U.S. 297 (1896); McCandless v. United States, ex rel. Diabo, 25 F.2d 71 (1928).

Some treaties provided for the modification<sup>43/</sup> or abrogation of previous provisions<sup>44/</sup> or declared previous treaties null and void and cancelled claims under them,<sup>45/</sup> or nullified preemptive rights and reservations created under them,<sup>46/</sup> or expressly recognized former treaties.<sup>47/</sup>

The legal standing of Indian treaties did not assure their actual enforcement.<sup>48/</sup> Some important treaties were negotiated but never ratified by the

<sup>43/</sup> Id. at 143, n.187, Treaty of January 20, 1825, Choctaws, 7 Stat. 234; Treaty of September 25, 1818, Osages, Art. 3, 7 Stat. 183; Treaty of July 15, 1830, Sacs and Others, Art. 12, 7 Stat. 328.

<sup>44/</sup> Id. at 144, n.188, Treaty of August 31, 1822, Osages, 7 Stat. 222, abrogates the Treaty of November 10, 1808, Art. 2, 7 Stat. 107; the Treaty of September 3, 1822, Sac and Fox Tribes, 7 Stat. 223, abrogates the Treaty of November 3, 1804, 7 Stat. 84, the Treaty of February 27, 1867, Patawatomies, Art. 13, 15 Stat. 531, 534, voids all provisions of this treaty, the Treaty of April 1, 1850, Wyandots, Art. 11, 9 Stat. 987; see, also, Art. 21 of the Treaty of June 22, 1855, Choctaws and Chickasaws, 11 Stat. 611; and the Treaty of August 7, 1856, Creeks, Art. 26, 11 Stat. 699.

<sup>45/</sup> Id. at 144, n.189, Treaty of January 24, 1826, Creeks, Art. 1, 7 Stat. 286.

<sup>46/</sup> Id. at 144, n.190, supplementary articles to the Treaty of December 29, 1835, Cherokees, 7 Stat. 488; Treaty of May 18, 1854, Sacs and Foxes, Art. 1, 10 Stat. 1074; Treaty of May 18, 1854, Kickapoos, Art. 8, 10 Stat. 1078; Treaty of July 31, 1855, Ottawas and Chippewas, Art. 3, 11 Stat. 621.

<sup>47/</sup> Id. at 144, n.191, Treaty of October 25, 1805, Cherokees, Art. 1, 7 Stat. 93; Treaty of July 18, 1818, Patawatomies, Art. 4, Art. 3, 7 Stat. 124; Treaty of September 25, 1818, Illinois Nation, Art. 2, 7 Stat. 181.

<sup>48/</sup> Id. at 144.

Senate,<sup>49/</sup> or ratified only after a long delay.<sup>50/</sup> Treaties were sometimes consummated by methods amounting to bribery,<sup>51/</sup> or signed by representatives of only a small part of the signatory tribes.<sup>52/</sup> The Federal government has failed at times to fulfill the terms of treaties,<sup>53/</sup> and is said to have been unable or unwilling in some instances to prevent states,<sup>54/</sup> or Anglos,<sup>55/</sup> from violating treaty rights of the Indians.

<sup>49/</sup> Id. at 144, n.199, Hoopes, Indian Affairs and Their Administration, With Special Reference to the Far West, p. 86 (1932).

<sup>50/</sup> Id. at 115.

<sup>51/</sup> Federal Indian Law, U. S. Dept. of Interior, p. 144 (1958); see, n.467. Kinney, A Continent Lost - A Civilization Won, pp. 37, 38, 52, 56, 71, 94 (1937); Schmeckebier, The Office of Indian Affairs, Its History, Activities, and Organization, p. 31 (1927).

<sup>52/</sup> Kinney, op. cit., pp. 44, 45.

<sup>53/</sup> Kinney, op. cit., p. 68; Hoopes, op. cit., pp. 180, 218, 219; Schmeckebier, op. cit.

<sup>54/</sup> See, Kinney, op. cit., p. 71.

<sup>55/</sup> Ibid., pp. 148, 149, 174, 184, 208; Hoopes, op. cit., pp. 84, 226, 228-32, 236; Schmeckebier, op. cit., pp. 24-25, 44.

#### IV

#### CREATION OF RESERVATIONS

There are said to be three types of Indian reservations: those created by treaties prior to 1871; those created by acts of Congress since 1871; and those made by executive orders, whereby the President set apart public lands for the use of the Indians.<sup>1/</sup> The United States generally holds the title, while the right of use and occupancy is in the Indians.<sup>2/</sup> There is no peculiar virtue in the word "reservation" and there is no special ceremony for bringing a reservation into existence.<sup>3/</sup>

The reservation system was devised to isolate the Indians away from the white settlers who were expanding westward. Reservations were created with different political, social, and economic policies in mind. Federal policy has, from time to time, been aimed at encouraging Indians to adopt the ways of their white neighbors.<sup>4/</sup> Between 1789 and 1886, such policy vacillated between making treaties with Indian tribes as landowning, autonomous nations and compelling them to live as wards of the Federal government.<sup>5/</sup> Certain bands were virtual

<sup>1/</sup> Federal Indian Law, U. S. Dept. of Interior, p. 601 (1958), see, n.1; Sioux Tribe of Indians v. United States, 94 Ct. Cl. 150 (1941), aff'd 316 U.S. 317 (1942).

<sup>2/</sup> Id. at 601.

<sup>3/</sup> Id. at 601, see, n.158; 58 I.D. 331, 343.

<sup>4/</sup> Brophy & Aberle, The Indian, America's Unfinished Business, p. 180 (1949).

<sup>5/</sup> Id. at 180.

prisoners, forced to dwell within the boundaries of their original domain or on land given them in exchange for it.<sup>6/</sup>

The Indians were forced or coerced to sign reservation agreements which appeared to be in the best interest of their tribes. But, in fact, the best interest normally served was that of the white man. Federal interest focused upon the acquisition of eastern Indian land through treaties and the establishment of Indian tribes on land west of the Mississippi where, it was hoped, they would be left unmolested by encroaching settlers.<sup>7/</sup> In the majority of cases, the treaties provided that the Indians "receive" for their exclusive use and occupancy a portion of western territory, and that they relinquish title to eastern lands in return for some form of compensation, while other treaties provided for the removal of Indians to new land.<sup>8/</sup>

The reservation system, in its early form, was neither an acceptable mode of life for the Indians, nor did it prevent the unlawful acquisition of Indian land by white settlers.<sup>9/</sup> Besides the fact that the Indians could not make the rapid

<sup>6/</sup> Id. at 180.

<sup>7/</sup> Kelly, Indian Adjustment and the History of Indian Affairs, 10 Ariz. L. Rev. 561 (1960).

<sup>8/</sup> See, generally, Cohen, Original Indian Title, 32 Minn. L. Rev. 28 (1947).

<sup>9/</sup> Kelly, Indian Adjustment and the History of Indian Affairs, 10 Ariz. L. Rev. 561 (1960).

adjustment expected of them, a basic conflict resulted from the Indian memory of the day when he belonged to a sovereign, independent tribe as contrasted with the white attitude toward Indians as little more than a nuisance in a land that now belonged to the United States.<sup>10/</sup>

In 1871, Congress passed legislation which abolished the treaty method of dealing with the Indians and adopted legislation and executive orders as the methods of dealing with Indian affairs. The act passed on March 3, 1871, contained the following:

"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; but no obligation of any treaty lawfully made and ratified with any such Indian nation or tribe prior to March 3, 1871, shall be hereby invalidated or impaired."<sup>11/</sup>

The constitutionality of the 1871 Act was affirmed in 1894 in Leighton v. United.<sup>12/</sup>

This act asserted the right of the government to define the rights of Indians with or without their consent.<sup>13/</sup>

Thus, the rights of the Indian were to be decided by the white father in Washington without regard to the Indians' desires if such be the choice of the

<sup>10/</sup> Id. at 563.

<sup>11/</sup> 25 U.S.C. 71 (1964).

<sup>12/</sup> 29 Ct. Cl. 288, aff'd 161 U.S. 291.

<sup>13/</sup> United States v. Santa Fe Pac. Ry. Co., 114 F.2d 420, modified on other grounds, 314 U.S. 329, rehearing denied 314 U.S. 716.

government. By 1880, it became imperative that the conflict be alleviated between the Indians and the white settlers over land disputes and the answer was to serve the white man's interests, by application of the economic and social philosophy of the time, rather than from a study and understanding of the Indians and the cross-cultural problems involved in the acculturation process.<sup>14/</sup> It was believed that the possession of lands in common, together with the continuation of tribal political, religious, and social independence, constituted the principal reasons for the inability and unwillingness of the Indian to learn the American way of life.<sup>15/</sup> Thus, the legal position of the Indian tribes as domestic dependent nations passed as a historical part of the settlement of the western United States.

<sup>14/</sup> Kelly, Indian Adjustment and the History of Indian Affairs, 10 Ariz. L. Rev. 563 (1968).

<sup>15/</sup> Id. at 563-564.

V  
THE ACTS

General Allotment Act

With the increased number of white settlers migrating to the west and with the Indians holding large acreage of choice lands, it was apparent that Congress would come forward with a plan to expand white influence. The plan took shape as the Dawes or General Allotment Act and was passed in 1887.<sup>1/</sup> The act was to apply to all reservation land, regardless of the original mode of creation, i.e., treaty, legislative enactment or executive decree. The act was not to apply to the five civilized tribes of Oklahoma nor to a tribe in New York.<sup>2/</sup> The President at his discretion could execute the act which would distribute acreage to every Indian in severalty, i.e., to every man, woman and child.<sup>3/</sup> Amounts received were not to exceed 80 acres of agricultural land, nor 160 acres of grazing lands.<sup>4/</sup> If the land had been brought or was to be brought within any irrigation project, then the allotment

<sup>1/</sup> 25 U.S.C. 331.

<sup>2/</sup> 225 U.S.C. 339.

<sup>3/</sup> Id.

<sup>4/</sup> Id.

was not to exceed 40 acres.<sup>5/</sup> Each allotment was to be held in trust by the United States for twenty-five years with a renewal trust provision, after which the Indian would be given a fee patent, the land would become subject to taxation, and the Indian could do as he pleased with his land.<sup>6/</sup> The excess land which would not be allotted to the Indians, was to be placed on the surplus market and sold to the white settlers with the purchase price to be placed in trust for Indian tribes.<sup>7/</sup> Under the surplus plan, the Indians lost an estimated 86,000,000 of a total of 138,000,000 acres held by the tribes in 1887.<sup>8/</sup>

The companion problem which was present with this massive land transfer was simply that of integrating segregated societies with diverse social beliefs and cultures into one society within the trust period of 25 years.<sup>9/</sup> The old

<sup>5/</sup> Id.

<sup>6/</sup> Id.

<sup>7/</sup> Kelly, Indian Adjustment and the History of Indian Affairs, 10 Ariz. L. Rev. 564 (1968).

<sup>8/</sup> Cohen, Handbook of Federal Indian Law (1931) 216.

<sup>9/</sup> Kelly, Indian Adjustment and the History of Indian Affairs, 10 Ariz. L. Rev. 565 (1968).

way of life had to be altered to allow for the creation of a new kind of Indian.<sup>10/</sup> Indian agents, with the assistance of traders, army personnel, missionaries, and other Anglos, undertook the systematic destruction and dissolution of the Indian way of life.<sup>11/</sup> Specifically, this included native religious beliefs and ceremonies; patterns of community economics; systems of interpersonal relations and obligations between and among Indian men, women, adults, children, priests, medicine men, and other leaders; and other beliefs, practices and freedoms, so that almost no area of Indian life was exempt from this interference.<sup>12/</sup> Schools and Christian missions were established, provisions were made for supplying Indians with farm tools and other equipment, and some instruction in modern farm and stock raising methods was made available through the employment of farmers or ranchers.<sup>13/</sup> The Indian response was generally not favorable. Instead of reaching for the American version of life to replace their old institutions, the Indians responded with angry hostility, skillful sabotage or listless chagrin.<sup>14/</sup>

<sup>10/</sup> Id. at 563.

<sup>11/</sup> Id. at 563.

<sup>12/</sup> Id. at 563.

<sup>13/</sup> Id. at 563.

<sup>14/</sup> Wolf, Needed: A System of Income Maintenance for Indians, 10 Ariz. L. Rev. 607 (1968).

The General Allotment Act provided terms for citizenship to be granted to the Indians. This law conferred citizenship upon two classes of Indians born within the limits of the United States:

- 1) An Indian to whom allotments were made in accordance with this act, or any law or treaty.
- 2) An Indian who had voluntarily taken up within said limits, residence separate and apart from any tribe of Indians therein, and adopted the habits of civilized life.<sup>15/</sup> By an amendment adopted May 8, 1906,<sup>16/</sup> known as the Burke Act, the Indian became a citizen after the patent in fee simple was granted instead of upon completion of his allotment and the issuance of a trust patent.<sup>17/</sup> Thus, the Allotment Act was to civilize the Indian and give him the rights of citizenship if he so complied with the provisions. The result of the provision was that a new form of citizenship came into being for which there was no precedent in the law of the United States -- a national citizenship unaccompanied by state citizenship.<sup>18/</sup>

<sup>15/</sup> Federal Indian Law, U.S. Dept. of Interior (1958), p. 519.

<sup>16/</sup> 34 Stat. 182.

<sup>17/</sup> Federal Indian Law, U.S. Dept. of Interior (1958), p. 519.

<sup>18/</sup> Wise, The Red Man in the New World Drama (1931), 475.

### Citizenship Act - 1924

Prior to the Citizenship Act, approximately two-thirds of the Indians of the United States had already acquired citizenship in one or more ways.<sup>19/</sup> Until the act, those Indians who had not acquired citizenship by marriage to white men, by military service, by receipt of allotments, or through special treaties or special statutes, occupied a peculiar status under Federal law.<sup>20/</sup> Not only were they noncitizens, but they were barred from the ordinary processes of naturalization open to foreigners.<sup>21/</sup>

In an attempt to correct further inequities, the Congress extended citizenship to those of the noncitizen Indians. On June 2, 1924,<sup>22/</sup> the 68th Congress passed the act. It stated the following:

"That all non-citizen Indians born within the territorial limits of the United States be, and they are hereby, declared to be citizens of the United States: Provided, that the granting of such citizenship shall not in any manner impair or otherwise affect the rights of any Indian to tribal or other property."

Hence, insofar as national citizenship may constitute a qualification for voting in any state, Indians received equality with other citizens.<sup>23/</sup> The question

<sup>19/</sup> Federal Indian Law, U.S. Dept. of Interior (1958), p. 517.

<sup>20/</sup> Id. at 520.

<sup>21/</sup> Id. at 520.

<sup>22/</sup> 43 Stat. 253, 8 U.S.C. 3.

<sup>23/</sup> Houghton, The Legal Status of Indian Suffrage in the United States, 19 Calif. L. Rev. 509 (1930-31).

of power and influence through the voting right, however, was left with the individual state to decide.

Suffrage is, of course, almost entirely a state matter.<sup>24/</sup> Subject to certain restrictions in the national constitution with respect to how it shall be regulated by the states,<sup>25/</sup> the whole matter of suffrage is controlled by the constitutions and statutes of the several states.<sup>26/</sup> In some states, out-and-out discrimination long prevented Indians from voting.<sup>27/</sup> In other states, the requirement of "residence" was construed in such a way as to exclude Indians living on reservations within the boundary of the state.<sup>28/</sup> In some circumstances, the statutory prohibition on voting by persons under guardianship was construed as limiting "wards" from voting because of the trust relationship with the United States.<sup>29/</sup> Without exception, these crude

<sup>24/</sup> Id. at 519.

<sup>25/</sup> See, Article I, Secs. 2 and 4, Article II, Sec. 2, and 14th, 15th, 17th and 19th Amendments, U.S. Constitution.

<sup>26/</sup> Price, American Legal Problems: Cases & Material, 1969, p. 238.

<sup>27/</sup> Id. at 238.

<sup>28/</sup> Id. at 238.

<sup>29/</sup> Id. at 238-39.

barriers to exercising the vote have been eliminated.<sup>30/</sup> Utah and Arizona were the last states to revise these formidable statutory barriers.<sup>31/</sup> Other obstacles, however, still remain. In some jurisdictions, literacy standards prevent persons who still use their native tongue from qualifying for the vote.<sup>32/</sup> The vastness of rural reservation, coupled with the inadequacy of facilities, often makes registration and polling remote.<sup>33/</sup> Finally, there is still the somewhat sweet remembrance of sovereignty; despite the radical change in relationships, the state government is still perceived as foreign and apart, a government in which the people do not wish to participate.<sup>34/</sup>

Indian Reorganization Act, 1934

In 1928, the Merriam Report brought about a new era in Indian-white relations.<sup>35/</sup> The report described the conditions of poverty, illiteracy, and poor health among the Indians and made embarrassingly obvious the depths of maladministration of Indian affairs and the niggardly appropriations that had

<sup>30/</sup> Id. at 239.

<sup>31/</sup> Id. at 239.

<sup>32/</sup> Id. at 239.

<sup>33/</sup> Id. at 239.

<sup>34/</sup> Id. at 239.

<sup>35/</sup> Brookings Inst. for Gov't Research, The Problem of Indian Administration (1928).

been authorized for Indians by Congress during the preceding 50 years.<sup>36/</sup> Based upon this report and conferences between Indian leaders and non-Indian experts, a recommendation was made to Congress for the passage of the Reorganization Act.<sup>37/</sup> The basic purpose of the act was to restore tribal life and tranquillity back to the Indian tribe and to give the Indians some control of their lives.

Among other things, the Indian Reorganization Act provided that further allotment of Indian land was to stop and provisions were made for the restoration to Indian ownership of reservation land previously declared surplus.<sup>38/</sup> Appropriation of funds was authorized for the purchase of additional nontribal land for Indian use.<sup>39/</sup> The act allowed the return of cultural, social and religious liberty to the Indians.<sup>40/</sup> Business and

<sup>36/</sup> Kelly, Indian Adjustment and the History of Indian Affairs, 10 Ariz. L. Rev. 566 (1968).

<sup>37/</sup> Id. at 566.

<sup>38/</sup> 25 U.S.C. 461-63 (1969).

<sup>39/</sup> 25 U.S.C. 465 (1964).

<sup>40/</sup> Kelly, Indian Adjustment and the History of Indian Affairs, 10 Ariz. L. Rev. 567 (1968).



educational provisions were authorized through loan funds and scholarships.<sup>41/</sup>

The most important concept of the act was the recognition of consent by the Indian tribe before the act would be applied to them,<sup>42/</sup> they had an opportunity to disavow the act, rather than be forced to accept the application of the white man's concepts and desires as had been true under the Allotment Plan.

The act, through the efforts and plans of John Collier, was to attack the Indian problem from three directions:

1) The development of Indian resources and of Indian business enterprises.

2) The enlargement and improvement of all services to the Indians -- education, health, employment, welfare, etc.

3) The revival of tribal self-government by encouraging Indian tribes to adopt tribal constitutions, bylaws and corporate charters.<sup>43/</sup> The Collier plan called for acceptance or rejection of Indian Reorganization within a twelve-month period.<sup>44/</sup> Much was done in haste and in the end 181 tribes

<sup>41/</sup> 25 U.S.C. 470, 477 (1964).

<sup>42/</sup> 25 U.S.C. 478 (1964).

<sup>43/</sup> Kelly, Indian Adjustment and the History of Indian Affairs, 10 Ariz. L. Rev. 567 (1968).

<sup>44/</sup> *Id.* at 569.

# CONTINUED

## 1 OF 6

accepted, 77 rejected, and 14 came under its provisions by failing to vote.<sup>45/</sup> Notwithstanding the election provision, all tribes were eventually administered under its terms, since the Bureau of Indian Affairs felt it was too cumbersome to operate under an Indian Reorganization Manual (IRA) for some tribes and a non-IRA Manual for others.<sup>46/</sup> Thus, the consent factor again was not of major importance; what the white man felt best had to be applied.

The plan could not be launched on the scale which was envisioned because of the depression and World War II.<sup>47/</sup> The lack of competent manpower, both Indian and white, and the lack of money were the major factors which stood in the way of success of the plan.<sup>48/</sup>

#### Public Law 280 and Termination

The post-war thoughts regarding the Indian turned again toward assimilation of them into white man's society. This was to be undertaken by transferring more responsibilities to the states and moving away from the federal ward concept. For about eight years, the last two years of the Truman administration

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<sup>45/</sup> Id. at 569.

<sup>46/</sup> Id. at 569.

<sup>47/</sup> Id. at 569.

<sup>48/</sup> Id. at 569.

and the first six years of the Eisenhower administration, there was almost total disagreement between Indians and federal officials on the issues of termination and transfer of federal responsibilities.<sup>49/</sup> On August 15, 1953, the Congress enacted Public Law 280, purporting to be the most general surrender of jurisdiction over Indian country from the Federal Government to the states.<sup>50/</sup> The act brought Indian lands in California, Minnesota (except the Red Lake Reservation), Nebraska, Oregon (except the Warm Springs Reservation), and Wisconsin (except the Menominee Reservation) under the criminal and civil jurisdiction of those five states.<sup>51/</sup> Section 7 of the act granted the other states the authority to extend jurisdiction with respect to criminal and civil matters over the Indians at such time the people of each state so chose to do.<sup>52/</sup>

The consent of the tribes again was of no concern to Congress, which desired to assimilate them as quickly as possible and make them responsible state citizens.

Along with Public Law 280, House Concurrent Resolution 108 was passed, declaring it to be the policy of the government to:<sup>53/</sup>

<sup>49/</sup> Id. at 571.

<sup>50/</sup> Price, American Legal Problems: Cases & Material, 1969, p. 304.

<sup>51/</sup> 18 U.S.C. 1162 (1964).

<sup>52/</sup> 18 U.S.C. 1161 (1964).

<sup>53/</sup> H. R. Con. Res. 108, 83rd Cong., 1st Sess. (1953).

"(A)s rapidly as possible . . . make the Indians within the territorial limits of the United States subject to the same laws and entitled to the same privileges and responsibilities as are applicable to other citizens of the United States, to end their status as wards of the United States, and to grant them all the rights and prerogatives pertaining to American citizenship . . . ."

The termination period was filled with misunderstanding and confusion by all three parties involved. The historical connections between the tribes and the United States were severed by the termination acts, without a clear understanding on either side of what was involved.<sup>54/</sup> Special services the United States had rendered were stopped without any assurance that they would or could thereafter be provided willingly by the states or their local units.<sup>55/</sup>

Essentially, the concept of termination involved the elimination of the trust relationship, which would subject the land to property taxes, allow alienation of land without federal approval and subject the land and the people to uniform state laws.<sup>56/</sup> If a state assumed jurisdiction over the Indian lands, many problems which had been handled before by the Federal government, would be transferred to the state, hence many states refused

<sup>54/</sup> Brophy & Aberle, The Indian, Americas Unfinished Business, p. 189 (1949).

<sup>55/</sup> Id. at 189.

<sup>56/</sup> Price, American Legal Problems: Cases & Material, p. 330 (1969).

termination without adequate federal assistance to finance the new programs, which would be necessary.

The effect of such a policy would vary from reservation to reservation, depending upon the Indians' education, their adaption to the white culture, the value of their resources, their leadership and countless other factors.<sup>57/</sup>

To say the least, termination had been ill conceived.<sup>58/</sup> Once more, acquisitive white men looked toward Indian land.<sup>59/</sup> Once more, confusion increased regarding the status of the Indians.<sup>60/</sup> The Indians were seized with fear, made additionally insecure, and forced to rely for strength upon their own cultural conventions, thereby automatically every ethnic trait separated them from the dominant society.<sup>61/</sup>

In 1958, the policy of termination was declared to no longer be the accepted policy of the Department of Interior. Secretary of the Interior Seaton declared the new policy:<sup>62/</sup>

<sup>57/</sup> Brophy & Aberle, The Indian, Americas Unfinished Business, p. 192 (1949).

<sup>58/</sup> Id. at 189.

<sup>59/</sup> Id. at 189.

<sup>60/</sup> Id. at 189.

<sup>61/</sup> Id. at 189.

<sup>62/</sup> 1959 Sec'y of Interior Ann. Rep. 231.

"No Indian tribe or group should end its relationship with the Federal Government unless such tribe or group has clearly demonstrated first, that it understands the plan under which such a program would go forward, and second, that the tribe or group affected concurs in and supports the plan proposed."

Thus, consent was again made a part of the Indian policy of the United States.

When Stewart Udall became Secretary of the Interior in 1961, he not only adopted the consent position, but he also reached for even more telling ways of healing the rift that had been created in Indian-white relations during the early years of the Eisenhower administration.<sup>63/</sup> Udall's new plans were not successful to improve the condition of the Indian, for emphasis was not on the central problems of Indian adjustment, but on an endorsement of institutional and economic programs already in operation.<sup>64/</sup>

#### Civil Rights Act - 1968

Because of criticism of Public Law 280, the Civil Rights Act of 1968 contained title IV dealing with jurisdiction over criminal and civil matters on the reservation.<sup>65/</sup> The title contains a provision for extension of state jurisdiction only by majority vote by the Indians at a special election held

<sup>63/</sup> Kelly, Indian Adjustment and the History of Indian Affairs, 10 Ariz. L. Rev. 573 (1968).

<sup>64/</sup> Id. at 574.

<sup>65/</sup> 18 U.S.C. 1162 (1964).

for that purpose.<sup>66/</sup> The title is a comprehensive effort to correct the major mistake of Public Law 280 in its provision for integrating Indian reservations without their consent into the states in which they are located.<sup>67/</sup> A clear preponderance of testimony before the subcommittee supports the conclusion that state assumption of criminal and civil jurisdiction has been successful only when undertaken with the consent and cooperation of the Indian tribes.<sup>68/</sup> In requiring such consent for the future, and in providing the methods for correcting existing unsuccessful assimilations, title IV is a step in the right direction.<sup>69/</sup>

Title III of the Indian Civil Rights Act directs the Secretary of the Interior to prepare and recommend to the Congress a model code governing the administration of justice by Courts of Indian Offenses on Indian reservations. Without discussing the merits of this piece of legislation or the advisability of a "model code" to be applied to diverse tribes, suffice it to say that this mandate has yet to be accomplished.

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<sup>66/</sup> 18 U.S.C. 1162 (1964).

<sup>67/</sup> Reibelich, Indian Rights, Under the Civil Rights Act of 1968, 10 Ariz. L. Rev. 641 (1968).

<sup>68/</sup> Id. at 641.

<sup>69/</sup> Id. at 641-42.

The most emotionally charged section of the act is contained in title II, which makes all tribal authorities subject to most of the provisions of the First, Fourth, Fifth, Sixth and Eighth Amendments. The only important omissions from the language of the Bill of Rights are the establishment clause of the First and the grand jury clause of the Fifth. Much has been and can be written and argued about the purpose and the advisability of all or parts of title II. This study will not attempt to present these arguments, but will only call the reader's attention to the serious impact which its enforcement would have upon the traditional court systems of many tribes.

VI

THE JURISDICTIONAL DILEMMA

The rather confused pattern of jurisdiction on Indian reservations today is largely an outgrowth of the legal history previously described, especially that portion concerning original tribal sovereignty and its subsequent erosion. Since the tribes were sovereign, they were possessed of certain criminal and civil jurisdiction which did not depend on a delegation from the Federal Government.<sup>1/</sup> It was nevertheless clear that the Federal Government, by the combined rights of conquest<sup>2/</sup> and its own constitutional grant<sup>3/</sup> had plenary power over Indian affairs and could regulate them to the extent Congress chose to do so. It was also clear, after Worcester v. Georgia,<sup>4/</sup> that the states had no regulatory authority over Indian affairs unless that power was ceded to them by Congress.

While these basic principles are simple enough, the jurisdictional morass that overlies them is not. Much of the confusion is caused by three

<sup>1/</sup> Ex parte, Crow Dog, 109 U.S. 556 (1883); Crosse, Criminal and Civil Jurisdiction in Indian Country, 4 Ariz. L. Rev. 57 (1962).

<sup>2/</sup> Cherokee Nation v. Georgia, 5 Pet. 1 (31 U.S. 1831).

<sup>3/</sup> U.S. Const., Art. 1, Sec. 8, cl. 3.

<sup>4/</sup> 6 Pet. 515 (32 U.S. 1832).

developments: (1) Congress has chosen to exercise only part of its power, leaving other matters to the tribes and in some cases ceding their regulation to the states; (2) the tribal authority itself has not been regarded as purely territorial, but has instead been construed to apply only to Indians or, at the most expansive, to all matters involving Indian self-government;<sup>5/</sup> and (3) the reservations are not actually under the control of the states, but they do lie within state boundaries, leaving the states with some powers of regulation over non-Indians<sup>6/</sup> and perhaps over Indians where such regulation does not interfere with the rights of tribal self-government.<sup>7/</sup>

Federal Jurisdiction

The Federal Government has by statute assumed jurisdiction over the so-called "major crimes" committed by Indians in Indian country.<sup>8/</sup> In

<sup>5/</sup> Williams v. Lee, 358 U.S. 217 (1959); Kane, Jurisdiction over Indians and Indian Reservations, 6 Ariz. L. Rev. 237, 242-43.

<sup>6/</sup> U.S. v. McBratney, 104 U.S. 621 (1881); Draper v. U.S., 164 U.S. 240 (1896).

<sup>7/</sup> Ghahate v. Bur. of Rev., 80 N.M. 98, 451 P.2d 1002 (1969). Where "reservations" of a special type are set up with no view to tribal self-government, as in some cases in Alaska, the state may regulate. See, Metlakatla Indian Community v. Egan, 369 U.S. 45 (1962).

<sup>8/</sup> 18 U.S.C.A. 1153 (Supp. 1970). The major crimes are: murder, manslaughter, rape, carnal knowledge, assault with intent to commit rape, incest, assault with intent to kill, assault with a dangerous weapon, assault resulting in serious bodily injury, arson, burglary, robbery and larceny.

In 1956, it was made a Federal crime for any person to steal or embezzle from a tribal organization. 18 U.S.C. 1163 (1934).

practical effect, this is the most important area of Federal criminal jurisdiction on the reservations.

In addition, the general federal criminal laws applicable to areas under exclusive Federal jurisdiction have been extended to Indian country, but the applicable statute expressly excludes crimes committed by an Indian against another Indian, crimes for which a tribe has already punished the Indian offender, and crimes consigned by treaty to the exclusive jurisdiction of the tribe.<sup>9/</sup> The list of such federal crimes is further expanded by the Assimilative Crimes Act to include crimes defined by the state in which the reservation lies, so long as they are not inconsistent with applicable Federal laws.<sup>10/</sup> In practice, these Federal laws are applied primarily against non-Indians committing offenses against Indians in Indian country.<sup>11/</sup>

#### State Jurisdiction

As a rule, the states have no general civil or criminal jurisdiction over Indians on the reservation.<sup>12/</sup> Thus, the U. S. Supreme Court in Williams v.

<sup>9/</sup> 18 U.S.C. 1152 (1964).

<sup>10/</sup> 18 U.S.C. 13 (1964).

<sup>11/</sup> See, Williams v. Lee, 358 U.S. 217, 220, n.5 (1959).

<sup>12/</sup> Worcester v. Georgia, 6 Pet. 515 (32 U.S.) (1832). Congress, in the enabling acts authorizing admission of states to the Union, regularly required a renunciation of claim to title of Indian land until Indian title was extinguished by the United States. The enabling acts of both Arizona and Utah contain such disclaimers, and provide that Indian lands shall remain ". . . under the absolute jurisdiction and control of the Congress of the United States . . ." 36 Stat. 557, Sec. 20, cl. 7 (1910) (Ariz.), 28 Stat. 107, Sec. 3, cl.2d (1894) (Utah).

Lee,<sup>13/</sup> barred a state court from entertaining a suit by a non-Indian against an Indian for a transaction occurring on a reservation, where process was served on the reservation. The Supreme Court ruled that such a suit should "undermine the authority of the tribal courts over reservation affairs and hence would infringe on the right of the Indians to govern themselves,"<sup>14/</sup>

This ruling leaves unsettled the question whether the state can, without authorization by Congress, in fact exercise any jurisdiction over Indians in other matters. Currently under litigation in Arizona is the right of the state to collect state income tax on the income of Indians working on the reservation. The lower court held that such a tax was collectible by the state,<sup>15/</sup> and the matter is currently on appeal in the Arizona court system. The New Mexico Supreme Court has held such a tax collectible by the state, but in that case counsel for the Indian plaintiff inexplicably stipulated that the tax collection did not interfere with the tribe "in any way."<sup>16/</sup> However the tax collection cases may come out, it is clear that the states have no

<sup>13/</sup> 358 U.S. 217 (1959).

<sup>14/</sup> Id. at 223.

<sup>15/</sup> McClanahan v. State Tax Commission, No. 4370, Superior Court for Apache County, Ariz., Oct. 16, 1969.

<sup>16/</sup> Ghahate v. Bureau of Revenue, supra, at 98.

inherent power to enforce their general civil or criminal laws against Indians on the reservation.<sup>17/</sup> That would unquestionably interfere with tribal self-government.

The states can, however, exercise jurisdiction when Congress permits, and Congress in 1929 authorized the Secretary of Interior to permit the states to enforce health regulations on Indian lands.<sup>18/</sup> The states have subsequently been authorized to enforce compulsory school attendance laws, but only if the tribe consents.<sup>19/</sup>

A far more sweeping exercise of state jurisdiction was permitted by Public Law 280,<sup>20/</sup> which extended state civil and criminal jurisdiction over specified reservations not in the Southwest, and authorized other states to assume such jurisdiction notwithstanding any prohibitions in the state enabling acts. As yet, none of the "Four Corner" states have assumed such general civil or criminal jurisdiction.<sup>21/</sup> Public Law 280 was amended in 1968 so

<sup>17/</sup> Williams v. Lee, 358 U.S. 217 (1959).

<sup>18/</sup> 45 Stat. 1185 (1929), 25 U.S.C. 231 (1964).

<sup>19/</sup> 60 Stat. 962 (1946), 25 U.S.C. 231 (1964).

<sup>20/</sup> 67 Stat. 589, 28 U.S.C. 1360 (1964), 18 U.S.C. 1162 (1964).

<sup>21/</sup> Arizona has by statute assumed jurisdiction over Indian lands for the limited purposes of enforcing air and water pollution control. Ariz. Rev. Stat. Secs. 36-1801, 36-1865 (Supp. 1970). The validity of such a limited assumption may be questioned.

that states cannot now assume such jurisdiction without an authorizing referendum by the tribe concerned.<sup>22/</sup>

States do have general civil and criminal jurisdiction over non-Indians on reservations.<sup>23/</sup> Thus, a crime or tort committed by a non-Indian against a non-Indian will be subject to state jurisdiction. State regulation of non-Indians will not be permitted, however, where it is inconsistent with a scheme of federal regulation<sup>24/</sup> or, probably, with tribal self-government.<sup>25/</sup>

#### Tribal Jurisdiction

Tribal jurisdiction over Indians was originally complete,<sup>26/</sup> but has since been circumscribed by Federal legislation. The "Major Crimes Act"<sup>27/</sup> was the first such general limitation. The Civil Rights Act of 1968, in addition to prescribing many procedural limitations for tribal courts, imposed a limit on tribal court punishment for any one offense of \$500 or six months' imprisonment, or both.<sup>28/</sup> Tribal criminal jurisdiction now covers a range

<sup>22/</sup> 25 U.S.C.A. 1321, 1322, 1326 (Supp. 1970).

<sup>23/</sup> United States v. McBratney, 104 U.S. 621 (1881); Draper v. United States, 164 U.S. 240 (1896).

<sup>24/</sup> Warren Trading Post v. State Tax Comm'n, 380 U.S. 685 (1965).

<sup>25/</sup> Cf. Williams v. Lee, 358 U.S. 217 (1959).

<sup>26/</sup> Ex parte Crow Dog, 109 U.S. 556 (1883).

<sup>27/</sup> 18 U.S.C. 1153 (1964).

<sup>28/</sup> 25 U.S.C.A. 1302 (Supp. 1970).



of offenses defined by tribal codes<sup>29/</sup> which would normally be classed as misdemeanors. Civil jurisdiction over Indian defendants, on the other hand, is virtually without limits.

Because tribal jurisdiction arose from the tribe's own sovereignty and not from a Federal or state grant of power, the traditional judicial view was that the tribes were not limited by the Federal Constitution in their governmental or judicial actions. A tribal council or court did not, for instance, have to permit the free exercise of religion.<sup>30/</sup> Whether this view was destined to endure was in great question, however, and one Federal Circuit Court had found so much Federal connection with tribal activities that the tribe was forbidden by the Federal Constitution from incarcerating a member without due process of law.<sup>31/</sup>

<sup>29/</sup> In rare cases where the tribe has not established its own court and Law and Order Code, the equivalent jurisdiction is exercised by a Court of Indian Offenses, established by the authority of the Secretary of Interior and governed by 25 C.F.R. Part II. The only Court of Indian Offenses in Arizona and Utah is that of the Hopi Tribe.

<sup>30/</sup> Native America Church v. Navajo Tribal Council, 272 F.2d 131 (CA 10 1959).

<sup>31/</sup> Colliflower v. Garland, 342 F.2d 369 (CA 9 1965).

In any event, the Civil Rights Act of 1968<sup>32/</sup> imposed upon the tribes nearly all the requirements of the Bill of Rights,<sup>33/</sup> so that such major guarantees as those of due process, equal protection, the privilege against self-incrimination, and freedom from unreasonable searches are currently available to Indians in their courts and councils. Yet to be decided is the extent to which the decisional law surrounding these guarantees in a non-Indian context will be modified in the course of their transplant to a tribal setting.<sup>34/</sup>

Tribal court jurisdiction does not now extend to acts of non-Indians committed on the reservations. It is not clear that tribal courts are inherently powerless to exert such authority,<sup>35/</sup> but federal regulations establishing

<sup>32/</sup> 25 U.S.C.A. 1302 (Supp. 1970).

<sup>33/</sup> The most notable deviation by the Civil Rights Act of 1968 from the Bill of Rights is that the act contains no clause against the establishment of religion (although it does guarantee free exercise). It also guarantees the right of counsel to the Indian in tribal court, but only "at his own expense." 25 U.S.C.A. 1302(1), 1302(6) (Supp. 1970). The extent of the right to counsel at state expense in misdemeanor cases has not been settled by the U. S. Supreme Court.

<sup>34/</sup> See, generally, Reiblich, Indian Rights Under the Civil Rights Act of 1968, 10 Ariz. L. Rev. 617 (1968). The question remains, however, whether opposition to application of Bill of Rights guarantees, as previously interpreted, does not simply contravene the plain words and intent of the Civil Rights Act.

<sup>35/</sup> Kane, Jurisdiction Over Indians and Indian Reservations, 6 Ariz. L. Rev. 237, 242-43 (1965).

Law and Order Codes for Courts of Indian Offenses<sup>36/</sup> defined all crimes in terms of Indians only, and current tribal codes uniformly follow that lead.<sup>37/</sup> Similarly, the practice has not been to assert civil jurisdiction over non-Indian defendants without their consent. If a non-Indian wishes to bring a civil action against an Indian on the reservation for a claim arising there, however, he must sue in tribal court.<sup>38/</sup>

#### Off-Reservation

The Indian who is not on a reservation or otherwise in Indian country is generally subject to the same state and federal laws and jurisdiction as any other person. The major exception to this rule occurs when the Indian enjoys rights to off-reservation hunting or fishing secured by treaty. In such cases, he may be exempt from certain types of state regulations.<sup>39/</sup>

#### Typical Current Jurisdictional Problems

Practical problems arising from the above jurisdictional patterns are not difficult to imagine. For instance, a non-Indian speeding on a state highway

<sup>36/</sup> 25 C.F.R. Part II.

<sup>37/</sup> E.g., Code of Ordinances of the Gila River Pima-Maricopa Indian Community, Chapter 2.

<sup>38/</sup> Williams v. Lee, 358 U.S. 217 (1959).

<sup>39/</sup> Puyallup Tribe v. Dept of Game, 391 U.S. 392 (1968); Menominee Tribe of Indians v. United States, 391 U.S. 404.

across an Indian reservation is subject to arrest by state highway patrolmen and will be tried in state justice courts. An Indian committing the same act will be subject to arrest by tribal police and will be tried in tribal court. The obvious enforcement problem this creates has been reduced on some reservations by cross-deputizing tribal police with the sheriff's officers, but this does not eliminate the dual court problem.

Tribal police, especially those near large cities, also complain of the lack of power over non-Indians who create nuisances on the reservation but who do not commit crimes serious enough to precipitate enforcement by federal or state authorities.

The above problems have led to frequent informal expression of desires that tribes be given full territorial jurisdiction, at least over minor offenses. This would mean that tribal police and tribal courts could deal with non-Indians who commit offenses under tribal codes revised to cover non-Indians as well as Indians.

Another common problem is that busy U. S. attorneys are reluctant to prosecute many major crimes when only Indians are involved. This is particularly true when the crimes are not violent. The usual method of attacking the problem is to try the offender in tribal court under the tribal code, despite language of the major crimes act which on its face seems to indicate that jurisdiction over such crimes is exclusively federal.<sup>40/</sup>

<sup>40/</sup> 18 U.S.C.A. 1153 (Supp. 1970). For a discussion of other problems attending administration of the Major Crimes Act, see Note, Indictment under the "Major Crimes Act" -- An Exercise in Unfairness and Unconstitutionality, 10 Ariz. L. Rev. 691 (1968).

Many of the practical problems arising from the multi-jurisdictional nature of reservation law could probably be eased by increasing the jurisdiction of tribal courts both laterally to include non-Indians and vertically to include more serious crimes. Yet it is unlikely that any such avenue to reduction of the jurisdictional confusion will open up soon. Any large increase in the powers of tribal courts would require that those courts, and the police and correctional systems which serve them, be improved far beyond their present capacities.

#### Extradition

Case law relating to tribal control of extradition from the reservation was practically non-existent until a short time ago. Like so many other areas of Indian law, it has laid dormant over the years for various reasons. As will be seen later, provisions regarding extradition are found in many treaties; however, until 1969 the only guidelines available to Indian tribes were the general rules of tribal sovereignty. The purpose of this section is to explore tribal control of extradition, primarily through the case of State of Arizona, ex rel Merrill v. Turtle<sup>41/</sup> to ascertain whether that decision provides more definitive guidelines that may be used by Indian tribes across the country to determine to what extent they possess the power to control extradition. It

<sup>41/</sup> 413 F.2d 683 (1969).

is important to examine previously untouched areas of law pertaining to Indians and provide an analysis of the law for the tribes throughout the country so that they might determine whether the law is applicable to them and whether it should be implemented or enacted by the tribal government.

Apparently, the primary reason for the Federal government's long recognition of the right of Indian tribes to have some type of self-government is that since pre-historic times the various tribes have operated at independent political entities. No tribal governments were organized in the same way, nor were any organized in a very formal fashion, but each functioned in a practical manner and served its purpose well.<sup>42/</sup> It may fairly be inferred from history that the operation of the various tribal governments continued undisturbed until the white settlers had organized their own government and were an established military power. Soon it became necessary for the government of the white settlers to obtain more land for the ever-increasing number of immigrants. By means of treaty<sup>43/</sup> and military victory<sup>44/</sup> Indian lands were made available to settlers.

<sup>42/</sup> J. Hunter, Manners and Customs of Indian Tribes, 222-39, 305-12, 319-28 (1957); L. Morgan, Ancient Society, 49-204 (1964).

<sup>43/</sup> See, generally, G. Kappler, 2 Indian Affairs, Laws and Treaties, S. Doc. No. 319, 58th Cong., 2d Sess. (1904), hereafter cited as Kappler, wherein is recorded treaties made by the United States with the Indians. The first recorded treaty is with the Delawares, made in 1778.

<sup>44/</sup> See, generally, A. Josephy, Jr., The Nez Perce Indians and the Opening of the Northwest, 445-573; S. Humphrey, The Indian Dispossessed (1905).

This was to be the pattern followed until the government had conquered land from the east coast to where the land ended in the west.

As this procedure was followed and the problem of "what to do with the Indians" was resolved by the institution of the reservation system,<sup>45/</sup> the question of what is an Indian reservation and what powers do the people living on them have came to the forefront.

One of the earliest cases to consider these questions was Cherokee Nation v. Georgia.<sup>46/</sup> The Cherokee Nation sought an injunction to restrain the state of Georgia from executing certain laws which took no cognizance of tribal sovereignty, and which, it was alleged, were enacted to seize the land for the use of the state. Before delving into the merits of the case, Chief Justice Marshall considered the question of whether the Cherokee's reservation constituted a foreign state. He found that there were marked distinctions between the relations of foreign states and the United States and those that existed between an Indian reservation and the United States. Indian territory was obviously within the boundaries of the United States. The Federal Government also had assumed the duties of protecting the Indians and regulating their

<sup>45/</sup> "There are three kinds of Indian reservations: those which were created by treaties previous to 1871; those which have been created by acts of Congress since 1871; and those made by Executive Orders whereby the President has set apart public lands for the use of the Indians in order to keep them within a certain territory." Sioux Tribe of Indians v. United States, 94 Ct.Cl. 150, 170 (1941).

<sup>46/</sup> 30 U.S. 1 (1831).

commercial intercourse with foreign states. These factors would not allow an Indian reservation to be denominated with accuracy a foreign nation. Chief Justice Marshall deemed them to be "domestic dependent nations,"<sup>47/</sup> which remains the most accurate categorization of their political status. The court denied the application for an injunction on jurisdictional grounds.

One year later, in Worcester v. Georgia,<sup>48/</sup> the Court again discussed the status of an Indian reservation. A citizen of the state of Vermont, a missionary, was convicted under the laws of Georgia<sup>49/</sup> for residing in Cherokee country without a permit from the state and without having taken an oath of loyalty to the state. These laws, it was contended, were enacted to seize land held by the Cherokees for the use of the state in that they ignored Indian title to the land and assumed state control.

Again, Chief Justice Marshall wrote the opinion, but in this case he seemingly retreated from his opinion in Cherokee Nation v. Georgia, *supra*. Throughout his analysis of the status of a reservation in this opinion he alludes to the possibility that a reservation may have a status higher than a domestic dependent nation. Indeed, he considered it as a nation:

<sup>47/</sup> Id. at 17.

<sup>48/</sup> 31 U.S. 515 (1832).

<sup>49/</sup> These were apparently the same laws that were challenged in Cherokee Nation v. Georgia, 30 U.S. 1 (1831).

"The Indian nations had always been considered as distinct, independent political communities, retaining their original natural rights, as the undisputed possessors of the soil, from time immemorial, with the single exception of that imposed by irresistible power, which excluded them from intercourse with any other European potentate than the first discoverer of the coast of the particular region claimed; and this was a restriction which those European potentates imposed on themselves, as well as on the Indians. The very term 'nation', so generally applied to them, means 'a people distinct from the others.' 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. The words 'treaty' and 'nation' are words of our own language, selected in our diplomatic and legislative proceedings, by ourselves, having each a definite and well understood meaning. We have applied them to Indians, as we have applied them to the other nations of the earth. They are applied to all in the same sense.<sup>50/</sup>

It was held that the Cherokee Nation was a distinct community in which the laws of the state of Georgia could have no effect.

The reasoning of these cases and the historical fact of aboriginal self-government noted therein, formed the basis for recognizing that there are substantive powers of self-government which are legally recognized as falling within the domain of tribal sovereignty. Among these powers is the power to administer justice.<sup>51/</sup> This power was fairly broad at first, but has been limited

<sup>50/</sup> 31 U.S. 515, 559 (1832).

<sup>51/</sup> Dep't Int., Office of the Solicitor, Solicitor's Opinion: Powers of Indian Tribes, M-27781, 64 (Oct. 25, 1934).

somewhat over the years.<sup>52/</sup> Basically, however, the power remains -- used more by some tribes than by others.

In light of the special status accorded to Indian reservations, they emerged as having powers with regard to criminal jurisdiction distinct from those of a state or other community.<sup>53/</sup> Although thousands of cases involving Indians have been litigated over the years, this special status of the reservations in the area of tribal powers and criminal jurisdiction has yet to be solidified into a clear-cut body of law. As one issue becomes settled another arises that has never before been considered. Such is the question of the powers of a tribe to control extradition.

As with many of the powers that a tribe may potentially possess, it is impossible to determine absolutely whether they have a particular power until

<sup>52/</sup> See, for example, 18 U.S.C. Sec. 1153, The Ten Major Crimes Act, making Indians subject to punishment and prosecution by the Federal Government for the commission of any of the ten criminal acts listed. 18 U.S.C. Sec. 1152, which governs the punishment for offenses committed by Indians. It disallows jurisdiction where the offense is committed by one Indian against the person or property of another Indian, where the act is committed by an Indian in Indian country and he has been punished by tribal law, or where jurisdiction is reserved to the tribe by treaty.

<sup>53/</sup> See, Glover v. United States, 219 F. Supp. 19 (1963), where it was held that where Congress exercises its plenary power and withdraws tribal jurisdiction as to major crimes listed in 25 U.S.C. Sec. 1153, tribal jurisdiction as to crimes not named is left undisturbed.

See, also, M. Crosse, Criminal and Civil Jurisdiction in Indian Country, 4 Ariz. L. Rev. 57 (1962); Note, Criminal Jurisdiction Over Indians and Post-Conviction Remedies, 22 Montana L. Rev. 165 (1961); Kane, Jurisdiction Over Indians, and Indian Reservations, 6 Ariz. L. Rev. 237 (1965).

they attempt to exercise it or until concrete guidelines are established by statute. Although there has been but one case concerning the power to control extradition, it is possible to derive therefrom the factors considered by the court in recognizing that power.

The case of State of Arizona, ex rel Merrill v. Turtle, supra, involved a situation where a Cheyenne Indian, who was married to a Navajo woman, was sought by the state of Oklahoma on a charge of second degree forgery. Upon finding that the defendant and his wife had moved onto the Navajo reservation, Oklahoma filed an application with the Navajo Tribal Council for the defendant's extradition. The application was denied by the Navajo Tribal Court on the ground that tribal law provided for extradition only to the states of Arizona, New Mexico and Utah.<sup>54/</sup> Oklahoma then made demand on the Governor of Arizona for defendant's extradition. A warrant was issued and was executed for defendant's arrest on the reservation. While being held in custody in Arizona, defendant sought a writ of habeas corpus from the United States District Court for the District of Arizona. The writ was granted on the ground that Arizona authorities had exceeded their jurisdiction by arresting defendant on the Navajo reservation. The state of Arizona

<sup>54/</sup> 17 Navajo Tribal Code Sections 1841-42.

argued that Article IV, Section 2 of the United States Constitution<sup>55/</sup> requires that the state retain extradition jurisdiction over Indian residents of the Navajo reservation.

In affirming the District Court's decision, the United States Court of Appeals for the Ninth Circuit considered, among other things, the relationship between the Navajo Tribe, the United States and the state of Arizona. In this, the court had the benefit of two earlier cases that had explored this relationship -- Williams v. Lee<sup>56/</sup> and Littell v. Nakai.<sup>57/</sup>

Williams, supra, involved a suit to collect for goods sold on the reservation on credit to a Navajo Indian and his wife by a merchant who also resided on the reservation. The Supreme Court of Arizona held that the Arizona courts are free to exercise jurisdiction over civil suits by non-Indians against Indians, even though the action arises on the reservation, since no act of Congress expressly forbids their doing so. In overruling this decision, the United States Supreme Court stated that, "Essentially, absent governing acts of Congress,

<sup>55/</sup> "A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall on demand of the executive authority of the state from which he fled, be delivered up to be removed to the state having jurisdiction of the crime."

<sup>56/</sup> 358 U.S. 217 (1959).

<sup>57/</sup> 344 F.2d 486 (9th Cir. 1965).

the question has always been whether the state action infringed on the right of the reservation Indians to make their own laws and be ruled by them.<sup>58/</sup> The court further stated that to allow the exercise of state jurisdiction would undermine the authority of tribal courts over reservation affairs and thereby would infringe on the right of Indians to govern themselves.

The same reasoning was followed in Littell, supra, where the court relied heavily on the decision in Williams, supra. Littell, supra, involved a dispute between the Navajo Tribe's general counsel and the tribal chairman who was attempting to force an early termination of a contract between the general counsel and the tribe. It was held that the tribal courts had exclusive jurisdiction under the principles espoused in Williams, supra.

The court in Turtle, supra, gave a brief summary of these cases,<sup>59/</sup> stating that the history reviewed in them shows that Indian tribes historically were regarded as distinct political communities, protected by treaty from the laws of any state and subject only to the plenary power of Congress.<sup>60/</sup> Thus, the historical fact of self-government by an Indian tribe is an important factor

<sup>58/</sup> Cf. Utah & Northern Ry. Co. v. Fisher, 116 U.S. 28 (1885).

<sup>59/</sup> 413 F.2d 683, 684 (1969).

<sup>60/</sup> Id.

in allowing control of extradition, much as it is in the establishment of many other tribal powers. As a matter of evidence, it would be no problem to establish the fact of historical self-government in extradition cases.

In dealing with the state's argument that it had extradition jurisdiction over the Navajo Reservation through Article IV, Section 2 of the United States Constitution, the court first stated that there was no authority available on this particular point, therefore, the constitutional provision must be interpreted in light of the 1868 Navajo Treaty with the United States, and in light of the historical principle of retained tribal sovereignty. The result was essentially the same as that reached in Williams, supra, i.e., that the tribe has a right of self-government that is free from state interference, absent specific congressional action. There being no congressional action in this particular area, the question came down to whether the state's action infringed on the tribe's right to make their own laws and be governed by them; and the court held that it clearly did.

That the relationship between the right of self-government and the power to control extradition is essential and intimate was recognized long ago in Kentucky v. Dennison.<sup>61/</sup> It was held that a state is not compelled to exercise

<sup>61/</sup> 65 U.S. 66 (1860).

its constitutional duty of extradition. Further, it was apparent to the court in Turtle, supra, that the Navajo Tribe was intended to have exclusive control over extradition because Article I of the Treaty of 1868<sup>62/</sup> so provides. The court inferred that control over extradition was intended to be exclusive from the fact that money damages were the only remedy provided by the treaty for the wrongful refusal to extradite. Finally, it was noted that the Navajo Tribe had been exercising its jurisdiction over extradition since 1956, when the Tribal Council adopted a provision controlling procedures for Indian extradition.<sup>63/</sup> In light of this tribal code provision, it could not now be said that the state would not be infringing on tribal sovereignty by exercising extradition jurisdiction on the reservation.

From this lone case, four factors emerge that are important in determining whether the power to control extradition exists. These factors are, (1) the general historical background of the Indian people; (2) the existence of

<sup>62/</sup> "If bad men among the Indians shall commit a wrong or depredation upon the person of anyone, white, black, or Indian, subject to the authority of the United States and at peace therewith, the Navajo Tribe agree that they will, on proof made to their agent, and on notice by him, deliver up the wrongdoer to the United States, to be tried and punished according to its laws; and in case they wilfully refuse to do so, the person injured shall be reimbursed for his loss from the annuities or other moneys due or to become due to them under this Treaty, or any others that may be made with the United States . . . ."

<sup>63/</sup> 17 Navajo Tribal Code, Sections 1841-42.

congressional limitations on a tribe's right of self-government; (3) the existence and wording of treaty provisions relating to extradition; and, (4) the existence and extent of present day self-government by the tribe. These four factors would not only be all important in a future case involving a tribe's attempt to have its control over extradition recognized or established, but in any case where a tribe was attempting to establish its right to some fact of self-government.

Whether Indians exercised self-government aboriginally would seemingly take little effort to establish, there being many historical volumes, anthropological writings and court cases to that effect. A problem might arise where a tribe is required to show that it was, at some point in time, self-governed. However, this is unlikely, since American Indians are among the most studied people in the world.<sup>64/</sup>

A more technical question is presented when one attempts to determine whether Congress has specifically acted to limit the powers of a tribe with regard to extradition, and to confer increased jurisdictional powers on the state within which the particular reservation exists. An example of this type of congressional action is presented by 25 U.S.C. Sec. 1321, which provides for state assumption of criminal jurisdiction over offenses committed by or against Indians in Indian country. This statute would probably extend to cover

<sup>64/</sup> V. Deloria, Jr., Custer Died For Your Sins, 78-101 (1969).



state control of extradition of an Indian from an Indian reservation. Under this section of the 1968 Indian bill of rights,<sup>65/</sup> the United States consents to the assumption of criminal jurisdiction over an Indian reservation by a state with the consent of the Indian tribe(s) to be affected. It should be noted that the provision requiring the consent of the tribe(s) is a recognition of tribal sovereignty. Retrocession of criminal jurisdiction acquired by a state under 18 U.S.C. Sec. 1162, which was repealed by 25 U.S.C. Sec. 1322(b), is also provided.

It is apparent from Turtle, supra, that Article IV, Section 2 of the United States Constitution is not a limitation on the power of a tribe to control extradition. Thus, unless a tribe is located on a reservation within the boundaries of a state that has used 25 U.S.C. Sec. 1321 to assume criminal jurisdiction, or unless the tribe was the object of specific congressional action aimed solely at that tribe, it would have the right and power to control extradition from its reservation, provided however, it could satisfy the other requirements enumerated in Turtle, supra.

Whether a tribe has a treaty provision exactly like the one contained in the Navajo treaty, which allows for the discretionary exercise of extradition

<sup>65/</sup> 25 U.S.C. Sections 1301-1341.

power depends, to a great degree, on the date the United States Government entered into a treaty with the particular tribe. A perusal of the various treaties indicates that the extradition provision has been commonly inserted into treaties with Indians since 1868.<sup>66/</sup> Although a treaty was made prior to 1868, it may contain words that may be construed as granting extradition power to a tribe. Should it be found that a tribe's treaty contained no such provision, the outcome of a case in which such power was attempted to be established would be a matter of conjecture.

However, it could be argued, under a generally accepted rule of statutory construction, that since the power was not specifically denied to the tribe by the treaty, the power still exists. Besides being a legitimate result legally, it also is a fair result in light of the fact that the treaties were drafted by skilled employees of the Federal Government, and it is doubtful that the Indians had much influence on, nor an in-depth grasp of, the contents of the document. Also, it would seem unjust to deny to that group of tribes whose treaties were entered into prior to 1868, but which are usually on an equal political level with the group of tribes whose treaties were made subsequent to 1868, the power to control extradition from their reservation solely because they were unfortunate enough to have dealt with the Federal

<sup>66/</sup> See, generally, Treaty with the Sioux-Brule, Oglala, Miniconjou, Yanktonai, Hunkpapa, Blackfeet, Cuthead, Two Kettle, Sans Ares, and Santee - and Arapaho, April 29, 1868, art. 1, Kappler, supra, at n.3 at 998; Treaty with the Crows, May 7, 1868, art. 1, Kappler, supra, at n.3 at 1008; Treaty with the Ute, March 2, 1868, art. 6, Kappler, supra, at n.3 at 991.

Government at an earlier date, and because the federal employees who drafted the treaties had not yet conjured up this specific provision as a standard clause.

The necessity for the last requirement, i.e., that a tribe be organized so as to have tribal government and tribal courts, is fairly obvious. There must be some governmental branch to exercise the extradition power. This requirement would eliminate those tribes that have terminated or do not have a tribal government and those tribes having a tribal government, but no tribal court system, since as a general rule extradition is a bilateral agreement and a jurisdiction seeking extradition must be competent to try the person being extradited.<sup>67/</sup>

From the above discussion, it can be concluded:

- 1) That Indian control of extradition from their respective reservations was contemplated as early as 1868.
- 2) That there was no case in which the requirements of a tribe's exercising this control were enumerated or discussed until Turtle, supra, in 1969.
- 3) That Indian tribes have always enjoyed a sovereign status in that they have always exercised some type of self-government.
- 4) That the right to control jurisdiction is a part of, and closely related to, the right of self-government.
- 5) That Indian tribes who satisfy the requirements set out in Turtle, supra, have the right and power to control extradition from their reservations.

<sup>67/</sup> 31 Am.Jur.2d, Extradition, Sec. 1.

6) Those requirements are:

- a. That the tribe have a history of self-government;
- b. that there be no act of Congress denying this power to the tribe;
- c. that the tribe have a treaty provision allowing control of extradition (although an argument can be made that this is not absolutely essential); and
- d. that the tribe have a presently organized form of government including a tribal court system.

#### Indian Country

Whether the state, the Federal Government, or the tribe has jurisdiction to define offenses and try and punish offenders depends on the race of the offender and the race of the victim as one set of variables. But even after these variables have been sorted out, another remains, whether the offense is committed within "Indian country." The allocation of jurisdiction among state, Federal, and tribal governments in areas of fragmented land ownership depends upon what parts of these areas are "Indian country." Offenses involving Indian victims or Indian offenders in "Indian country" are within Federal or tribal jurisdiction,<sup>68/</sup> while outside "Indian country" the state has, as does

<sup>68/</sup> 18 U.S.C.A. 1153 (1970 Supp.).

the Federal Government, jurisdiction over Indian and non-Indian offenders alike.<sup>69/</sup> Offenses by or against Indians are generally beyond state jurisdiction<sup>70/</sup> if committed in "Indian country" and tribes generally do not have jurisdiction beyond "Indian country." Thus, the definition of "Indian country" is essential for the territorial demarcation of the jurisdiction of the three sovereignties. Clear demarcation is essential for effective law enforcement.

The power to define "Indian country" is an exclusive power of the Congress.<sup>71/</sup> And the question of whether particular lands are "Indian country" is a matter of Federal law, and not state law.<sup>72/</sup> The original sources of Federal powers over Indians were the commerce clause,<sup>73/</sup> and the treaty power.<sup>74/</sup> The treaty power was initially viewed as the source for the definition of "Indian country." Prior to 1834, definitions of "Indian country" were the metes and bounds descriptions of lands occupied by tribes with treaties

<sup>69/</sup> See, p. 90, et seq., supra.

<sup>70/</sup> Ibid.

<sup>71/</sup> U. S. v. Sandoval, 231 U.S. 28 (1913); U. S. v. 43 Gallons of Whiskey, 93 U.S. 188 (1876); Browning v. U.S., 6 F.2d 801 (CCA 8 1925); 18 U.S.C., Sec. 1151.

<sup>72/</sup> Seymour v. Superintendent, 368 U.S. 351 (1962).

<sup>73/</sup> U. S. Const., Art I, Sec. 8, cl.3.

<sup>74/</sup> U.S. Const., Art. II, Sec. 2, cl.2.

describing the lands.<sup>75/</sup> As more and more treaties were negotiated and adopted, the use of metes and bounds descriptions was abandoned in favor of a general definition, contained in the Indian Intercourse Act of 1834, Act of June 30, 1834, 4 Stat. 729. This definition stated:

" . . . (T)hat all that part of the United States west of the Mississippi, and not within the states of Missouri and Louisiana, or the territory of Arkansas, and, also, that part of the United States east of the Mississippi river, and not within any state to which the Indian title has not been extinguished, for the purposes of this act, be taken and deemed to be the Indian country."

The treaty power is implicit in this definition, as the source of the rule that territory not included within states which was held as unceded Indian land was "Indian country" east of the Mississippi. Many treaties had provided that the Indians' land was not to be included within the boundaries of any state.<sup>76/</sup>

The treaty power continued as a specific source of authority for the definition of "Indian country" until Congress ended the treaty system in 1871,<sup>77/</sup> though the power may still be viewed as a source of Federal power. But the

<sup>75/</sup> Cohen, Federal Indian Law, U. S. Dept. of Int. 1940, pp. 5-6 (hereafter cited as Cohen).

<sup>76/</sup> See, e.g., The Kansas Indians, 72 U.S. (5 Wall.) 737 (1866) for an example of such a treaty.

<sup>77/</sup> Act of March 30, 1871, 16 Stat. 566, 25 U.S.C., Sec. 71.

Act of 1834 presages another source of Federal power -- the public lands clause of the Constitution.<sup>78/</sup> All the lands of the United States in 1834 west of the Mississippi and not included within an existing state or territory<sup>79/</sup> were declared "Indian country" irrespective of any treaty arrangements with tribes west of the Mississippi.

In treaties, Indians gained vested rights to use of lands, rivers and streams which survive irrespective of land title, the right to fish or hunt in off-reservation areas which were customary hunting and fishing areas.<sup>80/</sup> The public lands power is more restricted in the sense that title to the land must be in the Federal Government before the power of making needful regulations exists.

The third constitutional source of Federal power is the commerce clause. This power was interpreted by Chief Justice Marshall in Cherokee Nation v. Georgia<sup>81/</sup> and Worcester v. Georgia<sup>82/</sup> as giving the Federal Government paramount and plenary authority over Indian tribes. The power exists without

<sup>78/</sup> U. S. Const., Art. IV, Sec. 3, cl. 2. See, U.S. v. Celestine, 215 U.S. 278 (1909) for a discussion of the public lands clause as a source of Federal power over Indians and "Indian country."

<sup>79/</sup> Cohen, *supra*, n.8, p. 6.

<sup>80/</sup> See, Federal Indian Law, U. S. Dept. of the Int., 1958, p. 495, n.1, for a list of such treaties. (Federal Indian Law is a revision and updating of Cohen, and will be cited as Federal Indian Law, 1958 hereafter.)

<sup>81/</sup> 30 U.S. 1 (5 Pet.) (1831).

<sup>82/</sup> 31 U.S. (515 (6 Pet.) (1832).

regard to territory, if an Indian is involved in commerce. The best example of its exercise remains the former Federal prohibition against the sale of liquor to an Indian, regardless of the situs of the transaction.<sup>83/</sup> This power seems also to serve as the basis of another concept of Federal power over Indians, that of the Federal government's necessary power as a guardian over the dependent Indian and the dependent Indian tribe.<sup>84/</sup>

Whether the definition of "Indian country" is grounded in the paramount authority of the Federal Government over Indians, or in the power over public lands is a question which has persisted in the background of the cases on "Indian country." The general statutory definition was omitted from the Revised Statutes of 1873, and was therefore repealed.<sup>85/</sup> Faced with cases arising under a Federal statute extending the general criminal laws of the Federal Government to include "Indian country," the Federal courts often used the former statutory definition of unceded land held by tribes under Indian title as the criterion for "Indian country."<sup>86/</sup> This test suffices for reservations created out of country

<sup>83/</sup> Federal Indian Law, 1958, pp. 383-85.

<sup>84/</sup> U. S. v. Kagama, 118 U.S. 384 (1886).

<sup>85/</sup> Donnelly v. U. S., 228 U.S. 243, 268 (1913).

<sup>86/</sup> Bates v. Clark, 95 U.S. 204 (1877); Ex Parte Crow Dog, 109 U.S. 556 (1883); U.S. v. Le Bris, 121 U.S. 278 (1887); Clairmont v. U.S., 225 U.S. 551 (1912).

held by tribes under Indian title,<sup>87/</sup> but the creation of reservations out of public domain lands previously not occupied by the tribe, as occurred in the period of forced westward migrations, rendered a new definition necessary. In addition, problems posed by the allotment system, which involved individual trust titles, and other forms of land tenure required new definitions.

New definitions were possible. The Supreme Court had indicated in Ex Parte Crow Dog, 109 U.S. 556 (1883), that the definition could:

"... be referred to in connection with the provisions of its original context that remain in force, and may be considered in connection with the changes which have taken place in our situation, with a view of determining from time to time what must be regarded as Indian country where it is spoken of in the statutes." 109 U.S. 556, 561.

Before discussing the cases which provided new definitions of "Indian country" and the question of the sources of federal power to define "Indian country" as reflected in the cases, the present statutory definition of "Indian country" should be included. The definition is to be interpreted in the light of case law definitions of "Indian country"<sup>88/</sup> and the discussion of the cases therefore pertinent to the statutory definition. Codified as 18 U.S.C. Sec. 1151, the definition in material part is as follows:

"The term 'Indian country', as used in this chapter, means  
(a) all land within the limits of any Indian reservation under the

<sup>87/</sup> See, U.S. v. Chavez, 290 U.S. 357 (1933).

<sup>88/</sup> See, The Reviser's Note to 18 U.S.C. Sec. 1151.

jurisdiction of the United States government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservations, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same."

The first extension of the definition of "Indian country" beyond that contained in the Indian Intercourse Act of 1834<sup>89/</sup> came in Donnelly v. U.S., 228 U.S. 243 (1913). The court held that an executive order Indian reservation created out of public domain lands not previously occupied by Indians was "Indian country."

"... (B)ut 'the changes which have taken place in our situation' are so numerous and so material, that the term cannot now be confined to land formerly held by the Indians, and to which their title remains unextinguished. And, in our judgment, nothing can more appropriately be deemed 'Indian country,' within the meaning of those provisions of the Revised Statutes that relate to the regulation of the Indians and the government of the Indian country, than a tract of land that, being a part of the public domain, is lawfully set apart as an Indian reservation."

Subparagraph (a) of Section 1151 reflects the Donnelly case and others which followed.<sup>90/</sup> The subparagraph does settle two areas in which there was confusion in the prior case law, whether fee lands within Indian reservations were "Indian

<sup>89/</sup> Act of June 30, 1834, 4 Stat. 729.

<sup>90/</sup> Pronovost v. U.S., 232 U.S. 487 (1914); In re Wilson, 140 U.S. 575 (1891); see, also, Guith v. U.S., 230 F.2d 481 (CA 9 1956).

country"<sup>91/</sup> and whether rights-of-way running through Indian reservations were "Indian country."<sup>92/</sup> If the sole source of Federal power to define "Indian country" is the public lands clause<sup>93/</sup> of the Constitution, the validity of subparagraph (a) would be doubtful. Not owning fee lands within Indian reservations, the Congress would lack authority under the public lands clause to include them within the definition of "Indian country." This question was raised and decided in the recent case of Hilderbrand v. Taylor, 327 F.2d 205 (CA 10 1964). The appellant argued that "Congress does not have the constitutional power to define privately owned lands as Indian country." The Tenth Circuit rejected this argument that the Congress' power to define Indian country was limited to federally owned lands. "It has always been recognized that Congress has the exclusive power to deal with Indians and Indian affairs on reservations set apart for them."

The constitutionality of 18 U.S.C. Sec. 1151(a) thus rests not solely upon the public lands power, but also upon the commerce power, and the

<sup>91/</sup> Compare Clairmont v. U.S., 225 U.S. 551 (1912), and U.S. v. Lindahl, 22 Fed. 143 (D.C. Mont.) with Toosga v. U.S., 186 F.2d 93 (CA 10 1950).

<sup>92/</sup> Compare Application of Konaha, 43 F. Supp. 747 (D.C. Wisc. 1942) with State v. Tucker, 237 Wisc. 310, 296 N.W. 645. See, U.S. v. Soldana, 246 U.S. 530.

<sup>93/</sup> U.S. Const., Art. IV, Sec. 3, cl.2.

power of the Federal Government over Indians necessary to effectuate its responsibilities toward them.<sup>94/</sup>

The next extensions of the definitions of "Indian country" came in the cases of U.S. v. Sandoval, 231 U.S. 28 (1913), Pelican v. U.S., 232 U.S. 442 (1914), and U.S. v. Ramsey, 271 U.S. 442 (1926). These three cases, with U.S. v. McGowan, 302 U.S. 535 (1938), brought the Supreme Court to a full endorsement of the principle that the basis for the definition of "Indian country" was not restricted to the power over lands, but also rested upon the commerce power over Indians, and the authority necessary to exercise guardianship responsibilities.

The Sandoval case involved liquor violation on the lands of the Santa Clara Pueblo. In an earlier case, U.S. v. Joseph, 94 U.S. 614 (1877), the New Mexico Pueblos were held not to be Indian tribes,<sup>95/</sup> and Congress, in

<sup>94/</sup> See, Coyle v. Smith, 221 U.S. 559, 574, for a discussion of Congress' power over commerce and the public lands as it relates to the states.

<sup>95/</sup> In Joseph, the Supreme Court also indicated that it would not be bound on its decision on the status of the Pueblos as Indians "by the circumstance that some officer of the government has appointed for them an agent . . . ." 94 U.S. 614, 618. The Court in Sandoval expressly rejected this dictum. "(B)y, a uniform course of action beginning as early as 1854 and continued up to the present time, the legislative and executive branches have regarded and treated the pueblos of New Mexico as dependent communities entitled to its aid and protection like other Indian tribes, and . . . this assertion of guardianship over them cannot be said to be arbitrary, but must be regarded as both authorized and controlling." 231 U.S. 28, 47.

response to Joseph and other cases,<sup>96/</sup> had declared the pueblos to be "Indian country" for the purposes of the Federal liquor laws.<sup>97/</sup> The question thus posed was whether Congress had authority to declare the pueblos to be "Indian country" when Pueblos were not Indians, and when their land was held in communal fee simple title. The court held the Pueblos were Indians, and went on to state:

"Not only does the Constitution expressly authorize Congress to regulate commerce with the Indian tribes, but (46) long-continued legislative and executive usage and an unbroken current of judicial decisions have attributed to the United States as a superior and civilized nation the power and the duty of exercising a fostering care and protection over all dependent Indian communities within its borders, whether within its original territory or territory subsequently acquired, and whether within or without the limits of a state." (Emphasis added.) 231 U.S. 28, 44-46.

The court also held that the fact that the lands were held in fee did not impair the Federal Government's authority over the Pueblos, or limit the power of Congress to enact legislation for protection of the Pueblos or their property.<sup>98/</sup>

<sup>96/</sup> U.S. v. Mares, 14 N.M. T, 88 P. 1128 (1907).

<sup>97/</sup> Act of June 20, 1910, Sec. 2; 36 Stat. at L. 557, Chap. 310.

<sup>98/</sup> See, U.S. v. Chavez, 290 U.S. 357 which follows Sandoval in holding the Pueblo of Isleta to be "Indian country."

The stress on "dependent Indian communities" and the use of the Indian's status as the test of whether their lands are "Indian country" was carried even further in the case of U.S. v. McGowan.<sup>99/</sup> McGowan concerned the Reno Indian Colony, a tract of about 29 acres purchased by the Federal Government near Reno, Nevada, to provide homes and farms for landless Nevada Indians. The contrast between the Supreme Court's opinion, and the opinions below, is instructive. The land had never been used by Indians prior to purchase, and had not been a part of the public domain for many years. The Circuit Court of Appeals for the Ninth Circuit held that the land was not a "reservation" within the meaning of Article I, Section 8, cl. 17 of the Constitution, which relates to the Congress' exclusive legislative power over Federal enclaves, purchased with the consent of state legislatures, and that the Congress could not unilaterally extend Federal Indian laws to the colony without the Nevada legislature's consent.<sup>100/</sup> The Supreme Court reversed, and stated that the:

"Congress possess the broad power of legislating for the protection of the Indians wherever they may be within the territory of the United States." U.S. v. Ramsey, 271 U.S. 471, 70 L. Ed. 1041, 46 S.Ct. 559. 302 U.S. 535, 539.

The court indicated that:

"The Reno Colony has been validly set apart for the use of the Indians. It is under the superintendence of the government . . . . The government has authority to enact regulations and protective laws respecting this territory." (Citing U.S. Const., Art. 4, Sec. 3, cl. 2, the public lands' clause) 302 U.S. 535, 539.

<sup>99/</sup> 302 U.S. 535 (1938).

<sup>100/</sup> U.S. v. McGowan, 89 F.2d 201 (CCA 9 1937).

"Indian country" thus defined became any lands validly set apart for the use of the Indians as such, when the Indians were under the protection of the United States. And the source of Federal power is both the commerce clause, with the protection extended thereunder to the "dependent Indian communities" and the power necessary to extend the protection, and the power to establish needful regulations over public lands.

18 U.S.C. Sec. 1151(b) is taken almost bodily from language in U.S. v. Sandoval and U.S. v. McGowan. In Cohen's Federal Indian Law, U.S. Dept. of Int., 1940, page 7, these cases were interpreted to mean "any lands occupied by 'distinctly Indian communities' recognized and treated by the government as 'dependent communities' entitled to its protection" were Indian country. In U.S. v. Booth,<sup>101/</sup> the court considered such factors as whether an on-going tribal organization existed, whether the area was inhabited by one identifiable tribe, and whether special federal services and protection existed for the group in determining whether the Metlataka community was a "dependent Indian community."<sup>102/</sup> These are the factors which must be considered in determining whether particular areas are "Indian country" under 18 U.S.C. Sec. 1151(b).

<sup>101/</sup> 161 F. Supp. 269 (D.C. Alaska 1958).

<sup>102/</sup> See, also, U.S. v. Sandoval, 231 U.S. 28 (1913).

As Booth, Sandoval and McGowan involved specific and contiguous tracts of land, there is no indication in the case law that the definition of "Indian country" as a "dependent Indian community" would include areas of fragmented land ownership which include concentrations of Indian population, such as the Eastern Agency area. And, though the definition of 18 U.S.C. Sec. 1151(a) of reservations as "Indian country" includes fee lands and rights-of-way within the reservation, there is no such provision in part (b), the "dependent Indian community" section. In Petition of McCord,<sup>103/</sup> the court indicated that:

"In view of the . . . definition of Congress, however, any extension of the definition beyond those areas set apart from the public domain and dedicated to the use of the Indian people and within which is found an operational tribal organization, would be unwarranted."

In areas of fragmented land ownership caused by the disestablishment of reservations and the allotment process, the case law has been that the only "Indian country" in the area is allotted land, and any other land reserved for and occupied by Indians.<sup>104/</sup>

<sup>103/</sup> 151 F. Supp. 132 (D.C. Alaska 1957).

<sup>104/</sup> See, Seymour v. Superintendent, 368 U.S. 351 (1962); Ellis v. Page, 351 F.2d 252 (CA 10 1965); Tooisqah v. U.S., 186 F.2d 93 (CA 10 1950); De Marrias v. State, 319 F.2d 845 (CA 8 1963), and other cases involving the same questions, 107 N.W.2d 255, cert. denied 368 U.S. 844, 91 N.W.2d 480; Alexander Bird in the Ground v. District Court, 239 F. Supp. 981 (D.C. Mont. 1965).



Allotted lands were held to be "Indian country" in two Supreme Court cases, U.S. v. Pelican,<sup>105/</sup> and U.S. v. Ramsey.<sup>106/</sup> In Pelican, trust allotments, lands held by the United States in trust for the allottee were held to be "Indian country" because the allotments were "Indian lands," set apart for Indians under governmental care "and were, in view of these characteristics, indistinguishable from reservations," 232 U.S. 442, at 449.<sup>107/</sup> The court held no doubts that, on the authority of both the public lands clause and the commerce clause, and of Hallowell v. U.S.,<sup>108/</sup> the Congress had the power to extend Federal Indian criminal laws to allotments.

In U.S. v. Ramsey, 271 U.S. 467 (1926), the allotment involved was a restricted allotment, one in which the allottee held the title in fee, subject to absolute restrictions on alienation for statutorily prescribed period. The

<sup>105/</sup> 232 U.S. 442 (1914). See, also, Hallowell v. U.S., 221 U.S. 317 (1911), U.S. v. Sutton, 215 U.S. 291 (1909).

<sup>106/</sup> 271 U.S. 467 (1921).

<sup>107/</sup> Ex parte Moore, 133 N.W. 817 (1911) held that Indian allotments out of public domain were not "Indian country" and that the states, by virtue of their jurisdiction over offenses by or against Indians outside reservations, had jurisdiction of such offenses on such allotments. For a history of this case, see Section V D of this paper. See, also, Ex Parte Van Moore, 221 Fed. 954 (D.C. S.D. 1915), discussed in the above section.

<sup>108/</sup> Note 38, op.cit.

District Court held the allotment was not "Indian country" on the ground that the allottee held fee title to the land. On the question of the source of federal power, the Supreme Court, foreclosed from the public lands clause, because the United States did not own the land, held that:

"Since Congress possesses the broad power of legislating for the protection of Indians wherever they may be within the territory of the United States, the question presented is not one of power . . . ." 271 U.S. 467, 471.

The court stressed the fact that federal jurisdiction over crimes by or against Indians existed:

"(I)n virtue of the long-settled rule that such Indians are wards of the nation in respect of whom there is devolved upon the Federal Government the duty of protection, and with it the power." United States v. Kagama, 118 U.S. 375, 384

The Supreme Court also held that since the protection and services provided the allottees by the United States were the same whether a trust allotment or a restricted allotment was involved, the restricted allotment was as much "Indian country" as the trust allotment.

18 U.S.C. Sec. 1151(c) defines "all Indian allotments, the Indian titles to which have not been extinguished . . ." as "Indian country" on the authority of the Pelican and Ramsey cases.

The case law definitions of "Indian country" indicate that several common elements are required before lands populated by Indians are "Indian country."

Either the Indian, the Indian tribe, or the United States must own the land in fee. The Indian or the tribe must have a right or privilege to occupy the land on a permanent basis. This part of the requirement excludes Indian schools, hospitals or agencies from the definition of "Indian country" unless they are located within reservations.<sup>109/</sup> And the relation between the Indian or the tribe occupying the land and the United States must be characterizable as involving dependency and guardianship, with special restrictions, services and protections involved.

Under 18 U.S.C. Section 1151, Parts (a) and (c), the definition of "Indian country" is clearly tied to a specific territory owned either by the United States or by individual Indians. The criteria followed in the cases would not be important in a case involving an allotment or a reservation, but these criteria will be important in the interpretation of part "b" of Section 1151. Thus, in interpreting part "b", considerations of whether federal power to define particular lands as "Indian country" may still arise. Would the Federal Government have the power to include, for example, a section of fee land entirely surrounded by Indian allotments to be "Indian country?" There is no certain answer to this question, and no certain limit on federal powers under

<sup>109/</sup> Cohen, *supra*, n.8, p. 8.

the court-evolved doctrine that federal power over Indians derives from the necessity of uniform protection of a dependent people.<sup>110/</sup> No reported cases involving lands outside reservations which are not owned by the government and reserved for Indian occupancy, or owned by Indians and subject to federal control on alienation or management have been found<sup>111/</sup> and the cases involving offenses committed within the former boundaries of disestablished reservations and not committed on allotments indicate that fee lands interspersed among allotments are not "Indian country."<sup>112/</sup> Except in the case of a reservation, therefore, it is likely that lands cannot be termed "Indian country" unless the Indians or the government own the land, and unless the land is either validly set aside for exclusive use by Indians<sup>113/</sup> or subject to federal restrictions on alienation, *i.e.*, held in some status whereby the United States serves as a trustee for the Indian or the tribe.<sup>114/</sup>

<sup>110/</sup> See, *U.S. v. Kagama*, 118 U.S. 375 (1886); Davis, *Criminal Jurisdiction Over Indian Country in Arizona*, 1 *Ariz. L. Rev.* 62.

<sup>111/</sup> See the cases cited at n.37, *supra*.

<sup>112/</sup> N.37, *supra*. The argument was raised in *U.S. v. Pelican* that Congress could not have intended that little islands of federal jurisdiction would exist scattered through territory open to Anglo settlement. The court accepted as a matter of course that the fee land and public domain settled or open to settlement by Anglos was not "Indian country." 232 U.S. 442, 449-50.

<sup>113/</sup> *U.S. v. McGowan*, 302 U.S. 535 (1938).

<sup>114/</sup> *U.S. v. Ramsey*, 271 U.S. 467 (1921).

This conclusion, that the Federal Government lacks the power to include fee lands, interspersed among allotments within "Indian country," bears directly on an important practical problem for law enforcement officials in areas of fragmented land ownership -- jurisdiction over the traffic offender. 18 U.S.C. Section 1151(a) and (c) clarify this problem by providing that rights-of-way through reservations and allotments remain "Indian country."<sup>115/</sup> But the question still remains for "dependent Indian communities" as 18 U.S.C. Section 1151(b) makes no provision for rights-of-way.

Clairmont v. U.S., 225 U.S. 551 (1912), established the rule that whether rights-of-way are "Indian country" or not depends upon the nature of the right-of-way and the underlying title to the land over which the right-of-way runs. The test provided in Clairmont has been followed in a line of cases arising from state attempts to prosecute Indians for traffic offenses committed on reservation roads.<sup>116/</sup> Highways themselves are not likely to be held "Indian country" under the "dependent Indian community" test, and

<sup>115/</sup> See Application of Denetclaw, 83 Ariz. 299, 320 P.2d 697 (1958) and State v. Begay, 63 N.M. 409, 320 P.2d 1017 (1958) for cases holding that the states of Arizona and New Mexico, respectively, lack jurisdiction over Indian traffic offenders on highways within the Navajo Reservation.

<sup>116/</sup> Ibid, n.48. See also Application of Konaha, 131 F.2d 737 (CA 7 1942), affirming Application of Konaha, 43 F. Supp. 747 (1942).

it is a reasonable assumption that the test will continue to be whether the land underlying the highway or right-of-way is "Indian country" or not. In areas of fragmented land ownership, with allotments and fee land interspersed, the jurisdiction over traffic offenders will continue to be dependent upon land title, and law enforcement officers will continue to be faced with the problems discussed in the following section, on the effects which jurisdiction based on land titles have on law enforcement in "checkerboard" areas.

#### "Checkerboard" Jurisdiction

Of the problem areas in the field of law enforcement for Indians, perhaps the most perplexing is the problem of jurisdiction and enforcement in "checkerboard" areas. This section will discuss the problems posed by land titles in these areas, and by jurisdictional tangles, which result from the land status, for tribal, Federal and state authorities, all involved in law enforcement in these areas.

The term "checkerboard" area is descriptive of a pattern of land ownership created by the Federal Government's practice of granting railroads all the odd or even numbered sections of land for a set number of miles from the line, to finance the construction of the railroads. When Indian reservations were also created in the areas of the land grant, the result was a pattern of railroad land and Indian land which exactly resembles a checkerboard. The

term has been extended to include areas in which Indian lands, either tribally owned or allotted, are interspersed with lands held by non-Indians in other forms of land tenure.

In 1871, out of a total of 121,993,283 acres of Indian lands, 111,261,558 acres were held by tribes.<sup>117/</sup> In 1933, there were only 29,481,685 acres held by tribes, and only 17,829,315 acres were held in trust by the United States for individual Indians.<sup>118/</sup> "Between 1887 and 1934 the Indians were separated from an estimated 86,000,000 of a total of 138,000,000 acres."<sup>119/</sup>

In the years prior to 1887, the United States had generally followed the policy of concentrating Indians on reservations, or on remnants of the domain they had formerly occupied. The overall policy had been to concentrate the Indians on these reservations, thereby opening former tribal lands to Anglo settlement. When the lands set aside for the Indians and guaranteed as tribal lands by

<sup>117/</sup> Technically, and with few exceptions, Indian reservations were not "owned" by Indian tribes. The tribes own the beneficial use of the lands, while the United States holds fee title to the lands in trust for the tribes. See Federal Indian Law, U.S. Dept. of the Interior, 1958, pp. 32-40. While it is technically incorrect to speak of "tribally-owned" lands, this term will be used in this paper to avoid the cumbersome expressions which would be required to give technically correct descriptions of tribal titles.

<sup>118/</sup> Kinney, A Continent Lost - A Civilization Won, Baltimore, 1937, Appendix Table showing total area of Indian lands, 1871-1933, following p. 351. See also, Cohen, Federal Indian Law, 1940, p. 216.

<sup>119/</sup> Hagan, American Indians, Chicago, 1961, p. 147.

treaty obligations were attractive to westward-expanding settlers, the Indians were moved, in steps, westward until many of the tribes had been removed to the Kansas and Oklahoma territories, and other points west of the Mississippi.<sup>120/</sup>

In 1887, Congress passed the General Allotment Act,<sup>121/</sup> which provided a major new direction in U. S. Indian policy,<sup>122/</sup> and eventually resulted in the enormous reduction in Indian lands shown in the figures on tribal holdings before the act was passed, and the year it was in effect repealed.<sup>123/</sup> As of October 1, 1936, approximately 103 reservations out of 152 had been parceled in part or wholly into allotments.<sup>124/</sup> In place of the former policy of settling

<sup>120/</sup> Ibid., Hagan, pp. 66-91. See also Federal Indian Law, 1958, pp. 180-202, Harmon, 60 Years of Indian Affairs, 1789-1850, Chapel Hill (U. North Carolina Press) 1941. Foreman, Indian Removal, Norman, Okla., 1932 discusses in detail the removals of the Five Civilized Tribes.

<sup>121/</sup> Act of February 8, 1887; 49th Cong., 2nd Sess., Chap. 119; 24 Stat. at L. 388. See, Cohen, Federal Indian Law, U. S. Dept. of Interior, 1940, pp. 206-17, for an excellent summary of the General Allotment Act's history and effects.

<sup>122/</sup> For a detailed account of the public and congressional debates which led to the passage of the act, and the objectives of the act, see, Priest, Uncle Sam's Stepchildren, The Reformation of United States Indian Policy, 1865-1887. New York, 1969.

<sup>123/</sup> The Act of June 18, 1934, 73rd Cong., 2nd Sess., Chap. 576, 48 Stat. at L. 984, prohibited future allotment of Indian reservation lands and extended trust or restriction periods for existing allotments indefinitely.

<sup>124/</sup> Kinney, op. cit., n. 2, Appendix, Table showing Areas of Restricted Lands on Indian Reservations, following p. 351.

Indians on tracts of solely Indian land, the Allotment Act substituted the policy of fragmenting Indian lands into small parcels, and interspersing these small parcels with public domain, open for white settlement.<sup>125/</sup>

The text of the General Allotment Act indicates itself that the policy was motivated by both a desire to civilize the Indian, and a desire to open all reservation lands not necessary for support of the Indians to white settlement. Section 1 provides for allotment of reservation lands in severalty, to the individual members of the tribe, upon order of the President. The premise supporting this section, and the allotment policy, was that the reservation system, by segregating Indians from Anglos,<sup>126/</sup> and perpetuating tribal government through communal land ownership,<sup>127/</sup> only delayed the assimilation that was necessary if the Indians were to survive in the midst of Anglo civilization.<sup>128/</sup> The allotments, under section 5 of the act, were to be held in trust by the United States for 25 years, to protect the Indian from improvident disposition of his land while he assimilated.

<sup>125/</sup> Priest, *supra*, n.6, pp. 145-54, pp. 167-252.

<sup>126/</sup> Numerous statutes, formerly codified as 25 U.S.C. Section 219-226, before their repeal in 1934, 48 Stat. 787, implemented or were used to implement the segregation policy. These included a requirement that foreigners entering "Indian country" have passports, Revised Statutes Section 2134, and authority for Indian agents or the military to remove undesirables from Indian country. Revised Statutes, Sections 2147-2151.

<sup>127/</sup> Kinney, *supra*, n.2, pp. 203-07.

<sup>128/</sup> Priest, *supra*, n.6, pp. 123-27, 145-48, 190-93.

The allotment was to cause the assimilation of the individual Indian by bringing to him "one of the most effective civilizing agencies," "the enjoyment and pride of individual ownership in property."<sup>129/</sup> The act also provided that if the Indians failed to select their allotment within four years, the allotting agent could do so for them in section 2 thereof.

Good lands were not always contiguous, and the Indians themselves may have selected in many cases lands which were not adjacent to lands selected by others. In addition, under a view that was common during the years preceding the passage of the act, the breakup of tribal culture could not be effectively accomplished so long as the Indians "live(d) together in close neighbor\_hoods."<sup>130/</sup> The agent, with his power to select allotments if the Indian refused, could separate allotments, in order to locate the Indians away from their tribal villages.

The final provision of the act pertinent here was this part of section 5:

"And provided further, That at any time after lands have been allotted to all the Indians of any tribe as herein provided, or sooner, if in the opinion of the President it shall be for the best

<sup>129/</sup> Cohen, *supra*, n.5, p. 207, quoting from the Report of the Secretary of the Interior, 1877, p. xi, as recounted in Otis, *History of the Allotment Policy*, in Hearings, Committee on Indian Aff., H.R. 7902 73d Cong. 2nd Sess. 1934, pt. 9, pp. 428, *et seq.*

<sup>130/</sup> Kinney, *supra*, n.2, p. 204, quoting from a Report by J. G. Gassman, Indian agent for the Yankton Sioux, 1887.

interests of said tribe, it shall be lawful for the Secretary of the Interior to negotiate with such Indian tribe for the purchase and release by said tribe, in conformity with the treaty or statute under which such reservation is held, of such portions of its reservation not allotted as such tribe shall, from time to time, consent to sell, on such terms and conditions as shall be considered just and equitable between the United States and said tribe of Indians, which purchase shall not be complete until ratified by Congress, and the form and manner of executing such release shall also be prescribed by Congress: Provided however, that all lands adapted to agriculture, with or without irrigation so sold or released to the United States by any Indian tribe shall be held by the United States for the sole purpose of securing homes to actual settlers and shall be disposed of by the United States to actual and bona fide settlers only in tracts not exceeding one hundred and sixty acres to any one person, on such terms as Congress shall prescribe, subject to grants which Congress may make in aid of education: And provided further, That no patents shall issue therefor except to the person so taking the same as and for a homestead, or his heirs, and after the expiration of five years occupancy thereof as such homestead; and any conveyance of said lands so taken as a homestead, or any contract touching the same, or lien thereon, created prior to the date of such patent, shall be null and void. And the sums agreed to be paid by the United States as purchase money for any portion of any such reservation shall be held in the Treasury of the United States for the sole use of the tribe or tribes of Indians; to whom such reservations belonged; and the same, with interest thereon at three per cent per annum, shall be at all times subject to appropriation by Congress for the education and civilization of such tribe or tribes of Indians or the members thereof. (Emphasis added.)

By providing that unused lands were to be opened as public domain for white homesteading and settlement, Congress created the circumstances resulting in the enormous loss of Indian lands described above. Though this provision was condemned during debates on the act as a land-grab,<sup>131/</sup> it had another purpose -- to speed the

<sup>131/</sup> Cohen, *supra*, n.5, p. 209; Kinney, *supra*, n.2, pp. 207-08.

assimilation of the individual Indian by bringing him into close contact with Anglo neighbors homesteading adjacent lands. As section 5 indicates, ceded surplus lands were to be open to homestead settlement only. The lands would, after settlement for five years, be patented to the homesteader.

Had the allotment scheme, as established in the General Act and many special acts which followed establishing methods of operation for allotting particular reservations,<sup>132/</sup> worked, no checkerboard areas would have resulted, because both Indian's and homesteader's lands would have been private fee lands.

But the failures of the policy were soon apparent, and the process of extending trust or restriction periods began with the Act of June 21, 1906, 34 Stat. 325, which authorized the President to extend trust periods, and has continued to the present.<sup>133/</sup> Thus, many parcels of land are held in these areas in fee, by non-Indians, while others are held in indefinitely extended trust or restricted status for Indian allottees. One result of the allotment policy and its failure has thus been the creation of many "checkerboard" areas, in

<sup>132/</sup> Schmeckebrier, *The Office of Indian Affairs*, Baltimore, 1927, p. 143.

<sup>133/</sup> Gilbert, W. H., and Taylor, J. L., *Indian Land Questions*, 8 Ariz. L. Rev. 102, 112-15 (1966).

perhaps all 105 of the former reservations which were ceded and parceled out under the allotment policy.<sup>134/</sup>

An important impetus behind the re-examination of federal Indian policies which resulted in the General Allotment Act of 1887 was the coming of the railroads.

"No aspect of America's desire for internal expansion was pressed more strongly during the eighties than the demand that railroads should be allowed to cross Indian lands." <sup>135/</sup>

The push for railroad expansion across Indian lands occurred initially in regard to reservations in Kansas, Nebraska and the Indian territory.<sup>136/</sup> The manner by which treaty cessions of reservation lands were arranged to suit railroad needs, in the case of the cession of the Osage Reservation in Kansas, resulted in the end of the Senate's Indian treaty -- making power and in protracted litigation.<sup>137/</sup>

<sup>134/</sup> Schmeckebrier, *supra*, n.15, has a map of a typical allotted reservation, showing in black allotted areas, in white, lands open for settlement, following p. 290, copy attached as Appendix A.

<sup>135/</sup> Priest, *supra*, n.6, p. 220.

<sup>136/</sup> History of Public Land Law Development, Public Land Law Review Commission, by Paul W. Gates, U.S.G.P.O., 1958, p. 369.

<sup>137/</sup> Gates, *ibid.*, pp. 369-70. See, *Leavenworth, L & G Ry. v. U.S.*, 92 U.S. 733 (1875) in which the Supreme Court invalidated land titled along a 34-mile stretch of the railroad through the former Osage Reservation, including those townsites with an aggregate population of about 5,000 people because the land grant act was passed before the cession was obtained.

The General Allotment Act, Section 10, contained a specific provision that Congress' power to grant rights-of-way across Indian lands for railroads would not be impaired by the act, and would extend to Indian allotments. Provisions such as this one, for rights-of-way, along with the fact that the need for alternate section grants of public lands for railroads diminished in Kansas, Nebraska and the Indian territory, reduced to naught the potential impact of land grants in creating checkerboard areas in the two states and the territory.

The use of alternate section grants to railroads for transcontinental lines had exactly the opposite impact. Many checkerboard areas resulted from these grants, and the subsequent creation of Indian reservations in grant areas.<sup>138/</sup> The policy of congressional grants of lands to railroads to capitalize began in earnest in 1850, and continued through the 1870's.<sup>139/</sup> The major transcontinental statutory grants were made in 1871.<sup>140/</sup> This same year was assigned as the beginning of the "reservation" period in federal Indian policies by Schmeckebrier, in his book, *The Office of Indian Affairs*,

<sup>138/</sup> Perhaps the most well-known of all "checkerboard" areas is the city of Palm Springs, California. This area resulted from the creation of a reservation for the Agua Caliente Band of Mission Indians in an area in which the odd-numbered sections were already owned by the Southern Pacific Railroad. (See, Mission Indian Relief Act of 1891, 26 Stat. 1712.) *Golden Checkerboard*, Ainsworth, Palm Desert, Calif. (1965) is an account of the protracted controversy surrounding the reservation, and of the impact of confused land titles on the economic development of the band.

<sup>139/</sup> Spaulding, *Treatise on the Public Land System*, 1881, Sec. 517.

<sup>140/</sup> Gates, *supra*, n.19, pp. 373-77.

1927. "Reservations existed before and after this period (1871-1887), but the predominant characteristics of those years were the segregation of Indians on reservations . . . ." (P. 66)

The last transcontinental grant was made during the Indian wars, also. The result of the completion of the statutory grants by 1871, combined with the Indian wars meant that the railroad grants preceded the creation of many reservations.<sup>141/</sup> This resulted in the creation of "checkerboard" areas in some cases, while in others including the Navajo Reservation, reservation expansions would take place after the railroad land grants and Indian occupancy would be scattered in "checkerboard" patterns.

The Allotment Act, and the use of alternate section land grants are the two major sources of "checkerboard" areas.

<sup>141/</sup> The Peace Commission, created in 1867, negotiated many treaties with western tribes in that year. See, 15 Statutes at Large, several of which included provisions requiring the Indians not to oppose the construction of the railroads. Treaty with Sioux Indians, 15 Stat. 635; Treaty with Navajo Indians, 15 Stat. 667.

## VII

### LAW ENFORCEMENT SYSTEMS AND AVAILABLE RESOURCES

It is almost impossible to describe existing systems and resources with any degree of accuracy without, at the same time, discussing some needs and problems of those systems and resources.

While state-wide and tribal needs and problems are discussed as a part of the multi-year plan section of each of the plans set forth in Part II, the reader should keep in mind that the needs and problems set forth in this chapter are universal and could be superimposed over the entirety of Part II.

#### Background of the Tribal Court System

The very title "Tribal Court" brings to mind a system of traditional justice embodying the law-ways of a distinct culture -- a dispute-resolution system which is an outgrowth of the cultural needs of a people evolved through time immemorial. Nothing could be further from the truth. Tribal courts are in only a very superficial sense "tribal."<sup>1/</sup>

The anthropological history and traditional systems of justice of the Southwestern tribes have been discussed in the first two chapters of this study.

<sup>1/</sup> Shepardson, Problems of the Navajo Tribal Courts in Transition, 24 Human Organization 250 (1965).



and will not be dwelt upon here. It is sufficient to say that the tribes were not characterized by a system of central government, and there was no single leader whose decisions were regularly utilized as a means of resolving intra-tribal disputes. Thus, there was no room for the traditional growth of courts whose enforcement powers were natural modifications of a chief's power -- as King's Bench and Chancery were outgrowths of royal power in England.

If there is an ancestor of the present tribal court system, it is probably the Indian agent of 100 years ago, appointed from Washington to administer the affairs of the tribes. The Indian agent could make decisions on disputes brought to his attention, and did so. Subsequently, as Indian administration became more complex, the Secretary of Interior felt the need for an Indian court system, which would take some of the law and order load from the Indian agent. As a result, the Secretary in 1883, authorized the creation of Courts of Indian Offenses,<sup>2/</sup> which administered a Law and Order Code, drafted in Washington and embodied in Federal regulations.

When the tribes much later organized themselves under the Indian Re-organization Act of 1934, or were separately organized on the strength of their own treaties like the Navajo, they created tribal code courts and adopted

<sup>2/</sup> Hagan, Indian Police and Judges, Yale Univ. Press (1966), pp. 104, 108-09.

tribal codes, relying on the law-making powers of the tribes themselves. A model for the tribal code was readily found in the Secretary's law and order code. As a result, the "tribal" criminal codes administered by most tribal courts in the Southwest today are relatively unchanged duplicates of the Secretary's code drafted in Washington.

Consequently, virtually every tribal court now tries Indians for such an offense as "disorderly conduct" which is defined as, among other things, "appear(ing) in a public place or private place in an intoxicated . . . condition."<sup>3/</sup> This, in cultural groups who did not have a central law system, who viewed "crime" not in terms of a wrong against the tribe, but in terms of a wrong against the victim, and who had no equivalent of incarceration -- the most common current tribal court punishment for the status offense of drunkenness in a public place.

The greatest present problem of the tribal courts should be apparent from the above discussion: It is that neither the courts themselves nor the communities they represent have a fundamental concept of just what the court's function is in their present society. The courts may be accepted as a judgment-making arm of the government, but they are not really understood. An offender's experience with the court is likely to be viewed as a

<sup>3/</sup> E.g., Salt River Pima-Maricopa Community Law and Order Code, Sec. 6.21; Code of Ordinances, Gila River Pima-Maricopa Indian Community, Ch. 2, Sec. 12.

stroke of bad luck rather than a predictable effect of avoidable conduct. Deprived of community understanding, the tribal court judge is likely to feel adrift in his own role -- to feel uncertain of his decisions and, on occasion, unable to decide.

While there are many technical flaws in the tribal court system, they cannot be placed in perspective without understanding this major problem, which might be characterized as a judicial lack of identity. There is no common acceptance among the tribes and the judges themselves of just what a tribal court is supposed to do.

Obviously, this lack of identity, or lack of understood purpose, affects the police and corrections system, which are part of the imposed system of justice and to which these remarks equally apply.

#### The Viability of the System

If the tribal courts are not understood by their communities or themselves, the threshold question is whether the system is, in fact, serving any function and whether it should be assisted or abolished. Despite this discouraging introduction to the subject of tribal courts, there are several reasons why these courts can be expected to remain in existence for a considerable period of time and why efforts must be made to improve their status and their operations.

To state this central problem of the tribal courts is not to say that they are performing no function at all. For the fact is that traditional conditions have been so altered that the traditional forms of justice are not functional in many of the tribal settings, and the imposition of tribal courts has proceeded far enough so that real alternatives are no longer at hand.

On the criminal side, Indian police and tribal judges do perform an immediate peace-keeping function; the truly disorderly offender can be removed from the scene of disorder by the police and can at least be kept from circulation for a time by the court. On the civil side, and to a lesser extent on the criminal side, the courts replace the open meeting as a forum for all parties to state their positions at length, and to arrive at some sort of decision which can be accepted by all. It is, accordingly, very common to see a tribal judge go to unusual lengths in civil or family support cases to reach a decision acceptable to all sides. This function of the judge as mediator, rather than decision-maker, is clearly a traditional heritage which the formal court system has not extinguished. Perhaps the major hope for future understanding of the courts by the community lies in finding further accommodations between imposed due process considerations of fair procedure and traditional ways of resolving disputes. The fact that tribal courts are not now basically understood does not mean that understanding is forever impossible.<sup>4/</sup>

<sup>4/</sup> Shepardson, Problems of the Navajo Tribal Courts in Transition, 24 Human Organization 250, 253 (1965).

Finally, in a day when the administration of justice in the entire country is in danger of losing support of minority cultures, it appears that elimination of indigenously operated systems of justice would simply increase to intolerable levels the suspicion with which the system of justice is regarded. This consideration is doubly true for the tribal police. For the alternative to a tribal justice system today is far more likely to be a completely outside system than it is to be a return to traditional methods of justice.

There are traditional modes of decision-making which exist side-by-side with tribal court system: Examples are village decisions in the Hopi Tribe, covering many matters of status and succession, and the community decisions regarding stock and grazing in the Papago Tribe. Nevertheless, it seems clear that increasing economic development and other intrusive influences on the reservations require something more than the existing traditional dispute-resolving mechanisms. The tribal court system is by far the most likely instrument. It is therefore quite appropriate to look to subsidiary operating problems of the tribal justice system with a view toward their resolution.

#### The "Traditional" Courts of the Pueblos

This section will describe briefly the traditional Pueblo court systems of Laguna, Acoma, Cochiti, Zia, San Ildefonso and Santa Ana Pueblos.

Based upon these descriptions, a cautious generalization might be made as to traditional Pueblo court procedure among most of the pueblos. This generalization is meant to be a model only and does not pretend to describe all pueblos as being identical in their traditional court procedure.

Before examining the pueblo court system, the reader should remind himself that pueblo government is essentially theocratic in nature; that while the affairs of the pueblo may be administered by both secular and temporal officials, the relationship of man and "nature" pervades nearly every facet of pueblo life. With some changes, the writings of the wife of an early territorial governor of New Mexico could easily have been written yesterday:

"Every pueblo, or village, has its own officers and government independent of all the others, and exactly the same and according to the ancient customs. First there is the Cacique, chief officer of church and state, priest of Montezuma, and director of all temporal affairs of the pueblo. It is not known how the Cacique was originally installed in his office, he alone having power to appoint his successor - which duty is among the first he performs after succeeding to his office; nor can the most inquiring mind of the most energetic newspaper correspondent discover the origin of their judicial system.

"The Cacique, aided by three Principales, selected by himself, appoints the Governor "and all the officers." The appointments are communicated to the council of Principales and then proclaimed to the people. No matter how weak and shrunken in numbers the tribe, it still has its full corps of officers, all sons of Montezuma, though evidently many generations removed from the conquering chiefs who reveled in the jeweled hall of their illustrious ancestor.

"The Governor is appointed by the Cacique for one year, and is the executive officer of the town. He is chief in power and nothing can be done without the order of the Governor, especially in those things relating to the political government. The position is purely honorary as regards salary, and the honors do not cease with the office, for the dignified place of Principal is awaiting him at the close of his term, and there is no anti-third term rule to prohibit his holding the place many times during his life.

"Immediately after the Governor succeeds to his office he repairs to Santa Fe and seeks the Agent for the Pueblo Indians to receive confirmation. This is an empty ceremony, the agent being without the authority to object or remove, but it is followed in obedience to precedent and custom, and there is no harm in humoring the ambition of the gentle wards of the government. On such days of lofty state the happy fellow, in paint and solemn dignity, brings a silver-headed cane and hands it to the Agent, who returns it to the Governor, and the august inaugural ceremony is ended. Under the Mexican rule, it is said, the new incumbent knelt before the Governor of the territory and was confirmed by a process of laying-on of hands, and some simple formula of Spanish sentences.

"The Principales, or ex-Governors, compose a council of wise men, and are the constitutional advisers of the Governor, deciding important questions by their vote.

"The Alguacil, or Sheriff, carries out the orders of the Governor, and is overseer and director of the Public Works.

"The Fiscal Mayor attends to the ordinary religious ceremonies.

"The Capitan de la Guerra, Captain-of-War, with his under-Captains and Lieutenants, has very light duty to perform in these piping times of peace. He is head of the ancient customs, dances, and whatever pertains to the moral life of the people. The several priests acting under him order the dances and enforce special obedience to those dedicated to any particular God or ancient order."<sup>5/</sup>

<sup>5/</sup> Susan E. Wallace, The Land of the Pueblos, pp. 40, et seq. (1888).

### Laguna

In 1858, the Cacique at Laguna appointed the secular leaders of the pueblo.<sup>6/</sup> But since the turn of the century, a popular election by the men (and more recently, the women) has determined the secular officers. However, the nomination of the candidates is still very much in the control of the religious leaders of the pueblo and the outlying villages.

At Laguna, great emphasis is placed upon the clan and the oldest member of the clan for settling criminal and civil disputes arising between individuals within the pueblo. An important distinction is made between "private" and "public" matters, and the Governor and village officers are reluctant to interfere with the process of adjudication which the older clan members should administer. As a last resort, the matter may be taken to the village officers and the Governor, who will investigate and make a decision. If the decision is not satisfactory and there is danger of upsetting the entire pueblo, the matter may be taken up by the council as a whole; thus, the council serves as an appellate body.

Religious violations are handled by the War Chief and his assistants and the Governor is not consulted. Thus, the secular officers deal with outsiders and the War Chief deals with religious matters. However, in practice, the

<sup>6/</sup> Thomas Donaldson, Pueblo Indian Census of Arizona and New Mexico, U. S. Census Printing Office, p. 79 (1893).

categories overlap and the Governor often consults with the War Chief and clan leaders as well as the council before deciding most cases.<sup>7/</sup>

#### Acoma

The Cacique at Acoma appoints the Governor and his assistants as well as a War Chief. As at Zuni and Laguna, the Caciques and religious men are not supposed to get involved in mundane matters and quarrels; these are left to the Governor and to his officers. Again, the Governor will not interfere with the settlement of disputes until the disputing parties convince him that they are deadlocked or until a dispute poses a threat to the solidarity of the pueblo as a whole. The Governor and his officers hear the complaints and testimony of the parties and investigate on their own; then they render a decision as a body.<sup>8/</sup>

#### Cochiti

A Keresan pueblo, Cochiti is markedly similar to Laguna and Acoma in the methods employed in adjudicating criminal and civil disputes. The Governor has the right to make fines or to imprison, although imprisonment is resorted to only during fiestas and feast-days when numerous young men become intoxicated. Like Acoma and Laguna, there is a distinction

<sup>7/</sup> Eggen, Fred, Social Organization of the Western Pueblos, Univ. of Chicago Press, Chicago, p. 210 (1950).

<sup>8/</sup> Ibid., p. 246.

made between the secular and the religious with the Governor, who is appointed by the Caciques, handling the secular matters and the War Captain handling the religious matters. There is also a distinction between "public" and "private" matters.

Again, most civil and criminal disputes are handled within the family and clan, but if a settlement is not reached, accusations are taken to the Governor who in turn investigates the matter. This is followed by a meeting among the Governor and his officers to discuss the case and to make a decision.<sup>9/</sup>

#### Zia

At Zia, disputes are classified according to whether they are merely "private" or whether they are of the magnitude to threaten the entire pueblo. The Governor is reluctant to become involved in family quarrels, possibly because he serves as Governor for only one year, after which he once again becomes a private citizen and is therefore not anxious to excite bad feeling among his fellows. If he must intercede, he may adjudicate the matter alone or with the aid of a few of his fellow officers. He can, of course, request the entire council to assist him in his decision-making.

<sup>9/</sup> Charles Lange, Cochiti, University of Texas, Austin, p. 220 (1959).

As in the other pueblos, the Governor deals with the secular and outside matters and the War Captain handles religious disputes and can even punish the Cacique if the Cacique is remiss in his duties. The Cacique is supposed to remain aloof from all earthly concern and to think only good thoughts and to concentrate on the welfare of the Zias as a whole.<sup>10/</sup>

#### San Ildefonso

The elders of the pueblo, composed of the ex-Governors and religious leaders, nominate two candidates for the office of Governor who serves a two-year term. The Governor is then elected by popular election of all men in the pueblo over the age of 18. The Governor and his staff, who are selected for one-year terms, handle such secular affairs as misdemeanors, ditch duty, property and inheritance and land and water use. These secular officers are the liaison with the Bureau of Indian Affairs and the outside world. "Closed" quarrels are handled within the family and the clan. Minor religious offenses are left to the Gods to punish. Serious religious offenses are punished by the War Captain.

The procedure for adjudicating disputes follows the usual pattern; settlement is first attempted by clans and families and, failing this, the

<sup>10/</sup> Leslie White, The Pueblo of Zia, New Mexico, Bureau of American Ethnology, Bull. 184, U.S.G.P.O., Washington, p. 220 (1962).

Governor and his aides hear the problem and decide upon the merits of the case. Any dispute involving a non-Indian or an Indian from outside the pueblo is generally taken immediately to the Governor.<sup>11/</sup>

#### Santa Ana:

At Santa Ana the War Priest handles the trial and punishment of religious offenders, and he aids the Governor in those rare cases of witchcraft which are both religious and secular at the same time.

The Governor, appointed by the Cacique, hears disputes, but only if they are of sufficient magnitude to threaten the solidarity of the community. As for domestic quarrels, the Governor wishes the people to settle their troubles among themselves. Like all pueblo Governors, the Santa Ana Governor may imprison or levy fines.<sup>12/</sup>

#### A Model of the Traditional Pueblo Court System:

Disputes are classified as "private" and "public." "Private" disputes include petty theft, adultery, assault and battery, damage to personal

<sup>11/</sup> William Whitman, The Pueblo Indians of San Ildefonso, Columbia University Press, N. Y., pp. 17-20 (1947).

<sup>12/</sup> Thomas Lief, Cultural Change and Social Problems of an Indian Pueblo, Masters Thesis, University of New Mexico, p. 91 (1960).

property, personal injury and water and land disputes. Any dispute can develop into a "public" matter if, for some reason, it begins to cause factions within the pueblo and threatens the solidarity of the pueblo.

Disputes are also classified either as secular or religious. Most of the religious disputes involve persons who disclose religious secrets or fail to perform certain religious duties. Witchcraft is one accusation which involves both the secular and religious leaders.

Private disputes are handled within the families and clans of the parties involved. Arrangements are made to pay for damage done to property or harm done to persons; most disputes seem to be handled this way and it is with great reluctance that a Governor intercedes in these disputes. In fact, it appears that only when a "private" dispute cannot be settled and threatens to cause the entire pueblo unrest, will the Governor step in to hear the accusations and to gather evidence. He will then consult with his aides and sometimes ask for the assistance of the Council. The decision of the Governor can include the imposition of fines or, in rare cases, imprisonment. In the event the Council did not partake in the Governor's decision, it is possible for the individual offender to appeal to the Council; this however appears to be done very rarely.

Matters or disputes involving individuals of the pueblo and "outsiders" are taken immediately to the Governor. Thus the Governor handles the secular disputes of the pueblo.

Religious disputes are heard and decided by the War Captain and his aides. The War Captain has authority to impose punishment.

It can thus be seen that a dispute goes first to the elders of the family and clan for a hearing with both the accused and the aggrieved party presenting their cases. Interested persons and parties also attend and speak without restriction as do witnesses to the event. The elders of both clans and families will bargain and come to a decision which is acceptable to all. If this process fails, the Governor is notified of the failure of the clans to adjudicate the matter satisfactorily, and the Governor with his aides will hear complaints and accusations from the parties involved as well as from witnesses and other interested persons. The Governor may also look into the matter himself, that is, to conduct an investigation and gather evidence. In arriving at his decision, the Governor may consult his aides, religious men and even the Council for advice. Then, depending upon whether the pueblo has a council and whether the Council aided the Governor in his decision-making, the aggrieved party or the accused may still be able to appeal the Governor's decision to the Pueblo Council. The decision of the Council is final.

Since most pueblo governments are theocracies, the distinction between "religious" and "secular" may not fit the Anglo-Saxon definition. Witchcraft

is a "secular" offense in the pueblos, but heavily involves the War Captain and religious leaders who must aid the Governor in handling the offender. Likewise, decisions which the Governor makes in secular affairs are frequently guided by the War Captain and religious men whose duty it is to "take care of the welfare of the people." Those "secular" decisions which may affect the pueblo as a whole are generally carefully discussed by the religious men with the Governor.

#### Courts of Indian Offenses

Falling upon the traditional justice of the Indians with the cultural and traumatic effect of a bombshell was the first effort of the white man to "outlaw certain of the old heathenish dances; such as the sun-dance, scalp-dance, etc." and to prevent social activities that "are intended and calculated to stimulate the war-like passions."<sup>13/</sup> This effort in the area of Indian justice was the creation of Courts of Indian Offenses.

The Courts of Indian Offenses were nothing more than earlier attempts by the Indian Service to administer a rough and ready form of Anglo-Saxon justice. These courts were characterized in the only reported case squarely upholding their legality, as "mere educational and disciplinary instrumentalities by which the government of the United States is endeavoring to improve

<sup>13/</sup> AR of Teller, Ser. 2190, p. xi (1883).

and elevate the condition of these dependent tribes to whom it sustains the relation of guardian."<sup>14/</sup> One defense of their legality is the doctrine that the Courts of Indian Offenses "derive their authority from the tribe, rather than from Washington."<sup>15/</sup>

Whichever of these explanations be offered for the existence of the Courts of Indian Offenses, their establishment cannot be held to have destroyed or limited the powers vested by existing law in the Indian tribes over the province of law and order and the administration of civil and criminal justice.

Prior to the 1930's the Courts of Indian Offenses were widespread and most tribes felt the dubious effects of this "educational and disciplinary" agent. The Courts of Indian Offenses were established by administrative act of the Commissioner of Indian Affairs as a result of a request by the Secretary of the Interior, H. M. Teller, in 1883.<sup>16/</sup> Courts of Indian Offenses were established where the Superintendent and Commissioner of Indian Affairs concluded they were practical and desirable. At their peak of activity about two-thirds of the Indian Agencies had such courts, this occurring at about the turn

<sup>14/</sup> U. S. v. Clapox, 35 F. 575 (1888) and cf. Ex Parte, Bi-a-lil-le, 12 Ariz. 150, 100 P. 450 (1909).

<sup>15/</sup> Rice, The Position of the American Indian in the Law of the United States, 16 J. Comp. Leg. (3rd Series), pt. 1, pp. 78, 93 (1934).

<sup>16/</sup> AR of Teller, supra.



of the century.<sup>17/</sup> Some agencies never established a court, others experimented with them only briefly. Basically, the judges of Courts of Indian Offenses were, and still are where used, administratively appointed. They operate under rather broad and general regulations propounded by the Indian Service. In a large measure they determine both law and fact. Their decisions are subject to administrative but no judicial review.

One of the major problems of the system of Courts of Indian Offenses has been the relatively inadequate pay the Congress has appropriated to pay the judges. This has always plagued the system. The second problem has been selecting a qualified person to serve as judge. Ideally a well-qualified judge had to be legally trained, understand the official power structure existing on his reservation, be able to fathom personality traits of an alien culture, and most of all be such a person that would meet with approval in distant bureaucratic Washington. The problem was further compounded by the fact that historically the job was considered 'degrading and generally caused the person appointed to be alienated and even ostracized from his tribe and friends.

The Indian Service of the Federal Government has at times been complimented and at other times been bitterly assailed, with justification, for

<sup>17/</sup> William T. Hagan, Indian Police and Judges, Yale Univ. Press, New Haven, p. 109 (1966).

maintaining these courts and for the type of justice dispensed by them. Today, where they still exist in modified form, they are held up as models of justice and efficiency by the Indian Service when compared to tribal court systems. However, the proponents fail to point out that generally the Federal Government has appropriated sufficient funds to hire legally trained or highly educated individuals to serve as judges for the Courts of Indian Offenses while virtually ignoring the requests by Indian tribes for funds with which to improve their own systems of justice.

Generally, the Courts of Indian Offenses are but of historical interest because most of the tribes and pueblos with which this report is concerned either provide their own court system or have contracted with the Indian Service to provide such system. The history of the development of Courts of Indian Offenses points out however one fact that is of interest to those who will assist with the future development of the law and order systems on Indian reservations. Indian police systems were organized in 1878,<sup>18/</sup> and not until 1883 did the Federal Government see fit to establish the court system and not until 1888 did Congress see fit to appropriate any money to finance the courts.<sup>19/</sup> It would seem that the Federal Government, since the early days of the Indian

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<sup>18/</sup> Ibid., p. 104.

<sup>19/</sup> Ibid., p. 111.

Service, has been police-oriented and the courts, the heart of any system of justice, have been low in the order of priorities for assistance in improving or expanding the law and order system. Because of this, the courts presently are in the greatest need of assistance.

#### Current Operational Problems of Tribal Courts

Level of Training: Virtually all of the tribal court judges have received no formal higher education; until very recently they have received no special education for their jobs. While they may be men of excellent judgment, well acquainted with their own people and their ways, they are often not able to wed their practical knowledge with the operation of the imposed court system. The result, more often than not, is a misinformed application of the "legal" code with a disregard for traditional values -- the worst of both worlds. Virtually every tribal judge is aware of his need for further education in legal methodology and desire for additional training is commonly expressed.

Selection and Pay: Selection methods vary from election for a term of years to appointment by the tribal council for service at the pleasure of the council. Only one tribe, the Navajo, has attempted to create life tenure. Obviously, the appointed judges who are subject to removal or who depend upon frequent reappointment are insecure and far from independent in their judgments.

Salaries also vary, but the typical tribal judge is not well paid, and it is frequently difficult to get people to run for election or take an appointment. This is partly a reflection of salary, partly due to low prestige or lack of understanding of the judge's role, and partly due to the fact that a judge may incur some public resentment from his judgments. Part of the problem is that the Bureau of Indian Affairs does not contribute toward judicial salaries, while it does in many instances toward those of the police. As a result it is quite common for a tribal judge to be paid significantly less than the policeman who testifies in his court.

Tribal Codes: As previously stated, the tribal criminal codes are a copy of the Secretary's original Law and Order Codes, generally not tailored to the needs of the tribe. Most tribes have no juvenile code; exceptions being the Navajo tribe and the Ute Indian tribe of the Uintah and Ouray Reservation. There is even a greater deficiency on the civil side, where judges frequently have no statutory guidance whatsoever. This deficiency will become all the more serious as economic development takes place on reservations. In fact, the uncertainty of the civil law is often believed to be a factor inhibiting industry from coming to the reservation. Creation of codes truly tailored to the needs of each individual tribe is not simply a rewriting task. It requires fundamental study and an interest in the subject which few tribes or outsiders have yet shown.

Alcohol Problem: Perhaps the greatest defect of the tribal codes is that they deal with alcohol problems solely as criminal offenses. This approach has not proved overwhelmingly successful in non-Indian society, and it is even less so in the typical tribal setting, where extreme social disorganization exacerbates the alcohol problem. There is an increasing recognition of the need for a treatment approach to alcohol, but thus far in the four-state area only the Uintah and Ouray Reservation has a full-scale alcohol treatment program to which the tribal court can refer problem drinkers.

Administrative Problems: Many tribal courts do not have their own separate clerks, and have to rely on a police clerk part-time for all their record keeping. While virtually all the courts keep a docket, there are no standard records which permit meaningful studies of repeating offenders, the nature of the court's business, or many other elementary matters. Handling of money received from fines is also frequently slipshod and a source of potential embarrassment or worse for courts and clerks.

Lack of Precedent: None of the tribal courts are courts of record, although the Navajo tribe is currently attempting to create one. Consequently, a tribal judge who is faced with a legal problem has no way of knowing which other judges have been faced with the problem and what they have done with it. Since there is a high turnover in judges, the type of case may even be

decided differently from year to year on the same reservation. There is a clear need for reporting of unusual or significant cases arising in tribal court, for making this reporting available to all tribal judges, and for instruction of tribal judges in the use of precedents.

Appeals: While there is understood to be the right of appeal in nearly all the tribal court systems, many do not actually have an appeal system which operates in practice. Again, the Navajo system is an exception. There are reservations where an appeal is simply kept pending for months and then is "lost" -- i.e., buried in the files with no further disposition. Even if the appeals system were actuated, in many cases they provide for the original trial judge and his two associates to hear the case, so that the trial judge presides over an appeal from his own decision.

Lack of Representation: Lay advocates are permitted in all tribal courts, but most defendants are not able to pay for them. There is accordingly very little representation furnished in most cases. In those places where there is a legal service program which provides lay advocates, such as the Navajo or Papago systems, there has until recently been no prosecutor. The result is that the judge feels compelled to handle the prosecution side of the case to counter the defensive imbalance, with a resulting loss of apparent impartiality.<sup>20/</sup> In response to this problem, the Navajo tribe has established the

<sup>20/</sup> When the Courts of Indian Offenses were first created, the judges were policemen who were not paid for their additional judging duties. Ibid. The role of the judge as an arm of the police is still evident on many reservations.

office of prosecutor, but no other tribe in the "Four Corners" states have thus far done so.

One effect of regular representation by advocates is an increased demand for adherence to precedent. As advocates, they are relied on for advice. They cannot advise unless there is some predictability of court decisions. Thus, representation brings increased pressure for regularity and adherence to precedent.

Civil Rights Act of 1968: The single event which did most to call attention to the shortcomings and needs of the tribal court system was the passage of the Civil Rights Act of 1968.<sup>21/</sup> In one stroke, tribal judges laboring under all the disabilities described above were called upon to administer justice in accordance with technically evolved standards of "due process of law;" they had to honor the privilege against self-incrimination; they had to protect against conviction based on illegal search and seizure. It became apparent to all -- and especially to the tribal judges -- that they were ill-equipped to do any of these things.

For example, the typical tribal court trial had often begun with a request -- or demand -- by the judge that the defendant tell what had happened, which the defendant then proceeded to do. This may have resulted in a full exposition of the facts, but it is doubtful now that a person

<sup>21/</sup> 25 U.S.C.A. 1301, et seq. (Supp. 1970).

incarcerated after such a procedure could be kept in jail when a federal habeas corpus petition is filed on grounds that his privilege against self-incrimination was violated.<sup>22/</sup> Other examples are rife and are still common. The Civil Rights Act has pointed up the need for tribal court training and tribal court police training more than any other single recent development.

Need for Independence: Perhaps the most fundamental problem of some tribal court systems is the total lack of judicial independence. Since there is no real appreciation of the role of an independent judiciary in some tribes, there is (as a partly circular result) no independence. A tribal chairman or tribal councilman may not hesitate to express his desires as to the outcome of a particular case, and the judge in varying degrees may feel compelled to respond. Particularly in tribes where the judge's continuing tenure depends on the tribal council, the resulting loss of independence is not only real -- it is the single greatest failing of the system. Fortunately, it is not universally present. Like many of the other problems, the lack of independence cannot be solved until there is a greater understanding by both the communities and the judges of the role of tribal justice.

<sup>22/</sup> The only remedy specifically provided by the Civil Rights Act for violation of its Indian rights provisions is habeas corpus in Federal Court. 25 U.S.C.A. 1303 (Supp. 1970).

### The Role of Off-Reservation Courts

If the average Indian who lives on a reservation cannot relate and communicate with the judicial system imposed upon and existing on his own reservation, one can but wonder at the confusion that must exist when he is forced into contact with a totally alien state or Federal court that often is located miles from familiar surroundings. There is a consequent need to educate not only the tribal judge but the individual to the fact that the court is not an accident in life but is a deterrent force that helps to maintain peace and harmony in the Indian community and that a court can help as well as punish.

The role of the Federal, state and tribal courts in the law and order system is completely dependent upon the jurisdictional question. The courts in handling an Indian problem, must first determine which law is applicable. The general principle is that federal legislation prevails and, in default thereof, Indian customs and codes rule, but in the absence of either code the court may turn to state law. The problem as previously discussed in this study is not quite that simple. Law from all three codes -- Federal, state and tribal -- may apply to Indian offenses.

As an example, that part of an act making it a federal crime to dispense intoxicating liquor to tribal Indians, either on or off the reservation, was

repealed in 1953.<sup>23/</sup> Under the amended act, tribal governments were given local option to prohibit or to permit the introduction of liquor on the reservation and to regulate its sale. While still being debated, it would appear that state law as to license, taxes, hours of operation and other controls would apply to the commercial operator of the bar. In other words, both state and tribal laws would be applicable to the operation, neither code abrogating the other, but if the authorities saw fit, adding additional controls. Federal law would also be involved, not alone because the bar was located on a reservation, but because the owner was a dealer in distilled spirits.

Because the jurisdictional question has been previously discussed in this study, we will not go into detail in this section, except to say that generally the state court does not have jurisdiction over crimes committed on Indian reservations by Indians. The crime, in order to involve the state courts, must have occurred off the reservation. In that situation the individual Indian is treated the same as any other citizen in his contact with the court. Unfortunately, if the individual Indian is a true reservation Indian, unfamiliar with the Anglo world, the treatment can be quite traumatic.

With regard to Federal courts it might be said as a general rule of thumb that major felonies committed on the reservation are tried in Federal court.

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<sup>23/</sup> 67 Stat. 586.

This area of criminal justice which brings the Federal courts into contact with the Indians living on reservations and in pueblos is the result of a blood feud which caused Congress to pass federal legislation.

In 1881, Crow Dog, an Oglalla Sioux Chief, shot and killed Spotted Tail, a Brule-Teton Sioux Chief, in South Dakota. The feud originated because Spotted Tail had seduced the wife of Medicine Bear, a crippled friend of Crow Dog. Settlements were made in the Indian way, but Crow Dog was, nevertheless, tried in the Federal court, convicted and sentenced to be hanged. But in 1883, the Supreme Court of the United States ordered Crow Dog discharged from custody, holding that the tribe had exclusive jurisdiction over crimes between Indians, as no federal law had curtailed the tribal authority.<sup>24/</sup>

This decision led to great consternation throughout the country. In 1885, Congress passed the Major Crimes Act, which provided for the trial and punishment of Indians committing murder, manslaughter, rape, assault with intent to kill, arson, burglary, or larceny against the person or property of another Indian or of any other person on a reservation.<sup>25/</sup> Later the

<sup>24/</sup> Ex Parte, Crow Dog, 109 U. S. 556 (1883).

<sup>25/</sup> Act of March 3, 1885, 23 Stat. 385; constitutionality upheld, U. S. v. Kagama, 118 U.S. 375 (1886).

crimes of incest, robbery, and assault with a deadly weapon were added.<sup>26/</sup> The 1968 Civil Rights Act further added the crime of assault resulting in serious bodily injury to the Major Crimes Act. These offenses, plus embezzlement of travel funds and the infringement of a few federal laws applying to both Indians and non-Indians, constitute the only acts of Indians against each other which are federal crimes. Crimes committed by an Indian against another Indian in Indian country, excluding those enumerated above, are dealt with by the tribal courts.

#### Prosecutors and Defenders

Typically, the "standard method" of prosecution in most tribal courts is for the judge or the policeman to act as the prosecutor. Most of the judges realize the inequity of this situation and many request money to establish a prosecutor's office as has been done on the Navajo reservation.

The method of prosecution used in most tribal courts results in a high number of convictions because the judge, when forced into the role of developing the case through informal questioning, builds a feeling of having invested something of himself in the merits of the case and thus believes in the guilt of the defendant. Tribal judges believe that the only way to overcome this problem is either through more and better education of the policemen

<sup>26/</sup> Act of March 4, 1909, 35 Stat. 1088; Act of June 28, 1932, 47 Stat. 336; now 18 U.S.C. 1153.

in the methods of prosecutions or preferably by the establishment of tribal prosecutors.

U. S. District Attorneys: The problem in this area may be summed up in very few words: Not enough prosecution. Figures and statistics available to this study indicate that U. S. Attorneys generally refuse to prosecute over 90% of the cases presented to them for violation of offenses on reservations and pueblos. In several cases the case jacket contained a sworn confession that appeared proper and the cases were refused with the statement, "not sufficient evidence to warrant prosecution." The U. S. Attorneys in defense of their poor record for service to reservations point to the manpower shortage in their offices and the fact that most reservations are in remote areas making it difficult to prepare the case and to communicate with witnesses. A very real problem appears in many instances to be a lack of interest in Indian problems and that the U. S. Attorneys' offices feel a strong obligation to devote their efforts to handling the criminal problems of urban and metropolitan areas.

Vista, OEO and Others: Tribal and pueblo response to the OEO and Vista legal aid organizations is mixed. An informal opinion would be that generally most tribes are opposed to these organizations because of the problems that they have heard about which occurred on the Navajo reservation and the fact that they feel the defense attorney tends to confuse the court

and is trying to destroy their traditional way of life. This opinion is gained from interviews with tribal leaders who, because of their age and their position within the tribe, generally reflect the traditional view of the tribe. While it may be argued that defense attorneys are sorely needed to assure the individual Indian's rights are protected, tribal leaders make a good argument when they point out that this is only half the system and that in the white man's world the prosecution side of the system was developed first. The principal fear is that the reverse development of the system as proposed by non-Indians will destroy the tribal or pueblo government and thus destroy the tribe.

Lay Counsel: Lay counsel are tribal members who appear in court as the lay attorneys for a member of the tribe accused of a crime. The only formal development of this system is seen on the Navajo reservation and it is being developed by the OEO legal aid organization as a response to the criticism of professional attorneys appearing in tribal court. Elsewhere it is generally a member of the family or relative representing a relative and is usually quite informal. Many tribal leaders view this as a solution if the pressure to allow professional attorneys to appear in tribal court continues. The suggestion has been made that training programs be established to train individual tribal members to act as counsel to tribal members and for these lay counsel to be compensated for this service.

### Corrections

Tribal Jails: The principles of human dignity to which we all subscribe require that offenders, while under the jurisdiction of the law enforcement and correctional agencies, be accorded the generally accepted standards of decent living and decent human relations. Their food, clothing and shelter should not be allowed to fall below the generally accepted standards and they should be afforded the conventional conveniences made possible by our technological progress. Their health needs, both physical and mental, should be met in accordance with the best medical standards.

The forces for the prevention and control of crime and delinquency ultimately must find their strength from the constructive qualities of the society itself. The willingness of the society to maintain a rationally organized and properly financed system of corrections directed toward reclamation of offenders is a prerequisite to effective control.

American county jails have often been described as "the penal institutions that have successfully resisted change and reform." This statement is also true of jails on Indian reservations. Of all tribal jails surveyed by Indian Justice Planning Project on Indian reservations within the states of Arizona, Utah, Colorado and New Mexico, only two would meet the minimum standards for detention as contained in the Manual of Correctional Standards, published by the American Correctional Association, and as prescribed by New Roles for Jails, published by the U. S. Bureau of Prisons, Department of Justice, Washington, D.C.

Only two of these facilities could meet the recommendations contained in The Report by the President's Commission on Law Enforcement and Administration of Justice. Two of the facilities were so bad that they should discontinue housing prisoners until improvements can be made.

Old, unsanitary buildings, poorly qualified and constantly changing personnel, intermingling of all types of prisoners -- sick and well, old and young, hard-core criminals and misdemeanants with petty offenders in overcrowded cells and tanks and the complete absence of even the most rudimentary rehabilitative programs; and the failure of most jails to provide adequate supervision and services of a jailer at night are but a few of the more glaring deficiencies noted among the correctional facilities on Indian reservations in the four-state area.

With that general condemnation the jails on the 46 Indian reservations vary from extremely modern to nonexistent. The average tribal jail is from thirty to sixty years old, has no separate facilities for juveniles, is cold in winter and hot in summer and has totally inadequate supervision of its prisoner population.

More than one tribal jail utilizes trustees as jailers and police radio dispatchers. The juvenile cell on one reservation measures approximately 4 x 6 feet, contains four steel bunks with filthy mattresses, has no windows, a solid steel door and no ventilation. Most tribal jails have one shower facility available at the end of a hall for the use of both male and female



prisoners. One tribal jail is so poorly managed that it suffered 22 escapes within a 60-day period. Fortunately, most Indian prisoners will return to their homes upon "walking away" from tribal jails and are easily retrieved.

Because of poor design and poor supervision, tribal jails are frequent scenes of suicide. It was reported to this project that one young Apache boy was so intent on suicide that he tied his socks together, tied them around his neck and to an upper bunk and proceeded to hang himself by flexing his knees and lifting his feet from the floor until he had strangled.

Some reservations are so vast and the distance from point of arrest to the tribal jail so great that oftentimes prisoners are housed in the paddywagon overnight before being transported to a holding facility. In such a circumstance, the deleterious effect upon prisoners due to severe summer and winter temperatures should be readily apparent to the most casual observer.

In fairness to Indian police and judges, it must be reported that in many instances, juveniles are not sentenced to jail because of poor facilities and many offenders, who would otherwise be incarcerated, are returned to their homes and placed in the custody of friends or relatives or are not arrested at all.

In some instances where a tribal jail is totally lacking or has been condemned, the detention facilities of nearby county or city jails is utilized at a cost to the tribe ranging from \$1.50 to \$11.00 per day per prisoner.

While the old-fashioned jail, designed as a storage facility for those persons whom the public wishes to remove from its midst for a period of time, is rightfully under attack from nearly all sectors, both public and private, a tribe which has never had a detention facility or is attempting to use one which may be one step removed from the middle ages, a modern detention facility, designed for the specific use of reservation residents might be innovative indeed. A modern, clean, sanitary, well-lighted, heated and ventilated facility with sufficient space to house a small but dignified courtroom, sufficient and proper space for police offices, radio facilities, records and evidence security, and which could provide for classroom and recreational facilities to be used in the preventive and rehabilitative processes is, in the opinion of many tribal leaders, a first giant step toward a practical approach to dealing with the offender.

The current chief of the Law and Order Division of the Bureau of Indian Affairs has expressed the opinion that no new jails should be built on Indian reservations. This stated policy evidences lack of recognition of practical day-to-day problems currently existing on some reservations; fails to recognize that a properly designed facility could act as a springboard toward the implementation of many forward-looking programs now being seriously considered by tribal leaders; and flies in the face of the most recently stated policy by the federal administration of Indian self-determination.

Juvenile Detention and Youth Homes: While Utah provides services to all Indian youth within the state, the other three Southwestern states do not

so provide unless an Indian youth runs afoul of state law and is prosecuted in state courts.

A very few reservations have youth homes which are utilized for housing primarily those children who might be classified as dependent and neglected.

The Mount Lemmon Behavioral Training Center, 2627 East Broadway, Tucson, Arizona, has as its objectives the development of leadership potential, the development and testing of new educational materials and approaches to teaching Indian youth, employment and vocational training, research and evaluation. Unfortunately the center accommodates but approximately 15 students and the reported cost to the tribe of providing services for each student is approximately \$400 per month.

Probation and Parole Services: Probation and parole services are inadequate, ineffective or nonexistent on most Indian reservations. Probation generally is used very little and when granted is almost always without supervision. Some tribal courts are interested primarily in the collection of fines and it is not unknown to encounter an offender in court for the fifth or sixth time while still on probation from the first arrest and conviction.

The Bureau of Indian Affairs provides probation and parole services on two reservations and juvenile officers on four reservations within the four-state area. Some tribes have recently begun in-service training programs for probation and parole officers and for juvenile officers recruited from the Indian population. The Navajo tribe provides the services of a probation and parole officer.

# CONTINUED

## 2 OF 6

The Bureau of Indian Affairs requested five additional adult and five additional juvenile probation and parole officers for 1970, but was unable to obtain funding for them. It has only been within the last five years that such services have been initiated by the Bureau. The BIA feels that the program has been highly successful with the Jicarilla Apaches, but some of the pueblo leaders indicate that they question the merit and effectiveness of the program. A pueblo spokesman stated that he did not think it worked well because of the necessity to cover a small population scattered throughout a vast area. He further stated, "The probation officers do not meet with the clients enough to warrant the money spent on the program."

Although the Laguna Pueblo has indicated that they would like to have the services of a juvenile probation officer, there is some justification for Indian disapproval of the complete federal handling of probation and parole. A representative of the Sandia Pueblo felt that the Indian community social workers should provide more meaningful assistance in terms of prevention, rather than supervision. The Indian objection to spending the money after the fact rather than on prevention which would remove social conditions incidental to the occurrence of crime is reasonable. A Taos Pueblo Indian stated that the value of either probation and parole officers or community social workers would be questionable considering some of the attitudes and values operating within the Taos Pueblo.

It is conceivable that differing kinds of programs would be successful with differing tribes. But the idea of superimposing the correctional programs successful in the dominant society upon the Indians without considerable research is presumptuous.

#### Police

A Brief History: Prior to 1878, most police functions on Indian reservations were performed by Army troops stationed at headquarters in Indian country. However, several Indian agents in the 1860's and 1870's concluded that conditions on their reservations required the organization of police forces or courts, or both. Pawnees, Klamaths, Modocs, Navajos, Apaches, Blackfeet, Chippewas and Sioux were among the tribes involved. At the Pawnee Agency, continued horse thefts led the agent to act. He selected six respected warriors from each of the four bands, uniformed them attractively, and ordered an end to the larceny. Challenged and flattered by the distinction and responsibility, the police proceeded to curtail one of the most popular and prestigious activities of their people. Generations of young Pawnees had demonstrated their right to be called warriors by raiding the horse herds of their enemies. But now when a proud party raced into camp with 34 prizes from a herd of the Delawares, the Pawnee police seized and restored the stolen property. They did the same thing with other stock stolen from the Army and from settlers.<sup>27/</sup> So successful was the

<sup>27/</sup> Hagan, *supra*, p. 25, n.1.

force that it survived a change in administration, and the next agent continued the police as a mainstay in preserving order among the Pawnees.<sup>28/</sup>

The Navajo experiment stemmed from a problem similar to that on the Pawnee reservation. Thought of today as artists in silver and wool, in 1872 the Navajos still bore their reputation of fierce warriors who had raided the Mexican frontier settlements and the Pueblo Indians for as long as tribal memory ran. Defeated and driven into captivity by Colonel Kit Carson in 1863, they had been permitted to return to their home country in 1870. Like the Pawnees, the Navajos had not been completely broken of their wild, free habits, and settlers near their reservations complained incessantly of losing stock. In the hope of stopping the rustlers, a Special Indian Commissioner, General O. O. Howard, ordered the recruitment of about a hundred young Navajos and placed them under the command of the renowned warrior chief Manuelito. So effective were they that within six months their agent proposed reducing the force to 30 men. A year after it had been raised, the force was officially disbanded, although it was kept in service briefly by other financial support. A new agent paid them from the surplus of annuity goods remaining after the annual issue.<sup>29/</sup>

Under the Appropriations Act of 1878, the Commissioner of Indian Affairs directed all agents to organize Indian police on their reservations. A force of

<sup>28/</sup> *Ibid.*, p. 25.

<sup>29/</sup> *Ibid.*, pp. 26-27.

430 privates and 50 officers was established to "maintain order and prohibit illegal traffic in liquor on Indian reservations." The Indian police were poorly financed until recent years and until the tribes reorganized their tribal governments, the Indian police functioned primarily as arms of the Federal Government rather than of the tribe.

These early Indian policemen were under the direction of the Indian agent and their chain of command was simple; the agent was in charge of the officers and privates of the police force. As the Indian Service was at that time under the direction of the War Department, the Indian police received uniforms, rations and salaries from the Army, the privates receiving \$5.00 per month and the officers \$8.00. The police provided their own horses and other equipment.

Prior to the Act of March 3, 1885, Indian police powers were extremely broad. The Major Crimes Act of 1885 then limited the jurisdiction of the Indian police in areas of major felonies committed on a reservation. The major crimes of murder, manslaughter, rape, assault with intent to kill, arson, burglary or larceny against the person or property of another Indian or any other person on a reservation, incest, robbery and assault with a deadly weapon, known as the "ten major crimes," fell under the exclusive jurisdiction of the Federal Government. The authority of the Indian police was reduced to keeping order on a reservation, including the hunting and tracking of horse thieves, hostile

tribal members who were still raiding settlers and other nearby reservations and to enforce their tribal custom laws and federal regulations.

Following reorganization of tribal governments after 1934 many tribes not only established tribal courts for the administration of justice but tribal police forces as well.<sup>30/</sup>

BIA Division of Law and Order: The Division of Law and Order is one of several divisions which function under the supervision and control of the Assistant Commissioner for Community Services. The division is headed by the Chief Special Officer of the Bureau of Indian Affairs who has a staff to assist him in the formulation, implementation, compliance, review and revision of bureau policy and procedure as it relates to law and order matters. Present overall personnel strength of bureau/tribal law and order programs is approximately 950, including about 550 uniformed and nonuniformed law enforcement officers.

Administratively the Division of Law and Order is responsible for files, records, reports, budgetary and fiscal matters, property and supply, research, standards, personnel, training, review and compliance.

Operationally the Division of Law and Order is responsible for all aspects of uniformed police activities, as well as for criminal investigative matters. Enforcement authority for bureau personnel is derived through the Chief Special Officer whose police powers are set forth in 18 U.S.C. 3055. Further authority

<sup>30/</sup> Robert Young, Historical Backgrounds for Modern Indian Law and Order, BIA Indian Police Academy Manual, p. 26.



for the employment of personnel to perform police duties is found in 25 U.S.C. 13. Each year since 1939 the annual federal appropriations act has contained specific language and authorization for the use of federal funds in the general maintenance of law and order on Indian reservations.

Corrections, jail operations and administration, together with prevention and rehabilitation, with emphasis on crime control and reduction, is a further function of the Division of Law and Order.

As approval of the Secretary of the Interior is a requirement for the enactment of tribal codes, the Division of Law and Order reviews all tribal enactments which impose penalties. The Division of Law and Order becomes further involved in tribal court activities through its function of establishing standards, organization, staffing and training of Indian court personnel and in assisting and advising tribal courts in these activities.

The Bureau of Indian Affairs maintains eleven area offices in the western states. In seven of these area offices, the Bureau maintains law and order personnel which function as a part of the area director's staff in matters relating to law and order. Each of these seven areas have one or more law and order programs currently functioning on reservations within their respective areas.

Agency/reservation law and order programs are usually joint operations conducted by both the bureau and the tribe. In some instances, however, the bureau provides all protective services while in other instances the tribe provides all services except investigation of the commonly known major crimes.

Within the four-state area encompassed by the Indian Justice Planning Project there are area offices located in Albuquerque, New Mexico, Phoenix, Arizona and Window Rock, Arizona. Each of these area offices maintains an Area Special Officer who assumes the responsibility of maintaining the law and order office of each agency within his area. The Area Special Officer might be equated to a police chief, while the Agency Special Officers acting under him would perform the duties of captains or lieutenants. Special officers who are working under the agency office would perform the duties of criminal investigators and police officers. For example, the Navajo tribe which maintains its own police department, has no need for BIA policemen. The Bureau Special Officers stationed on the Navajo reservation perform primarily investigatory duties when major federal crimes are committed within their jurisdiction. On the other hand, the Bureau is responsible for all law and order activities on the Hopi Reservation, where the Agency Special Officer acts as chief of police of a nine-man department of whom five are federal employees and four are employed by the tribe with funds received under a contract with the Bureau of Indian Affairs.

BIA officers have the authority to enforce tribal laws in the event the tribe has a code, or to enforce the Code of Federal Regulations (Title 25) where no tribal code exists and the tribe has accepted the provisions of CFR-25.

Bureau special officers normally perform the duty of providing in-service training to tribal police officers.

Tribal Police: Tribal police departments vary in size from the one-man department on the Ak-Chin Maricopa reservation to the 205-man department on the Navajo reservation. Tribal police departments are generally headed by a chief of police, superintendent or commissioner, who is directly responsible to the tribal council or to the tribal chairman for the operation of the department. Departmental organization may be as sophisticated as the Navajo Police Department with a Superintendent, Assistant Superintendent of Field Operations, Assistant Superintendent of Administration, Inspector, Major, District Captain, District Lieutenants, District Sergeants and Patrolmen, or it may be extremely simple with the only rank being that of Chief or Captain.

Indian tribal police departments are responsible for the enforcement of tribal laws and ordinances, for the enforcement of federal laws and regulations and in some instances, for the enforcement of state laws, all, of course, within the boundaries of the reservation. In areas where a close relationship between tribal police and other law enforcement agencies exists, cross-commissioning is commonplace. This practice gives the tribal officer jurisdiction over non-Indians for violation of traffic laws and other offenses and, conversely, gives the local sheriff's office or state police jurisdiction over reservation residents on the reservation. Cross-commissioning is not universal, however, and gives rise to many jurisdictional problems where it is not practiced. There are recorded instances where the services of surveyors were utilized to determine land ownership, thus determining jurisdiction.

Starting salaries for tribal police range from \$1092 per year to \$5096 per year. Although Indians may utilize the services of Indian hospitals operated by U. S. P. H. S., there are few, if any, additional benefits.

While the primary responsibility of the tribal police is for the protection of the life and property of the citizens residing on the reservation, authority may be vested in the tribal police by the tribal council through its constitution and tribal code for additional areas of responsibilities, such as the enforcement of fish and game laws, removing non-Indians from the reservation at the request of the tribal leaders and such other duties as the council may see fit to impose upon the department. Ordinarily, the tribal police department is responsible for the maintenance and administration of the tribal jail or detention center.

While few tribes set any sort of standards for the employment of police officers, others may require a high school diploma or its equivalent, a complete background investigation, a medical examination, a written examination, may require that the candidate be a member of the tribe, speak and write the Indian language fluently and speak and write English.

Most departments operate with grossly insufficient budgets and cannot, therefore, be too selective in their employment practices.

Contracts with Local Agencies: Some tribes are so small and so poor that they can, under no circumstances, maintain their own law and order system. In that event contracts are entered into, usually with the local county sheriff, to

the reservation for a set monthly sum. Offenders arrested by the deputy sheriff are lodged in the local county jail and a charge is made for room and board to the tribe.

The legality of an arrest by a county sheriff of an Indian on the reservation for an infraction of the tribal code is questionable at best.

#### Variations on a Theme

BIA Chiefs and Tribal Officers: A tribe may employ its own police department but might be unable to obtain a qualified tribal member to serve as chief of police. In that event the tribe may ask for assistance in police administration from the BIA. Arrangements are then made between the Bureau of Indian Affairs and the tribe for the loan of a qualified police administrator. The administrator then serves as chief of the tribal police department and furnishes in-service training to its officers.

Contract (Tribal) Officers: There are instances where a tribe cannot afford to employ a department of sufficient size and consequently enters into a contract with the Bureau of Indian Affairs whereby a budget is established and approved, funds are furnished to the tribal council and the council then employs police officers who become employees of the tribe and not of the bureau. In this event, the only control or supervision exercised by the bureau is through the budget and contract terms.

Services by Other Agencies: Several other agencies are involved in providing police protection to citizens who are residents on or visitors to an

Indian reservation. Many of these agencies lend assistance to tribal police and Bureau of Indian Affairs policemen upon request. Such assistance may range from the investigation of a homicide or other federal offense to serving court documents and training of tribal police.

The Federal Bureau of Investigation has jurisdiction and authority to investigate the fourteen major crimes committed within the boundaries of an Indian reservation under the provisions of 18 U.S.C. 13, 1151 and 1153. The FBI can and does provide training to tribal police upon request.

State Highway Patrol and State Police: Generally, the authority of state patrolmen is limited to state rights-of-way which lie within the boundaries of an Indian reservation. They enforce state traffic laws upon non-Indians within the reservation and investigate accidents where a non-Indian is involved on state highways or county roads within the reservation. State police departments have been very helpful and cooperative in providing training, especially in the area of traffic control and accident investigation, to Indian police.

Sheriffs' Offices: Except as set forth above in describing contractual relations between a tribe and a sheriff's office, the authority of county officers is limited in the same way as state highway patrol or police.

In practice, when a subpoena or summons needs to be served upon a reservation resident, the document is delivered to the tribal police or BIA police by a sheriff's deputy, who then usually accompanies the tribal policeman until service is completed.



Again, cross-commissioning with sheriffs' offices is commonplace and sheriffs' deputies do, on occasion, enforce tribal laws upon the reservation.

Some county sheriffs maintain search and rescue teams who are most cooperative in providing service on reservations when requested.

#### Educational Facilities and Programs

##### Roswell Indian Police Academy: (Roswell, New Mexico)

Funding by the BIA, in conjunction with Thiokol Chemical Corporation, made possible the Indian Police Academy, located near the city of Roswell, New Mexico. The academy offers police training for police officers presently employed by the Indian Service or by any of the more than 200 Indian tribes across our land.<sup>31/</sup> Academy representatives sought out instructors considered to be leaders of their respective fields of training and assigned them to conduct the classroom work.<sup>32/</sup> The curriculum during the course of the training session covers 380 hours of actual police-related subjects covering all areas of police activity from physical fitness to report writing.

As extra-curricular activity those policemen who have not obtained their high school diploma can complete their education through a General Education

<sup>31/</sup> New Mexico Law Man, July 1969, Vol. 35, #7, p. 3, Indian Police Academy.

<sup>32/</sup> Ibid.

Development (G.E.D.) program offering them a G.E.D. certificate upon completion. At least 200 Indian Police Officers have completed this ten week basic police training program. Following is a summary (list) of the curriculum that has been followed by the academy:

#### INDIAN POLICE ACADEMY ROSWELL, NEW MEXICO

##### MASTER CURRICULUM

Course No. 5

#### INDIAN POLICE TRAINING PROGRAM

<u>PHYSICAL ACTIVITY</u>	<u>HOURS</u>
Physical Training & Defensive Tactics	16
Firearms:	
Qualifications	32
Safety & Cleaning	4
Drills, Ceremonies & Inspections	4
Crowd, Mob & Riot Control	4
Intramural Activities	16
<u>Total Hours</u>	<u>76</u>
<u>GOVERNMENT &amp; ADMINISTRATION</u>	
Organization & Chain of Command	2
History of Indian Law and Order	4
U. S. Constitution & Title 11, PL 90-284	4
Definition & Jurisdiction of Indian Reservations & Indian Country	6
Highpoints 68 IAM	2
Highpoints 25 CFR	1
Jail Administration & Operation	4
Authority of Indian Police	2
<u>Total Hours</u>	<u>25</u>

LAWS, COURTS & JUDICIAL PROCEDURES HOURS

14 Major Crimes	4
Federal Indian Liquor Laws	2
Other Federal Crimes & Assimilated Crime Acts	2
Civil Jurisdiction & Civil Process in Indian Country	2
Courtroom Demeanor & Testimony	7
Due Process (Miranda Decision)	2
Laws of Arrest	4
Laws of Search & Seizure	4

Total Hours 27

SOCIAL RELATIONS

Role of Police Officer in Community Development	4
Professional Ethics & the Police Image	2
Public Speaking	4
Public Relations	4
Nature & Contributing Factors of Common Crimes	2
Corrective & Procedural Methods for Crime Control	2
Human Development	12
Police Problem Solving & Decision Making	6
Abnormal Behavior	6

Total Hours 42

PATROL FUNCTIONS

First Aid	27
Emergency Childbirth	2
Radio & Telephone Procedures	3
Police Patrol Methods & Operations	3
Defensive Driving	8
Practical/Emergency Driving Course:	
Class Room	3
Driving Range	4

Total Hours 50

TRAFFIC FUNCTIONS

Traffic Control & Accident Investigation	20
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Total Hours 20

POLICE SCIENCE & INVESTIGATION HOURS

Techniques of Interviewing & Interrogation	4
Auto Theft Investigation	4
Unattended Death, Injury & Illness Cases	1
Crime Scene Procedures:	
Searching	4
Latent Print Procedures	2
Photography & Crime Scene Sketching	8
Field Note Taking	1
Collection, Preservation & Identification of Evidence	4
Plaster Casting	2
Outline of Death Investigation	4
Fingerprinting & Identification	4
Narcotic & Drug Abuse Investigation	6
Sex Crimes	2
Arson Investigation	4
Juvenile Delinquency	4

Total Hours 54

RECORDS & REPORT WRITING

Police Report Writing	10
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Total Hours 10

MISCELLANEOUS

Preparation for Inspection & Inspections	16
Classroom Communication & Note Taking	1
Initial Entrance Examinations	2
Stanford Achievement & Related Test	6
Weekly Examination & Review	8
Midterm Examination	2
Final Examination & Review	4
Critique of Course	3
Preparation for Graduation & Graduation	4
Orientation	8
Director's Time	20
Uniform & Equipment Issue	2

Total Hours 76

Total Hours 380

Basic, Remedial, GED & Advanced Education	76
Supervised Study Hall & Counseling	44

Grand Total Hours      500

Navajo Police Academy: The Navajo Police Academy is located at the headquarters of the Navajo Police Department in Window Rock, Arizona, in northeastern Arizona near the New Mexico boundary.

The Navajo Police Department is the largest Indian tribal law enforcement agency in the United States today. The mere size of the department required its men to have adequate training in basic police techniques, and to avoid the necessity of sending men away to school, the Navajo Police Academy was originated.

As a young academy, its primary concern was for the training of the Navajo recruits and for maintaining an in-service training program for its own police officers. Today the Navajo Police Academy not only serves its own men but during each specialized school and basic police training, invitations are sent out to many other Indian, municipal and county agencies. Among these are Laguna, Hopi, Zuni, Jicarilla Apache, Mescalero Apache, Whiteriver Apache, San Carlos Apache, Towaca Ute, City and county departments in the immediate area.

The basic police training course is geared toward the new recruits and is an extensive eight (8) week course. The curriculum of the Navajo

Academy is similar to that of the Roswell Academy, that is, it covers all areas and functions a police officer needs to know, from laws of arrest, report writing, to defensive driving.

The academy also offers short courses lasting anywhere from one (1) day to two (2) weeks. Such topics as report writing, techniques in prosecuting a case, self-defense, search and rescue operations, narcotics, first-aid, criminal investigation and many others are offered. Participants in a training are provided with room and board during the course of the session.

Instructors are obtained from many sources, i.e., Arizona Highway Patrol (Department of Public Safety), New Mexico State Police, Gallup City Police, Federal Bureau of Investigation, BIA Special Officers, Public Health Service Doctors, Navajo Police, Navajo Judicial Department and State Narcotics Agency.

The Academy Facility can handle a maximum of 40 men during a training session. In 1969, 500 police officers attended training sessions at the Navajo Police Academy.

In-Service Training by FBI, BIA and Others: Many police officers throughout the nation are faced with in-service training. Many Indian police officers have been through police academies of the state patrol, city and county. For other Indian policemen who have never attended any formal training, the in-service program is the only resource of training other than that received on the job.

Depending upon the size of a police force and the location of the reservation, in-service training sessions vary greatly. For example some departments have weekly or semi-weekly sessions, meeting for ten or fifteen weeks. Others may have sessions once or twice a month. It would not be uncommon to hear of an Indian police department having training sessions once a year.

Other agencies in the area provide excellent cooperation, in that they lend qualified men to instruct in-service classes.

Courts: The major existing educational facilities and programs for the improvement of the law and order process on the reservations and pueblos of the Southwest are fortunately located in the states with which this report is concerned. It appears that at the time of writing this report, the major effort in this area is being done by the American Indian Law Center which is a branch of the University of New Mexico Law School. The director of the Center is Robert L. Bennett, who is a member of the Oneida Tribe of Wisconsin, graduate of Southeastern University School of Law, and former U. S. Commissioner of Indian Affairs. A law faculty committee advises the Center. Ultimately, as the Center expands a board of advisors will be appointed composed of non-law and Indian people.

The purpose of the Center is to render services of a broad legal nature to Indians. The primary source of funding is from government or foundation grants, and, by and large, the financing has been on a "catch-as-catch-can" basis.

The present general activities of the Center are:

1. Indian Law Student Program: This is a special program to encourage Indians to study law. This program begins with an eight week summer workshop each summer to which Indian judges, lay advocates, college graduates and tribal leaders are invited to attend. The summer workshop is intended to be an introduction to the law in the hope that some participants in the program will be encouraged to continue on to law school, and that others in the program will gain knowledge in how a judicial system operates and take this knowledge back to their reservations. Qualified students from this workshop are encouraged to enter law school in the fall at the University of New Mexico or elsewhere with the aid of a scholarship provided under the Center's program which continues for the Indian law student through graduation. At present the Center has placed 11 Indian students at the University of New Mexico School of Law and 67 Indian students at 34 law schools across the nation. The efforts of this program should double the Indian lawyer population in the United States in the next five years. In addition, this program has presented to many tribal leaders and judges their first formal, organized look at how a judicial system should function. The program is presently funded by the O.E.O. and by the Bureau of Indian Affairs.

2. National Indian Law Library: The National Indian Law Library is located at the University of New Mexico Law School Library under the supervision of the American Indian Law Center. It is at this time growing rapidly,

but even in its present state of development, it is considered one of the top three Indian Law libraries in the nation. The collection of books, reports, papers and other materials are concerned with Indian Law, history, legislation and administration of Indian affairs. The existing material and future additions will be housed in a separate wing of the new law school which will be completed in late 1970. A separate card catalogue is being established to properly accommodate the mass of material now being housed by the Center. It is hoped by many that the National Indian Law Library will become the major non-governmental center for the study and research for lawyers and scholars interested in Indian Law and History.

3. Indian Law Newsletter: The American Indian Law Center presently publishes a newsletter every two weeks on legal developments, including legislation, of interest to the tribes and pueblos. It is intended that this publication shall, in 1971, become the authoritative publication in the field of Indian Law and the Digest or Reporter for key decisions of tribal courts by converting the publications to a law journal or law review status.

4. Legal Research: The demands of society on Indian tribal governments as well as their own entry into many areas of property rights and civil rights and criminal problems is opening new frontiers in Indian Law. The Center, its staff and Indian student lawyers will be a major resource in assisting the tribes, private and public agencies in research of basic Indian Law.

5. Legal Services: Beyond the specialized field of legal research, the opportunity for legal assistance to Indian tribes is increasing dramatically. The impacts of a changing Indian society and a changing national political environment are posing substantial problems for Indian tribes and pueblos, the solution for which cannot be found in the cultural or historical background of Indian tribes and pueblos. It is logical for the Indian tribes and pueblos to look to existing institutions to provide the information for tribal decision making. The Center is intended to be the conduit for this assistance. The Center also serves on a cooperative basis with other related programs in Indian affairs administered by private, state or federal agencies.

6. Conferences and Seminars: The Center has in the past, and intends in the future, to sponsor a variety of conferences and seminars on subjects of interest to Indian tribes and pueblos and to provide resource people and other participants for conferences and seminars sponsored under other agencies.

In addition to the above described general functions of the Center, it is presently operating approximately six training and research projects for individual tribes nationally.

A second major educational program is being conducted by the American Indian Trial Judges Association, which was originally funded by the Arrow Foundation, to provide training for Indian judges and court personnel working for Indian judicial systems. This organization has a nation-wide affiliation and is presently headed by Chief Justice Virgil Kirk, as president, who is

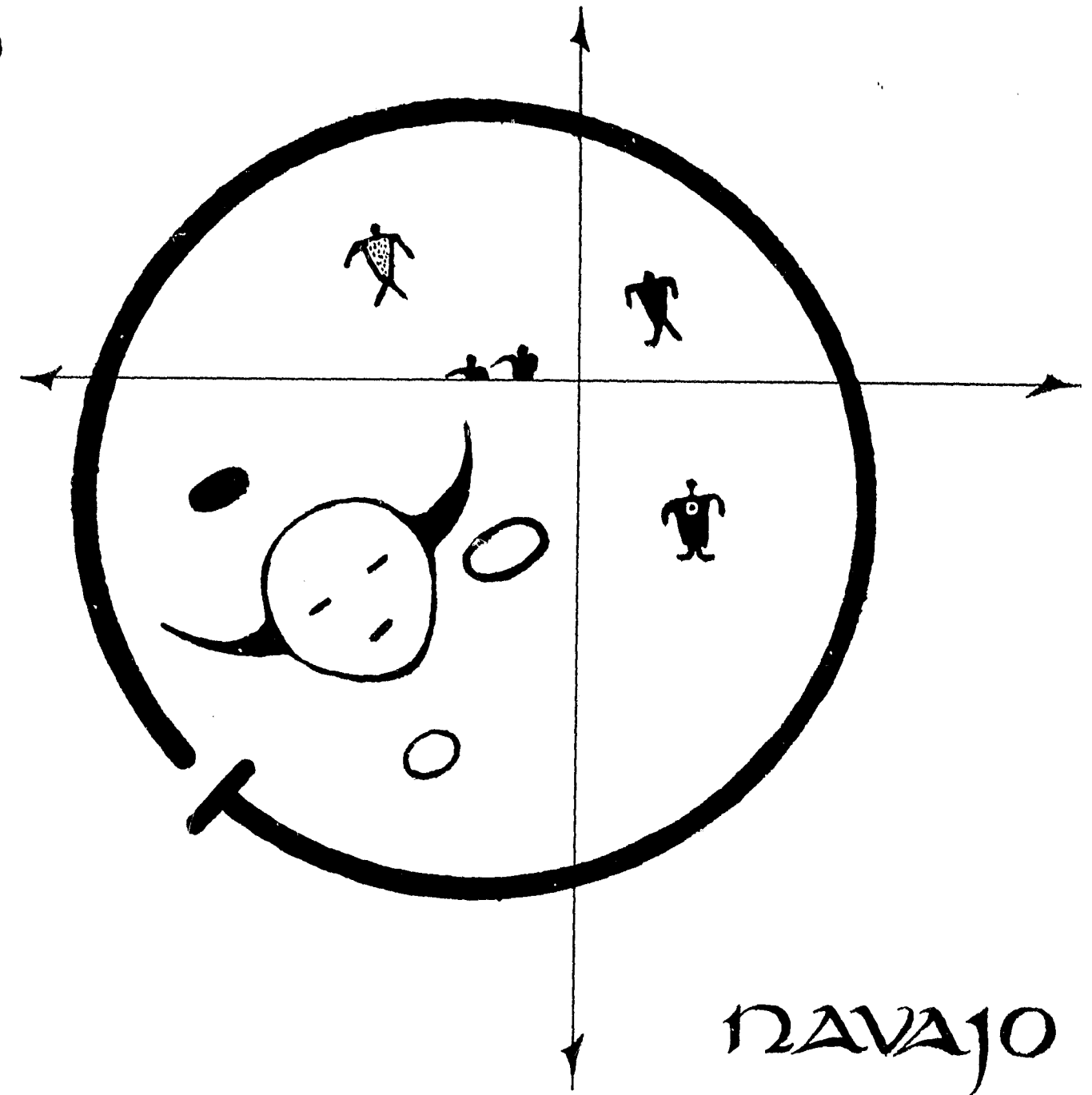
the Chief Justice for the Judicial Branch of the Navajo Tribe. The organization was founded in 1967 and has 84 tribes and pueblos as members.

The main goal of this organization is to improve the court systems of the Indian tribes and pueblos. The organization is presently greatly concerned with the impact of the 1968 Civil Rights Act on Indian governments and cultures. The American Indian Trial Judges Association is attempting to assist in an orderly adjustment by providing materials and information to tribal governments. A second major goal of this organization is the establishment of a comprehensive training program to improve the internal management and administration of justice in tribal court systems.

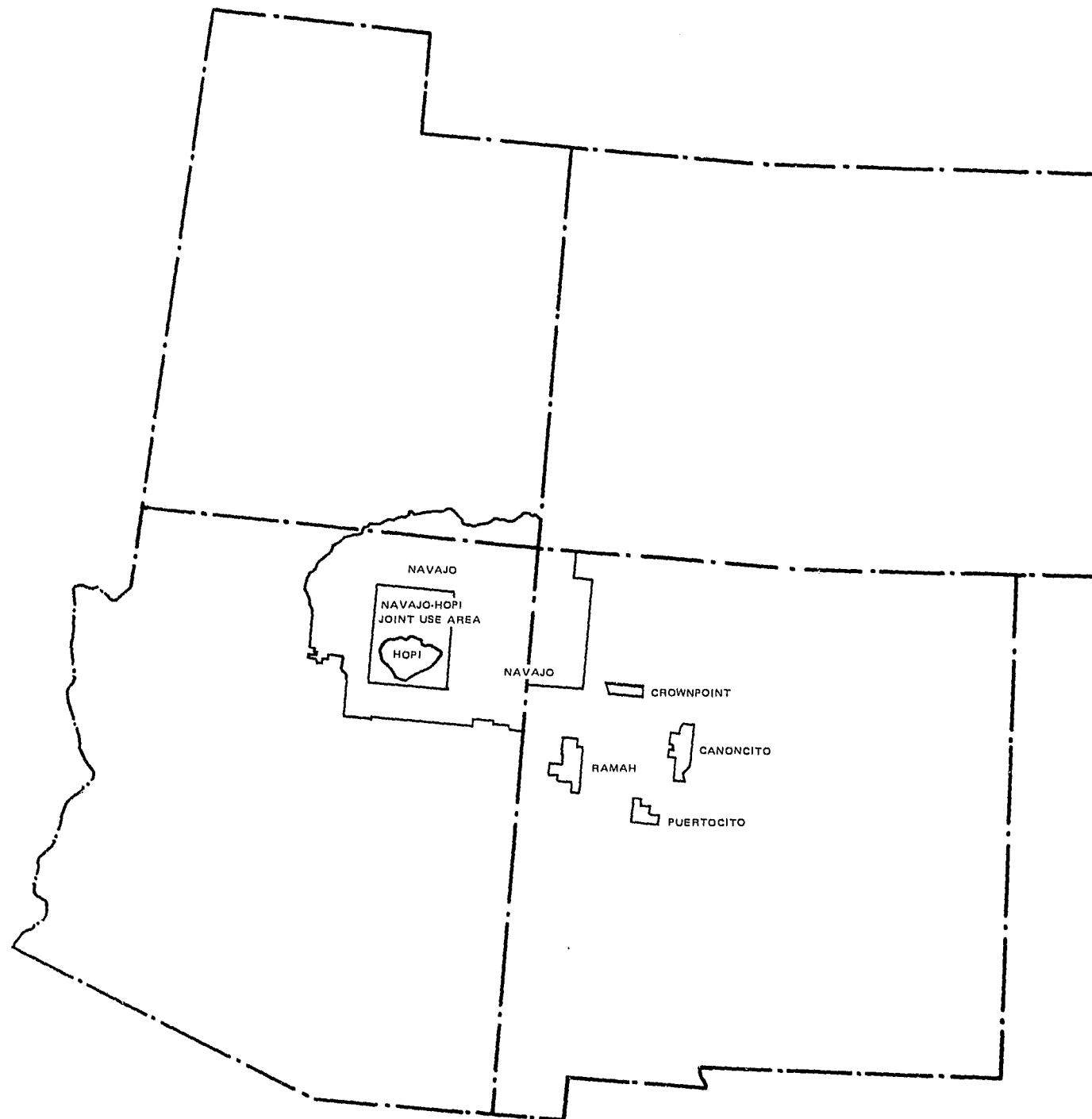
A major effort to provide judicial training is now being organized through a grant made by the Law Enforcement Assistance Administration.

The third major educational program for tribal judges has been a series of seminars conducted by the University of Arizona School of Law in Tucson, Arizona. This effort was funded by a grant from the Bureau of Indian Affairs and was for the purpose of providing training to tribal judges for those tribes located in Arizona. In addition the school has conducted a series of studies of the traditional justice of the Arizona tribes and pueblos.

To avoid repetition in the "systems" section of each tribal plan, this chapter has been written to give the reader an overview of the systems and the way they usually function on most Indian reservations.



N A V A J O



Although the seat of government of the Navajo Tribe is located in Arizona, the reservation boundaries extend into three of the four states which are the subject of this planning effort. For that reason, the Navajo Tribal Plan is set forth as a separate section of this study.

The Navajo Tribe is the largest in the United States with a current population estimate of approximately 124,000. Many adults speak little or no English and most live several miles from their nearest neighbors in Hogans—windowless mud and log huts with earth floors. Navajo women not only have property rights, but usually have the final "say" in family and community affairs. The extended family group, made up of two or more biological families are an important aspect of Navajo social organization. The extended family forms a cooperative unit, bound by ties of marriage and close relationship, possessing responsible leadership and identified with specific areas of land use for grazing or agricultural purposes. The extended family group, in turn, is an aspect of a larger, loosely associated sociological unit, commonly referred to as "community" or "chapter". No communities in

the "village" since exist on the reservation, except as developed near government schools, hospitals, administrative centers, or missions. There is a rapid cultural change taking place with diversification of economy, formal schooling, western dress, pressures for acculturation, and a multitude of allied forces working toward individualization. More and more Navajos live by wages and pay rent on their homes instead of depending on agricultural returns. However, sheepherding is still an important avocation. Many Navajo people are employed by oil and gas, mining, railroads, missions, and federal and tribal government. The affairs of the tribe are administered by a 74-member tribal council which is elected every four years.

The administrative offices of the Bureau of Indian Affairs, U. S. Public Health Service, and the Navajo Tribe are located at Window Rock, Chinle, Tuba City, and Fort Defiance in Arizona and Crownpoint, Shiprock, and Gallup in New Mexico.

The reservation encompasses approximately 24,000 square miles (15.5 million acres) and extends into the states of Arizona, New Mexico, and Utah. All Navajos do not live on reservation land. Many live on public domain allotments, railroad land, and outside the boundaries of the reservation. Three small detached Navajo communities exist in New Mexico

at Ramah (50 miles southeast of Gallup), Canoncito (40 miles west of Albuquerque), and Alamo (80 miles southwest of Albuquerque).

Climate and agricultural productivity are dictated largely by elevation and rainfall. Vegetative cover varying sharply from sparse shrubs at lower elevations (4,500 feet) to forests in mountainous regions (10,000 feet). The reservation is a land of high plateaus, deep canyons, and low-lying plains, traversed by a range of mountains along the Arizona-New Mexico state line. Although annual rainfall may be as high as 27 inches in high altitudes, reservation climate is considered as generally arid or semiarid.

The degree of acculturation assumed by the Navajo is far ahead of that of most Indian tribes. This is probably due to the impact of tourism and contact with off-reservation communities and nearby towns. The Navajo have adjusted to the impact of White culture while still retaining natural traits and preserving their own cultural organization. The impact of change makes for uneasiness and distrust. As more of the young become educated, they must force the difficult problem of compromise between the demands of both cultures.

The Navajo government is a chapter-representative tribal council System, composed of 92 community chapters from which



74 council members are elected. The Navajo tribal chairman of the council is elected by all eligible enrolled members of the Navajo tribe. Headquarters for the Navajo tribe is located in Window Rock, Arizona. The tribal council has taken over from the Bureau of Indian Affairs the maintenance of law and order, the conduct of tribal elections, certain welfare services, water control, and responsibility for grazing regulations.

As might be expected, the annual budget of the tribe has been increasing each year. The total law and order budget for fiscal year 1970 was \$2,289,949 (including \$140,000 contributed by the Bureau of Indian Affairs). From this total budget, the Navajo tribal police department received \$1,914,727 and the Navajo tribal courts received \$235,222.

A. EXISTING LAW ENFORCEMENT SYSTEMS AND AVAILABLE RESOURCES

The Navajo tribal court system is composed of seven tribal court judges. There are five judicial divisions located at Chinle, Tuba City, and Window Rock in Arizona and Shiprock and Crownpoint in New Mexico. Each division has one judge with the exception of the headquarters division at Window Rock which has two trial court judges. The Appeals Court at Window Rock consists of the chief judge of the Navajo

tribe and two judges of the trial court who are called to serve by the chief judge in particular cases.

The judicial branch is governed by the Navajo tribal code which includes rules of procedure and a criminal code. In 1969, a juvenile code was adopted, approved, and funded in September of 1969. At this writing, the juvenile code is not in use due to the failure of the tribal council to appoint a juvenile judge and the five probation and parole officers provided for under the plan.

The Navajo tribal code is the governing body of law which regulates all activities within the Navajo reservation. The trial courts handle all reservation misdemeanors, some of which would be felonies in federal or state courts, committed by tribal members within the boundaries of the reservation. The federal government has jurisdiction of the felonies covered by the Major Crimes Act, nevertheless, the federal courts consistently decline to prosecute some violators, so the tribal courts generally try to fit these crimes under their jurisdiction though they are limited in sentencing to a maximum of six months in jail and \$500 fine.

State jurisdiction to punish Indians for violation of state law committed outside of Indian country is to the same extent that it has jurisdiction to punish non-Indians. While

the state has no jurisdiction within the boundaries of the reservation, except in particular instances, the Navajo tribe has sought to establish good working relationships and cooperation with the states. At times, this cooperation is strained when conflicts arise as can be seen in the "checkerboard" area in law enforcement. Land ownership and jurisdictional status in this area is extremely complicated and it is frequently questionable as to who has authority to make arrests. As a consequence, law enforcement in these areas is sometimes lax because of the fear of infringing upon the rights and obligations of others, together with the inherent fear of possible law suits against law enforcement agencies who attempt to enforce state, federal, and tribal laws in this no man's land.

Presently, there is a law suit pending against the Navajo tribal police department and the county sheriff's office in Gallup, New Mexico, growing out of a case where juveniles were arrested by the Navajo police department on federal government reserved land in Crownpoint. The Navajo police who were cross deputized by the county sheriff, arrested the juveniles and took them to Gallup for detention. When the law suit arose the district attorney in Gallup refused to defend the Navajo police, claiming they had no authority to make such arrests and that the county sheriff's deputization of the Navajo police was invalid.

The Navajo police department is the largest police organization in the United States and possibly one of the best departments in the southwest. The facility at Window Rock, Arizona, houses the administrative offices, records division, Window Rock District Station, male and female cell blocks (65 capacity), the Navajo Police Academy, and barracks to accommodate approximately 40 men, an in-door pistol range, an eight tray morgue, and the judicial department consisting of offices for judges, clerks, and two well appointed courtrooms. The total cost of this facility was \$863,818.37.

In the other district stations, except for Crownpoint in New Mexico, are fairly new facilities, constructed during the late 1950's and early 1960's. Each of these facilities houses offices for the district captains, have detention facilities of 18 to 25 capacity and house the judicial department for their district. These facilities were poorly planned and are in need of remodeling and expansion to provide for additional services inasmuch as the population and work load have increased measurably in recent years.

The officers of the Navajo police department appear to be well trained. They have attended either the 320-hour basic training course at the Navajo Academy or the 640-hour advanced basic training course offered at the Indian Police

Academy in Roswell, New Mexico. Some men have attended both these academies. All men are completely uniformed and maintain a neat appearance at all times.

The fleet of the Navajo police consists of 104 vehicles of which 56 are panel trucks, 35 sedans, 7 ambulances, 5 pickups, and 1 dump truck. All emergency vehicles are equipped with necessary equipment, i. e., visa-bar twin beacons, electronic sirens, first aid and traffic control devices. Most of the sedans are late model Dodges and most of the panel trucks are late Chevrolet and GMC products. The vehicles are rented from the Navajo Tribal Motor Pool annually.

The Navajo Police Academy conducts several training sessions during each year. The basic training for new recruits is eight to ten weeks in length covering 320 classroom hours of subjects. Each class consists of 35 to 40 men. During the year, the Academy provides inservice and specialized classes ranging from two days to three weeks in length. Ten to fifteen of these sessions are conducted annually.

Salaries on the Navajo Police Department range from \$15,000 for the superintendent to \$5,096 as starting pay for patrolmen.

The reservation is divided into five police districts with headquarters located at Crownpoint and Shiprock in

New Mexico and Chinle, Tuba City, and Window Rock in Arizona. Forty-three sub-stations cover all five districts.

The present strength of the department is 205 of which 28 are civilians and 177 are sworn officers.

The functions and responsibilities of the Navajo Police Department are described in the Navajo Tribal Code: the police department shall be responsible to the tribal council and a chairman for the planning, organizing, and administering of Navajo law enforcement, including the direction of work assignments and distribution of personnel at their various stations. The department is responsible for the investigation of both routine and more complex criminal cases and the preparation of reports required for presentation and disposition of cases in the court of jurisdiction; for preparation and maintenance of an adequate police records system; and for training of police personnel through various media. It shall provide the tribal council and other officials technical assistance as requested.

Due to the peculiar nature of the land ownership pattern on or near the reservation and due to the multiplicity of the agencies having jurisdiction over these lands, the department must establish satisfactory working relationships with other law enforcement organizations in order that crime may be

expeditiously investigated and crime prevention programs established. The department shall establish and maintain good relations with communities surrounding the reservation in order that they may better understand law enforcement problems peculiar to the reservation situation. The department shall be responsible for the dissemination of information regarding law enforcement regulations, law and procedures to all concerned.

In addition, the department enforces all misdemeanors and traffic regulations which includes federal, state, and tribal codes. Major felonies committed on the reservation are investigated by the Navajo police as a preliminary step and then turned over to the FBI. The department is also responsible for the housing and caring of prisoners incarcerated in tribal jails. Patrolmen are assigned to attend council meetings and are required to provide peace and order during the meetings. All traffic accidents on the reservation involving Indians are investigated by the Navajo police. All special events which occur on the reservation such as rodeos, basketball games, football games, movies, modern dances, squaw dances, and other ceremonial celebrations are patrolled by the Navajo police. In addition, special services are provided by the police such as ambulance services from

the reservation to hospitals or clinics, handling animal patrols (preventing wild dog packs from forming), and delivering messages to isolated areas on the reservation.

As minimum requirements for employment as a Navajo patrolman, the applicant must be able to read and write in English and to speak Navajo fluently. The candidate must have attained his 21st birthday and not be past 45 years of age. The minimum height requirement is 5'6" with weight proportionate to height. A candidate must also have received his high school diploma (although some exceptions are made) and be subject to an intensive background investigation.

Once a recruit is hired, he is required to take a minimum of 320 hours of basic police courses and to serve a probation period of 90 days.

Navajo policemen are occasionally sent to other police agencies for specialized training and investigatory techniques.

1. BIA Law and Order

Federal officers are stationed at each police district agency and report directly to the area special officer in Window Rock, Arizona. BIA exercises no control over the Navajo police department and limits their activities to investigation of major crimes, to providing training to Navajo

police and lend such other technical assistance as may be requested. BIA officers on the Navajo reservation investigate and enforce federal offenses committed on the reservation and work in close harmony with tribal police and the FBI.

2. Department of Public Safety—Arizona Highway Patrol and New Mexico State Police

These state agencies work in close harmony with tribal police but limit their responsibility primarily to the enforcement of state and tribal traffic laws on state rights-of-way within the reservation boundaries. State officers provide a training resource upon request by the Navajo Police Academy.

3. Sheriffs Offices

In Arizona, the relationship between the reservation and the counties of Navajo, Apache and Coconino are generally favorable. When assistance is requested by the tribal police, it is usually given without hesitation. The authority and jurisdiction of sheriffs deputies within the Indian reservation is limited and exists primarily through cross deputization. If a deputy sheriff apprehends an Indian while on the reservation, the prisoner must be adjudicated in tribal court.

In New Mexico, the McKinley and San Juan county sheriffs maintain some patrol on rights-of-way but usually extend very limited service to the tribal police.

Sandoval, Bernalillo, Valencia, and Rio Arriba counties are also in close proximity to the Navajo reservation within the area of the eastern Navajo agency and tribal police complain that relationships with these departments is generally in need of improvement.

The tribal police committee complains that the Attorney General of New Mexico has ruled that the Navajo tribal police department is not a valid or duly qualified police department and therefore not entitled to recognition as such. This situation apparently does not exist in Utah or Arizona.

The San Juan county sheriff's office of Utah maintains very little contact with the tribal police department and enters the reservation only upon request and in an extreme emergency. No cross deputization exists and even while on the reservation, sheriff's jurisdiction is limited in its enforcement to non-Indians.

4. Federal Bureau of Investigation

FBI agents are an excellent source of instructors and of technical assistance to tribal police. Agents participate, in cooperation with tribal and BIA officers, in the investigation of felonies committed in Indian country as defined by the Major Crime Act (Title 18 USC, Section 1153).

5. Corrections

The correctional agencies on the Navajo Indian reservation consist of the supervision and operation of five tribal jails, juvenile probation services, parole and probation services for adult parolees released from state and federal institutions. These services are all financed by the Navajo tribe. There are no correctional services provided by federal or state agencies on the Navajo reservation.

a. Probation Parole Services: One adult probation officer provides parole and probation services for state and federal parolees returned to the Navajo reservation. In addition, the Navajo tribe furnishes juvenile probation officers at each of the five BIA agencies on the Navajo reservation.

b. Correctional Facilities: The Navajo tribe provides detention facilities at each of the five Bureau of Indian Affairs agencies on the reservation. However, two of these facilities should be reconstructed at different locations. Two others are in need of an expansion to provide separate facilities for juveniles and persons in pre-trial incarceration. The detention facilities are located at the following BIA agencies on the Navajo reservation: Crownpoint, New Mexico; Shiprock, New Mexico; Window Rock,

Chinle, Arizona; and Tuba City, Arizona. A facility is badly needed at Kayenta, Arizona.

c. Available Resources: The Bureau of Indian Affairs provides the following services which are not necessarily directly to but have an impact on the law and order problems: social welfare services, employment assistance, education, and law and order.

B. THE MULTI-YEAR PLAN

1. Needs and Problems

When compared with other southwestern tribes, the Navajo criminal justice system and its facilities may appear quite complex and sophisticated—and so it is. The needs and problems of the Navajo people, however, are not unlike those of many other tribes. Common problems such as multiple jurisdiction where land ownership may be in federal, state, county, tribal or private hands, the lack of adequate communication facilities, isolation and long distance between homes, schools, population centers and health services, and the lack of adequate all weather roads are all contributing factors to crime and delinquency. Added to these are the socio-economic problems such as unemployment and underemployment resulting in substandard family income and lack of family stability.

Both adult and juvenile crime rates on the Navajo reservation are significantly above the national average. Emphasis on prevention is lacking. The rehabilitative staff is presently being organized and trained which in time will provide a juvenile probation officer at each Bureau of Indian Affairs agency on the reservation.

Chronic misuse of alcohol and inadequate job opportunities; lack of a centrally organized community services system

and the lack of intensive case work service; these and many more are among the needs and problems of the Navajo people.

The present population ratio of 53% of the total population being under the age of 18, forecasts a potentially explosive juvenile delinquency problem on the Navajo reservation in the not-too-distant future. To prevent this probability from occurring, a comprehensive program for prevention and control of delinquency must be developed immediately. This program should involve all branches of community services. A massive social welfare effort must be made to intervene in the deviant behavior of juveniles and the activities of the very young. Alternatives to arrest and incarceration must be developed.

A centrally located youth rehabilitation center should be provided with diagnosis, evaluation, and treatment as its primary goal.

Participation in vocational, rehabilitation and aftercare programs must be encouraged. Family services should be provided on a case basis and should involve the family in offender treatment programs.

The U. S. Public Health Service, Division of Indian Health, should provide detoxification units at each BIA agency.

All community resources should be coordinated. Courts commonly handle many family and youth problems which could be more effectively handled in the community on a voluntary basis, particularly with first offenders. Police and courts should make more use of community services as referral agencies. Specialized prevention-protective programs should be developed. A pre-delinquent referral unit should be established drawing together the joint efforts of school, police, courts, and neighborhood community services.

This program might be considered ambitious for the Navajo people to develop within the next five years, but if the Navajo are to conserve their human resources, such programs must be developed.

Tribal leaders, police officers, Bureau of Indian Affairs personnel and others interviewed by Indian Justice Planning Project concurred that major problems exist on the Navajo reservation as reflected in the increase in juvenile crime, chronic misuse of alcohol, lack of adequate detention facilities, and rapid turnover of police officers.

In general, to overcome the many needs and problems on the Navajo reservation, there is a need to define the kind of criminal justice system deemed "ideal" yet attainable for the Navajo tribe and its reservation in terms of man-

power, training, equipment, facilities, operational standards and services provided. It is expected that achievement of these goals will require several years and that the ability of the Bureau of Indian Affairs to participate and assist in accomplishing these goals will have a direct effect upon the rapidity with which these goals become reality.

On the Navajo reservation, as on most reservations, there is a critical shortage of persons with legal training. The Navajo tribal judges are not law trained, but have held their position for numerous years. Only one has a college degree and the others have learned through experience and seem to be performing their duties with devotion as they have the common feeling that justice must be impartially meted out before their courts. Nevertheless, the tribal judges can see their inadequacies when they are continuously confronted with many kinds of problems which would normally puzzle and engage the attention of state and federal courts of general trial jurisdiction. The judges feel the need for legal and judicial training very keenly and are eager to receive any training or help which might be made available.

In April of 1968, the Civil Rights Act was signed into Law, expressly extending most of the protections of the Bill of Rights to American Indians in their relations with their tribes. The tribal court systems, and to some degree



the tribal governing bodies, have been unable to digest the complexities of constitutional law imposed upon them by the Act, and they have often been unable to relate those complexities to their own enduring cultural values. The crisis of the Civil Rights Act is not the sole problem of the Tribal Justice System; it is only the most current and dramatic period. It is not insoluble, but it does bring into sharp focus the urgent need of providing reservation residents with a level of justice, at least equal to that enjoyed by other American citizens, while at the same time preserving the distinct cultural heritage of their own peoples and the values implicit in the tribal court system. To meet this need, the tribal courts need sustained training and technical assistance.

Most, if not all, Navajo judges have attended judge oriented seminars conducted throughout the neighboring states covered by the Navajo reservation. They have an understanding of the necessary duty to keep pace with their ever-changing tribal society and the greater burdens placed upon the law enforcement agencies. All the judges interviewed recognized their own shortcomings and were more than enthusiastic to attend judicial seminars and training sessions. Nevertheless, money heretofore appropriated for that particular purpose has

been minute. The council has recognized the handicaps encountered by the judicial branch and have continued to increase their budget. Annually, this increase, however, has been largely utilized in increasing clerical personnel.

It has been requested that a legal adviser be assigned to each of the district trial judges. Presently, only the chief judge is provided with a legal adviser and a law clerk. As previously mentioned, since enactment of the Indian Civil Rights Act and with the advent of legal aid societies, complex questions are being asked and the judges realize that skilled legal assistance is needed in order to maintain and to improve the quality of tribal justice. Furthermore, the ever growing Navajo tribal code requires constant interpretation and understanding.

With the Navajo tribal code and to the courts now allowing professional lawyers to appear before the court, every legal assistance is now at the disposal of the defense, but very little attention has been given to the prosecution. The court then is left in an awkward position of being placed in the position of quasi-prosecutor and judge. This leads to an obvious imbalance of the judicial system and places a heavier burden upon the court. The judges realize that this added burden, together with their

limited capacity to deal with such complex problems, could result in the judges having to dismiss many of such cases or be subject to constant criticism. Fifty-six percent of the criminal cases appealed in 1968 were dismissed on the court's own motion, and shows hesitancy in the court to sustain the judgments of the lower court. A result could well be that the Navajo people will come to look upon the law with impunity and to disregard it. A legal adviser assigned to the courts could minimize the imbalance and instill confidence in the judges. Added benefits would be gained in handling the ever increasing case load.

A second judicial need exists in the field of prosecution. Presently, only two prosecutors and one legal adviser are available for the entire Navajo reservation, and they are located at Window Rock, Arizona. The legal adviser and prosecutors have attempted to train two or three Navajo police officers in each of the police districts to act as prosecutors. The training has been extremely limited, and it has been impossible to even scratch the surface in teaching prosecution methods and approaches. The resulting imbalance during trial is obvious. The police officers receive no extra pay for performing the duties of prosecutor and are hesitant to take on these new duties, and those who do are constantly frus-

trated by their inadequacies. It should be impressed upon the tribal council that the tribe may be faced with numerous and embarrassing problems because of the lack of attention to the prosecutor's role in the criminal justice system. Inasmuch as the function of the Navajo tribal court has shifted from mediating to presiding over an adversary-type system, the need for an independent and well trained prosecutorial force as an integral part of the justice system is badly needed. The \$58,000 budget of the prosecutor's office is adequate only to support two prosecutors in Window Rock together with their legal adviser and two secretaries. There should be a minimum of one prosecutor and secretary in each of the judicial districts.

The recent trend to urbanization now taking place on the Navajo reservation, coupled with the vastness of the reservation, the continued wide scattering of its population, and hundreds upon hundreds of miles of road to be patrolled have placed ever increasing burdens upon the Navajo tribal police.

A prime example of current problems encountered by the police exists at Kayenta, Arizona. This community is patrolled by the Tuba City district with five sworn officers (three patrolmen and two staff officers). Kayenta proper

has a population of some 3,500 people and is a rapidly growing community due to expanding industry and tourism. The Peabody Coal Company has recently commenced operations in the immediate vicinity of Black Rock Mesa, and the Arizona Highway Department has located district offices here. The Bureau of Indian Affairs maintains branch offices for land operations, land management and roads at Kayenta, and the BIA also maintains a boarding school which accommodates approximately 1,000 students between the ages of 6 and 18. Monument Valley Elementary and High Schools are also located in Kayenta and have a student population of 1,800. Kayenta lies at the southern edge of Monument Valley and is rapidly becoming a tourist center with 300 motel units, 3 cafes, 2 grocery stores, 2 trading posts, 7 service stations, and 5 churches. The physical facility at Kayenta utilized by the police is one of the three oldest buildings in the community. The building is so small there is barely room for two desks. There are no toilet facilities or running water in the building. There are no detention facilities and prisoners must be transported to Tuba City, 75 miles to the south.

As a result of additional growth in population throughout the reservation, present police facilities in all districts is inadequate or rapidly becoming so. Modern space

is required to not only house prisoners but to provide the police with a modern tool with which to perform their vital functions. First priority in constructing police and court facilities should be directed at Crown Point, New Mexico.

Extreme distances constitute a major hardship for the Navajo tribal police and a modern improved communication system should be implemented to help attack this problem. Steps should be taken now to begin design of an interdepartmental communication system which could be phased in over the next three years.

There exists a high attrition problem on the department due to inadequate pay, inadequate compensation for overtime, lack of housing for personnel at district or substation levels, heavy work loads, long hours and other inconveniences. This problem should be attacked by providing for more personnel, more adequate compensation, and the establishment of fringe and incentive benefits.

The Navajo Police Academy is in constant use and its services are extended not only to Navajo police but to tribal police throughout the area. The training staff of this Academy should themselves be better trained and the Academy furnished with better visual aids and training materials.

As indicated above, physical facilities at district

and substation levels are old, unsanitary, inadequate in size, poorly lighted and heated, and unsightly. Most detention facilities on the reservation were initially designed to handle 18 to 20 prisoners adequately. Population growth and increased mobility have placed an impossible burden upon these facilities, the jails sometimes holding 100 to 300 prisoners.

A morgue facility of three to six trays should be provided at each substation. Presently, there is no place to hold a body pending proper arrangements, and bodies must be transported to the Window Rock morgue, sometimes necessitating a 250-mile round trip.

Tribal police are stationed in very isolated areas of the reservation and housing facilities which are provided for them and their families are unfit for habitation. Consequently, many officers leave their families at home during their tour of duty in isolated parts of the reservation, resulting in a breakdown family relations and a direct effect upon the officer's performance.

The Navajo tribal police patrol a reservation of 24,000 square miles, containing 972 miles of state, federal, and county roads and 3,343 miles of roads maintained by the Bureau of Indian Affairs. There are 101 communities on the

reservation with populations ranging from 284 to 4,462.

The problem of narcotics and dangerous drugs in the hands of juveniles has been increasing at a rapid rate in recent months. There is relatively easy access to drugs in towns and cities surrounding the reservation. Many Navajo youths attending off-reservation schools have returned to introduce drugs to the reservation. The Chinle and Shiprock districts have noticed a recent increase in the use of Marijuana among juveniles.

The drug problem is unique and new to Navajo law enforcement and as a consequence, officers are not trained to recognize drugs or the behavior of their users. As a consequence, many users are arrested and charged with being drunk.

The possession, sale, or traffic in dangerous drugs on Indian reservations is a federal offense (not including Peyote) and those cases should be referred to the Bureau of Narcotics for investigation and prosecution. However, experience has shown that unless a large quantity of drugs are involved it is extremely difficult to get the cooperation of the Bureau of Narcotics to investigate or to get the United States Attorney to prosecute. The offenders, therefore, go unpunished and the problem increases.

A narcotics squad should be formed within the Navajo tribal police to be trained by BNDD and the Arizona Department of Public Safety.

2. General Statement of Priorities and Improvement Programs

Following is a discussion by functional category of objectives sought, the direction, scope, and types of improvement programs planned over the multi-year period.

a. Upgrading Law Enforcement Personnel

Objective: The objective of all programs falling under this category is to insure that the best qualified Navajo people will be attracted to all categories of law enforcement jobs on the reservation. To provide them with the best possible training to insure competency and to provide sufficient incentives to reduce the turnover rate and to attain better retention of these qualified people.

b. Prevention of Crime (including public education)

Objective: To prevent and reduce crime by prohibiting opportunities for the commission of crime, and by involving the general public in crime prevention through educational programs.

It is anticipated that the Navajo tribal council, assisted by the Bureau of Indian Affairs, will place additional emphasis on developing an improved data base, by correlating

such information as "juveniles in contact with the police" and "juveniles and adults, in trouble in the off-reservation community", thereby providing more accurate information defining the extent of the crime and delinquency program. It is also anticipated that efforts will be made to obtain the support of the reservation population by education and involvement in crime prevention programs, designed to reduce reservation tolerance to deviant behavior. Efforts to insure conformity, strengthen norms and mores, by changing attitudes and encouraging a change in values, should be undertaken.

Schools should place more emphasis on programs designed to develop an understanding of law enforcement systems through public education programs.

Public indifference must be overcome by the dissemination of knowledge to the public about modern theories and techniques of crime prevention.

c. Prevention and Control of Juvenile Delinquency

Objective: To divert potential delinquents from the criminal justice system and to remove or correct those sources contributing to juvenile delinquency. To assist parents and schools in identifying the potentially delinquent and to involve him in community programs designed to prevent delinquency.

Available information indicates that a massive effort by the Navajo tribe must be undertaken to develop innovative and effective programs incorporating all community services in order to identify potential delinquents, first offenders, and to utilize all community services as referral aids.

d. Improvement of Detection and Apprehension of Criminals

Objective: To place in the hands of the Navajo tribal police the necessary quantity and quality of equipment with which to do an effective job; to encourage better cooperation with and more rapid response from county and state police agencies which may be involved in non-Indian crimes on the reservation; and to improve the communications network on the Navajo reservation and between the Navajo police and other police agencies.

e. Improvement of Prosecution and Court Activities, and Law Reform

Objective: To improve the quality of the Navajo tribal court system to a degree which would enable courts of other jurisdictions to eventually give full faith and credit to their decisions; to modernize and standardize the administrative functions of the court; to provide adequate recompense in order to attract and retain qualified judges; to develop and present meaningful training to the tribal judges, to lay prosecutors, and to court clerks; to develop and

expand the independent prosecutor's office to provide lay prosecutors and legal advisers to all trial courts on the reservation.

An intensive study should be made to determine and to recommend legislative enactments necessary to eradicate or to clarify "checkerboard" and other critical jurisdictional problems.

f. Increase in Effectiveness of Corrections and Rehabilitation (including probation and parole)

Objective: To provide probation services as an arm of the tribal court system in order to increase the effectiveness of corrections and rehabilitation programs for adults and juveniles alike; to expand, remodel, and rebuild correctional facilities as required in order to provide separate facilities for juveniles and for persons awaiting trial.

A regional-type rehabilitation facility should be provided where youth may receive evaluation, diagnosis, and treatment. This facility would provide intervention in delinquent behavior and provide necessary corrective measures through diagnosis and evaluation, with treatment prescribed as needed.

The present lack of completely adequate corrections and rehabilitation services on the Navajo reservation indicates little likelihood that adults and juveniles needing

institutional rehabilitation can be deterred from recidivism and progressive crime and delinquency.

g. Reduction of Organized Crime

There are no programs contemplated in this area as there is no indication that organized crime presently exists on the Navajo reservation.

h. Prevention and Control of Riots and Civil Disorder

Objective: To train tribal police in the causes of civil disorder, in dealing with large numbers of non-Indians and in crowd control.

The potential for large scale riots and civil disorder on the Navajo reservation is minimal. However, disorders may arise at large gatherings during tribal celebrations. Orientation and training in the use of riot control equipment should be provided to both tribal police and Bureau of Indian Affairs special officers.

i. Improvement of Community Relations

Objective: Programs within this category will be aimed at both the police and the citizens of the reservation in an attempt to increase the community involvement in law enforcement.

j. Research and Development

Objective: To establish a planning committee within and representative of all branches of the criminal justice system on the Navajo reservation; to participate in research projects on a regional basis to determine the nature of such problems as alcoholism and to develop plans and programs on the Navajo reservation for the prevention and control of such problems; to perform or engage the services of those persons qualified to perform organizational and management analyses of each division of the criminal justice system as required.

3. MULTI-YEAR BUDGET AND FINANCIAL PLAN

<u>Functional Categories</u>	<u>1971</u>	<u>1972</u>	<u>1973</u>
A. Upgrading Law Enforcement Personnel			
(1) Federal Funds	\$ 67,391.40	\$100,200.00	\$ 51,000.00
(2) Tribal Matching Funds	44,927.60	66,800.00	34,000.00
(3) State Matching Funds	-0-	-0-	-0-
TOTAL FUNDS	\$112,319.00	\$167,000.00	\$ 85,000.00
B. Prevention of Crime			
	No funds required at this time.		
C. Prevention and Control of Juvenile Delinquency			
(1) Federal Funds	\$ 18,999.00	\$ 18,999.00	\$ 18,999.00
(2) Tribal Matching Funds	12,667.00	12,667.00	12,667.00
(3) State Matching Funds	-0-	-0-	-0-
TOTAL FUNDS	\$ 31,666.00	\$ 31,666.00	\$ 31,666.00
D. Improvement of Detection and Apprehension of Criminals			
(1) Federal Funds	\$ 41,700.00	\$ 25,350.00	\$ 25,350.00
(2) Tribal Matching Funds	27,800.00	16,900.00	16,900.00
(3) State Matching Funds	-0-	5,000.00	-0-
TOTAL FUNDS	\$ 69,500.00	\$ 47,250.00	\$ 42,250.00

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<u>Functional Categories</u>	<u>1971</u>	<u>1972</u>	<u>1973</u>
E. Improvement of Prosecution and Court Activities and Law Reform			
(1) Federal Funds	\$ 20,000.00	\$ 32,500.00	\$ 45,000.00
(2) Tribal Matching Funds	5,000.00	15,000.00	25,000.00
(3) State Matching Funds	-0-	-0-	-0-
TOTAL FUNDS	\$ 25,000.00	\$ 47,500.00	\$ 70,000.00
F. Increase in Effectiveness of Corrections and Rehabilitation	Navajo Youth Rehab. Center	Construct 3 Correctional Facilities	Remodel and Expand 2 Correctional Facilities
(1) Federal Funds	\$200,000.00	\$375,000.00	\$ 50,000.00
(2) Tribal Matching Funds	200,000.00	375,000.00	50,000.00
(3) State Matching Funds	-0-	-0-	-0-
TOTAL FUNDS	\$400,000.00	\$750,000.00	\$100,000.00
G. Reduction of Organized Crime			
	No funds required at this time.		
H. Prevention and Control of Riots and Civil Disorder			
	No major equipment or funds needed at this time.		

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<u>Functional Categories</u>		<u>1971</u>	<u>1972</u>	<u>1973</u>
I. Improvement of Community Relations				
(1)	Federal Funds	\$ 3,000.00	\$ 3,000.00	No projection
(2)	Tribal Matching Funds	2,000.00	2,000.00	
(3)	State Matching Funds	-0-	-0-	-0-
TOTAL FUNDS		\$ 5,000.00	\$ 5,000.00	\$ -0-
J. Research and Development (including evaluation)				
(1)	Federal Funds	\$ 10,000.00	\$ 15,000.00	\$ 25,000.00
(2)	Tribal Matching Funds	2,000.00	5,000.00	10,000.00
(3)	State Matching Funds	-0-	-0-	-0-
TOTAL FUNDS		\$ 12,000.00	\$ 20,000.00	\$ 35,000.00

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#### 4. MULTI-YEAR FORECAST OF RESULTS AND ACCOMPLISHMENTS

##### Functional Categories

##### a. Upgrading Law Enforcement Personnel

	<u>1971</u>	<u>1972</u>	<u>1973</u>
(1)	Ten additional men will be hired as patrolmen each year, and they will be provided with basic training and specialized officer reservation training. A police legal adviser will be employed this year.	Continue program by hiring and training 10 additional men.	Employ 50 additional officers and establish a narcotics-liquor division. Continue and evaluate other programs.
(2)	Increase salaries and establish educational incentive program.	Continue and evaluate.	Continue and evaluate.
(3)	Study and evaluate present recruiting procedures and design improvements thereto.	Continue and evaluate.	Continue and evaluate.

##### b. Prevention of Crime (including public education)

(1)	To prevent and reduce crime by prohibiting opportunities for the commission of crime and by involving the general public in crime prevention through educational programs.	Continued.	Continued and evaluated.
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### Functional Categories

#### c. Prevention and Control of Juvenile Delinquency

<u>1971</u>	<u>1972</u>	<u>1973</u>
(1) Develop specialized referral units to provide prevention and protective services to pre-delinquent children and youth in order to divert these children and youth from the criminal justice system. A unit to be established at each of the Navajo Indian agencies.	Continue the establishment of referral units, thereby reducing the number of juveniles adjudicated delinquent.	Continue and evaluate.
(2) See Category E for a description of juvenile officer training program.		

#### d. Improvement of Detection and Apprehension of Criminals

(1) Purchase additional patrol vehicles for new personnel.	Continued.	Continued.
(2) Provide two police districts with access to the state LETS system.	Provide two additional police districts with access to the state LETS system.	Provide the last police district with access to the LETS system.

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### Functional Categories

#### d. Improvement of Detection and Apprehension of Criminals - contd.

<u>1971</u>	<u>1972</u>	<u>1973</u>
(3) Provide two police districts with VASCAR radar computers for traffic control.	Provide two additional police districts with VASCAR radar computers.	Provide VASCAR computer to the fifth police district.
(4)	Determine and purchase basic and specialized equipment needed for detection and apprehension of criminals for entire department.	Continue and evaluate.

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#### e. Improvement of Prosecution and Court Activities and Law Reform

(1) Send all tribal judges to National Tribal Judges Training Program sponsored by American Indian Court Judges Association.	Continuation of tribal judge training.	Continuation.
(2) Employ lay prosecutor for each of five trial courts and send to prosecutors training course at Window Rock, Arizona.	Continue lay prosecutors training and evaluate.	Continuation and evaluation.

### Functional Categories

#### e. Improvement of Prosecution and Court Activities and Law Reform - contd.

<u>1971</u>	<u>1972</u>	<u>1973</u>
(3) Begin construction of criminal justice center at Crownpoint, New Mexico.	Determine additional criminal justice center needs and begin construction.	Determine additional needs.
(4) Research courses of action to be taken to solve jurisdictional problems.	Continuation and recommend a legislative change.	Continuation and evaluation.
(5) Offer training to existing staff of juvenile court, employ three additional probation officers and one full time juvenile judge, develop audio-visual aids and other curricula for training and for public information, train volunteers to work in remote areas and to evaluate.	Employ five additional probation officers and necessary clerical personnel.	Continue and evaluate.

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### Functional Categories

#### f. Increase in Effectiveness of Correction and Rehabilitation (including probation and parole)

<u>1971</u>	<u>1972</u>	<u>1973</u>
(1) Design and begin construction of the youth rehabilitation center, stressing diagnosis and treatment as a means of rehabilitating young offenders.	Complete construction, continue and evaluate program.	Continuation and evaluation. Significant results should become apparent.
(2) Design and begin construction of three new correctional centers at Crownpoint, New Mexico, Chinle and Kayenta, Arizona, to provide for rehabilitation programs for adults and to institute adult probation services.	Continue construction and design an operation of rehabilitative programs.	Continue construction and operations and evaluation.
(3) Remodel two correctional facilities at Tuba City, Arizona, and Shiprock, New Mexico, to provide separate detention facilities for juveniles and persons in pre-trial incarceration.	Complete construction.	Continue evaluation.

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Functional Categories

g. Reduction of Organized Crime

1971

1972

1973

There appears to be no programs necessary at this time.

h. Prevention and Control of Riots and Civil Disorders

- |  |               |               |
|--|---------------|---------------|
| (1) Instruct police personnel in basic crowd control techniques. | Continuation. | Continuation. |
|--|---------------|---------------|

i. Improvement of Community Relations

- |  |                          |                          |
|--|--------------------------|--------------------------|
| (1) Provide necessary training materials and instructors to increase community participation in law and order. Group sessions and meetings oriented toward the relationship between the police and the citizens. | Continued and evaluated. | Continued and evaluated. |
|--|--------------------------|--------------------------|

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Functional Categories

j. Research and Development

1971

1972

1973

- |   |  |   |
|---|--|---|
| (1) Formulate a criminal justice planning committee composed of representatives from all criminal justice disciplines. Begin comprehensive planning involving all community services. | Continued and evaluated.                           | Continued and evaluated.                |
| (2) Initiate research project in solving jurisdictional problems existing on Navajo reservation, particularly in New Mexico.  | Recommend state and federal legislation as needed. | Continued research and recommendations. |

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Goals: To develop plans and programs designed to increase the efficiency and quality of the criminal justice system on the Navajo Indian Reservation. It is expected these plans and projects will provide improved police efficiency, provide probation services to adult and juvenile courts, initiate rehabilitation services to those incarcerated, to reduce recidivism and progressive crime and delinquency.

For each of the projects or programs presented, the degree of success and progress achieved will be determined by the support rendered by the Indian community and governmental services and agencies involved. To determine the progress of these projects or programs, systematic evaluation will be made from time to time and necessary changes made as dictated by such evaluation.

C. THE ANNUAL ACTION PROGRAM

This section details the specific action programs to be undertaken during the current year on the Navajo reservation. The following discussion and the action programs are arranged by functional categories.

1. Program Descriptions

A. Upgrading Law Enforcement Personnel

- a. Title - Police Personnel and Instructor Training
- b. Objective - To insure that each recruit participates in the 320-hour basic training course and to provide for inservice training programs for police officers stationed throughout the reservation; to instruct and provide capable and qualified instructors within the department who will provide basic and specialized training in turn; to make available to each police district specialized short courses in advanced police techniques and in police management and administration for staff officers.
- c. Implementation - Officers who are selected as potential instructors will be sent to recognized training centers where they can be developed into qualified instructors, having knowledge of teaching techniques and procedures. Following their training, these officers will return to the Navajo

police department where they will be assigned as instructors for both inservice and basic training schools at the Navajo Police Academy.

Additional programs within this section will provide for basic and advanced inservice training programs for the entire department and for the development of specialized programs in various areas of law enforcement from management and administration to criminal investigation. Most of these courses will be offered to other tribal departments in the region.

During a five-year period, training will be offered to approximately 2,000 men in both basic and inservice schools. This training will consist of approximately 3,000 hours of classroom and practical training, including an annual basic training school of 320 hours offered to 40 trainees and annual inservice training of approximately 280 hours of classroom time offered to some 360 men. The training will cover a wide range of subjects such as firearms, traffic control, criminal investigation, communications, fingerprint, first

aid, narcotics and dangerous drugs, search and rescue, techniques in prosecution, defensive driving, self defense, crowd control, and others. Length of the courses will depend on the subject and will range from two days to three weeks. Except for inservice training held at the district level, all courses will be held at the Navajo Police Academy in Window Rock, Arizona.

d. Budget

(1) LEAA Support Requested	\$50,000.00
(2) State Support	-0-
(3) Local Support	32,000.00
(4) Other Support	-0-
(5) Program Total	\$82,000.00
(6) Applicable Federal/Local Contribution Ratio:	
60% Federal	40% Local
(7) Prior Funding	\$44,730.00
(8) Past Progress - In 1970, LEAA funded the Navajo tribe in the amount of \$44,730 for off-reservation training in specialized fields. This program has just begun and has not yet been evaluated.	

Upgrading Law Enforcement Personnel

- a. Title - Police Legal Adviser
- b. Objective - To employ a qualified attorney to consult with the Navajo police department and to advise the department on enforcement problems relating to all areas of the criminal justice system.
- c. Implementation - Although the present legal adviser to the Navajo prosecutor's office has been attempting to lend legal assistance to the police department, his work load is such that it is impossible to do both jobs. An attorney will be employed to work solely with the police department in areas of training and to act as liaison between the department, the prosecutor's office, and the courts. He will assist in law enforcement planning and implementation and will be on call 24 hours a day to advise and consult with police officers needing legal aid. This attorney will require a secretary, office supplies and equipment, travel expenses, postage, communications, and other necessary items.

d. Budget

(1) LEAA Support Requested	\$11,540.00
(2) State Support	-0-
(3) Tribal Support	15,779.00
(4) Other Support	-0-
(5) Program Total	\$27,319.00
(6) Applicable Federal/Tribal Contribution Ratio:	
60% Federal	40% Tribal
(7) Prior Funding - None	

Upgrading Law Enforcement Personnel

- a. Title - Recruiting and Retaining Qualified Police Personnel
- b. Objective - To build the Navajo tribal police to acceptable citizen-police ratios with qualified and well trained Indian policemen.
- c. Implementation - It is estimated that the tribal police department is presently understaffed by at least 50 patrolmen due to the ever-growing population and ever-increasing work load. Recruiting methods will be studied and improved, recruiting will be aimed at more educated job candidates and an improved training program will insure the best qualified police officers are hired and retained to serve the Navajo reservation.

It is anticipated that 10 additional men will be hired during the first year and each of the succeeding four years; that more training will be offered the new men in addition to the present employees; that pay incentives will be provided for education and training.

d. Budget

- |   |             |
|---|-------------|
| (1) LEAA Support Requested                        | \$51,000.00 |
| (2) State Support                                 | -0-         |
| (3) Tribal Support                                | 34,000.00   |
| (4) Other Support                                 | -0-         |
| (5) Program Total                                 | \$85,000.00 |
| (6) Applicable Federal/Tribal Contribution Ratio: |             |
| 60% Federal                                       | 40% Tribal  |
| (7) Prior Funding - None                          |             |



C. Prevention and Control of Juvenile Delinquency

- a. Title - Pre-Delinquent Referral Unit
- b. Objective - To improve prevention and control of juvenile delinquency by developing innovative programs and coordinating all branches of community services in order to divert potential delinquents from the juvenile justice system. To improve programs already in existence by establishing a pre-delinquent referral unit at each agency headquarters.
- c. Implementation - Because of a lack of coordinated community resources, courts commonly handle many family and youth problems which could be more effectively handled in the community on a voluntary basis, particularly first offenders. Police should make more use of existing community services as referral agencies. Specialized prevention-protective programs should be advanced to meet the income, treatment, education, and vocational training needs to families of children diverted from or referred by the juvenile courts.

Communications should be improved between

the courts, police, schools, and community services programs to eliminate unnecessary court intervention in the lives of children. Courts, police, schools, and other sources which turn up cases involving first offenders or the very young should be urged to make the fullest possible use of existing community services as referral aids for those families who cannot handle their problems without help. The program to be developed would employ the service of a pre-delinquency referral unit comprised of persons skilled in treatment of deviant behavior problems.

It is anticipated that first-year goals would consist of establishing programs in the schools with Bureau of Indian Affairs branches of community services, probation services, juvenile courts, and police as participants.

d. Budget

(1) LEAA Support Requested	\$18,999.00
(2) State Support	-0-
(3) Tribal Support	12,667.00
(4) Other Support	-0-
(5) Program Total	\$31,666.00
(6) Applicable Federal/Tribal Contribution Ratio:	
60% Federal	40% Tribal
(7) Prior Funding - None	

D. Improvement of Detection and Apprehension of Criminals

- a. Title - Improvement of Police Equipment and Communications
- b. Objective - To increase the detection and apprehension of violators of federal, state, and tribal laws throughout the reservation; to provide improved modern equipment and communications to all five police districts on the reservation; to provide a rapid and reliable interagency communications network which would provide the ability for each district to communicate immediately when needed; to provide each district with facilities and equipment for state communication with the Law Enforcement Teletype System (LETS); to provide equipment and facilities necessary for access to the Arizona Criminal Justice Information System (ACJIS).
- c. Implementation - Requests will be made for funds with which to purchase additional modern equipment to replace obsolete, unreliable, and worn-out equipment such as VASCAR, breath analyzers, and investigation and detection

equipment. Equipment will be purchased to furnish the additional officers to be employed by the Navajo tribal police.

Presently, each of the Navajo police districts operates on its own radio frequency and only the base stations have communications with each other. Obviously, this necessitates one officer who may be working in close proximity to another officer in an adjacent district relaying his message through two base stations. The impracticality of such a system and the danger thereof in emergencies can readily be seen. Two channel radios for each vehicle are necessary, one operating on a common frequency with all others. Once the system is designed, it is anticipated that four districts would complete the transition during the first two years and the last district completing the project during the third year.

d. Budget

(1) LEAA Support Requested	\$101,400.00
(2) State Support	5,000.00
(3) Tribal Support	62,600.00
(4) Other Support	-0-
(5) Program Total	\$169,000.00
(6) Applicable Federal/Tribal Contribution Ratio:	
60% Federal	40% Tribal
(7) Prior Funding - None	

- a. Title - Construction and Expansion of Police Facilities
- b. Objective - To expand and remodel present facilities to provide additional office space and record space in conjunction with programs designed to improve correctional and court facilities.
- c. Implementation - It is anticipated that criminal justice centers will be designed for long range construction at several points throughout the Navajo reservation. These centers would provide modern, attractive, and efficient space which not only improve the image of the criminal justice system in the eyes of the Navajo people and improve the morale and working efficiency of those persons dedicated to the criminal justice function, but would provide a tool upon which to base future, far-reaching, and innovative programs designed to ultimately reduce the numbers of persons entering and re-entering the criminal justice system as offenders.

There is a great need for improving housing facilities at substations in isolated areas. Retention of police personnel will be improved through improvement of these facilities.

The Navajo police provide, as a part of their duties, ambulance and morgue services. It is anticipated that a minimal morgue of four trays will be constructed at each police district in order to facilitate this service.

It is anticipated that the first construction of a criminal justice center will be at Crownpoint, New Mexico, in the eastern Navajo nation.

The first year will see design and construction begin on ten of the 30 living facilities needed at 43 substations. It is anticipated that construction will be nearly completed at the end of a five-year program.

d. Budget

- |   |              |
|---|--------------|
| (1) LEAA Support Requested                        | \$325,000.00 |
| (2) State Support                                 | -0-          |
| (3) Tribal Support                                | 325,000.00   |
| (4) Other Support                                 | -0-          |
| (5) Program Total                                 | \$650,000.00 |
| (6) Applicable Federal/Tribal Contribution Ratio: |              |
| 50% Federal                                       | 50% Tribal   |
| (7) Prior Funding - None                          |              |

F. Increase Effectiveness of Corrections and Rehabilitation

- a. Title - Construction of Correction Facilities
- b. Objective - To improve the effectiveness of corrections by development of three small model correctional facilities, providing flexible community oriented special treatment and rehabilitation as an alternative to incarceration. These three facilities would be located at Crownpoint, New Mexico, Chinle and Kayenta, Arizona, and will be operated to the greatest extent possible with rehabilitation as a joint responsibility of the Navajo tribe and all community service activities, resources, and agencies.
- c. Implementation - It is anticipated that a joint planning activity will be initiated by the Navajo tribe encompassing all community resources having responsibility for and being involved in the juvenile justice system. Physical facilities and program activities will be designed to reduce pre-trial incarceration, eliminate trial delay, provide faster flow through the justice system, and reduce recidivism to a marked degree.

d. Budget

(1) LEAA Support Requested	\$375,000.00
(2) State Support	-0-
(3) Tribal Support	375,000.00
(4) Other Support	-0-
(5) Program Total	\$750,000.00
(6) Applicable Federal/Tribal Contribution Ratio:	

50% Federal      50% Tribal

(7) Prior Funding - None

F. Increase Effectiveness of Corrections and Rehabilitation

a. Title - Expansion of Correctional Facilities

b. Objective - To increase effectiveness of corrections by expanding facilities to provide ample space for implementation of rehabilitative programs for both adults and juveniles; to provide separate facilities for juveniles and adults in pre-trial incarceration.

c. Implementation - It is anticipated that design and construction of expanded facilities at Shiprock, New Mexico, and Tuba City, Arizona, will be implemented during the coming two years.

d. Budget

(1) LEAA Support Requested	\$50,000.00
(2) State Support	-0-
(3) Tribal Support	50,000.00
(4) Other Support	-0-
(5) Program Total	\$100,000.00
(6) Applicable Federal/Tribal Contribution Ratio:	

50% Federal      50% Tribal

(7) Prior Funding - None

F. Increase Effectiveness of Corrections and Rehabilitation

- a. Title - Construction of Youth Rehabilitation Centers
- b. Objective - To provide Indian youth with a suitable rehabilitation program through the development of a regional youth rehabilitation center to accommodate delinquent Indian youth from the Navajo reservation. This facility would provide services for Indian youth in need of temporary care in a controlled environment.
- c. Implementation - The center would function with evaluation, diagnosis, and treatment as contributors to rehabilitation. The operation of the center will provide the first step in the re-direction of youth involved with Indian courts. Program emphasis will be on helping delinquent youth on a non-punitive basis. The program will be directed toward providing intervention in delinquent behavior through diagnosis, evaluation, and treatment, followed by release for probation services.

It is anticipated that the center will have a capacity for 20 males and 10 females on a 24-hour basis and will provide outdoor recreation areas, study hall, dining areas, examining rooms for physical and medical examinations, counseling rooms, and day rooms.

The rehabilitative programs at the center will be directly linked to the juvenile courts through its juvenile officers, Bureau of Indian Affairs family service programs and other community service activities and will constructively offer alternatives to progressive delinquency.

The center will operate with assistance from the Bureau of Indian Affairs social services and the U. S. Public Health Service (Division of Indian Health), the tribal government, and the judicial system.

d. Budget

- |   |              |
|---|--------------|
| (1) LEAA Support Requested                        | \$200,000.00 |
| (2) State Support                                 | -0-          |
| (3) Tribal Support                                | 200,000.00   |
| (4) Other Support                                 | -0-          |
| (5) Program Total                                 | \$400,000.00 |
| (6) Applicable Federal/Tribal Contribution Ratio: |              |
| 50% Federal                                       | 50% Tribal   |
| (7) Prior Funding - None                          |              |

I. Improvement of Community Relations

a. Title - Public Education and Community

Involvement Program

b. Objective - To provide the public with additional knowledge of laws and criminal justice procedures and to improve cooperation and existing relationships between the police and the public.

c. Implementation - It is anticipated that all divisions of the Navajo criminal justice system will participate in providing information at chapter meetings and community gatherings as well as public school classrooms with information and instruction concerning the Navajo criminal justice system. Assistance will be required in printed materials and visual aids.



d. Budget

(1) LEAA Support Requested	\$ 6,000.00
(2) State Support	-0-
(3) Tribal Support	4,000.00
(4) Other Support	-0-
(5) Program Total	\$10,000.00
(6) Applicable Federal/Tribal Contribution Ratio:	

60% Federal	40% Tribal
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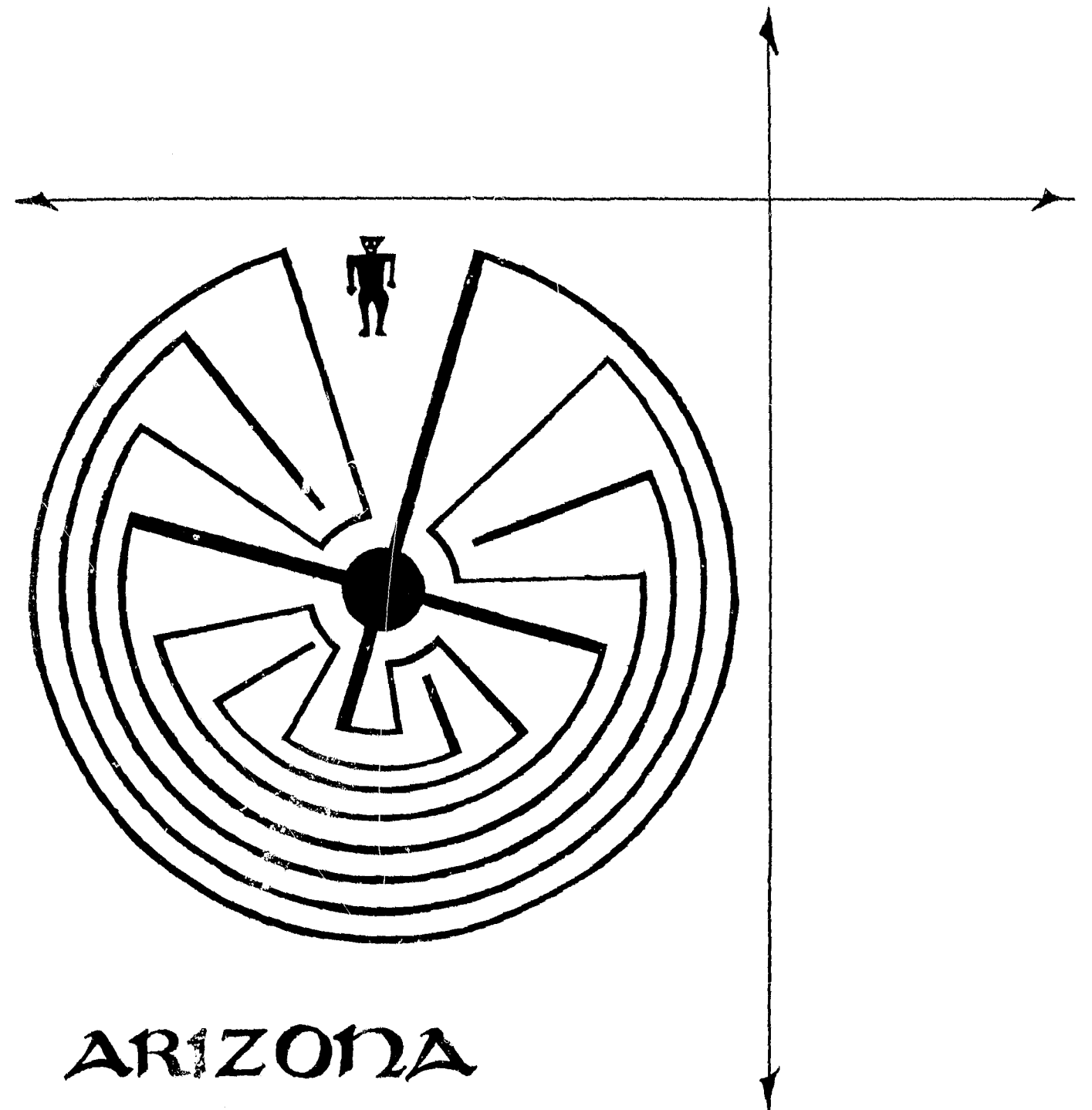
(7) Prior Funding - None

Prior Funding Requested

The Navajo tribe has previously made application for the following projects in the amounts indicated to the Law Enforcement Assistance Administration. To date, some of these projects have been funded and others are in the process of being examined by LEAA for discretionary funding. The projects which have been funded are too new to be evaluated at the present time.

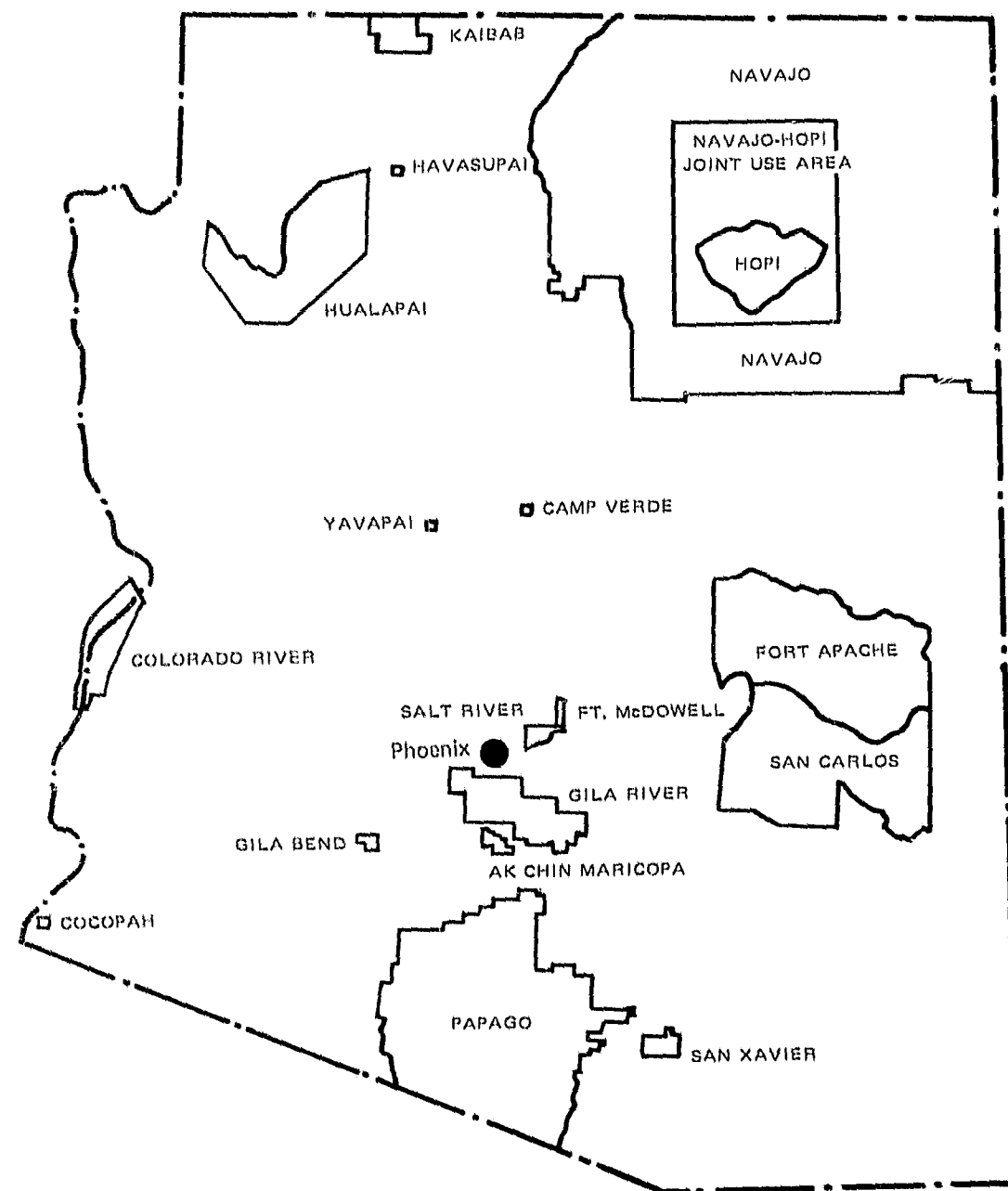
<u>TITLE</u>	<u>LEAA SUPPORT SOUGHT</u>
Comprehensive Navajo Nation Juvenile Officer Training Program	\$ 82,390.00
Navajo Prosecutor Training Project	32,604.00
Basic Recruit Training	22,559.50
Police Legal Adviser	11,540.00
Off-Reservation Specialized Police Training	44,730.00

The Navajo tribe has also made application to the State of Arizona Justice Planning Agency for a project entitled, "Navajo Justice Planning Project", seeking \$7,435.00 in funding.



ARIZONA

INDIAN JUSTICE PLANNING PROJECT



**CONTINUED**

**3 OF 6**

## ARIZONA

The state plan for Indian law enforcement for Arizona as presented here is largely a composite of the eighteen tribal plans which follow and of the Navajo plan set forth previously in this study. It is not intended as a complete summary of those tribal plans but is intended to present an overview to be utilized by the state in drafting its 1971 plan. There is no Administrative Component to this plan as that requirement is covered elsewhere in the state-wide plan.

One of the justifications for funding this special planning effort is the uniqueness of Indian priorities—from non-Indian communities and from reservation to reservation. For this reason, no attempt is made to establish statewide Indian priorities as such, but rather to present program descriptions of general need under the functional categories suggested by LEAA.

Of the twenty-one Indian reservations located in Arizona, two (Chemehuevi and Fort Yuma) have their tribal headquarters located in the State of California and are not included in this plan or in the tribal plans which follow. The Navajo reservation is administered by the

Navajo area office of the Bureau of Indian Affairs in Window Rock, Arizona, and the balance of the reservations are administered by the Phoenix area office in Phoenix.

A. EXISTING LAW ENFORCEMENT SYSTEMS AND AVAILABLE RESOURCES

Thirteen of the Arizona reservations perform law enforcement functions, eight of which are assisted by the Bureau of Indian Affairs and five operate tribal agencies independently of the Bureau of Indian Affairs.

Operating under the Phoenix area office is an area special officer, an assistant special officer, and seven agency special officers located at seven Indian agencies in Arizona.

The Navajo area office employs an area special officer, an assistant area special officer, and five agency special officers, three of which are located in Arizona.

On those reservations where law enforcement is provided by the Bureau of Indian Affairs, the police department is administered and managed by the agency special officer. In addition to his other duties of investigating federal crimes, training police and, in some instances, handling juvenile delinquency and probation. Those reservations are Hopi, Fort Apache, San Carlos, Fort McDowell, Gila River, Papago, Havasupai, and Kaibab. The departments

range in size from one-man departments at Havasupai and Kaibab to seventeen men at Gila River. Equipment and supplies for these departments are furnished by BIA and GSA.

In some instances, the agency special officer serves more than one reservation; i.e., the Colorado River Agency serves Cocopah, Quechan (Fort Yuma), and Fort Mohave; the Hualapai Agency serves the Havasupai reservation, the Yavapai-Prescott Indian community and the Camp Verde reservation; and the Hopi Agency also serves the Kaibab reservation.

The Navajo, Hualapai, Colorado River, Salt River, and Ak-Chin-Maricopa reservations operate their own tribal police departments independently of the BIA, except for technical assistance, training and suggestive improvement programs. The principal function of the agency special officer on these reservations is the investigation of federal crimes committed on the reservation.

There is great variation in the size of tribal police departments as there is in size of reservations. The Navajo reservation, in addition to vast acreages in New Mexico and Utah, covers nearly all of northeastern Arizona. It employs 205 people of which 116 are sworn officers serving in Arizona. It operates five district stations of which

three are in Arizona and forty-three sub-stations of which twenty-six are in Arizona. It maintains a fleet of 104 vehicles (panel trucks and sedans).

The Salt River Indian Community has a chief, one captain, one sergeant, and six patrolmen and maintains five vehicles, one of which is a worn-out jeep and the other four being sedans obtained from the Arizona Highway Patrol auction. The men are fully uniformed. The Colorado River, Hualapai, and Ak-Chin-Maricopa are smaller departments ranging from one and two tribal officers at Maricopa-Ak-Chin and Hualapai respectively to five men at Colorado River. They are semi-uniformed and maintain one to three vehicles.

Salaries for both tribal officers and BIA Indian policemen range from \$3,000 to \$15,000 annually.

Three reservations are too small and lack sufficient funds with which to employ a police department and have contracted with the local sheriff's office for police protection and jail services. Cocopah utilizes the Yuma County Sheriff's office while Yavapai-Prescott and Camp Verde utilize the Yavapai County Sheriff's office and county jail.

Cooperative arrangements between tribes and the Arizona Highway Patrol and with county sheriffs are generally good. The state and county patrol state and county rights-of-way across the reservations and investigate most accidents occurring thereon with the assistance of tribal police. Cross commissioning is quite common (with the exception of Maricopa County). Both the Highway Patrol and the sheriffs' offices provide training, programs, and lend technical assistance upon request. Working relationships between the BIA, Indian departments, sheriffs' offices, and the Highway Patrol are generally very excellent.

U. S. Customs Agents and immigration officers (Border Patrol) work closely with Indian officers on reservations located along the United States-Mexico border and in Indian communities where aliens might find jobs after illegally entering the country. This is particularly true of agriculturally developed reservations such as the Colorado River, Salt River, Gila River, Ak-Chin-Maricopa, and Papago. The Papago Indian police agency assists the U. S. Border Patrol in patrolling approximately 75 miles of international border located on that reservation. As there are only nine Indian police officers servicing that vast reservation and two border patrolmen for that area, much

of the fenceline goes unprotected.

FBI agents are available as instructors for training tribal police, they lend technical assistance when requested, and, in conjunction with tribal police and BIA officers, investigate the fourteen major crimes on Indian reservations where Indian people are involved.

Tribal jails are located at Fort Apache, Gila River, Hopi, Hualapai, Papago, Salt River, San Carlos, Ak-Chin-Maricopa, and three on the Navajo reservation. Arrangements are made to house prisoners in off-reservation jails at Parker, Yuma, and Prescott. Charges are made for housing prisoners and the Bureau of Indian Affairs usually absorbs all or a portion of that cost.

The tribal jails are under the jurisdiction of the tribes and do not meet the minimum standards for detention as contained in the "Manual of Correctional Standards" published by the American Correctional Association.

The State of Arizona does not provide probation services for its Indian reservations. Probation services are available on the Navajo reservation but only for juvenile offenders. An adult probation officer is employed by the Navajo tribe to provide probation services for state and federal offenders returning to the reservation.

While federal youth rehabilitation facilities are available in California and Colorado, there are presently no juvenile detention facilities provided by the State of Arizona for youth from Indian reservations unless such youth run afoul of state law off the reservation. The survey of the Indian Justice Planning Project indicates that most Arizona counties have juvenile detention facilities and that five youth rehabilitation facilities are maintained by the State of Arizona. However, none of these facilities are available to tribal courts.

Each reservation maintains a tribal court and there are several trial courts located on the Navajo reservation as described in the Navajo plan.

Indian police, courts and corrections are more completely described in Chapter VII of Part I of this study, and the reader's attention is invited to that chapter and to the individual tribal plans for additional information concerning existing law enforcement systems and available resources.

B. THE MULTI-YEAR PLAN

1. Needs and Problems

This is the first comprehensive state plan for Indians developed by the Indian Justice Planning Project. To develop a meaningful plan, incorporating reliable data and knowledgeable opinions of Indian leaders and those active in Indian affairs, it was necessary for the project to survey each Indian reservation in the states of Arizona, Colorado, New Mexico, and Utah (46) to determine the needs and problems in each of the functional categories. The survey took place over a six-month period and was accomplished by specialists in the criminal justice fields of police, courts, and corrections. This plan is the initial step in designing and implementing a long-range action program to achieve significant and lasting improvements in the criminal justice system on Indian reservations and to assist the Indian tribes in overcoming problems which are unique to Indian reservations in all areas of law enforcement functions.

Common problems such as multiple jurisdiction where land ownership may be in federal, state, county, tribal or private hands, the lack of adequate communication facilities; isolation and long distances between homes, schools,

population centers, and health services; and the lack of adequate all-weather roads, are all contributing factors to crime and delinquency. Added to these are the socio-economic problems such as unemployment and under-employment resulting in substandard family income and lack of family stability. The lack of formal training exists in all areas of the criminal justice system and should be upgraded to equal that of other agencies.

Juvenile Delinquency and Adult Crime: The delinquent children and youth on Indian reservations are unable to cope with the problems and frustrations of the real world in which apathy, prejudices and discrimination present obstacles to the processes leading to community integration. Caught in a seemingly hopeless and helpless situation in which a reservation sub-culture is in conflict with the culture of the dominant society; residing on a reservation where the disintegration of the Indian culture has left a cultural void filled with family disorganization, broken homes, poverty, alcoholism, and child neglect, and required to exist in a world full of dependency, they have refused to accept the norms and mores of the dominant society. These and other factors contribute to a deep sense of inadequacy, hostility, and disrespect for law and order.



Evidence presented by available statistics suggests the extent of the social breakdown and the demoralization of both of the juvenile and adult populations. There is strong evidence to indicate a competitive atmosphere among juveniles to become the most delinquent. Apprehension and incarceration is a status symbol. The youth who can create the most havoc or commit the most severe crime is oftentimes not looked upon with disfavor, but is upheld by his peers and excused by his parents and other adults.

Persons interviewed, including tribal leaders, law enforcement personnel, social workers and others, expressed opinions that most crime and delinquency on Indian reservations is related to the use of alcohol by the law violator. A complaint voiced by some law enforcement personnel, particularly Navajo, was their inability to obtain successful prosecution of bootleggers who sell liquor to anyone, regardless of age.

It has often been said that "offenders are not born criminals, but they are a mirror of their environment", basically their home and community. Being a criminal is a social role, not just a personal feeling. Before the offender can change, there must be some alteration in the social structure within the community of which he is a part.

For offenders to struggle with and do something about their own behavior, people and institutions in the community must also be altered.

The widespread family instability on many Indian reservations is evidenced by high rates of arrests, divorce, desertion, chronic misuse of alcohol and inadequate job opportunities. There does not appear to be a convenient centrally organized community service system. Intensive casework services are inadequate or non-existent.

Both adult and juvenile crime rates are significantly above the national average. Emphasis on prevention is lacking. There is, in most instances, a far-too-limited rehabilitative staff to deal with repeat offenders. There are no juvenile probation officers. Alcoholism is a generally accepted major problem and a number of related family problems are directly related to alcoholism. Unfortunately, there is no aggressive ongoing program for prevention and control of alcoholism on most reservations at the present time.

In general, to overcome the problems outlined above there is a need for a massive social welfare effort to overcome these many social problems. A comprehensive program for prevention of youth and adult crime must be developed. A rehabilitation plan must be inaugurated

utilizing all branches of Bureau of Indian Affairs community services. A centrally located youth rehabilitation center should be provided. A detoxification unit should be established at each Bureau of Indian Affairs agency by the USPHS Division of Indian Health and the National Institute of Mental Health.

Both male and female parole and probation officers are needed at each BIA agency and there must be an increase in the effectiveness of corrections and rehabilitation through improvement of jail and detention facilities.

Police Manpower, Equipment, and Facilities: Indian police are generally undermanned, undertrained, underpaid, and underequipped with obsolete equipment, operating in and out of a physical plant which does little to enhance the policemen's morale, efficiency, or the respect of the public.

Ordinarily, the standards of selection for tribal policemen are quite low. No educational requirements are made and no mental, aptitude, or physical testing is given. Background checks are oftentimes dispensed with and it is not unusual to find members of a tribal police department who are not unfamiliar with the wrong side of the cell door.

Training the new recruit is usually limited to riding with an older officer for a few days at most with the attendant problem of picking up poor police habits from another untrained officer. Although training is available without cost at the Roswell Police Academy, many tribes can ill afford the policeman's salary during the ten-week course or the loss of even one man from an already too small department.

Even those officers who possess a formal education and who are fortunate enough to receive additional training present a problem to a tribe which cannot afford to pay a salary commensurate with the officer's qualifications. A trained policeman soon discovers more attractive pay scales in other departments.

BIA Special Officers usually attempt some sort of in-service training program. Interviews with some tribal policemen indicate that on some reservations this training is not very consistent and not too helpful.

Larger, off-reservation departments oftentimes extend invitations to tribal departments to attend workshops and training sessions, but the invitation too often goes unaccepted.

Lack of tribal funds is also felt and is readily apparent in the lack of police equipment. Although some departments are well uniformed, many tribal police are either poorly uniformed or wear no uniforms at all. Most firearms are unsafe and outmoded. One department passes its side arm and leather from shift to shift. Vehicles, usually panel trucks or sedans, are frequently obtained from GSA surplus and, rather than passing a savings to the tribe, pass an unreasonable burden in the cost of upkeep and repairs.

Most reservations encompass vast areas and many, many miles of unbelievably poor roads and trails. The effect of police patrol and service over this type of terrain upon vehicles is obvious. New, special purpose equipment is needed by all departments. Because of the isolation of many Indian reservations it is difficult to obtain emergency aid from county and municipal sources, thus search and rescue equipment is a need on some Indian reservations.

Communications is of vital importance to any police department, particularly to Indian reservations where it could be many miles to headquarters or to a substation. One tribal police department (Hualapai) is operating

entirely without a radio either in its vehicle or at the station. They depend entirely on the telephone and upon personal contacts.

Although the benefit to both tribes and state is obvious, communication with state and county agencies is seldom practiced by tribal departments. Radio communications between reservations is also a seldom thing. Contact is usually done by telephone. Although the Hopi reservation lies within the boundary of the Navajo reservation, in order for the Hopi department to contact Navajo headquarters in Window Rock, it is necessary for Keam's Canyon (Hopi) to call the Flagstaff sheriff's office, who then call the Navajo District Station at Tuba City, which in turn calls Navajo headquarters at Window Rock. Direct radio communication between closely related reservations would be of great benefit to all parties concerned.

The limited radio facilities currently utilized on Indian reservations in Arizona is outmoded and in a constant state of disrepair.

Tribal police records should be standardized and space provided for their keeping. The Bureau of Indian Affairs is currently attempting to standardize and update its reporting procedures. Collection, identification,

evaluation, and preservation of evidence is in great need of improvement.

There is a universal need for new police facilities. Old, crowded, poorly lighted and unattractive buildings not only impair operating efficiency, but tend to erode public respect for the police.

The need for additional manpower, training, and equipment is not only sorely felt at the present time but will become alarmingly pressing in the near future. The Colorado River reservation contains 225,996 acres and each year attracts thousands of people to the many resorts and marinas along the river. The reservation is populated throughout with both Indians and non-Indians, yet the department operates with only four patrolmen and one chief of police.

The Papago Indian reservation contains 2,773,596 acres with 75 miles of international boundry. It contains over 100 settlements and villages. All this with just five patrolmen and two supervisory officers.

Community relations between the police and reservation residents is a relatively new concept on most reservations. Police are frequently looked upon as merely "drunk chasers" and are not relied upon, in many instances, for the investigation of serious offenses. Many assaults, rapes, and thefts go unreported to the police.

Correctional Services and Facilities: The Navajo tribe employs three juvenile probation officers in Arizona and utilizes its tribal probation and parole officer to some extent in Arizona for the purpose of supervising those convicted of state or federal crimes. Such services are generally unavailable to all of Arizona's Indian population.

State correctional institutions and services are unavailable to tribes and to Indians individually unless convicted of state law. Even then, state probation and parole services are difficult if not ineffectual because of isolated reservations and language difficulties.

Until permissive state legislation can be enacted, with a commensurate increase in budget, or until the budget of the Bureau of Indian Affairs can be increased to so provide, Arizona's Indian population will continue to be deprived of even the most rudimentary assistance in the rehabilitative processes.

The percentage of children on reservations far exceeds the national average. Indian people are oriented toward their children as a whole and are deeply concerned with widespread alcohol abuse and glue and paint sniffing which, on some reservations, begins at preschool age. Yet, training in the handling of children by the police is almost non-existent. The need for public education in the

uses and abuses of alcohol and dangerous substances goes largely unheeded. Massive, well-organized, and continuing educational programs should be instituted for both parents and students of all grades. At least one officer with each tribal police department should be well trained and well paid as a juvenile officer.

Tribal jails on Indian reservations in Arizona were surveyed by the Indian Justice Planning Project. None of the jails would meet the minimum standards for detention as contained in the "Manual of Correctional Standards" published by the American Correctional Association and as prescribed in "New Roles for Jails" published by the U. S. Bureau of Prisons. None of these facilities could meet the recommendations contained in the "Report by the President's Commission on Law Enforcement and Administration of Justice". Most of the facilities should discontinue housing prisoners until improvements can be made.

Old, unsanitary buildings, poorly qualified and constantly changing personnel, intermingling of all types of prisoners—sick and well, old and young, hard core criminals and misdemeanants with petty offenders in overcrowded cells and tanks—the complete absence of any sort of rehabilitative program, and the failure of most jails to provide adequate

supervision and services of a matron or a jailer at night are but a few of the more glaring deficiencies noted. One reservation has no jailer and utilizes trustys as a jailer and houses its occasional female prisoners in a storeroom without any supervision.

Modern, up-to-date physical plants, housing dormitory-like quarters, recreational space, kitchen and dining rooms, classroom space, counseling offices, small but dignified courtroom settings and space for judges chambers, jury room and court administrative functions, police headquarters, radio, records and evidence facilities, provisions for work-release or similar programs, together with proper outdoor areas for recreation and police training; this is what is totally lacking, and this is what is critically needed for gaining respect for the system; for providing the basic tool with which to build modern, far-reaching and innovative programs; for providing basic humane treatment; and finally, to permit the system as it exists today to perform its most rudimentary tasks with some degree of efficiency and effectiveness.

The Tribal Judiciary: As tribal courts, codes and prosecutory process was discussed at some length in Chapter VII of this study, the subject will be treated briefly in this section of the plan.

Although some tribes have written constitutions and criminal codes, not all do and some rely on time-honored custom and tradition for social control. Few tribes have any semblance of a juvenile code. All tribes are in need of modernizing, implementing, and educating both law enforcement personnel and the public in the matter of codes.

A great need exists to resolve the manifold jurisdictional problems which exist upon Indian reservations.

State legislation is needed to recognize tribal governments, courts, and police and to extend state services to its Indian population.

All tribal judges recognize their need for training in the judicial processes. Basic education in procedures, terminology, and the rights of the accused should be provided to tribal judges without delay.

A system of precedent, based upon written decisions and written codes should be striven for in order that both judges and accused may be assured of some consistency in the application of justice.

Record keeping of dockets and fines should be improved and all tribal judges should have available to them the services of a well trained clerk.

If better pay were made available to tribal judges, accommodations in governmental structure might be made to provide for more tenure.

## 2. General Statement of Priorities and Improvement Programs

This plan is designed to increase the efficiency and quality of criminal justice on Indian reservations by development of programs which will define the kind of criminal justice system deemed "ideal", yet attainable in terms of upgrading law enforcement, improvement of prosecution, court activities and law reform, and to increase the effectiveness of corrections and rehabilitative services.

Following is a discussion by functional category of objectives sought, the direction, scope, and types of improvement programs planned over the multi-year period.

### a. Upgrading Law Enforcement Personnel

Objective: The objective of all programs within this category is to insure that the best qualified Indian people will be attracted to all categories of law enforcement jobs on the reservation. To provide them with the best possible training to insure competency and to provide sufficient incentives to reduce the turnover rate and attain better retention of these qualified people.

b. Prevention of Crime (including public education)

Objective: It is anticipated that tribal governments, assisted by the Bureau of Indian Affairs, will place additional emphasis on developing an improved data base, thereby providing more accurate information defining the extent of the crime and delinquency problem.

Schools should place more emphasis on programs designed to develop an understanding of law enforcement systems through public education programs.

Public education programs should be designed and presented in order to reduce the abuse of alcohol and other dangerous substances, particularly among youth.

c. Prevention and Control of Juvenile Delinquency

Objective: To divert potential delinquents from the criminal justice system and to remove or correct those sources contributing to juvenile delinquency. To assist parents and schools in identifying the potential delinquent and to involve him in community programs designed to prevent delinquency.

This is probably the most significant of functional categories for Indian reservations. In recent years, youth under eighteen years of age have increased in tremendous numbers. As an example, on the Navajo reservation fifty-

three percent of the entire population is under eighteen years of age. In 1969, 871 juveniles were detained in adult jails and approximately 5,000 were apprehended by police. This does not reflect the number of violators apprehended off the reservation. Tribal leaders, police officers, and others on the reservations in Arizona have stated that juvenile crime and adult alcoholism are of great concern to the people on the reservation.

The information provided indicates that a massive effort by the Indian tribes in Arizona must be undertaken to develop innovative and effective programs, coordinating all community resources and designed to divert potential delinquents from the criminal justice system.

Coordinated community resources could more effectively handle family and youth problems within the community on a voluntary basis.

Communications must be improved between the courts, police, schools, and community service agencies to identify the potential delinquent and eliminate or delay unnecessary court intervention in the lives of children.

Courts, police, schools, or other sources which discover cases involving first offenders or the very young, should be urged to make the fullest possible use of existing community services as referral aids, to assist families

with potentially delinquent children.

As many Indian youth attend boarding school away from the reservation, the more isolated reservations should develop meaningful recreation programs, particularly during the summer months.

d. Improvement of Detection and Apprehension of Criminals

Objective: To place in the hands of the Indian police the necessary quantity and quality of equipment with which to do an effective job; to match the upgrading of police personnel in order that maximum utilization may be made of police services.

Communications appears to be of greatest need on Indian reservations throughout the state. Replacement and modernization of present communication systems and equipment now in use is sorely needed. Common problems of high maintenance cost, limited operating range, lack of sufficient radio units and the inadequacy of inter-agency communication, particularly during emergencies, point up this critical need.

A Highway Patrol base station should be located on all Indian reservations, particularly where major highways are located.

Although "shopping lists" should be avoided in the planning process, a well considered shopping list should be filled for each tribal police department.

e. Improvement of Prosecution and Court Activities, and Law Reform

Objective: To improve the quality of tribal courts to a degree which would enable courts of other jurisdictions to give full faith and credit to their decisions; to modernize and standardize the administrative functions of tribal courts; to establish tenure and adequate recompense in order to attract and retain qualified judges; to develop and present meaningful training to tribal judges, lay prosecutors, and to court clerks.

Each tribe should strive toward a modern criminal code and the enactment of a juvenile code. Probation services should be made available and established as an arm of each tribal court.

Courts, the foundation of any criminal justice system, have on Indian reservations been too long the step children in the eyes of the purse-string bureaucrat. Consequently, a concentrated effort must be made to provide each tribal court with a basic but dignified court setting, with adequate and well-trained personnel, and with a public education program aimed at restoring respect in the people for their judiciary.

Legislative and administrative enactments are urgently needed to eradicate or to clarify "checkerboard" and other critical jurisdictional problems.



A system of balanced prosecution and defense should be instituted to relieve the court and the police of this burden and to help assure the process of justice.

f. Increase in Effectiveness of Corrections and Rehabilitation (including probation and parole)

Objective: To improve both adult and juvenile rehabilitative services, including correctional facilities, and detoxification centers for adults and diagnostic and treatment centers for juveniles.

The lack of adequate corrections and rehabilitative services on Indian reservations in Arizona, and the lack of such services off the reservations indicates little likelihood that adults and juveniles needing institutional rehabilitation can be deterred from recidivism and progressive crime and delinquency.

To increase the effectiveness of corrections and rehabilitation, juveniles and adults must be provided with probation and parole services. Correctional facilities (jails) must be provided with separate facilities for juveniles, adults, and persons in pre-trial incarceration.

Regional-type facilities should be provided where youth may receive evaluation, diagnosis, and treatment. This type facility would provide intervention in delinquent

behavior and provide corrective measures through diagnosis, evaluation, and recommendations to community service agencies on the reservation.

g. Reduction of Organized Crime

Objective: There is no indication that organized crime does exist, and is not likely to exist so long as there are no resources on Indian reservations to attract organized crime.

Resort areas on some reservations, i. e., Fort Apache and Colorado River, are on the threshold of tremendous expansion and could, in the future, provide an attraction to some elements of organized crime.

h. Prevention and Control of Civil Disorder

Objective: To train tribal police in the causes of civil disorder, in dealing with large numbers of non-Indians on the reservation and in crowd control.

The probability and potential for large scale riots and civil disorders on Indian reservations is minimal to non-existent. There is, however, some possibility of disorders which could arise at large gatherings and Indian celebrations which attract thousands of people each year. This past Easter vacation saw thousands upon thousands of young people descending upon the Colorado River reserva-

tion to celebrate their spring vacation. Possession and use of drugs was quite evident and the combined forces of the Department of Public Safety, the county sheriff's office, and the tribal police supplemented by police reserves was barely adequate.

Some tribal police have expressed the desire to cross train with other tribal departments to learn their customs and to be on call in the event of crowds too large for the local tribal department to handle.

i. Improvement of Community Relations

Objective: To increase community involvement in law enforcement programs. For the upgrading of law enforcement on Indian reservations to have a meaningful beginning, there must be cooperation from everyone involved within the community. A closer relationship between Indian police agencies and state, county, and municipal departments needs improvement to provide more rehabilitation, correctional and medical services to the reservation criminal justice systems.

j. Research and Development

No research and development programs are planned at this time. Evaluation plans of action programs may, however, be submitted in the future.

3. MULTI-YEAR BUDGET AND FINANCIAL PLAN

Functional Categories	1971	1972	1973
A. Upgrading Law Enforcement Personnel			
(1) Federal Funds	\$570,000.00	\$120,000.00	\$ 45,000.00
(2) Local Matching Funds	380,000.00	80,000.00	30,000.00
(3) State Matching Funds	-0-	-0-	-0-
TOTAL FUNDS	\$950,000.00	\$200,000.00	\$ 75,000.00
B. Prevention of Crime	No funds required at this time		
C. Prevention and Control of Juvenile Delinquency			
(1) Federal Funds	\$ 89,083.00	\$ 89,083.00	\$ 89,083.00
(2) Local Matching Funds	38,055.00	38,055.00	38,055.00
(3) State Matching Funds	-0-	-0-	-0-
TOTAL FUNDS	\$127,138.00	\$127,138.00	\$127,138.00
D. Improvement of Detection and Apprehension of Criminals			
(1) Federal Funds	\$180,000.00	\$150,000.00	\$ 415,000.00
(2) Local Matching Funds	120,000.00	100,000.00	270,000.00
(3) State Matching Funds	-0-	-0-	-0-
TOTAL FUNDS	\$300,000.00	\$250,000.00	\$685,000.00
E. Improvement of Prosecution and Court Activities and Law Reform			
(1) Federal Funds	\$ 60,000.00	\$126,000.00	\$ 60,000.00
(2) Local Matching Funds	40,000.00	84,000.00	40,000.00
(3) State Matching Funds	-0-	-0-	-0-
TOTAL FUNDS	\$100,000.00	\$210,000.00	\$ 100,000.00

Functional Categories	1971	1972	1973
F. Increase in Effectiveness of Corrections and Rehabilitation	New Construction or Modification of Correctional Facilities		
(1) Federal Funds	\$250,000.00	\$250,000.00	\$250,000.00
(2) Local Matching Funds	250,000.00	250,000.00	250,000.00
(3) State Matching Funds	-0-	-0-	-0-
TOTAL FUNDS	\$500,000.00	\$500,000.00	\$500,000.00
G. Reducation of Organized Crime	No funds required at this time		
H. Prevention and Control of Riots and Civil Disorder			
(1) Federal Funds	\$ 18,778.00	\$ 18,778.00	\$ 18,778.00
(2) Local Matching Funds	6,222.00	6,222.00	6,222.00
(3) State Matching Funds	-0-	-0-	-0-
TOTAL FUNDS	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00
I. Improvement of Community Relations			
(1) Federal Funds	\$ 45,000.00	\$ 30,000.00	\$ 12,000.00
(2) Local Matching Funds	30,000.00	20,000.00	8,000.00
(3) State Matching Funds	-0-	-0-	-0-
TOTAL FUNDS	\$ 75,000.00	\$ 50,000.00	\$ 20,000.00
J. Research and Development (including evaluation)	No funds required at this time		

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#### 4. MULTI-YEAR FORECAST OF RESULTS AND ACCOMPLISHMENTS

##### a. Upgrading Law Enforcement Personnel

	1971	1972	1973
(1)	To provide additional formal academy training for approximately 120 Indian officers at Navajo and Roswell Academies ranging from 320 to 602 classroom hours. Twenty officers to attend sessions at the LEOAC for at least 200 hours.	Continued training assistance for 100 officers and at least 50 new recruits.	Basic training assistance to be continued for new recruits. Formal police academy training completed for all personnel.
(2)	To provide assistance in upgrading inservice training for eleven Indian police departments.	Continued and evaluated for the eleven departments.	Continued. Inservice training should be improved at least 25 percent.
(3)		Obtain uniforms for at least 150 men. To improve their personal appearance with resulting improvement in morale, officer performance and community respect.	

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a. Upgrading Law Enforcement Personnel (cont'd.)

<u>1971</u>	<u>1972</u>	<u>1973</u>
(4) To increase present police salaries by 10%. This should attract additional personnel from qualified tribal members, reduce attrition and improve morale.	Institute additional and more effective recruiting programs and establish training incentive programs on six tribal police departments.	Institute additional recruiting programs. Establish educational incentive programs on all tribal police departments.

b. Prevention of Crime  
(including public education)

(1) To prevent and reduce crime by prohibiting opportunities for the commission of crime and by involving the general public in crime prevention through educational programs.	- Continued	Continued
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c. Prevention and Control of Juvenile Delinquency

(1) Plan and place in operation a "pre-delinquent referral unit".	Continuation	Continuation and Evaluation
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c. Prevention and Control of Juvenile Delinquency (cont'd.)

<u>1971</u>	<u>1972</u>	<u>1973</u>
(2) Institute a juvenile officer training program on the Navajo, San Carlos, Fort Apache reservations.	Evaluation and train juvenile officers on Colorado River and Papago reservations.	Continuation of training programs and evaluation of previous programs.
(3) Institute delinquency prevention and control program on White Mountain and San Carlos reservations.	Continuation and evaluation.	Continuation and evaluation.

d. Improvement of Detection and Apprehension of Criminals

(1) Assist tribal departments in obtaining modern communications equipment capable of interdepartmental and intradepartmental communications.	Establish teletype system on reservations where deemed practical to be tied in with state and LETS system.	Continuation and evaluation. Communication on Indian reservations should be improved at least 50%.
(2) Assist tribal departments in obtaining necessary detection and apprehension equipment deemed necessary by at least six tribal departments. Arrest rates should increase by 15%.	Obtain necessary detection and apprehension equipment for remaining five tribal police departments. Arrest rates should increase at least 15%.	To provide adequate vehicles to those tribes in greatest need. Should improve patrol efforts at least 50%.

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e. Improvement of Prosecution and Court Activities, and Law Reform

<u>1971</u>	<u>1972</u>	<u>1973</u>
(1) Send all tribal judges to National Tribal Judges Training Program sponsored by American Indian Court Judges Association.	Continuation of tribal judge training.	Continuation.
(2) Send two tribal lay prosecutors to Prosecutors Training Course sponsored by Navajo tribe at Window Rock, Arizona.	Send additional lay prosecutors to Prosecutors Training Course. Evaluate.	Continuation and Evaluation.
(3) Establish program to develop standardized court administration and training program for court clerks.	Expand court clerk training program.	Continuation.
(4) Begin construction of criminal justice centers on two reservations providing for court facilities.	Begin construction on to additional criminal justice centers.	Determine additional needs.
(5) Research courses of action to be taken to solve jurisdictional problems.	Continuation and recommendation to legislators.	Continuation and evaluation.
(6) Develop juvenile codes to be considered for adoption by tribal councils.	Evaluate previous code drafting effort and make necessary changes.	Continuation and evaluation.

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f. Increase in Effectiveness of Correction and Rehabilitation (including probation and parole)

<u>1971</u>	<u>1972</u>	<u>1973</u>
(1) Develop plans and begin construction of correctional facilities.	Continuation.	Complete construction and begin operation.
(2) Develop plans for regional rehabilitation facilities, including diagnostic and treatment services.	Continuation.	Complete construction and begin operation.
(3) Develop plans and submit applications for training of male and female probation personnel.	Complete plans and training begin providing probation service to Indian courts.	Continuation and evaluation.
(4) Develop plans and begin remodeling facilities at Sells, Tuba City, and Sacaton, Arizona	Continuation.	Completion.

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g. Reduction of Organized Crime

There are no immediate programs planned.

# h. Prevention and Control of Riots and Civil Disorders

1971

- (1) To provide the Colorado River reservation with equipment and training in the use of riot control equipment. Equipment to be used by all police agencies in the area.

1972

Assist Navajo White Mountain and Salt River Departments in obtaining riot control equipment and crowd control training.

1973

All tribal police departments to receive training and cross training to provide a mobile strike force in the event of unforeseen crowd disorders.

## i. Improvement of Community Relations

- (1) Provide necessary training materials and instructors to increase community participation in law and order. Group sessions and meetings oriented toward the relationship between the police and the citizens.

Continued and evaluated.

Continued and evaluated.

## j. Research and Development

There are no immediate programs planned.

## C. THE ANNUAL ACTION PROGRAM

This section details the specific action programs to be undertaken during the current year on Indian reservations in the State of Arizona. The following discussion and the action programs are arranged by functional categories.

### 1. Program Descriptions

#### A. Upgrading Law Enforcement Personnel

- a. Title - Training of Law Enforcement Personnel.
- b. Objective - To upgrade police personnel on all reservations by assisting and providing training programs of at least 300 hours for 275 officers serving Arizona reservations. To assist the tribal police departments in establishing in-service training programs and in making it possible for them to attend advanced specialized schools. To ultimately establish equivalent standards with state, county, and municipal agencies throughout the state.
- c. Implementation - It is anticipated that various police academies and training courses would be utilized throughout the

year. Sixty tribal policemen will be sent to the Indian Police Academy at Roswell, New Mexico, throughout the year. Twenty will be sent to each of the three, 602-hour courses, held each year. The Navajo Police Academy provides a 320-hour basic police training course and approximately ten specialized courses of shorter duration each year. This Academy is accredited by the Law Enforcement Officers Advisory Council and invitations are extended to surrounding tribes for each course presented.

Inservice training instructors would be drawn from the Department of Public Safety, Federal Bureau of Investigation, Fish and Game Department, Bureau of Indian Affairs, Motor Vehicle Division, and other federal, state, and municipal agencies.

d. Budget

(1) LEAA Support Requested	\$570,000.00
(2) State Support	-0-
(3) Local Support	380,000.00
(4) Other Support	-0-
(5) Program Total	\$950,000.00

(6) Applicable Federal - Tribal Contribution Ratio:

60% Federal - 40% Tribal

(7) Prior Funding - The Navajo tribe has been previously granted \$44,730 for basic police training course.

e. Past Progress - No report has been received by Indian Justice Planning as to the progress of the Navajo program referred to above.

Upgrading Law Enforcement Personnel

- a. Title - Addition and Retention of Police Personnel
- b. Objective - To establish salary levels at a rate commensurate with nearby off-reservation departments, thus improving the possibility of attracting and retaining qualified Indian policemen.
- c. Implementation - Projects under this program will be aimed at supporting recruiting programs, organizing incentive programs, and where needed providing a ten percent increase in salaries. With the overall goal to attract and to retain police personnel on all reservations throughout the state.

d. Budget

(1) LEAA Support	\$ 90,000.00
(2) State Support	-0-
(3) Local Support	60,000.00
(4) Other Support	-0-
(5) Program Total	\$150,000.00

(6) Applicable Federal - Tribal Contribution Ratio:

60% Federal - 40% Tribal

(7) Prior Funding - None

Upgrading Law Enforcement Personnel

- a. Title - Providing Uniforms and Personal Equipment to tribal police
- b. Objective - To improve the appearance, pride, and morale of tribal police officers and to aid in their effectiveness by improving their image and relations with the community.
- c. Implementation - It is anticipated that approximately 150 tribal officers in Arizona who are now either partially uniformed or who have no uniforms at



all will, through this program, obtain attractive uniforms well suited to reservation law enforcement work together with those items of personal equipment deemed necessary by the department for the proper exercise of their job functions. An added benefit should be realized in recruiting of new personnel.

d. Budget

- |   |              |
|---|--------------|
| (1) LEAA Support Requested                          | \$ 45,000.00 |
| (2) State Support                                   | -0-          |
| (3) Local Support                                   | 30,000.00    |
| (4) Other Support                                   | -0-          |
| (5) Program Total                                   | \$ 75,000.00 |
| (6) Applicable Federal - Tribal Contribution Ratio: |              |
| 60% Federal   | - 40 Tribal  |
| (7) Prior Funding - None                            |              |

B. Prevention of Crime (including public education)

- a. Title - Educational Program Design
- b. Objective - To prevent and reduce crime by prohibiting opportunities for the commission of crime and by involving the general public

in crime prevention through educational programs.

- c. Implementation - It is anticipated that tribal governments, assisted by the Bureau of Indian Affairs, will place additional emphasis on developing an improved data base, by correlating such information as "juveniles in contact with police" and "juveniles and adults, in trouble in the off-reservation community", thereby providing more accurate information defining the extent of the crime and delinquency problem. It is also anticipated that efforts will be made to obtain the support of the reservation population by education and involvement in crime prevention programs designed to reduce reservation tolerance to deviant behavior. Efforts to insure conformity, strengthen norms and mores by changing attitudes and encouraging a change in values, should be undertaken.

Schools should place more emphasis on programs designed to develop an under-

standing of law enforcement systems through education programs. It is anticipated that inroads will be made in overcoming public indifference through the dissemination of knowledge to the public about modern theories and techniques of crime prevention.

d. Budget

- |  |              |
|--|--------------|
| (1) LEAA Support Requested                             | \$ 30,000.00 |
| (2) State Support                                      | -0-          |
| (3) Local Support                                      | 20,000.00    |
| (4) Other Support                                      | -0-          |
| (5) Program Total                                      | \$ 50,000.00 |
| (6) Applicable Federal - Tribal<br>Contribution Ratio: |              |
| 60% Federal  | - 40% Tribal |
| (7) Prior Funding - None                               |              |

C. Prevention and Control of Juvenile Delinquency

- a. Title - Pre-delinquent Referral Unit
- b. Objective - To establish on each Indian reservation a pre-delinquent referral unit, designed to improve prevention and control of juvenile delinquency by developing innovative programs, and coordinating all branches

of community services designed to divert potential delinquents from the juvenile justice system.

- c. Implementation - Because of a lack of coordinated community resources, courts commonly handle many family and youth problems which could be more effectively handled in the community on a voluntary basis. Communications should be improved between the courts, police, community service agencies, schools, and neighborhood community services program to eliminate unnecessary court intervention in the lives of children.

First offenders and the very young would be referred to the pre-delinquency referral unit, comprised of persons skilled in treatment of deviant behavior problems, by those agencies first coming in contact with the potential delinquent. All branches of community services, probation services, juvenile courts, police, and schools would participate in implementing this program.

It is anticipated that applications will ultimately reach 13 and range in cost from \$5,000 on the smallest reservation to \$60,000 on the largest reservation.

d. Budget

(1) LEAA Support Requested	\$ 96,000.00
(2) State Support	-0-
(3) Local Support	64,000.00
(4) Other Support	-0-
(5) Program Total	\$160,000.00
(6) Applicable Federal - Tribal Contribution Ratio:	
60% Federal - 40% Tribal	
(7) Prior Funding - None	

D. Improvement of Detection and Apprehension of Criminals

- a. Title - Improvement in Police Communications
- b. Objective - To improve the detection and apprehension of federal, state, and local offenders on the reservation; to improve the effectiveness of the Indian police by assisting them in obtaining modern and improved communications equipment and by improving

interdepartmental communications between tribal police and state and local agencies. To make available to tribal police the facilities of the Law Enforcement Teletype System (LETS) and the National Crime Information Center (NCIC).

- c. Implementation - The program would be implemented by first stimulating and giving priority to those tribal police departments now totally lacking any effective communication system. Those tribal departments needing base stations and vehicular equipment and those in need of modernizing such equipment would be encouraged to provide for rapid intercommunication with those state or local agencies having access to SEARCH facilities.

d. Budget

(1) LEAA Support Requested	\$180,000.00
(2) State Support	-0-
(3) Local Support	120,000.00
(4) Other Support	-0-
(5) Program Total	\$300,000.00
(6) Applicable Federal - Tribal Contribution Ratio:	
60% Federal - 40% Tribal	
(7) Prior Funding - None	

E. Improvement of Prosecution and Court Activities,  
and Law Reform

- a. Title - Tribal Court Judges Training
- b. Objective - To acquaint tribal judges with a basic understanding of judicial processes, legal terminology, procedures, rules of evidence, and the rights of the accused.
- c. Implementation - The American Indian Trial Judges Association, under a grant previously approved by LEAA, will provide judicial training to 13 Arizona tribal judges during the coming year. It is anticipated that all tribes employing judges will take advantage of this course of study. Classes

will meet in Phoenix once a month for six months with the interim periods filled with homes-study courses. Travel and per diem will be needed by most tribes in order to take advantage of this training.

d. Budget

(1) LEAA Support Requested	\$ 6,000.00
(2) State Support	-0-
(3) Tribal Support	4,000.00
(4) Other Support	-0-
(5) Program Total	\$ 10,000.00
(6) Ratio:	

60% Federal - 40% Tribal

Improvement of Prosecution and Court Activities,  
and Law Reform

- a. Title - Drafting of Tribal Codes
- b. Objective - To modernize tribal criminal codes, to insure the tribal codes are responsive to the needs of the reservation residents and meet the requirements of due process. To stimulate and encourage the adoption of modern juvenile codes, without which many of the other programs would be impossible.

c. Implementation - To provide to those tribes desiring codes the assistance of trained lawyers and law students who, once having understood the customs and cultural demands for which accommodation must be made, could lend worthwhile assistance in the drafting of codes while advising of the accommodations which must be made to the Indian Civil Rights Act and other applicable federal and state statutes.

d. Budget

(1) LEAA Support Requested	\$ 6,000.00
(2) State Support	-0-
(3) Tribal Support	4,000.00
(4) Other Support	-0-
(5) Program Total	\$ 10,000.00
(6) Ratio:	
60% Federal	- 40% Tribal
(7) Prior Funding	- None

F. Increase Effectiveness of Corrections and Rehabilitation

a. Title - Construction or Expansion of Correctional Facilities

b. Objective - To improve the effectiveness of correctional facilities by expansion and modernization of present facilities and by the construction of new facilities. To provide separate detention facilities for juveniles and persons awaiting trial.

c. Implementation - This project will be implemented by individual tribal governments on those Indian reservations maintaining correctional facilities. Regional applications will be submitted wherever feasible (i.e., more than one tribe using the same facility). Six new facilities are needed and four are in need of expansion and remodeling. All of the proposed facilities will provide for maximum rehabilitative efforts as an alternative to incarceration.

NEW CONSTRUCTION				
Reservation	State	Federal	Matching	Total
Crown Point	Navajo	\$ 125,000.00	\$ 125,000.00	\$ 250,000.00
Chinle	Navajo	125,000.00	125,000.00	250,000.00
Kayenta	Navajo	125,000.00	125,000.00	250,000.00
Colorado River	Arizona	100,000.00	100,000.00	200,000.00
San Carlos	Arizona	125,000.00	125,000.00	250,000.00
Salt River	Arizona	50,000.00	50,000.00	100,000.00
The following facilities need remodeling or expanding:				
Papago	Arizona	25,000.00	25,000.00	50,000.00
Shiprock	New Mexico	25,000.00	25,000.00	50,000.00
Tuba City	Arizona	25,000.00	25,000.00	50,000.00
Gila River Indian Community	Arizona	25,000.00	25,000.00	50,000.00

d. Budget

(1) LEAA Support Requested	\$ 750,000.00
(2) State Support	-0-
(3) Local Support	750,000.00
(4) Other Support	-0-
(5) Program Total	\$1,500,000.00
(6) Applicable Federal-Local Contribution Ratio:	
50% Federal	- 50% Local
(7) Prior funding for program	
Fiscal 1969/1970 Requests	- None

Increase Effectiveness of Corrections and Rehabilitation

- Title - Training of juvenile probation officers
- Objective - To improve prevention and control of juvenile delinquency by providing juvenile probation services for each of the twelve Indian courts in the State of Arizona presently presently without probation services.
- Implementation - Tribal governments will submit applications for training of juvenile probation officers and these

officers will be selected from among persons indigenous to the reservation. Training will be accomplished primarily by attending on-the-job training programs presently available. Providing probation services to the Indian courts will provide an alternative to incarceration.

d. Budget

(1) LEAA Support Requested	\$105,600.00
(2) State Support	-0-
(3) Local Support	70,400.00
(4) Other Support	-0-
(5) Program Total	\$176,000.00
(6) Applicable Federal-Tribal Contribution Ratio:	
60% Federal - 40% Tribal	
(7) Prior funding - None	

Increase Effectiveness of Corrections and Rehabilitation

- a. Title - Construction of youth rehabilitation center
- b. Objective - To provide regional youth rehabilitation centers which will provide services for delinquent Indian youth in

need of temporary care in a controlled environment. State facilities are not available to Indian youth unless committed while under jurisdiction of the state.

- c. Implementation - These centers will function with evaluation, diagnosis, and treatment as contributors to rehabilitation. The operation of the centers will be the first step in the redirection of youth involved with the courts. Emphasis will be on helping offenders through non-punitive processes. Programs will be designed to provide intervention in delinquent behavior by establishing corrective measures in diagnosis, evaluation, and treatment followed by release for probation services.

The centers will have a capacity for 20 males and females on a twenty-four hour basis. Facilities will include a day room, outdoor recreation areas, dining room, examining rooms for the purpose of physical examinations, and several counseling rooms. The rehabilitation program will be linked

directly to the juvenile courts, the probation unit, Bureau of Indian Affairs family programs, and other community service activities and youth development programs. It will constructively offer alternatives to progressive delinquency. The centers should operate with the systems from the Bureau of Indian Affairs social services and the U. S. Public Health Service (Division of Indian Health). Medical, physical, and emotional needs will be met; social summaries and recommendations will be furnished the court to assist in evaluation and to finding solutions to the problems of youth. It is anticipated that the length of stay for most youth would be ten to fourteen days.

It is presently anticipated that two regional type facilities will accommodate most needs. It is currently projected that one facility would be constructed on the Navajo reservation

to accommodate Indian youth from northern Arizona and another center would be constructed on the Gila River reservation to accommodate youth from southern Arizona.

The Winter of 1970-71 should see the completion of the planning phase for the construction of a rehabilitation center at Gila River and the beginning of the planning stage for the Navajo facility. The Gila River Model Cities Program should provide some assistance in the construction of the southern regional facility.

d. Budget

(1) LEAA Support Requested	\$400,000.00
(2) State Support	-0-
(3) Local Support	300,000.00
(4) Other Support (model cities)	100,000.00
(5) Program Total	\$800,000.00
(6) Applicable Federal-Tribal Contribution Ratio:	
50% Federal	- 50% Tribal



G. Reduction of Organized Crime

There is no annual action program concerning organized crime on Indian reservations in the State of Arizona. There is no indication that organized crime has made inroads in this area for the simple reason that there is presently no attraction on Arizona reservations for this type endeavor.

H. Prevention and Control of Riots and Civil Disorders

- a. Title - Feasibility study to determine civil disorder needs on Arizona reservations.
- b. Objective - To determine the frequency and extent of riotous situations occurring on Indian reservations in the State of Arizona and to determine if additional training and equipment is presently warranted.
- c. Implementation - To collect and collate data concerning frequency of celebrations occurring on Arizona reservations, to collect arrest records and to serve opinions of law enforcement officials, federal, state, local, and tribal, with the essential to

determining needs in this category.

In the event the results of the initial study were positive, it would be necessary to then design a program of cross training of tribal police and tribal-federal-state police in order to provide the response necessary.

d. Budget

(1) LEAA Support Requested	\$ 7,500.00
(2) State Support	-0-
(3) Local Support	2,500.00
(4) Other Support	-0-
(5) Program Total	\$ 10,000.00
(6) Applicable Federal - State Contribution Ratio:	

75% Federal - 25% Local

I. Improvement of Community Relations

- a. Title - Public education and community involvement
- b. Objective - To improve the relationship between the police and the public and to provide the public with additional knowledge of the law enforcement system and criminal justice procedures.

- c. Implementation - Programs would be designed to enhance the police image among reservation residents and to stimulate cooperation between all sectors of the public.

Programs would be instituted on thirteen of the nineteen Arizona reservations in the form of public talks and discussions at community gatherings, designing course material and presenting the same to all school grades with the aid of filmstrips, movies, slides, charts, tapes, and other visual aids.

d. Budget

(1) LEAA Support Requested	\$ 45,000.00
(2) State Support,	-0-
(3) Local Support	30,000.00
(4) Other Support	-0-
(5) Program Total	\$ 75,000.00
(6) Applicable Federal - Local Contribution Ratio:	
60% Federal - 40% Local	
(7) Prior Funding - None	

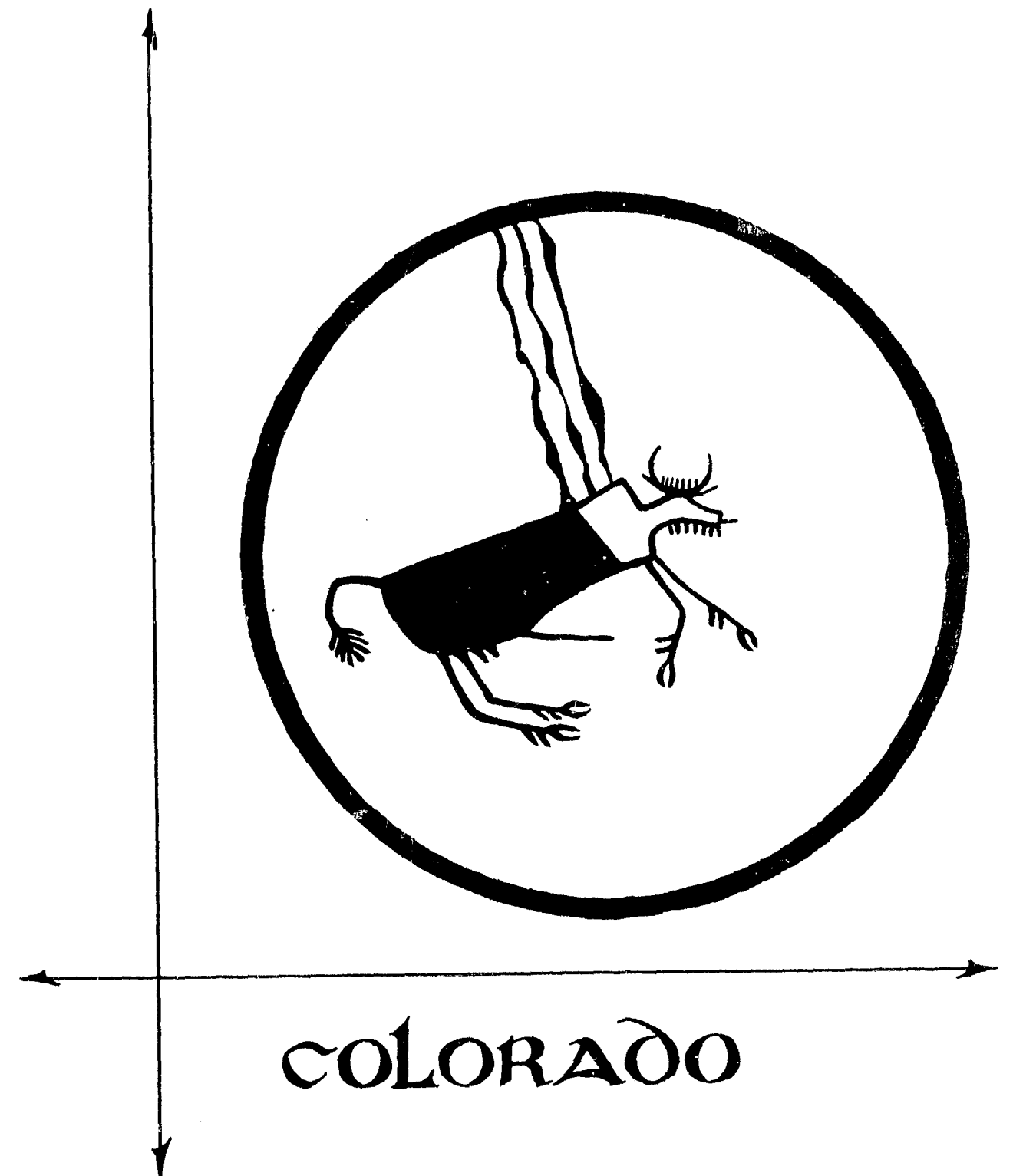
J. Research and Development

No research and development projects are planned at this time for Arizona reservations; however, evaluation plans of action programs may be submitted in the future.

5. TECHNICAL ASSISTANCE AND SERVICES

Arizona has joined with the states of Colorado, New Mexico, and Utah in supporting the application of the "National Indian Justice Planning Association", of which the states are members, for a sole source contract or grant with LEAA to provide technical assistance to tribes, to the states, and to LEAA in all matters appertaining to law enforcement on Indian reservations within the member states. The National Indian Justice Planning Association will assist the tribes in implementing their individual tribal plans through applications for program funding; it will assist the member states in coordinating Indian projects with statewide plans; it will render such services to LEAA as might be requested by the Indian Desk; it will provide training to tribal leaders in the planning process in order that tribal plans may be updated and the planning process continued. It is contemplated that other states will become members of the Association and, in that event, a

similar planning effort as has been accomplished by the Indian Justice Planning Project will be provided the new member states during the coming year.

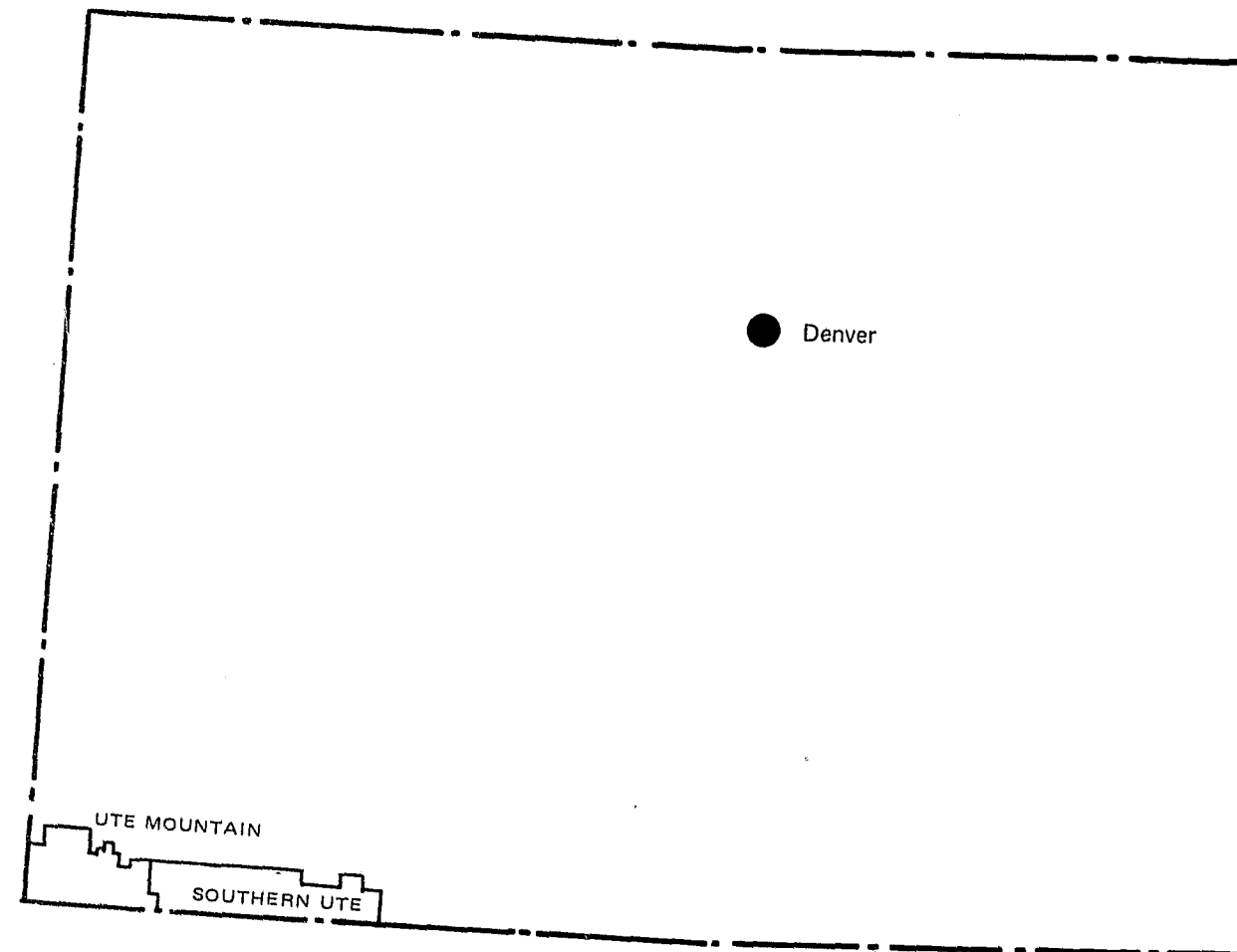


INDIAN JUSTICE PLANNING PROJECT

# C O L O R A D O

The state plan for Indian law enforcement for Colorado as presented here is largely a composite of the two tribal plans of the Ute Mountain Ute and the Southern Ute tribes. It is not intended as a complete presentation of those tribal plans but is intended to present an overview to be utilized by the state in drafting its 1971 state-wide plan. There is no administrative component to this plan as that requirement is covered elsewhere in the state-wide plan. One of the justifications for funding this special planning effort is the uniqueness of Indian priorities -- from non-Indian communities and from reservation to reservation. For this reason, no attempt is made to establish state-wide Indian priorities as such, but rather to present program descriptions of general need under the functional categories suggested by LEAA.

The Southern Ute tribe of the Southern Ute reservation, Colorado was organized and incorporated under the Indian Reorganization Act of 1934 with a



constitution and bylaws adopted by the tribe and approved by the Secretary of the Interior on November 14, 1936.

The Southern Ute reservation is located in the southwestern part of Colorado. The reservation is 15 miles wide and 73 miles long and occupies parts of La Plata, Archuleta and Montezuma Counties. A majority of the tribe lives in the Pine River Valley near the town of Ignacio, where the better tribal farm land is situated. The reservation is primarily an agricultural economy.

The reservation has a temperate and semi-arid climate, with temperature extremes ranging from a high of 101 degrees to a low of -38 degrees. Snow usually covers the ground from December to March.

Land ownership on the Southern Ute reservation is "checkerboarded" with 302,081 acres of tribal trust land, 4,967 acres of allotted trust land, 62.30 acres of government-owned land and 513,000 acres of private land.

U. S. Highway 160 parallels the northern boundary of the Southern Ute reservation, providing the main east-west access. It connects with the primary Denver-Albuquerque route. U. S. Highway 550 bisects the reservation, providing the main north-south highway route. State Highway 172 connects Ignacio (where the tribal and agency headquarters are located) with Durango. State Highway 151, an all-weather road, provides a direct route between Ignacio and Pagosa Springs, Colorado. The Bureau of Indian Affairs maintains 163 miles of intra-reservation roads.

As of March 31, 1970, there were 559 enrolled members of the Southern Ute tribe living on the reservation. In addition to which approximately 1,000 non-Indians live within the confines of the exterior border of the reservation, most in the town of Ignacio.

Originally, the nomadic Utes lived in the mountains and valleys of central and western Colorado, northern New Mexico and the eastern portion of Utah. The Utes were originally confined to a reservation comprised of most of the western third of the state

of Colorado. Subsequent treaties removed some Utes to the Uintah and Ouray reservation in Utah, greatly reduced the size of the Ute reservation in southwestern Colorado and eventually divided the Colorado reservation in twain. The westernmost of the Colorado Ute reservations is the Ute Mountain Ute reservation whose tribal headquarters and Indian Bureau Agency are located Towaoc, Colorado, located approximately sixteen miles south of Cortez. The present Ute Mountain Ute reservation consists of approximately 557,877 acres of which 448,029 are located in Colorado, 107,520 are located in New Mexico and 2,320 in Utah.

There are approximately 1250 persons residing on the Ute Mountain Ute reservation, of which 1190 are Indian and 60 are non-Indian. Approximately 230 members of the Ute Mountain Ute tribe reside at White Mesa, near Blanding, Utah.

There are approximately 45 miles of federal and state highway on the reservation, two miles of county road, and 163 miles of intra-reservation roads maintained by the Bureau of Indian Affairs.

BIA agency offices at both Ute reservations are responsible to the Albuquerque area office.

A. Existing Law Enforcement Systems and Available Resources

Both Colorado reservations perform law enforcement functions assisted by the BIA special officer located Towaoc and his assistant located at Ignacio. The agency's special officer at Towaoc also provides service to the Ute Mountain Ute community near Blanding, Utah.

The Southern Ute tribal police employs five commissioned officers; a chief, answerable to the tribal council, a sergeant, two patrolmen and one part-time patrolman (who also serves as dispatcher). The department is fully uniformed and adequately equipped. The tribe also employs a game warden who has some enforcement duties on the reservation.

The tribal police work one shift per day with two days off each week. There is coverage with an officer on duty all day every week day except for the hours of 3:00 a.m. to 6:00 a.m. when the chief of police answers emergency calls on an "on-call" basis.

In addition to the bureau officer and tribal officers at Southern Ute, there are two Colorado highway patrolmen who patrol the state roads through the reservation on a regular basis but who principally confine their duties to enforcement with respect to non-Indians. Other enforcement officers who perform some duties on the reservation are the La Plata county sheriff, undersheriff and deputy, the Colorado state game warden and the chief of police in the town of Ignacio, Colorado.

Additional enforcement on both reservations with respect to major crimes is furnished by the Federal Bureau of Investigation from Durango.

Working relations between tribal police and off-reservation police are considered to be generally good.

The chief of the Southern Ute Police Department is conscious of the need of training, and as a consequence, the level of training for this department is considered to be above the average for tribal police.

The Southern Ute police are responsible for the maintenance and operation of the tribal jail. The jail is located with police headquarters in the basement of the building housing tribal headquarters. The building was erected in 1929. There is no jailer as such, and because of the physical layout of both the detention facility and police headquarters, the basement must be kept locked at all times. In addition to the inherent hazards caused by this arrangement, the public is denied easy access to the police for the purpose of making contact or complaints.

The tribe maintains three vehicles for the department, a station wagon, a sedan and a four-wheel drive sedan carryall, used for various purposes during inclement weather. The police have two radios in each vehicle, one on the Colorado highway patrol frequency and the other on the Bureau of Indian Affairs-Forestry frequency. The purpose of the two radios is to provide radio communication with outside enforcement agencies and to transmit local trouble calls to the officers in the field from the tribal police department.

The tribal game warden has one four-wheel drive vehicle with which he patrols throughout the reservation.

The Ute Mountain Ute tribal police consists of a chief, answerable to the tribal Director of Community Services and the Tribal Chairman, and six patrolmen. This department patrols a reservation of 557,877 acres, and two communities -- Towaoc, Colorado and White Mesa, Utah. Their function is to provide the reservation with law and order for the protection of the lives and property of the reservation residents. They have the authority to enforce all laws and ordinances which pertain to the reservation and are responsible for the care and detention of local violators referred to them by the tribal court.

The department is semi-uniformed with uniform shirts only. Although the chief of this small department has apparently received training through a number of short courses, as well as having attended the Roswell Police Academy, the remainder of the department is poorly trained. This is largely due to a high turnover rate and to the disinterest of its personnel.

The Ute Mountain tribal jail is located near the BIA agency headquarters building in Towaoc, approximately one-half mile from police headquarters. The jail building is situated in a yard completely surrounded by a ten-foot chain link fence, topped by two layers of barbed-wire. The gate in the fence is secured by a large padlock. Another large padlock holds an iron bar in place over the main entrance to the jail. Once inside the building there is still another padlocked barred door which must be opened to permit access to the drunk tanks and cells. The jail has no jailer nor matron and there are two sets of keys to these locks; one of which is kept by the chief of police and the other in the patrol car.

The jail has four cells, containing a total of 22 bunks. There are three drunk tanks. There is one light fixture for the entire building and no visibility to the outside. The only shower is inoperative and the toilets are stuffed with papers and unusable. The jail is filthy and unattended except for spot checks by the police patrols.



The police headquarters building is small (approximately 20 feet square) and storage and working areas are extremely limited. Approximately half the building is utilized by the police chief and dispatcher as well as office and evidence storage. The other half appears to be used primarily as a booking area, for receiving complaints and as a public lobby.

Both the Southern Ute and the Ute Mountain Ute tribes have criminal codes but no juvenile code. The criminal code of the Ute Mountain Ute tribe has never been officially enacted by the tribal council and all arrests and convictions made thereunder are highly questionable. The criminal codes of both tribes are in great need of being updated.

Both tribes maintain a tribal court and both tribes retain a non-Indian, who is also a lawyer and county judge in Cortez, Colorado, as their tribal judge. This judge is active in the National American Indian Court Judges Association and is a moving force behind that organization's current effort to present a tribal judges training course to all American Indian trial judges.

The Bureau of Indian Affairs provides probation services for both the Ute Mountain Ute and Southern Ute agencies. This officer, working out of Towaoc, also provides services to the state courts in Blanding, Utah, as well as state and federal courts in Colorado. He serves both adults and juveniles in all cases involving Indians. Statistics indicate this probation officer, who, incidentally also serves the Jicarilla Apache reservation in New Mexico, is highly effective in serving his clientele.

Colorado does not presently provide detention or rehabilitative services for Indian youth except for those children under state jurisdiction.

Indian police, courts and corrections are more completely described in Chapter VII of Part I of this study, and the reader's attention is invited to that chapter and to the individual tribal plans for additional information concerning existing law enforcement systems and available resources.

B. The Multi-Year Plan

1. Needs and Problems

Common problems such as multiple jurisdiction where land ownership may be in federal, state, county,

tribal, or private hands, the lack of adequate communications facilities, isolation and long distance between homes, schools, population centers and health services, and the lack of adequate all-weather roads, are all contributing factors to crime and delinquency. Added to these are the socio-economic problems such as unemployment and underemployment resulting in substandard family income and stability. Formal training in all areas of the criminal justice system on Indian reservations should be upgraded to equal that of state or county systems.

a. Juvenile Delinquency and Adult Crime:

The delinquent children and youth on Indian reservations are generally unable to cope with the problems and frustrations of the real world in which apathy, prejudices and discrimination present obstacles to the processes leading to community integration. Caught in a seemingly hopeless, helpless situation in which a reservation subculture is in conflict with the culture of the dominant society, residing on a reservation where the disintegration

of the Indian culture has left a cultural void filled by family disorganization, broken homes, poverty, alcoholism and child neglect, and required to exist in a world of dependency, they have refused to accept the norms and mores of the dominant society. These factors and others contribute to a deep sense of inadequacy, hostility, and disrespect for law and order.

The forces for the prevention and control of crime and delinquency ultimately must find their strength from the constructive qualities of the society itself. The willingness of the society to maintain a rationally organized and properly financed system of corrections directed toward reclamation of criminals and juvenile delinquents is a prerequisite of effective control.

American county jails have often been described as "the penal institutions that have successfully resisted change and reform." This statement is doubly true of jails on Indian reservations in Colorado.

Both tribal jails in Colorado were surveyed by the Indian Justice Planning Project and were found to

be unfit for human habitation in all respects. These jails have likewise been condemned by the health services and by the Bureau of Indian Affairs. Neither of these jails would meet the minimum standards for detention as contained in the "Manual of Correctional Standards," published by the American Correctional Association, and as prescribed in "New Roles for Jails," published by the U. S. Bureau of Prisons.

Old, unsanitary buildings; poorly qualified, constantly changing personnel; intermingling of all types of prisoners -- sick and well, old and young, hard-core criminals and misdemeanants with petty offenders, in over-crowded cells and tanks; the complete absence of even the most rudimentary rehabilitative programs; and the failure of most jails to provide adequate supervision and services of a jailer at night, are but a few of the more glaring deficiencies noted among correctional facilities on Colorado Indian reservations.

Alcoholism is a generally accepted major problem and a number of related family problems are

directly related to alcoholism. While there is currently an attempt to initiate a meaningful alcoholism program at the Southern Ute reservation, there is no such program at Ute Mountain Ute. These programs should be supported and encouraged in every way.

A comprehensive program for prevention of youth and adult crime must be developed on Colorado reservations. A rehabilitation plan must be inaugurated utilizing all branches of the Bureau of Indian Affairs community services. A centrally located youth rehabilitation center should be provided. A detoxification unit should be established at each BIA agency by the USPHS Division of Indian Health and the National Institute of Mental Health.

(1) Police Manpower, Equipment, and Facilities:

Although the Southern Ute tribe has been active in sending its police personnel to training schools and academies, the Ute Mountain Ute tribal police are generally lacking in training. This is probably due

due to their high attrition rate and the unconcern and disinterest of its personnel. This disinterest has been laid at the doorstep of tribal council and the community generally. It has been reported to this project that the Ute Mountain Ute department is oftentimes used to employ tribal members while they are seeking more permanent and better-paying jobs.

Both departments should maintain in-service training and basic training programs. Staff officers in each department should increase their knowledge of administration, management and supervision.

Standards for selection of tribal policemen are quite low. No educational requirements are made and no mental, aptitude or physical testing

is given. While the size of both departments is presently adequate, it is necessary to increase salary levels in order to demand and obtain highly qualified and highly motivated personnel who will seek and receive benefit from additional training, who may then apply modern police skills to modern police problems on these Indian reservations and who will be induced to remain with the tribal departments.

Although the vehicular equipment at Southern Ute appears to be presently adequate, the vehicles at Ute Mountain Ute should be replaced in order to provide more effective police service and to reduce the high cost of maintenance.

Tribal police records should be standardized and space provided for

their keeping. The Bureau of Indian Affairs is currently attempting to standardize and update its reporting procedures. Collection, identification, evaluation and preservation of evidence is in great need of improvement.

There is a need on both reservations for new police facilities. Old, crowded, poorly lighted and unattractive buildings not only impair operating efficiency, but tend to erode public respect for the police.

Community relations between the police and reservation residents is a relatively new concept and police are frequently looked upon as merely "drunk chasers" and are not relied upon, in many instances, for the investigation of serious offenses. Police-community relations is vitally

important to any police agency in order for that agency to adequately and efficiently provide police protection. These relations should be improved on both reservations through training, community education, and improvement of police morale.

(2) Correctional Services and Facilities:

State correctional institutions and services are unavailable to tribes and to Indians individually unless convicted of state law. Until permissive state legislation can be enacted, with a commensurate increase in budget, or until the budget of the Bureau of Indian Affairs can be increased to so provide, Colorado's Indian population will continue to be deprived of assistance in the rehabilitative processes other than the probation services now provided by a lone probation officer.

The percentage of children on reservation far exceeds the national average. It was reported to the Indian Justice Planning Project that 50% of the population of the Ute Mountain Ute reservation was under the age of eight. Indian people are oriented toward their children as a whole and are deeply concerned with widespread alcohol abuse and glue and paint sniffing which, on some reservations, begins at preschool age. Yet, training in the handling of children by the police is almost nonexistent. The need for public education in the uses and abuses of alcohol and dangerous substances goes largely unheeded. Massive, well-organized and continuing educational programs should be instituted for both parents and students of all grades. At least one officer with each tribal police

department should be well trained and well paid as a juvenile officer.

The unspeakably poor jail facilities on both reservations has been briefly described heretofore. Suffice it to say that these medieval facilities should cease housing prisoners at once.

Modern, up-to-date physical plants, housing dormitory-like quarters, recreational space, kitchen and dining rooms, classroom space, counseling offices, small, but dignified courtroom settings and space for judge's chambers, jury room and court administrative functions, police headquarters, radio, records and evidence facilities, provisions for work release and similar programs, together with proper outdoor areas for recreation and police training; this is

what is totally lacking, and this is what is critically needed for gaining respect for the system, for providing the basic tool with which to build modern, far-reaching and innovative programs; for providing basic humane treatment, and finally, to permit the system as it exists today to perform its most rudimentary tasks with some degree of efficiency and effectiveness.

(3) The Tribal Judiciary: As tribal courts, codes and prosecutory processes was discussed at some length in Chapter VII of this study, the subject will be treated briefly in this section of the plan.

As mentioned earlier, although both tribes possess constitutions and criminal codes, both codes need updating. The code of the Ute Mountain

Ute tribe should be officially adopted by the tribal council in order to safeguard the rights of the accused and to promote the efficient administration of justice. Neither tribe has any semblance of a juvenile code. Both tribes are in need of modernizing, implementing and educating both law enforcement personnel and the public in the matter of codes.

A great need exists to resolve the manifold jurisdictional problems which exist upon both Indian reservations.

State legislation is needed to recognize tribal governments, courts and police and to extend state services to its Indian population.

An associate judge should be appointed from the enrolled tribal membership of both tribes in order to assist

and to receive training from the present non-Indian tribal judge. The associate judge would also receive training now being provided by the American Indian Trial Court Judges Association.

A system of precedent, based upon written decisions and written codes should be striven for in order that both judges and accused may be assured of some consistency in the application of justice.

Record keeping of dockets and fines should be improved and the tribal judge should have available to him the services of a well-trained clerk.

2. General Statement of Priorities and Improvement Programs

This plan is designed to increase the efficiency and quality of criminal justice on Indian reservations in Colorado by development of programs

which will define the kind of criminal justice system deemed "ideal" yet attainable in terms of upgrading law enforcement, improvement of prosecution, court activities and law reform and increase the effectiveness of corrections and rehabilitation services.

Following is a discussion by functional category of objectives sought, the direction, scope and types of improvement programs planned over the multi-year period. Priorities were not selected because it is believed that individual Indian tribes would prefer to determine their own priorities on the basis of individual reservation need.

a. Upgrading Law Enforcement Personnel

Objective: The objective of all programs falling under this category is to help insure that the best qualified Indian people will be attracted to jobs on the reservation in all areas of the criminal justice system; to provide them with sufficient training to insure



competency; and to provide sufficient incentives to reduce the turnover rate and to insure retention of these qualified people.

b. Prevention of Crime (including public education)

Objective: In this category, it is anticipated that tribal governments, assisted by the Bureau of Indian Affairs, will place additional emphasis upon the development of an improved data base; will initiate alcohol prevention programs, particularly among youth; and will reduce opportunities for the commission of crimes by involving the community in crime prevention through education.

c. Prevention and Control of Juvenile Delinquency

Objective: This is probably the most significant of functional categories for Colorado reservations. In recent years youth under eighteen years of age have increased in tremendous numbers. A figure furnished at Ute Mountain Ute reservation indicates that 50% of the Indian population

on that reservation is under the age of eight years. Tribal leaders, police officers and others on the reservations in Colorado have stated that juvenile crime and adult alcoholism are of great concern to reservation residents.

Information provided indicates that a massive effort by the Indian tribes in Colorado must be undertaken to develop innovative and effective programs, coordinating all community resources and designed to divert potential delinquents from the juvenile justice system. Coordinated community resources could more effectively handle family and youth problems within the community on a voluntary basis.

Communications must be improved between the courts, police, schools and community service agencies in order to identify the potential delinquent and to eliminate or to delay unnecessary court intervention in the lives of children. Courts, police, schools and other

sources which turn up cases involving first offenders or the very young should be urged to make the fullest possible use of existing community services as referral aids and to assist families with potential delinquent children.

d. Improvement of Detection and Apprehension of Criminals

Objective: The objectives under this functional category should go hand in glove with those of "Upgrading Law Enforcement Personnel." Programs under this category will place emphasis on upgrading both police equipment and training in their use in order to improve the detection and apprehension of federal, state and tribal law violators.

The facilities of the National Crime Information Center (NCIC) should be made available to the tribes either through the local county sheriff's office or through the Colorado State Patrol. New communications equipment will assist the tribes in maintaining adequate contact with these agencies.

It has been noted that oftentimes a major crime, calling for investigation by the Federal Bureau of Investigation, is oftentimes solved and the offender apprehended before the arrival of the FBI. Basic crime lab and training in its use would be of great benefit to both tribal departments and to the reservation residents.

e. Improvement of Prosecution and Court Activities, and Law Reform

Objective: To improve the quality of tribal courts to a degree which would enable courts of other jurisdictions to give full faith and credit to their decisions; to modernize and standardize the administrative functions of tribal courts; to establish an associate judgeship in each tribal court and to attract and employ a tribal member to serve in that capacity; to provide adequate recompense to the associate judge in order that high qualifications may be established and tenure will be encouraged; to develop and present meaningful training to tribal judges, lay prosecutors and to court clerks.

Each tribe should strive toward a modern criminal code and the enactment of a juvenile code. An Indian probation officer should be trained at each reservation to assist the BIA probation officer now serving both reservations and the services of such officer should be made available and established as an arm of each tribal court.

Courts, the foundation of any criminal justice system, have on Indian reservations been too long ignored in the funding processes. Accordingly, a concentrated effort should be made to provide each tribal court with a basic but dignified court setting, with adequate and well trained personnel, and with a public education program aimed at restoring respect in the people for their judiciary.

Legislative and administrative enactments are urgently needed to eradicate or to clarify "checkerboard" and other critical jurisdictional problems.

A system of balanced prosecution and defense should be instituted to relieve the court and the police of this burden and to help assure the process of justice.

f. Increase in Effectiveness of Corrections and Rehabilitation (Including Probation and Parole)

Objective: To provide both adult and juvenile rehabilitative services, including correctional facilities, and detoxification centers for adults and diagnostic and treatment centers for juveniles.

A determination should be made as to the best type and location of regional facility to provide such evaluation, diagnosis and treatment to youth as may be required. This type facility would provide intervention in delinquent behavior and provide corrective measures through the proper community services on the reservation and to the tribal court.

g. Reduction of Organized Crime

Objective: There is no indication that organized crime does exist, and it is not likely to exist so long as there are no resources on Colorado reservations to attract elements of organized crime.

h. Prevention and Control of Riots and Civil Disorder

Objective: While the potential for large scale riot or civil disorder on Colorado reservations is minimal, hundreds of people each year attend the Indian celebrations on the reservations. Techniques and tactics of crowd control should be learned by tribal police in order that potential situations do not get out of hand.

i. Improvement of Community Relations

Objective: To increase community involvement in law enforcement programs. For the upgrading of law enforcement on Indian reservations to have a meaningful beginning, there must be cooperation from everyone involved

**CONTINUED**

**4 OF 6**

within the community. A closer relationship between Indian police agencies and the state, county and municipal departments needs improvement to provide more rehabilitation, correctional and medical services to the reservation criminal justice systems.

d. Research and Development

Objective: To identify and design programs to improve the causes and effects of alcoholism and problem drinking in the Indian communities; to investigate the feasibility of area-wide or regional programs and/or facilities upon which to base meaningful and innovative programs designed to reduce problem drinking and alcoholism among the Indian people of Colorado.

### 3. MULTI-YEAR BUDGET AND FINANCIAL PLAN

<u>Functional Categories</u>	<u>1971</u>	<u>1972</u>	<u>1973</u>
A. Upgrading Law Enforcement Personnel			
(1) Federal Funds	\$135,540.00	\$ 9,600.00	\$ 7,200.00
(2) Local Matching Funds	90,360.00	6,400.00	4,800.00
(3) State Matching Funds	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
TOTAL FUNDS	\$225,900.00	\$16,000.00	\$12,000.00
B. Prevention of Crime	No funds required at this time.		
C. Prevention and Control of Juvenile Delinquency	<u>Pre-Delinquent Referral Unit</u>		
(1) Federal Funds	\$	\$18,999.00	\$18,999.00
(2) Local Matching Funds		12,667.00	12,667.00
(3) State Matching Funds		<u>-0-</u>	<u>-0-</u>
TOTAL FUNDS		\$31,666.00	\$31,666.00
D. Improvement of Detection and Apprehension of Criminals			
(1) Federal Funds	\$ 9,372.00	\$11,700.00	\$ 7,200.00
(2) Local Matching Funds	6,248.00	7,800.00	4,800.00
(3) State Matching Funds	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
TOTAL FUNDS	\$ 15,620.00	\$19,500.00	\$12,000.00

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<u>Functional Categories</u>	<u>1971</u>	<u>1972</u>	<u>1973</u>
E. Improvement of Prosecution and Court Activities and Law Reform			
(1) Federal Funds	\$ 2,400.00	\$ 2,400.00	
(2) Local Matching Funds	1,600.00	1,600.00	
(3) State Matching Funds	<u>-0-</u>	<u>-0-</u>	
TOTAL FUNDS	\$ 4,000.00	\$ 4,000.00	
F. Increase in Effectiveness of Corrections and Rehabilitation	<u>Correctional Facilities</u>	<u>Rehabilitation Center</u>	
(1) Federal Funds	\$250,000.00	\$200,000.00	
(2) Local Matching Funds	250,000.00	200,000.00	
(3) State Matching Funds	<u>-0-</u>	<u>-0-</u>	
TOTAL FUNDS	\$500,000.00	\$400,000.00	
G. Reduction of Organized Crime	No funds required at this time.		
H. Prevention and Control of Riots and Civil Disorder	No funds required at this time.		
I. Improvement of Community Relations			
(1) Federal Funds	\$ 6,000.00	\$ 3,000.00	
(2) Local Matching Funds	4,000.00	2,000.00	
(3) State Matching Funds	<u>-0-</u>	<u>-0-</u>	
TOTAL FUNDS	\$ 10,000.00	\$ 5,000.00	

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<u>Functional Categories</u>	<u>1971</u>	<u>1972</u>	<u>1973</u>
J. Research and Development (Including Evaluation)			
(1) Federal Funds	\$ 45,000.00		
(2) Local Matching Funds	5,000.00		
(3) State Matching Funds	<u>-0-</u>		
TOTAL FUNDS	\$ 50,000.00		

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#### 4. MULTI-YEAR FORECAST OF RESULTS AND ACCOMPLISHMENTS

##### Functional Categories

##### A. Upgrading Law Enforcement Personnel

<u>1971</u>	<u>1972</u>	<u>1973</u>
(1) Increase present salaries to attract better qualified applicants, reduce turnover rate by 75% and improve morale.	(2) Develop pay incentive programs based upon specialized skills and formal education.	Continue and evaluate.
(2) Assist Ute Mountain Ute tribe in obtaining services of a professional police administrator to act as chief and train tribal member as his successor.	Continue and evaluate.	Continue and evaluate.

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Functional Categories

A. Upgrading Law Enforcement Personnel (continued)

	<u>1971</u>	<u>1972</u>	<u>1973</u>
(3)	To provide both tribal police departments with additional formal academy training at Roswell Police Academy or at Colorado State Patrol School. Establish on-going inservice training sessions in conjunction with other tribal departments and local agencies.	Continued.	Continued.
(4)	Obtain modern police uniforms designed for the type of service required in order to increase morale, officer effectiveness and the image of the police within the community. Should improve contacts with the public by 50%		

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Functional Categories

B. Prevention of Crime (Including Public Education)

	<u>1971</u>	<u>1972</u>	<u>1973</u>
(1)	Development of programs designed to reduce reservation tolerance to deviant behavior. Emphasize police patrol and activity in known trouble spots. Involve community in crime prevention through education programs through the media of classroom and community meetings.	Continue and evaluate.	Continue and evaluate.

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Functional Categories

C. Prevention and Control of Juvenile Delinquency

<u>1971</u>	<u>1972</u>	<u>1973</u>
(1) Develop predelinquent referral units on both reservations.	Continue and evaluate.	Continue and evaluate.
(2) Establish a community resource coordinator to coordinate youth activities on each reservation.	Continue and evaluate.	Continue and evaluate.
(3) Amend existing tribal code and develop plans to investigate and prosecute persons contributing to delinquency.	Continue.	Continue.
(4) Obtain or train one officer from each department to act as an effective juvenile officer.	Cross-train juvenile officer with other officers on department.	Continue training and evaluate progress.

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Functional Categories

D. Improvement of Detection and Apprehension of Criminals

<u>1971</u>	<u>1972</u>	<u>1973</u>
(1) Improve police communications between state, county and tribal departments and provide tribes with access to NCIC facilities.		
(2)	Provide each department with one new vehicle to replace obsolete equipment.	Replace one additional vehicle for each department.
(3)	Standardize and improve records keeping to provide accurate data for evaluation of crime rates and causes.	Continue and evaluate. Should improve record keeping system by 75%.

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Functional Categories

E. Improvement of Prosecution and Court Activities, and Law Reform

<u>1971</u>	<u>1972</u>	<u>1973</u>
(1) Each tribe to employ an associate judge to train as future replacement for present tribal judge.	Continue tribal judge training.	Continuation.
(2) Send associate judges to National Tribal Judges Training Program, sponsored by American Indian Court Judges Association.		
(3) Employ and send two tribal lay prosecutors to prosecutors training course sponsored by Navajo tribe at Windowrock, Arizona.	Continue prosecutors' training.	Continuation and evaluation.
(4) Establish program to develop standardized court administration and training program for court clerks.	Expand court clerk training program.	Continuation.

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Functional Categories

E. Improvement of Prosecution and Court Activities, and Law Reform (continued)

<u>1971</u>	<u>1972</u>	<u>1973</u>
(5) Begin construction of criminal justice centers on both reservations providing for court facilities.	Continue construction.	Determine additional needs.
(6) Research courses of action to be taken to solve jurisdictional problems.	Continuation and recommendation to appropriate legislative bodies.	Continue and evaluate.
(7) Develop juvenile codes to be considered for adoption by tribal councils.	Evaluate previous code drafting effort and make necessary changes.	Continue and evaluate.

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Functional Categories

F. Increase in Effectiveness of  
Correction and Rehabilitation  
(including probation and parole)

<u>1971</u>	<u>1972</u>	<u>1973</u>
(1) Develop plans and begin construction of modern correctional facilities on both reservations.	Complete construction and begin operation.	Continue operation.
(2) Solicit application and develop plans for training both male and female probation personnel at each reservation to assist BIA probation officer.	Continuation.	Continuation.
(3) Develop plans for regional rehabilitation center including a diagnostic and treatment center.	Begin construction.	Place in operation.

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Functional Categories

G. Reduction of Organized Crime

1971

1972

1973

There are no immediate programs planned.

H. Prevention and Control of Riots and Civil Disorders

(1) Secure training for tribal police in crowd control situations.	Continue.	Continue.
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J. Improvement of Community Relations

(1) Provide necessary training materials and instructors to increase community participation in law and order. Group sessions and meetings oriented toward the relationship of the police and citizens.	Continuation.	Continuation.
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Functional Categories

J. Research and Development

1971

1972

1973

- (1) Develop, through Fort Lewis State College at Durango, a research program involving tribal leaders to discuss and evaluate social and economic problems on Indian reservations giving rise to problem drinking and alcoholism.
- (2) Collect and collate data concerning the magnitude and the effect of alcoholism on Indian reservations and make data available to interested departments and agencies.

C. THE ANNUAL ACTION PROGRAM

This section details the specific action programs to be undertaken during the current year on Indian reservations in the state of Colorado. The following discussion and the action programs are arranged by functional categories.

1. Program Descriptions

A. Upgrading Law Enforcement Personnel

- a. Title - Employ professional police administrator for Ute Mountain Ute tribe.
- b. Objective - To provide professional police leadership to the Ute Mountain Ute police department for a period of five years in order to adequately train and organize the Ute Mountain Ute department in order that at the end of that time the department could continue to maintain a professionally competent department utilizing its own members.

- c. Implementation - It is anticipated that the professional police administrator will be recruited from the ranks of retired police administrators who have knowledge and appreciation on Indian cultural patterns and problems. This administrator will assist in the development and design of a correctional-justice center to be built on the reservation, will assist in development of programs emphasizing the rehabilitative and correctional processes, will organize the department along modern lines, establishing proper records keeping and collection systems. He will design and provide training programs for an assistant administrator or chief and will design and assist in providing in-service training to members of the department.

d. Budget -

(1) LEAA Support Requested	\$ 6,000.00
(2) State Support	-0-
(3) Local Support	6,000.00
(4) Other Support	-0-
(5) Program Total	<u>\$12,000.00</u>
(6) Applicable Federal/Tribal Contribution Ratio:	
50% Federal - 50% Tribal	
(7) Prior Funding	None

e. Past Progress - None.

Upgrading Law Enforcement Personnel

- a. Title - Police salary incentives.
- b. Objective - To reduce police attrition rate by 75%; to stimulate applications from more qualified personnel; to improve department morale.
- c. Implementation - A desirable salary increment would increase the salaries of the Southern Ute police by 10% and the Ute Mountain Ute police by 15%. Salaries on the Southern Ute department range from \$6,700 for the chief

to \$3,600 for the lowest paid patrolman with an average of \$5,000 per year.

All six officers of the Ute Mountain Ute department earn \$3,000 per year, including the chief.

d. Budget -

(1) LEAA Support Requested	\$3,000.00
(2) State Support	-0-
(3) Local Support	3,000.00
(4) Other Support	-0-
(5) Program Total	<u>\$6,000.00</u>
(6) Applicable Federal/Local Contribution Ratio:	
50% Federal	- 50% Local
(7) Prior Funding	None

e. Past Progress - None.

Upgrading Law Enforcement Personnel

- a. Program Title - Improved appearance of tribal police.
- b. Objective - To stimulate pride and improve the morale of tribal policemen thus improving their activity and effectiveness; to improve the

image of the tribal police in the eyes of the reservation residents thus improving police-community relations.

- c. Implementation - Provide two sets of summer and winter uniforms for eleven officers on both Colorado reservations.

d. Budget -

(1) LEAA Support Requested	\$ 2,400.00
(2) State Support	-0-
(3) Local Support	1,600.00
(4) Other Support	-0-
(5) Program Total	<u>\$ 4,000.00</u>
(6) Applicable Federal/Local Contribution Ratio:	
60% Federal	- 40% Local
(7) Prior Funding	None

e. Past Progress - None.

Upgrading Law Enforcement Personnel

- a. Program Title - In-service and basic training programs.
- b. Objective - To provide sufficient training for new recruits and veteran

officers in order to insure their competency and to increase their knowledge and skills; to provide all officers with new ideas, techniques and insights into modern police procedures; to establish a minimum of two hundred hours of basic training for all police officers.

- c. Implementation - To send two officers from each department to each of the three sessions held at the Roswell Police Academy at Roswell, New Mexico during the year. To send at least one officer from each department to applicable specialized short courses held during the year at both the Colorado and New Mexico Law Enforcement Academies. To establish bi-monthly four hour in-service training sessions utilizing federal, state and county officers and providing necessary instructional material and equipment.

d. Budget -

(1) LEAA Support Requested	\$125,940.00
(2) State Support	-0-
(3) Local Support	83,960.00
(4) Other Support	-0-
(5) Program Total	<u>\$209,900.00</u>
(6) Applicable Federal/Local Contribution Ratio:	

60% Federal - 40% Local

(7) Prior Funding None

e. Past Progress - None.

Upgrading Law Enforcement Personnel

- a. Program Title - Tribal police exchange.
- b. Objective - To improve training procedures and techniques on Colorado tribal police departments by providing these officers with knowledge and experience to be gained from other, larger tribal police departments. To acquaint tribal police with cultural patterns of other tribes and the techniques employed by other departments in handling unique Indian problems.

c. Implementation - It is anticipated that each of the two Colorado reservations would exchange officers with nearby out-of-state tribal departments for periods not to exceed three months in length. Each exchange officer would continue at his present salary to be paid by his home department but would receive an additional compensation of \$200 per month during the exchange period. Selection of officers to participate in the program would be based upon a voluntary basis.

d. Budget -

(1) LEAA Support Requested	\$3,600.00
(2) State Support	-0-
(3) Local Support	2,400.00
(4) Other Support	-0-
(5) Program Total	<u>\$6,000.00</u>
(6) Applicable Federal/Local Contribution Ratio:	
60% Federal - 40% Local	
(7) Prior Funding	None

e. Past Progress - None.

B. Prevention of Crime (Including Public Education)

- a. Title - Prevention and reduction of crime.
- b. Objective - By prohibiting opportunities for the commission of crime through the involvement of the Indian community in crime prevention through educational programs.
- c. Implementation - Tribal governments and Bureau of Indian Affairs would act jointly in disseminating information through schools and community meetings. Tribal police departments would redesign their patrol activities to give greater coverage to high-crime areas.
- d. Budget - No budget required.

C. Prevention and Control of Juvenile Delinquency

- a. Title - Predelinquent referral unit.
- b. Objective - To improve prevention and control of juvenile delinquency by



developing innovative programs and by coordinating all branches of community services designed to divert potential delinquents from the juvenile justice system. To improve programs already in existence by establishing on both reservations a predelinquent referral unit.

- c. Implementation - Because of a lack of coordinated community resources, courts commonly handle many family and youth problems which could be more effectively handled in the community on a voluntary basis, especially first offenders. Police should make more use of existing community services as referral agencies. Specialized prevention-protective programs should be advanced to meet the income, treatment, education and vocational training needs to families of children diverted from or referred by the juvenile courts.

Communications should be improved between the courts, police, community service agencies, schools and neighborhood community services programs, to eliminate unnecessary court intervention in the lives of children.

Courts, police, schools and other sources which turn up cases involving first offenders or the very young should be urged to make the fullest possible use of existing community services referral aids for those families who cannot handle their problems without some help.

Persons skilled in the treatment of deviant behavior problems would be employed at each reservation to develop and comprise a predelinquency referral unit.

- d. Budget -

(1) LEAA Support Requested	\$18,999.00
(2) State Support	-0-

(3) Local Support	\$12,667.00
(4) Other Support	-0-
(5) Program Total	<u>\$31,666.00</u>

(6) Applicable Federal/Local  
Contribution Ratio:

60% Federal - 40% Local

(7) Prior Funding None

e. Past Progress - None.

D. Improvement of Detection and Apprehension  
of Criminals

- a. Program Title - Tribal police communications.
- b. Objective - To provide each tribal police department with its own frequency, independent of other local, tribal or governmental agencies. To reduce present high maintenance costs and to provide longer receiving and transmitting range.
- c. Implementation - To provide the two reservations with at least two base stations, six mobile units and two portable units.

d. Budget -

(1) LEAA Support Requested	\$ 9,372.00
(2) State Support	-0-

(3) Local Support	6,248.00
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(4) Other Support	-0-
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(5) Program Total	<u>\$15,620.00</u>
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(6) Applicable Federal/Local  
Contribution Ratio:

60% Federal - 40% Local

(7) Prior Funding None

Improvement of Detection and Apprehension  
of Criminals

- a. Program Title - Tribal patrol vehicles.
- b. Objective - To provide tribal police departments with adequate vehicles with which to maintain patrol of their respective communities and outlying reservation areas; to reduce the present high maintenance cost of patrol vehicles.
- c. Implementation - To provide during the first year each reservation with one new vehicle, a panel-type capable of traversing reservation roads and in transporting prisoners.

E. Improvement of Prosecution and Court Activities and Law Reform

- a. Title - Tribal court judges training.
- b. Objective - To acquaint tribal judges with a basic understanding of judicial processes, legal terminology, procedures, rules of evidence and the rights of the accused.
- c. Implementation - The American Indian Trial Judges Association, under a grant previously approved by LEAA, will provide judicial training to two Colorado tribal judges during the coming year. While the present tribal judge, who serves both reservations, is a qualified attorney, county and tribal judge, and one who assisted in the formulation and establishment of the training program, it is anticipated that both tribes will employ an associate judge to receive in-service training from the present judge and to attend the course offered by the Judges Association.

Training will require six trips to Albuquerque to attend classroom sessions and travel and per diem necessary thereto.

d. Budget -

(1) LEAA Support Requested	\$ 600.00
(2) State Support	-0-
(3) Tribal Support	400.00
(4) Other Support	-0-
(5) Program Total	<u>\$1,000.00</u>
(6) Ratio:	

60% Federal - 40% Tribal

(7) Prior Funding None

Improvement of Prosecution and Court Activities and Law Reform

- a. Title - Drafting of tribal codes.
- b. Objective - To modernize tribal criminal codes, to ensure the tribal codes are responsive to the needs of the reservation residents and meet the requirements of due process. To stimulate and encourage the adoption of modern juvenile codes, without which

many of the other programs would be impossible.

- c. Implementation - To provide to those tribes desiring codes the assistance of trained lawyers and law students who, once having understood the customs and cultural demands for which accommodation must be made, could lend worthwhile assistance in the drafting of codes while advising of the accommodations which must be made to the Indian Civil Rights Act and other applicable federal and state statutes.

d. Budget -

(1) LEAA Support Requested	\$ 3,000.00
(2) State Support	-0-
(3) Tribal Support	2,000.00
(4) Other Support	-0-
(5) Program Total	<u>\$ 5,000.00</u>

(6) Ratio:

60% Federal - 40% Tribal

- (7) Prior Funding                      None.

F. Increase Effectiveness of Corrections and Rehabilitation

- a. Title - Construction or expansion of tribal correctional facilities.
- b. Objective - To improve effectiveness of correctional facilities by expansion of present ones or construction of new ones. To provide separate detention facilities for juveniles, persons awaiting trial and first offenders.
- c. Implementation - Both tribal governments will first develop rehabilitation programs for persons to be committed to the facilities when constructed. While the entire funds requested may not be expended during the coming year due to the time required for the design of program and the design of the physical facility, the entire amount is being requested during this coming fiscal year.

d. Budget -

(1) LEAA Support Requested	\$250,000.00
(2) State Support	-0-
(3) Local Support	250,000.00
(4) Other Support	-0-
(5) Program Total	<u>\$500,000.00</u>
(6) Applicable Federal/Local Contribution Ratio:	
50% Federal	- 50% Local
(7) Prior Funding	None

Increase Effectiveness of Corrections  
and Rehabilitation

- a. Title - Construction of youth rehabilitation centers.
- b. Objective - To provide Indian youth with a suitable rehabilitation program by development of a regional youth rehabilitation center which will accommodate delinquent Indian youth from the Ute Mountain Ute and the Southern Ute reservations. This facility would provide services for Indian youth in need of temporary care in a controlled

environment. State facilities are not available to Indian youth unless committed while under jurisdiction of the state of Colorado.

- c. Implementation - This center would function with evaluation, diagnosis and treatment as contributors to rehabilitation. The operation of the center will provide the first step in the redirection of youth involved with Indian courts. Emphasis will be on helping delinquent youth on a non-punitive basis. Programs will be directed toward providing intervention in delinquent behavior through diagnosis, evaluation and treatment, followed by release for probation services. Centers will have a capacity for 20 males and 10 females on a 24-hour basis and will provide outdoor recreation areas, study hall facilities, dining area, examining rooms for

physical and mental examinations, counseling rooms and recreational facilities.

This rehabilitative program will be linked directly to the Indian juvenile courts, the probation unit of the Bureau of Indian Affairs and family services programs, other community services, activities and youth development programs and will offer alternatives to progressive delinquency.

The center will operate with assistance from the Bureau of Indian Affairs social services and the U. S. Public Health Service (Division of Indian Health). Medical, physical and emotional needs will be met and recommendations will be furnished the appropriate court to assist in evaluation and finding solutions to the problem of the delinquent youth.

d. Budget -

(1) LEAA Support Requested	\$200,000.00
(2) State Support	-0-
(3) Local Support	200,000.00
(4) Other Support	-0-
(5) Program Total	<u>\$400,000.00</u>

(6) Applicable Federal/Local  
Contribution Ratio:

50% Federal - 50% Local

(7) Prior Funding None

G. Reduction of Organized Crime

There is no annual action program concerning organized crime on Indian reservations in the state of Colorado. There is no indication that organized crime has made inroads in this area for the simple reason that there is presently no attraction on Colorado reservations for this type endeavor.

H. Prevention and Control of Riots and Civil Disorders

No formalized plans for annual action programs in this area are contemplated for the coming year.

I. Improvement of Community Relations

- a. Title - Community involvement with the justice system.
- b. Objective - To improve the relationship between the police and the public; to provide the public with additional knowledge of federal, state and tribal laws and with the criminal justice procedure; and to establish public education programs to improve access to the rehabilitative, correctional and medical services in their relationship with the criminal justice system.
- c. Implementation - Instructional material will be designed and presented by Indian law enforcement agencies and the Bureau of Indian Affairs through the media of community meetings, discussions and public and private school classes. The use of visual aids will be utilized freely.

Programs will be developed at both Colorado reservations.

d. Budget -

(1) LEAA Support Requested	\$ 6,000.00
(2) State Support	-0-
(3) Local Support	4,000.00
(4) Other Support	-0-
(5) Program Total	<u>\$10,000.00</u>
(6) Applicable Federal/Local Contribution Ratio:	
60% Federal - 40% Local	
(7) Prior Funding	None

J. Research and Development

- a. Title - Research in the causes and effects of alcoholism on Indian reservations.
- b. Objective - To involve the Indian leadership in the study of social and economic problems giving rise to alcohol abuse among reservation residents; to conduct seminars at Fort Lewis State College in this regard and to establish a data base useful to all agencies

and organizations involved and interested in the alcohol problem on Indian reservations.

- c. Implementation - A series of meetings and discussions are to be held on the campus at Fort Lewis State College at Durango involving tribal leaders, educators, sociologists, criminologists and others involved in Indian alcohol abuse and its effects. Funds will be necessary to collect and collate data from all southwestern tribes in order to provide meaningful information upon which these discussions and seminars might progress.

d. Budget -

(1) LEAA Support Requested	\$25,000.00
(2) State Support	-0-
(3) Local Support	-0-
(4) Other Support	25,000.00
(5) Program Total	<u>\$50,000.00</u>
(7) Prior Funding	None

4. Technical Assistance and Services

Colorado has joined with the states of New Mexico, Arizona and Utah in supporting the application of the "National Indian Justice Planning Association," of which the states are members, for a sole source grant from LEAA to provide technical assistance to tribes, to the states and to LEAA in all matters appertaining to law enforcement on Indian reservations within the member states.

The National Indian Justice Planning Association will assist the tribes in implementing their individual tribal plans through applications for program funding; it will assist the member states in coordinating Indian projects with state-wide plans; it will render such services to LEAA as might be requested by the Indian Desk; it will provide training to tribal leaders in the planning process in order that tribal plans may be updated and the planning process continues. It is contemplated that other states will become members of the association and, in that event, a similar planning effort as has been accomplished by the Indian Justice Planning Project will be provided the new member states during the coming year.



D. RELATED PLANS, PROGRAMS AND SYSTEMS

Under the provisions of the LEAA Discretionary Grants Program (Section 306 of the Omnibus Crime Bill) a project entitled "A National Project for Indian Court Judges' Training" has been awarded to the Southern Ute Indian tribe of Colorado. The project will be administered through Arrow, Incorporated, with a project director, working without pay, from the Bureau of Indian Affairs.



new mexico

INDIAN JUSTICE PLANNING PROJECT

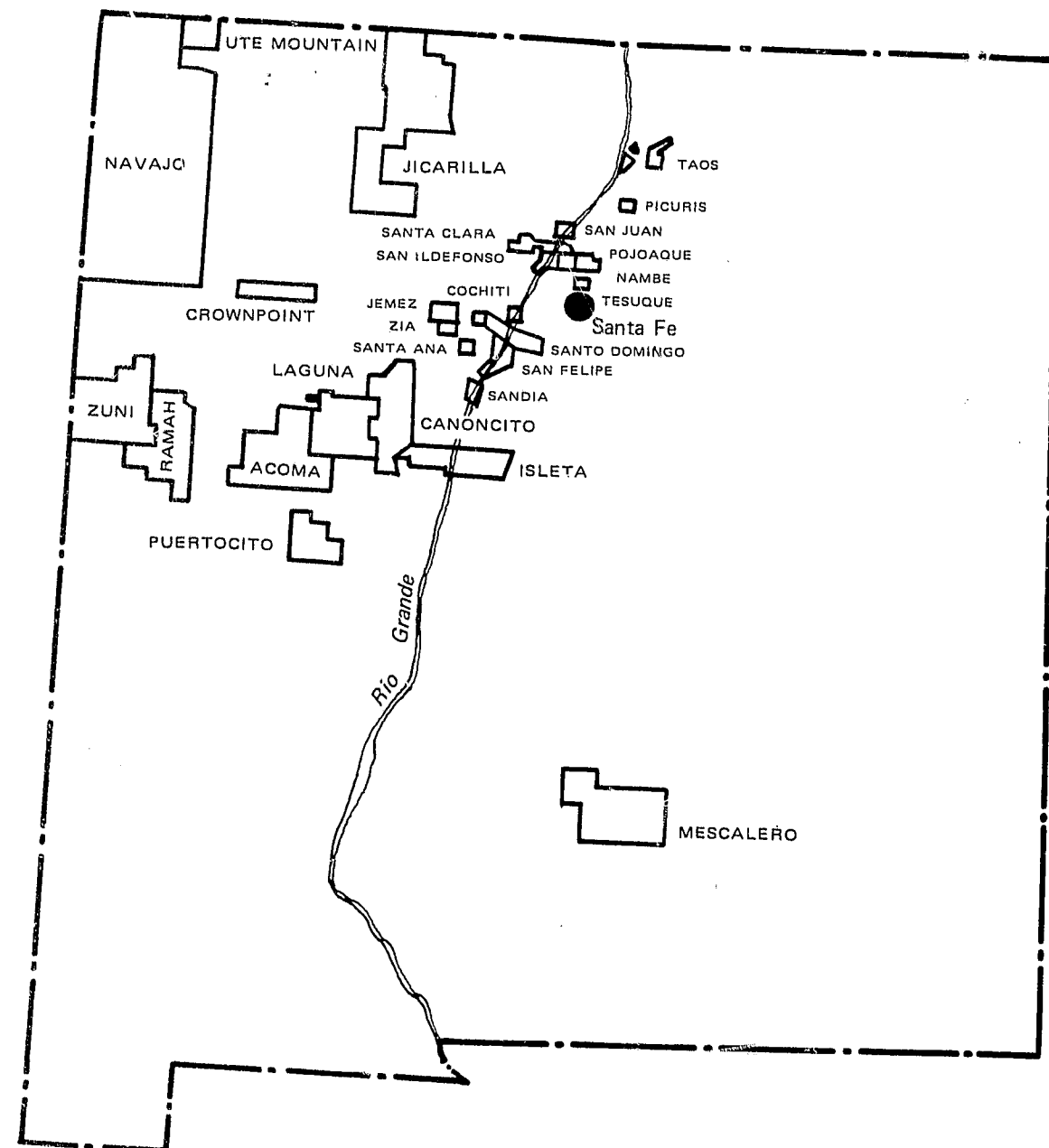
# NEW MEXICO

The state plan for Indian law enforcement for New Mexico as presented here is largely a composite of the twenty tribal plans which follow and of the Navajo plan set forth previously in this study. It is not intended as a complete summary of those tribal plans but is intended to present an overview to be utilized by the State in drafting its 1971 plan. There is no Administrative Component to this plan as that requirement is covered elsewhere in the statewide plan.

One of the justifications for funding this special planning effort is the uniqueness of Indian priorities - from non-Indian communities and from reservation to reservation. For this reason, no attempt is made to establish statewide Indian priorities as such, but rather to present program descriptions of general need under the functional categories suggested by LEAA.

## A. EXISTING LAW ENFORCEMENT SYSTEMS AND AVAILABLE RESOURCES

Although there is at least one official at each of the nineteen pueblos with law enforcement authority, only three have police departments as such. Santa Clara employs one officer at a salary of \$300 per month; Laguna has a small



department consisting of a captain, a sergeant, and five patrolmen; and Zuni's department, operating under the supervision of a BIA special officer, employs a chief, a lieutenant, a sergeant, and four patrolmen.

The Navajo Police department maintains a force of 61 officers in New Mexico, operating from Crownpoint and from Shiprock. The Jicarilla Tribe maintains a department of eight men who operate independently of the BIA special officer stationed at that agency. The Mescalero Apache Tribal Police operate under the supervision of the special officer with five officers paid by the tribe and three officers paid under contract with the Bureau.

The eight Northern Pueblos are administered by the Northern Pueblos Agency located in Santa Fe. Their police protection and service is provided by a six BIA officers operating out of a Bureau building located in Espanola, some twenty-five miles north of Santa Fe.

The rest of New Mexico's Pueblos, with the exception of Zuni, are administered by the Southern Pueblos Agency located in Albuquerque. With the exception of Laguna, these pueblos receive police services from ten BIA officers operating from Albuquerque.

In addition to the Pueblo Agencies mentioned in the preceding paragraph, the Bureau of Indian Affairs maintains agencies at Dulce for the Jicarilla Apache Tribe and at Mescalero for the Mescalero Apache Tribe. The administration of the Zuni Tribe has been taken over from the Bureau by the Zuni Tribal Council and some select employees of the Bureau are now performing similar functions for the tribe. The Bureau Special Officer was one of those retained and he is responsible for training and supervising Zuni's police.

These four agencies, as well as two more in Colorado, operate under the jurisdiction of the Bureau's Albuquerque area office, and the agency special officers report to the Area Special Officer located there.

There are agencies located at Crownpoint and at Shiprock, New Mexico, each with a special officer who provides investigatory services and who reports to the Navajo Area Special Officer at Window Rock, Arizona.

Cooperative arrangements between tribes and the State Police and with county sheriffs are generally good. The State and county patrol state and county rights-of-way across the reservation and investigate most accidents occurring thereon with the assistance of tribal police. Cross

commissioning is, or has been common. A civil suit is currently pending against the Sheriff of McKinley County for injuries allegedly caused by a Navajo tribal policeman while acting as a McKinley County Deputy Sheriff.

Tribal jails are located at Dulce, Mescalero, Zuni, Crownpoint, and Shiprock. A one cell with bath holding facility was constructed at San Ildefonso about twenty years ago, but it is being used as a storeroom. Arrangements are made to house prisoners in off-reservation jails at Taos, Espanola, Santa Fe, Los Lunas, Grants, and Albuquerque.

The State does not provide probation or parole services to tribal courts, and State correctional institutions are not available to the tribes. Zuni and Mescalero are the only tribes in New Mexico which employ a probation officer, although the Navajo Tribe employs an adult probation officer who works within the New Mexico portion of the Navajo Reservation and two juvenile probation officers who work from Crownpoint and Shiprock.

Each reservation located in New Mexico maintains a tribal court, and there are Navajo courts located at Crownpoint and at Shiprock.

Indian police, courts and corrections are more completely described in Chapter VII of Part I of this study, and the reader's attention is invited to that chapter and to the individual tribal plans for additional information concerning existing law enforcement systems and available resources.

B. THE MULTI-YEAR PLAN

1. Needs and Problems

Common problems such as multiple jurisdiction where land ownership may be in federal, state, county, tribal or private hands; the lack of adequate communication facilities; isolation and long distances between homes, schools, population centers, and health services; and the lack of adequate all-weather roads are all contributing factors to crime and delinquency. Added to these are the socio-economic problems of unemployment and under-employment resulting in substandard income and family instability. Formal education as well as training in all areas of the criminal justice system is in need of improvement to equal that of state or county systems.

Juvenile Delinquency and Adult Crime: The delinquent children and youth on Indian reservations are generally unable to cope with the problems and frustrations of the real world in which apathy, prejudices, and discrimination present obstacles to the processes leading to community integration. Caught in a seemingly hopeless and helpless situation in which a reservation sub-culture is in conflict with the culture of the dominant society: residing on a reservation where the disintegration of the Indian culture has left a cultural void filled with family disorganization, broken homes, poverty, alcoholism, and child neglect, and required to exist in a world of dependency, they have refused to accept the norms and mores of the dominant society. These and other factors contribute to a deep sense of inadequacy, hostility, and disrespect for law and order.

Evidence presented by available statistics suggests the extent of the social breakdown and the demoralization of both the juvenile and adult populations. There is strong evidence to indicate a competitive atmosphere among juveniles to become the most delinquent. Apprehension and incarceration is a status symbol. The youth who can create the most havoc or commit the most severe crime is

oftentimes not looked upon with disfavor, but is upheld by his peers and excused by his parents and other adults.

Persons interviewed, including tribal leaders, law enforcement personnel, social workers and others, expressed opinions that most crime and delinquency on Indian reservations is related to the use of alcohol by the law violator. A complaint voiced by some law enforcement personnel, particularly Navajo, was their inability to obtain successful prosecution of bootleggers who sell liquor to anyone, regardless of age.

It is often said that "offenders are not born criminals, but are a mirror of their environment," basically their home and their community. Criminality is all too often a social role acted out upon the environmental stage and before the actor can change his role, there must be some alteration in the structure of the social stage of which he is a part. For offenders to struggle with and do something about their own behavior, people and institutions must also be altered.

Widespread family instability on Indian reservations is evidenced by high rates of arrests, divorce, desertion, chronic misuse of alcohol and other social alarms. There does not appear to be convenient, centrally organized

are not unfamiliar with the dark recesses of the tribal jail.

Training the new recruit is usually limited to riding with an older officer for a few days at most with the attendant problem of picking up poor police habits from another untrained officer. Although training is available without cost at the Roswell Police Academy, the tribe can ill afford the policeman's salary during the ten-week course or the loss of even one man from an already too-small department.

Even those officers who possess a formal education and who are fortunate enough to receive additional training present a problem to a tribe which cannot afford to pay a salary commensurate with the officer's qualifications. A trained policeman soon discovers more attractive pay scales in other departments.

BIA Special Officers usually attempt some sort of in-service training program. Interviews with tribal policemen tend to indicate that this training is not very consistent and not well organized as to content.

Larger, off-reservation departments oftentimes extend invitations to tribal departments to attend workshops and training sessions, but the invitation usually goes unaccepted.

Lack of tribal funds is also felt and is readily apparent in the lack of police equipment. With the exception of the Navajo Police Department, tribal police are either poorly uniformed or wear no uniforms at all. Most firearms are unsafe and outmoded. One department passes on its side arm and leather from shift to shift. Vehicles, usually panel trucks or sedans, are frequently obtained from GSA surplus and, rather than passing a savings to the tribe, pass an unreasonable burden in the cost of upkeep and repairs.

Most reservations encompass vast areas and many, many miles of unbelievably poor roads and trails. The effect of police patrol and service over this type of terrain upon vehicles is obvious. New, special purpose equipment is needed by all departments.

Those tribal departments possessing radio equipment have, in the past, relied upon the State Police band for communications. With the State of New Mexico now converting to a new, high band frequency, tribal police are in need of new radio communications, utilizing either their own or the State Police frequency.

Tribal police records should be standardized and space provided for their keeping. The Bureau of Indian

Affairs is currently attempting to standardize and update its reporting procedures. Collection, identification, evaluation, and preservation of evidence is in great need of improvement.

Tribal police operate from and are responsible for the tribal jail. The condition of those jails has been described elsewhere in this plan. Suffice it to say that old, unsanitary, crowded, ill-lighted, poorly ventilated, and unattractive buildings not only impair operating efficiency, but tend to erode public respect for the police.

Indian tribes are currently quite active in attracting outside capital to the reservation. Industry and tourism is increasing with an attendant increase in police responsibilities. Two of New Mexico's Pueblos are in the process of leasing large areas to residential developers. The need for additional manpower, training, and equipment will become alarmingly pressing in the near future.

Community relations between the police and reservation residents is a relatively new concept on most reservations. Police are frequently looked upon as merely "drunk chasers" and are not relied upon for the investigation of

serious offenses. Many assaults, rapes, and thefts go unreported to the police. The people prefer to handle their own problems in their old ways.

Many of the pueblos would prefer their own tribal police rather than being served by the Bureau of Indian Affairs. Excessive response time and failure to understand cultural differences are cited as some of the reasons. The pueblos, however, lack sufficient funds with which to employ even the most minuscule department if they were to approach this goal independently. Therefore, many pueblo governors are examining the possibility of a regional, inter-tribal police department: one to serve the eight Northern pueblos and another to serve nine Southern pueblos. Each of the Southern and Northern departments would have available to it a centrally located rehabilitation center and a separate youth facility. Small, overnight holding facilities are being considered at each end of the "beat".

Correctional Services and Facilities: As stated by the President's Commission on Law Enforcement and Administration of Justice, "The general underlying premise for new directions in corrections is that crime and delinquency are symptoms of failure and disorganization of

community as well as of individual offenders. The task of corrections, therefore, includes building or rebuilding solid ties between offender and community, integrating or re-integrating the offender into community life. This requires not only efforts directed toward changing the individual offender which has been almost the exclusive focus of rehabilitation, but also mobilization and change of the community and its institutions."

The focus of corrections is intervention in delinquent and criminal careers, through management and control of crisis and programs designed to overcome handicapping deficiencies. The deeper an offender has been plunged into correctional processes and the longer he has to be locked up, however humanely, the greater the cost and the more difficult the road back to the point of socialization that will permit successful re-integration into the community. It should be recognized that a person's need for control or for help are not necessarily related to his temporary legal status.

Although the Zuni Pueblo employs a probation and parole officer and a juvenile officer trainee, and the Navajo Tribe employs two juvenile probation officers in

New Mexico and utilizes its tribal probation and parole officer to some extent in New Mexico for the purpose of supervising those convicted of state or federal crimes, such services are generally unavailable to all of New Mexico's Indian population.

State correctional institutions and services are unavailable to tribes and to Indians individually unless they run afoul of state law. One State probation officer stated that even then his service was ineffectual because of language difficulties.

Until permissive state legislation can be enacted, with a commensurate increase in budget, or until the budget of the Bureau of Indian Affairs can be increased to so provide, New Mexico's Indian population will continue to be deprived of even the most rudimentary assistance in the rehabilitative processes.

The percentage of children on reservations far exceeds the national average. Indian people are oriented toward their children as a whole and are deeply concerned with widespread alcohol abuse and glue and paint sniffing which on some reservations begins at preschool age. Yet, training in the handling of children by the police is almost non-existent. The need for public education in



the uses and abuses of alcohol and dangerous substances goes largely unheeded. Massive, well-organized, and continuing educational programs should be instituted for both parents and students of all grades. At least one officer with each tribal police department should be well trained and well paid as a juvenile officer.

Tribal jails on Indian reservations in New Mexico were surveyed by the Indian Justice Planning Project. None of the jails would meet the minimum standards for detention as contained in the "Manual of Correctional Standards" published by the American Correctional Association and as prescribed in "New Roles for Jails" published by the U. S. Bureau of Prisons. None of these facilities could meet the recommendations contained in the "Report by the President's Commission on Law Enforcement and Administration of Justice". Four of the facilities should discontinue housing prisoners until improvements can be made.

Old, unsanitary buildings, poorly qualified and constantly changing personnel, intermingling of all types of prisoners—sick and well, old and young hard core criminals and misdemeanants with petty offenders in overcrowded cells

and tanks—the complete absence of any sort of rehabilitative program, and the failure of most jails to provide adequate supervision and services of a matron or a jailer at night are but a few of the more glaring deficiencies noted.

Modern, up-to-date physical plants, housing dormitory-like quarters, recreational space, kitchen and dining rooms, classroom space, counseling offices, small but dignified courtroom settings and space for judges chambers, jury room and court administrative functions, police headquarters, radio, records and evidence facilities, provisions for work-release or similar programs, together with proper outdoor areas for recreation and police training. This is what is totally lacking, and this is what is critically needed for gaining respect for the system; for providing the basic tool with which to build modern, far-reaching and innovative programs; for providing basic humane treatment; and finally, to permit the system as it exists today to perform its most rudimentary tasks with some degree of efficiency and effectiveness.

The Tribal Judiciary: As tribal courts, codes and prosecutory process was discussed at some length in Chapter VII of this study, the subject will be treated briefly in this section of the plan.

Although some tribes have written constitutions and criminal codes, not all do and some rely on time-honored custom and tradition for social control. Few tribes have any semblance of a juvenile code. All tribes are in need of modernizing, implementing, and educating both law enforcement personnel and the public in the matter of codes.

A great need exists to resolve the manifold jurisdictional problems extant upon Indian reservations and, in particular, the "checkerboard" of the Eastern Navajo reservation.

State legislation is needed to recognize tribal governments, courts, and police and to extend state services to its Indian population.

All tribal judges recognize their need for training in the judicial processes. Basic education in procedures, terminology, and the rights of the accused should be provided to tribal judges without delay.

A system of precedent, based upon written decisions and written codes should be striven for in order that both judges and accused may be assured of some consistency in the application of justice.

Record keeping of dockets and fines should be improved and all tribal judges should have available to them the services of a well trained clerk.

Many pueblo judges serve a one-year term and that without pay. If pay were made available to tribal judges, accommodations in governmental structure might be made to provide for more tenure.

## 2. General Statement of Priorities and Improvement Programs

This plan is designed to increase the efficiency and quality of criminal justice on Indian reservations by development of programs which will define the kind of criminal justice system deemed "ideal", yet attainable, in terms of upgrading law enforcement, improvement of prosecution court activities and law reform, and increasing the effectiveness of corrections and rehabilitative services.

Following is a discussion by functional category of objectives sought, the direction, scope, and types of improvement programs planned over the multi-year period.

### a. Upgrading Law Enforcement Personnel

Objective: The objective of all programs within this category is to insure that the best qualified Indian people will be attracted to all categories of law enforcement jobs on the reservation. To provide them with the best possible training to insure competency and to provide sufficient incentives to reduce the turnover rate and attain better retention of these qualified people.

These improvement programs will serve a dual purpose, in that they will also provide a base for recruiting and training for proposed regional pueblo police department and correctional programs.

b. Prevention of Crime (including public education)

Objective: To prevent and reduce the commission of crime by prohibiting, removing, and reducing the opportunities for the commission of crime and by involving the general public in crime prevention through educational programs.

It is anticipated that tribal governments, assisted by the Bureau of Indian Affairs, will place additional emphasis on developing an improved data base by correlating such information as "juveniles in contact with police", and "juveniles and adults in trouble in the off-reservation community", thereby providing more accurate information defining the extent of the crime and delinquency problem. It is also anticipated that efforts will be made to obtain the support of the reservation population through education and involvement in crime prevention programs designed to reduce reservation tolerance to deviant behavior. Violations appear to be a felt need rather than that for which one should feel. Efforts to insure some conformity, to

strengthen norms and mores by changing attitudes and encouraging a change in values should be undertaken.

Schools should place more emphasis on programs designed to develop an understanding of law enforcement systems through public education programs.

c. Prevention and Control of Juvenile Delinquency

Objective: To divert potential delinquents from the criminal justice system, and by removing or correcting sources contributing to juvenile delinquency. By assisting parents and schools to identify the potential delinquent, and by involving him in community programs designed to prevent delinquency.

This is probably the most significant of functional categories for Indian reservations. In recent years, youth under eighteen years of age have increased in tremendous numbers. As an example, on the Navajo reservation fifty-three percent of the entire population is under the age of eighteen. In 1969, 871 juveniles were detained in adult jails and approximately 5,000 were apprehended by police. This does not reflect the number of violators apprehended off the reservation. Tribal leaders and police officers and others on the reservations in New Mexico have stated that juvenile crime and adult alcoholism are of the great-

est concern to the people on the reservations.

The information provided indicates that a massive effort by the Indian tribes in New Mexico must be undertaken to develop innovative and effective programs coordinating all community services and designed to divert potential delinquents from the juvenile justice system.

Coordinated community resources could more effectively handle family and youth problems within the community on a voluntary basis. Courts, police, schools, or other sources which discover cases involving first offenders or the very young should be urged to make the maximum use of existing community services as referral aids to assist families with potentially delinquent children. For those youths who do enter the criminal justice system, the only services are provided by tribal and governmental agency, and these services are extremely limited, if not totally non-existent. Therefore, community programs such as youth service bureaus (coordinating councils) which focus on utilizing existing resources through coordination and developing new resources for services were indicated should be fully utilized.

Projects should be undertaken to provide for combining adult and juvenile provision services.

The possibility of developing a regional-type rehabilitation facility (serving more than one reservation) should be studied.

Programs for the general upgrading of the quality of services to youth must be developed including training programs for indigenous persons. Data should be gathered and analyzed for administrative and program planning; volunteer programs should be developed and juvenile codes drafted and adopted by tribal councils for use by reservation courts. Diagnostic evaluation and treatment centers should be incorporated in planning for correctional facilities. These centers would assist in identifying the potential delinquent or suicidal youth and would provide for intensive case work and follow-up services for those children.

As many Indian youth attend boarding school away from the reservation, the more isolated reservations should develop meaningful recreation programs, particularly during the summer months.

Inasmuch as the State of New Mexico provides no service of this nature to the reservations, the Bureau of Indian Affairs through its branches of community services must intensify those services to families with behavioral problems.

d. Improvement of Detection and Apprehension of Criminals

Objective: To place in the hands of the Indian police the necessary quantity and quality of equipment with which to do an effective job. Otherwise, the improvements planned in "Upgrading Law Enforcement Personnel" will be to little avail.

Modernization of present communications equipment now in use by Indian police together with installation of additional communications equipment is needed. Present problems of high maintenance cost, limited operating range, lack of sufficient radio units, and lack of inter-agency communication during emergencies should be overcome. The need for communications with state and county agencies is important especially where these agencies are operating in or near reservations.

New and improved vehicles, weapons, traffic control devices, investigation and communications equipment and proper training in their use should be made available to the tribes.

Well-trained and well-paid inter-tribal police departments, organized on a regional basis, should greatly improve detection and apprehension of offenders on New Mexico reservations.

e. Improvement of Prosecution and Court Activities, and Law Reform

Objective: To improve the quality of tribal courts to a degree which would enable courts of other jurisdictions to give full faith and credit to their decisions; to modernize and standardize the administrative functions of tribal courts; to establish tenure and adequate recompense in order to attract and retain qualified judges; to develop and present meaningful training to tribal judges, lay prosecutors, and to court clerks.

Each tribe should strive toward a modern criminal code and the enactment of a juvenile code. Probation services should be made available and established as an arm of each tribal court.

Courts, the foundation of any criminal justice system, have on Indian reservations been too long the step children in the eyes of the purse-string bureaucrat. Consequently, a concentrated effort must be made to provide each tribal court with a basic but dignified court setting, with adequate and well-trained personnel, and with a public education program aimed at restoring respect in the people for their judiciary.

Legislative and administrative enactments are urgently needed to eradicate or to clarify "checkerboard" and other critical jurisdictional problems.

A system of balanced prosecution and defense should be instituted to relieve the court and the police of this burden and to help assure the process of justice.

f. Increase in Effectiveness of Corrections and Rehabilitation (including probation and parole)

Objective: To improve both adult and juvenile rehabilitative services, including correctional facilities, and detoxification centers for adults and diagnostic and treatment centers for juveniles.

The lack of adequate corrections and rehabilitative services on Indian reservations in New Mexico, and the lack of such services off the reservations indicates little likelihood that adults and juveniles needing institutional rehabilitation can be deterred from recidivism and progressive crime and delinquency.

To increase the effectiveness of corrections and rehabilitation, juveniles and adults must be provided with probation and parole services. Correctional facilities (jails) must be provided with separate facilities for juveniles, adults, and persons in pre-trial incarceration.

Regional-type facilities should be provided where youth may receive evaluation, diagnosis, and treatment.

This type facility would provide intervention in delinquent behavior and provide corrective measures through diagnosis and evaluation. Recommendations to community service agencies and to juvenile courts could then be made for adequate disposition.

g. Reduction of Organized Crime

Objective: There is no present indication of the existence of organized crime on Indian reservations in New Mexico. There is little likelihood of its existence in the foreseeable future due to the lack of resources on Indian reservations which might act as an attraction.

h. Prevention and Control of Civil Disorder

Objective: To adequately train and equip tribal police in crowd control. Although the probability of large scale riots and civil disorders on Indian reservations is extremely remote, disorders may arise at large gatherings and Indian celebrations which attract thousands of off-reservation people each year.

i. Improvement of Community Relations

Objective: To increase community involvement in law enforcement programs. Great interest was recently shown on one reservation when public opinion as to proposed constitutional provisions were solicited, not only from adults, but from school children as well. To establish meaningful

programs of public and school education utilizing personnel from police courts and corrections.

To solicit and establish closer relationships between Indian police agencies and state, county, and municipal departments.

3. MULTI-YEAR BUDGET AND FINANCIAL PLAN

<u>Functional Categories</u>	<u>1971</u>	<u>1972</u>	<u>1973</u>
A. Upgrading Law Enforcement Personnel			
(1) Federal Funds	\$131,923.80	\$ 97,437.91	\$ 56,400.00
(2) Local Matching Funds	87,949.20	64,758.60	37,600.00
(3) State Matching Funds	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
TOTAL FUNDS	\$219,873.00	\$162,196.51	\$ 94,000.00
B. Prevention of Crime			
(1) Federal Funds	No funds necessary	No funds necessary	No funds necessary
(2) Local Matching Funds			
(3) State Matching Funds			
C. Prevention and Control of Juvenile Delinquency			
	<u>Pre-Delinquent Referral Unit</u>		
(1) Federal Funds	\$ 96,000.00	\$ 96,000.00	
(2) Local Matching Funds	64,000.00	64,000.00	
(3) State Matching Funds	<u>None</u>	<u>None</u>	
TOTAL FUNDS	\$160,000.00	\$160,000.00	

<u>Functional Categories</u>	<u>1971</u>	<u>1972</u>	<u>1973</u>
D. Improvement of Detection and Apprehension of Criminals			
(1) Federal Funds	\$ 75,000.00	\$ 75,000.00	\$ 81,993.00
(2) Local Matching Funds	50,000.00	50,000.00	54,773.00
(3) State Matching Funds	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
TOTAL FUNDS	\$150,000.00	\$150,000.00	\$136,656.00
E. Improvement of Prosecution and Court Activities and Law Reform			
(1) Federal Funds	\$ 60,000.00	\$126,000.00	\$ 60,000.00
(2) Local Matching Funds	40,000.00	84,000.00	40,000.00
(3) State Matching Funds	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
TOTAL FUNDS	\$100,000.00	\$210,000.00	\$100,000.00
F. Increase in Effectiveness of Corrections and Rehabilitation			
	<u>Probation Services</u>		
(1) Federal Funds	\$ 56,160.00	\$ 56,160.00	\$ 56,160.00
(2) Local Matching Funds	37,440.00	37,440.00	37,440.00
(3) State Matching Funds	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
TOTAL FUNDS	\$ 93,600.00	\$ 93,600.00	\$ 93,600.00

1971 to 1973  
New Construction or Remodeling of Present  
Facilities Including a Rehabilitation Center

Federal Funds	\$1,075,000.00
Local Matching Funds	1,075,000.00
State Matching Funds	<u>-0-</u>
TOTAL FUNDS	\$2,150,000.00

<u>Functional Categories</u>	<u>1971</u>	<u>1972</u>	<u>1973</u>
G. Reducation of Organized Crime			
(1) Federal Funds	No funds necessary	No funds necessary	No funds necessary
(2) Local Matching Funds			
(3) State Matching Funds			
H. Prevention and Control of Riots and Civil Disorders			
(1) Federal Funds	No funds necessary	No funds necessary	No funds necessary
(2) Local Matching Funds			
(3) State Matching Funds			
I. Improvement of Community Relations			
(1) Federal Funds	\$ 30,000.00	\$ 12,000.00	\$ 12,000.00
(2) Local Matching Funds	20,000.00	8,000.00	8,000.00
(3) State Matching Funds	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
TOTAL FUNDS	\$ 50,000.00	\$ 20,000.00	\$ 20,000.00



<u>Functional Categories</u>	<u>1971</u>	<u>1972</u>	<u>1973</u>
J. Research and Development (including evaluation)			
(1) Federal Funds	\$ 32,868.00		
(2) Local Matching Funds	3,652.00		
(3) State Matching Funds	<u>-0-</u>		
TOTAL FUNDS	\$ 36,520.00		

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#### 4. MULTI-YEAR FORECAST OF RESULTS AND ACCOMPLISHMENTS

##### Functional Categories

##### a. Upgrading Law Enforcement Personnel

<u>1971</u>	<u>1972</u>	<u>1973</u>
(1) Increased training programs at basic, inservice, and specialized levels for a total of 45 Indian policemen. (One-half of 99 total Indian police in New Mexico)	Continued training of another 45 Indian police personnel in inservice and specialized programs. Training for 34 men of the new all-pueblo police agency.	Continued and evaluated.
(2)	Staffing and selection of personnel for the two new police agencies.	Continued and evaluated.
(3) Increasing of salaries and benefits for attraction and retention of qualified personnel for 99 Indian law enforcement personnel.	Continued and evaluation-set salaries for the new personnel of the proposed police agency which will serve 17 pueblos in New Mexico.	Continued and evaluated.

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Functional Categories

b. Prevention of Crime  
(including public education)

<u>1971</u>	<u>1972</u>	<u>1973</u>
(1) To prevent and reduce crime by prohibiting opportunities for the commission of crime and by involving the general public in crime prevention through educational programs. Public indifference must be overcome by the dissemination of knowledge to the public about modern theories and techniques of crime prevention.	Continued	Continued

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Functional Categories

c. Prevention and Control of Juvenile Delinquency

<u>1971</u>	<u>1972</u>	<u>1973</u>
(1) Develop plans and place in operation "Youth Referral Unit".	Continuation	Continuation and evaluation
(2) Develop plans for "Cross Training" of police officers to perform juveniles officer functions.	Continuation	Continuation
(3) Develop juvenile code for use by Indian courts.	Continuation	

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Functional Categories

d. Improvement of Detection and Apprehension of Criminals

<u>1971</u>	<u>1972</u>	<u>1973</u>
(1) Improve communications on five tribal police departments.	Obtain equipment for the two proposed all-pueblo departments necessary for initial operation.	Continued
(2) Improvement of basic police equipment on five tribal police departments.	Continued	Increase vehicular patrol equipment on all tribal departments.

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Functional Categories

e. Improvement of Prosecution and Court Activities, and Law Reform

<u>1971</u>	<u>1972</u>	<u>1973</u>
(1) Send the six tribal judges to National Tribal Judges Training Program sponsored by American Indian Court Judges Association.	Continuation of tribal judge training.	Continuation
(2) Send two tribal lay prosecutors to Prosecutors Training Course sponsored by Navajo tribe at Window Rock, Arizona.	Continuation and evaluation.	Continuation
(3) Establish program to develop standardized court administration and training program for court clerks.	Expand court clerk training program.	Continuation
(4) Begin construction of criminal justice centers on two reservations providing for court facilities.	Begin construction to additional criminal justice centers.	Determine additional needs.
(5) Research courses of action to be taken to solve jurisdictional	Continuation and recommendations to legislators.	Continuation and evaluation.

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Functional Categories

f. Increase in Effectiveness of Correction  
and Rehabilitation (including probation  
and parole)

<u>1971</u>	<u>1972</u>	<u>1973</u>
(1) Develop plans and begin construction of correctional facilities.	Continuation	Complete construction and start operation.
(2) Develop plans for regional rehabilitation facilities, include plans for diagnostic and treatment services.	Continuation	Continuation of construction and begin operation.
(3) Develop plans and submit project applications for training of male and female probation and parole personnel for each major reservation, include regional planning for pueblos desiring such services.	Complete planning and start services to Indian courts.	
(4) Develop plans and begin remodeling of correctional facility at Shiprock, New Mexico.	Continuation	Completion

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Functional Categories

g. Reduction of Organized Crime

<u>1971</u>	<u>1972</u>	<u>1973</u>
There is no indications that organized crime does exist, and it is not likely to exist as there are no resources on Indian reservations to attract organized crime.		

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h. Prevention and Control of Riots and Civil Disorders

There are no immediate programs planned.

Functional Categories

i. Improvement of Community Relations

<u>1971</u>	<u>1972</u>	<u>1973</u>
(1) Increase the community participation in law and order by having group sessions and meetings oriented toward the relationship between the police and the citizens.	Continued and evaluated.	Community involvement and citizen concern should be greatly improved.
(2) Increase police activities in the schools.		

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Functional Categories

j. Research and Development

<u>1971</u>	<u>1972</u>	<u>1973</u>
(1) To study the possibilities of operating an all-pueblo police departments. Two areas to be involved—the Northern and Southern pueblos—during the first six months.		
(2) Select a police committee for both areas to participate in additional study and for the hiring of employees. The second six months' activities.	Continuation (if necessary) and evaluation.	Continuation

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C. THE ANNUAL ACTION PROGRAM

This section details the specific action programs which may hopefully be undertaken during the current year on Indian reservations in the State of New Mexico. Funding will be sought both from discretionary funds and from bloc-grant funds. The following discussion and action programs are arranged by functional categories.

1. Program Descriptions

A. Upgrading Law Enforcement Personnel

- a. Title - Training of Law Enforcement Personnel
- b. Objective - To upgrade law enforcement personnel on all reservations by assisting in providing training programs and sending personnel to basic and specialized training schools.
- c. Implementation - Grants under this program will assist Indian Officers to attend various police academies during the first year. The program shall also provide officers with an opportunity to attend specialized and advanced training schools. Sources of training centers will be the Indian Police Academy

at Roswell, New Mexico, the Navajo Police Academy at Window Rock, Arizona, and the New Mexico Law Enforcement Academy, which when completed will be located in Santa Fe, New Mexico. Instructors will be the best qualified in various fields of basic and specialized training. These instructors will be members of federal, state, and local agencies, such as, New Mexico State Police, Federal Bureau of Investigation, Bureau of Indian Affairs Law and Order, Albuquerque City Police, and other municipal departments.

During this year, approximately half (47) of the total (99) enforcement personnel will attend training sessions of some kind, either basic or specialized at one of the three academies.

During the second and third year action programs additional men will be trained. In the event regional departments for pueblos are established, there will be a total of 35 additional officers to be trained.

d. Budget

(1) LEAA Support Requested	\$56,400.00
(2) State Support	-0-
(3) Local Support	37,600.00
(4) Other Support	-0-
(5) Program Total	\$94,000.00
(6) Applicable Federal-State Contribution Ratio:	
60% Federal - 40% Local - State	
(7) Prior Funding	-0-

e. Past Progress - No applications for training have been filed or funded by the Indian tribes of New Mexico.

Upgrading Law Enforcement Personnel

- a. Title - Retaining and Adding Law Enforcement Personnel
- b. Objective - For Indian reservations in New Mexico to attract, retain, and add qualified personnel to their present criminal justice system. To increase salaries at least 10%.
- c. Implementation - Many reservations are too understaffed to adequately police their reservation. As salaries are not competitive with other law enforcement agencies or with private industry, it is difficult to hire qualified personnel as law enforcement officers.

Projects under this program will support recruiting programs, incentive programs, and will provide a ten percent increase in salaries in an attempt to attract and retain personnel on all reservations throughout the state.

Using an average pay of \$4,036 statewide for tribal police, a 10% increase would cost \$39,946.50 for 99 officers. \$39,946.50 plus \$211,800 for the two new proposed departments would total \$251,746.50.

d. Budget -

(1) LEAA Support Requested	\$125,873.25
(2) State Support	-0-
(3) Local Support	125,873.25
(4) Other Support	-0-
(5) Program Total	\$251,746.50
(6) Applicable Federal - State Contribution Ratio:	
50% Federal - 50% State-Local	
(7) Prior Funding	-0-

C. Prevention and Control of Juvenile Delinquency

a. Title - Pre-delinquent Referral Unit

b. Objective - To establish on each Indian reservation a pre-delinquent referral unit, designed to improve prevention and control of juvenile delinquency by developing innovative programs, and coordinating all branches of community services designed to divert potential delinquents from the juvenile justice system.

c. Implementation - This program is designed to coordinate community services activities on Indian reservations in the State of New Mexico. This includes service provided by the Bureau of Indian Affairs and by the local tribal government. Because of a lack of coordinated community services, many family and youth problems which could be more effectively handled in the community on a voluntary basis, especially first offenders, are instead referred to juvenile court. Police should make more use of existing community service activities as referral agencies.



Specialized prevention-protective programs would be advanced to meet the income, treatment, education, and vocational training needs to families of children diverted from or referred by the juvenile courts.

Communications will be improved between the courts, police, schools, and community service programs and activities, to eliminate unnecessary court intervention to the lives of children.

Pre-delinquency referral aides would be persons indigenous to the reservations and would receive training through applications submitted to existing Federal agencies and by on-the-job training by Bureau of Indian Affairs, Community Services Personnel, Probation Officers, and in off reservation schools.

- d. Projected Goals - It is anticipated that first-year goals would consist of selection and training of personnel, developing programs and coordinating activities with the

schools, juvenile courts, and police, and with all branches or community services.

f. Budget -

- |   |              |
|---|--------------|
| (1) LEAA Support Requested                | \$96,000.00  |
| (2) State Support                         | -0-          |
| (3) Local Support                         | 64,000.00    |
| (4) Other Support (Federal-Private)       | -0-          |
| (5) Program Total                         | \$160,000.00 |
| (6) Applicable Federal-Local Contribution |              |
| 60% Federal                               | - 40% Local  |
| (7) Prior Funding for Program             |              |
| i.e., Fiscal 1969/1970 Fund Request       | NONE.        |

D. Improvement of Detection and Apprehension of Criminals

- a. Title - Improvement of Police Equipment and Communications
- b. Objective - To improve the detection and apprehension of criminals by obtaining modern and improved equipment. Equipment is defined here as all routine operational and technical equipment needed to detect and apprehend criminals, such as vehicles, fingerprint, identification, radar or vas-car and investigation equipment.

To provide the Indian reservations with their own independent communication systems and equipment.

To provide them with equipment necessary to tie in on the new state network which will be used only in emergency situations.

- c. Implementation - During this first year action program, there will be approximately six tribal police departments participating and possibly two additional regional departments the next year.

Under this program, communications equipment will be purchased, enabling each department to obtain bi-frequency radios. This would provide them with their own independent network and the ability to communicate with state policemen in emergencies and vice-versa.

All departments are also in need of additional modern equipment to help them operate the department more efficiently. Priorities and types of equipment needed by a tribe will be the responsibility of each individual reservation to request them, depending upon their need and demand. Equipment may involve all routine operational needs as well as technical equipment.(i.e., vehicles, uniforms, radar, sidearms, rifles, investigation, and identification equipment.)

e. Budget -

(1) LEAA Support Requested	\$ 75,000.00
(2) State Support	-0-
(3) Local Support	50,000.00
(4) Other Support	-0-
(5) Program Total	\$125,000.00

(6) Applicable Federal-State (Local)

Contribution Ratio:

60% Federal - 40% Local-State

(7) Prior Funding for Program -0-

E. Improvement of Prosecution and Court Activities and Law Reform

- a. Title - Tribal Court Judges Training
- b. Objective - To acquaint tribal judges with a basic understanding of judicial process, legal terminology, procedure, rules of evidence, and the rights of the accused.
- c. Implementation - Courses will be provided in Albuquerque for 23 judges in New Mexico. Course material and instruction will be provided by the American Indian Trial Judges Association under a grant previously approved by LEAA. While it is expected that those tribes employing a judge will take advantage of the course of study, most Pueblo judges, who work without compensation and are usually employed full time in pursuits off the reservation, will be hard pressed to afford the luxury of the available classroom instruction. For that reason, it is anticipated that some pueblos will apply for 100% funding to recompense their judges, not only for mileage and per diem, but also for wages after the next program.

F. Increase Effectiveness of Corrections and Rehabilitation

- a. Title - Training of Male and Female Probation Officers
- b. Objective - To improve prevention and control of juvenile delinquency and adult crime by providing juvenile and adult probation services for each Indian court in the State of New Mexico.
- c. Implementation - Indian tribal governments will submit applications for combined training of juvenile and adult probation officers. These officers would be selected from among persons indigenous to the reservations and would provide services to both adults and juveniles. Training will be accomplished by attending on-the-job training programs presently available or that become available. Providing probation services to the Indian courts will provide an alternative to incarceration. This program is projected through 1972.

e. Budget -

- (1) LEAA Support Requested \$168,480.00
- (2) State Support -0-
- (3) Local Support 112,320.00
- (4) Other Support (Federal-Private) -0-
- (5) Program Total \$280,800.00
- (6) Applicable Federal - Local Contribution Ratio:  
60% Federal - 40% Local
- (7) Prior Funding for Programs; i.e.,  
Fiscal 1969/1970 Fund Requests NONE

lost during their attendance at the training session.

Classes will meet once a month for six months with the interim periods filled with home-study courses.

d. Budget -

(1) LEAA Support Requested	\$15,920.00
(2) State Support	-0-
(3) Tribal Support	2,592.00
(4) Other Support	-0-
(5) Program Total	\$18,512.00

(6) Ratio:

60% Federal - 40% Tribal

(Ratio applied only to those reservations with sufficient funds with which to pay the tribal share on a matching basis.)

**CONTINUED**

**5 OF 6**

F. Increase Effectiveness of Corrections and Rehabilitation

- a. Title - Construction or Expansion of Correctional Facilities
- b. Objective - To improve effectiveness of correctional facilities by expansion of present facilities or construction of new ones and for the protection, health, and welfare of the inmate. To provide separate detention facilities for juveniles and persons awaiting trial.
- c. Implementation - This project will be implemented by individual tribal governments on those Indian reservations maintaining correctional facilities. Regional applications will be submitted wherever feasible (i.e, more than one tribe using same facility). Six new facilities are needed and one needs expansion and remodeling. Two regional rehabilitation centers are also proposed. All of the proposed facilities will provide for maximum rehabilitative efforts as an alternative to incarceration.

NEW CONSTRUCTION

<u>Reservation</u>	<u>State</u>	<u>Federal</u>	<u>Matching</u>	<u>Total</u>
Crown Point	Navajo	\$ 125,000	\$ 125,000	\$ 250,000
Jicarilla	Apache	125,000	125,000	250,000
Laguna	Pueblo	250,000	250,000	500,000
Eight Northern Pueblos	Pueblo	200,000	200,000	400,000
Zuni	Pueblo	125,000	125,000	250,000
Mescalero	Apache	125,000	125,000	250,000

REHABILITATION CENTERS

Jicarilla (A regional center to include Ute Mountain and Southern Ute)	Apache	\$ 50,000	\$ 50,000	\$ 100,000
Laguna	Pueblo	50,000	50,000	100,000

REMODELING OF PRESENT FACILITY

Shiprock	Navajo	\$ 25,000	\$ 25,000	\$ 50,000
TOTAL		\$1,075,000	\$1,075,000	\$2,150,000

H. Prevention and Control of Civil Disorders

- a. Title - Orientation and Introduction  
to Crowd Control
- b. Objective - To acquaint the Indian police  
with techniques and procedures of crowd  
control.
- c. Implementation - Basic training will cover  
the basic techniques which is probably all  
that is necessary for Indian reservations.  
No funding is required.
- d. Budget -
 

(1) LEAA Support	\$	-0-
(2) State Support		-0-
(3) Local Support		-0-
(4) Other Support		-0-
(5) Program Total	\$	-0-
(6) Applicable Federal - State (Local)		
Contribution Ratio:		
(7) Prior Funding for Program	\$	-0-

I. Improvement of Community Relations

- a. Title - Improvement of Public Education and Community Involvement
- b. Objective - To improve the relationship between the police and the public. To provide the public with additional knowledge of laws and criminal justice procedures.
- c. Implementation - These programs will be aimed at improving the public's opinion of present and future law enforcement agencies, which would provide additional cooperation between them. To provide the public with additional knowledge of laws and procedures within the criminal justice system. This will be given by Indian law enforcement agencies in the form of public talks and discussions at community gatherings and in public and private schools in both grade school and high schools. The use of visual aids, tape recordings, movie films, slides and charts will be used to help explain procedures and law. This will include all the 22 New Mexico reservations and pueblos.

e. Budget -

(1) LEAA Support Requested	\$30,000.00
(2) State Support	-0-
(3) Local Support	20,000.00
(4) Other Support	-0-
(5) Program Total	\$50,000.00
(6) Applicable Federal - State (Local)	
Contribution Ratio:	
60% Federal	- 40% State/Local
(7) Prior Funding	-0-



J. Research and Development

- a. Title - Regional Police Departments for both the Southern and Northern Pueblos (a total of 17 reservations).
- b. Objective - To study the compatibility of each pueblo to function as a law enforcement unit for the purpose of increasing the police coverage on these reservations and assisting the BIA police department; reducing criminal and juvenile delinquency activity in each pueblo; and providing additional protection of life and property in each pueblo.
- c. Implementation - The first six months' program will be devoted to a feasibility study conducted by a representative of each pueblo to check the compatibility of the pueblos to function together as a unit in the field of law enforcement.

The second six months will be for the forming of a police committee which shall have two representatives from each pueblo. The committee shall then proceed to submit

an application requesting federal funds for salaries and equipment for their respective regions (north and south). This committee shall then select personnel and conduct interviews with potential police officers if funding is made available. There will be a total of 17 tribal members representing each of the pueblos, north and south, on the planning and survey staff. This organizational body shall meet four hours in the evening (\$3 an hour) for 131 days (6 months) for the purpose of studying the possibility of an all pueblo police department. This would total \$26,724.

A police committee of two representatives from each pueblo will meet twice a month for six months, four hours per meeting. At \$3 an hour, this will total \$4,796 for a total of 16 members for the north and 18 members for the south.

After the department is functioning as an organized law enforcement agency, the police committee shall meet once a month

and shall be appointed for either a two- or four-year term and shall be compensated \$15 for each monthly meeting attended.

They shall be responsible for the hiring, firing, and disciplinary action to be taken in concurrence with the chief of police. Technical assistance will cost approximately \$5,000. Depending upon the possibility of obtaining federal grants to finance this project and the interest each pueblo placed on their program the next two or three years, programs will be aimed at staffing, equipment, and a facility.

e. Budget -

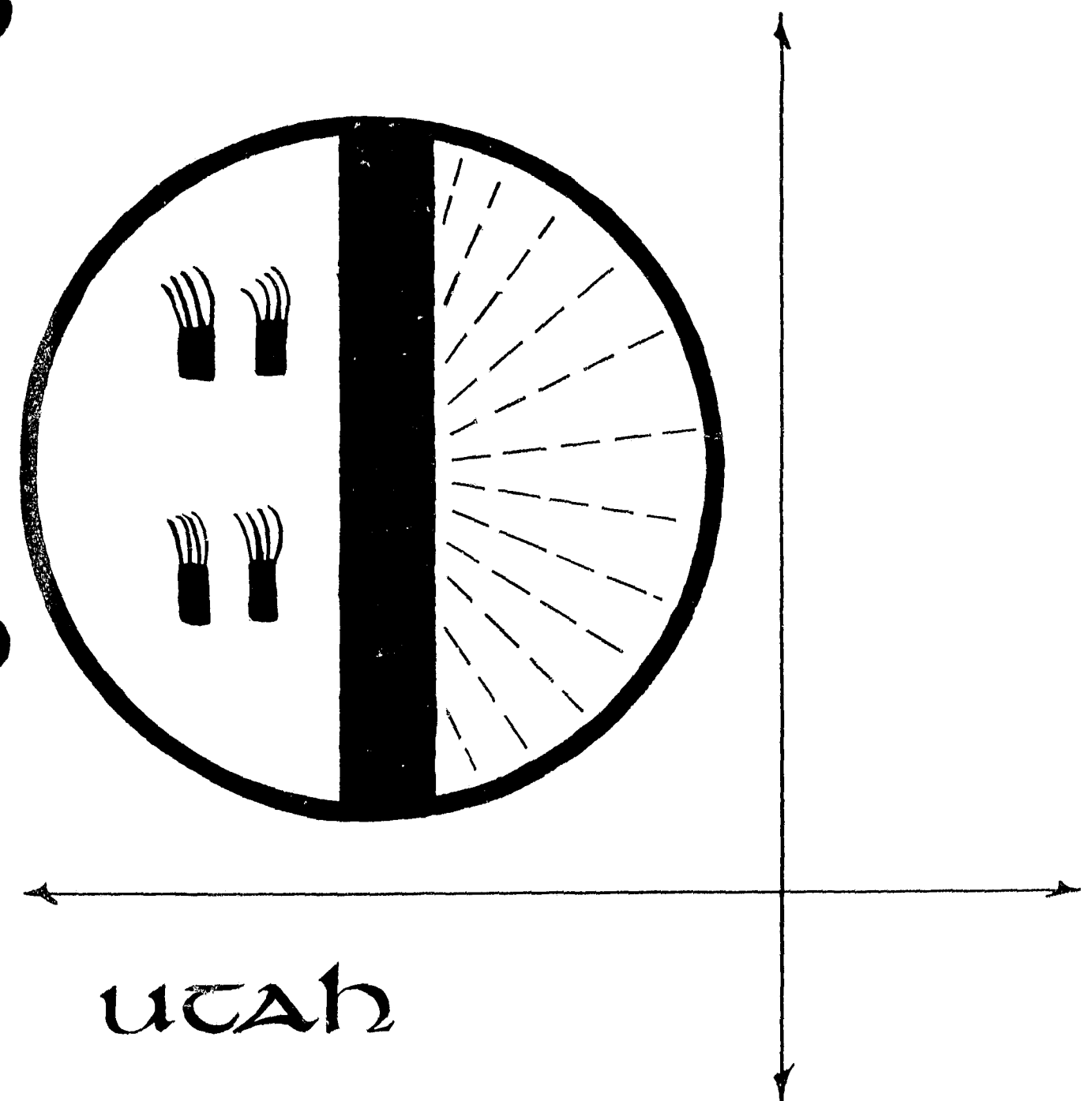
(1) LEAA Support Requested	\$32,868.00
(2) State Support	-0-
(3) Local Support	3,652.00
(4) Other Support	-0-
(5) Program Total	\$36,520.00
(6) Applicable Federal - State (Local)	
Contribution Ratio:	
90% Federal - 10% State-Local	
(7) Prior Funding	-0-

5. Technical Assistance and Services

New Mexico has joined with the states of Arizona, Colorado, and Utah in supporting the application of the National Indian Justice Planning Association, of which the states are members; for a sole source contract with LEAA to provide technical assistance to tribes, to the states, and to LEAA in all matters appertaining to law enforcement on Indian reservations within the member states. The National Indian Justice Planning Association will assist the tribes in implementing their individual tribal plans through applications for program funding; it will assist the member states in coordinating Indian projects with statewide plans; it will render such services to LEAA as might be requested by the Indian Desk; it will provide training to tribal leaders in the planning process in order that tribal plans may be updated and the planning process continued. It is contemplated that other states will become members of the Association and, in that event, a similar planning effort as has been accomplished by the Indian Justice Planning Project will be provided the new member states during the coming year.

6. Related Plans, Programs, and Systems

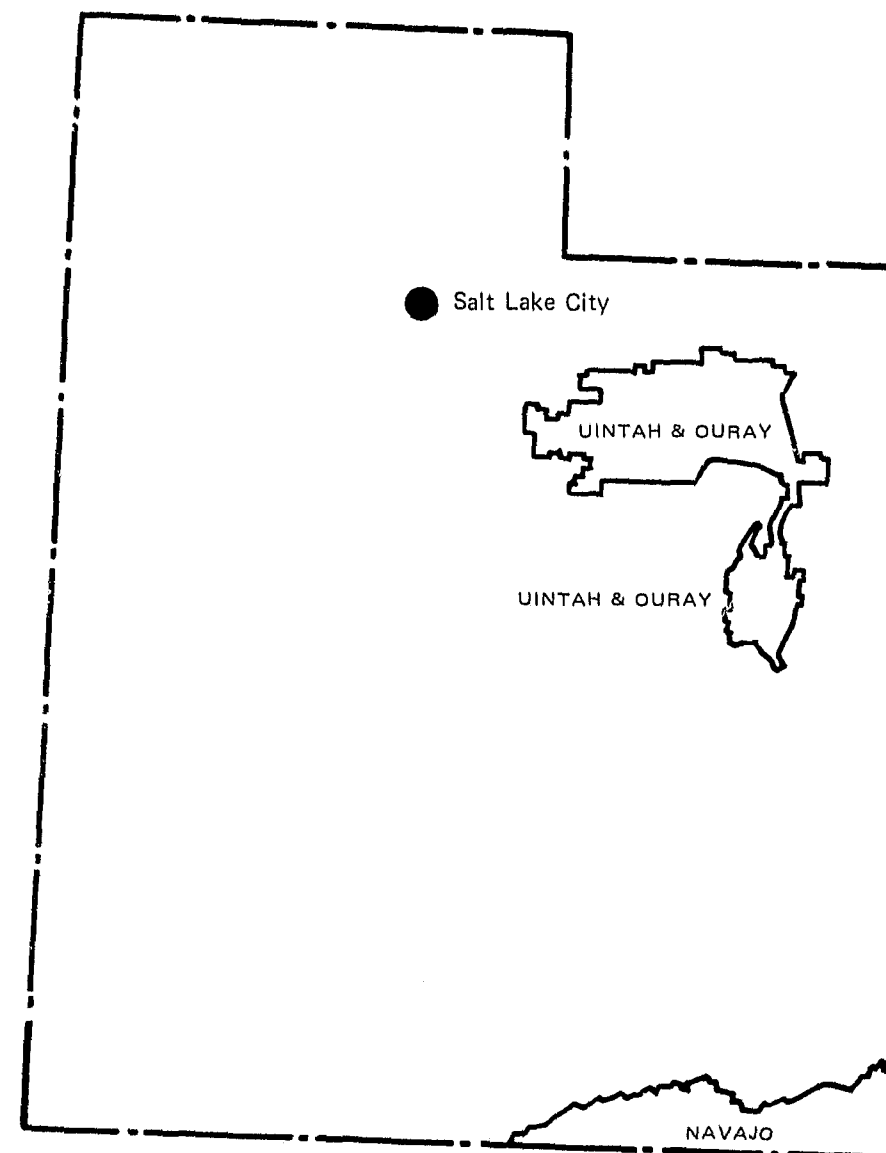
Juvenile Delinquency Act: Under the provision of Title I, Part C, and Title III, Section 301, Public Law 90-445, the Eight Northern Pueblos received an award of \$60,000 for a Summer Youth Development Program for FY 69-70. This project was developed to reduce juvenile delinquency through a program of conservation, recreation, and education.



utah

INDIAN JUSTICE PLANNING PROJECT

UTAH PLAN



The state plan for Indian law enforcement for Utah as presented here consists primarily of the law enforcement plan for the Ute Indian tribe of the Uintah and Ouray reservation.

The Skull Valley reservation lies about 35 miles south of the Great Salt Lake in western Utah. It consists of over 17,000 acres, but has an Indian population of only approximately 30, of whom less than 5 reside within the boundaries. The reservation has no law and order function or responsibility and is not included in the Utah Plan.

The Goshute reservation straddles the Utah-Nevada state lines. 33,878 of its 110,422 acres lies within the state of Utah. Tribal headquarters and most of its 157 Indians are located in the state of Nevada and this reservation is likewise not included in the Utah Plan.

A small Indian community of 100 to 150 people is located at White Mesa, some 16 miles south of Blanding, in San Juan County. These Indian people

are members of the Ute Mountain Ute tribe. Most of the tribal land, its members, its headquarters and its BIA agency are located near Towaoc, Colorado. One tribal policeman is assigned to the White Mesa community. While he is not fully uniformed, he is equipped with a vehicle, two-way radio, firearms and other basic equipment for routine patrol work. He is commissioned by the San Juan County Sheriff's Office with whom he maintains excellent working relationship. Tribal members arrested under his jurisdiction are transported to Towaoc for trial and incarceration. As this arm of the Ute Mountain Ute tribal police is included in the Colorado Plan, it is not included here.

That portion of the Navajo reservation in the state of Utah lies generally south of the San Juan River in San Juan County and extends to the Arizona and Colorado lines.

Navajo tribal headquarters are located in Window Rock, Arizona, as is the Navajo Area Office of the Bureau of Indian Affairs. Five BIA agencies operate under the area office on the reservation.

Two of these, located at Tuba City, Arizona and at Shiprock, New Mexico, divide the responsibility for that portion of the Navajo reservation which lies in Utah. A BIA special officer stationed at each of these two agencies, operates under the authority of the area special officer at Window Rock and offer investigatory and training services to their respective districts.

Navajo tribal police services and protection is offered to the Utah portion of the Navajo reservation through the tribal police district offices located at Shiprock, New Mexico and at Tuba City, Arizona. Within the Shiprock district one substation is located at Aneth, Utah where two patrolmen are stationed. Two substations within the Tuba City district are located at Mexican Hat and Navajo Mountain, Utah, with two patrolmen at each substation. Additional assistance is provided by the Kayenta, Arizona substation, located approximately 46 miles south of the Arizona-Utah border in the Monument Valley area. The Kayenta substation is also within the Tuba City district and maintains a force of five men. All

Navajo police personnel are fully uniformed and equipped to perform their duties in these isolated areas of the reservation. Each substation is equipped with a panel truck and two-way communications.

The systems, resources, needs, problems and programs of the Navajo tribe are fully set forth in the Navajo Plan which is a part of this study and will not be further explored here.

#### Uintah and Ouray Reservation

This reservation of 1275 Ute Indians is located in the Uintah basin of northeastern Utah, bounded on the north by the Uintah Mountains and on the south by the Book Cliffs. This large reservation of 1,008,152 acres contains forested mountains, grasslands, semi-arid hills, valleys, plateaus and arid plains from 4200 to 9200 feet above sea level and is considerably cut up into regions or sections.

Headquarters of the governing body of the Ute Indian tribe is situated at Fort Duchesne, approximately 7 miles east of the town of Roosevelt, Utah. The tribal government functions under provisions of a written constitution and charter which was approved in 1937, as the "Ute Tribe Business Committee,"

and is composed of six members who are elected by popular vote and serve overlapping terms. Executive committees are appointed and serve under the direction of the Business Committee.

Most of the enrolled tribal members reside in seven principal villages within the reservation boundaries. Those villages and their approximate populations are:

Fort Duchesne	167
Randlett	281
White Rocks	362
Roosevelt	85
Neola	91
Ouray	63
Myton	62

The remaining members are scattered in small groups throughout the northern section of the reservation in such communities as Bluebell, Soneta, Altona, Cedaryview, Twin Pots, Mountain Home, Mount Lemmons, and Altamont.

Major resources consist of irrigated agricultural lands, mineral deposits and recreational potential.

In addition, the forest resources are a limited but valuable natural resource. Recreational and tourism potential apropos outdoor recreation is high. Over one-third million acres of tribal land is an unsurpassed wilderness hunting and fishing region. Indian ruins hundred of years old dot the region. Dinosaur National Monument and Museum are near the reservation with the high Uintahs on the northern boundary.

While no industries are presently located on the reservation, cattle raising is an important activity, with the majority of the cattle being owned and operated by a tribal enterprise. A large multi-million dollar recreational development is now under construction on U. S. Highway 40 on tribally owned land within the reservation. It is expected to be open for business soon and additional demands will be placed on the Uintah and Ouray tribal police as security for this development.

I. EXISTING LAW ENFORCEMENT SYSTEMS AND AVAILABLE RESOURCES

A. Police

1. Uintah and Ouray Tribal Police

This small tribal department of five sworn officers is headed by a non-Indian chief

employed by the tribe who is responsible to the Vice-Chairman of the Business Committee and to the tribal council. A second non-Indian is employed as a patrolman.

Three of the officers have had extensive formal training at the National FBI Academy, Roswell Indian Police Academy and the Utah State Academy, located at the University of Utah. Two newly hired officers have as yet received only on-the-job training but plans are being made to provide them with academy training.

Because of the large population of non-Indians residing in communities within the reservation boundaries, tribal police are cross-commissioned with the Duchesne and Uintah County Sheriffs' Offices.

Excellent relations exist between the Sheriffs' departments and the Indian police.

The department is equipped with five vehicles, only two of which were in running condition at the time the department was surveyed by the Indian Justice Planning Project. All sworn personnel are fully uniformed and equipped with necessary basic equipment with which to conduct daily routine patrols of the communities on the reservation. The present physical facility of the department was constructed in 1954 as a jail with jailer quarters provided. The jail has since been remodeled to convert the jailer's quarters to office space for police-court clerks, dispatcher, chief of police and judge's office. The facility is totally inadequate in terms of safety, floor plan, office space, evidence and equipment storage. Other than the cells, the largest room in the building is the judge's office which measures approximately 8 feet by 10 feet.

Tribal police salaries range from \$5500 to \$8700 annually. This compares very favorably with other tribal departments in the southwest.

This tribal police department has jurisdiction over 1,008,500 acres which contains 60 miles of federal highway, 150 miles of state highway, 500 miles of county roads and 320 miles of BIA roads. Tribal officers average a 10 to 12 hour work day and are on call 24 hours a day, five days a week.

Selection standards for new recruits are quite low, it being required the candidate be 21 years of age and in good physical condition. A new recruit receives most of his training by riding with an older officer from 30 to 60 days before being allowed to patrol alone.

2. County Sheriffs' Offices

The area within and surrounding the Uintah and Ouray reservation is served by the Duchesne and Uintah County Sheriffs' Offices.



The Duchesne County Sheriff's Office consists of two sworn officers and the Uintah County Sheriff's Office has a total of three sworn officers. Both counties and the tribal police work closely with one another and maintain good relationships. The previously mentioned Navajo reservation and the White Mesa Indian community are located in San Juan County. The San Juan County Sheriff's Office is located in Monticello. Additional deputies maintain substations at Blanding and Bluff. The deputies work closely with the Indian police at White Mesa and give him assistance when requested. Only in the event of a special emergency does the deputy sheriff enter the Navajo reservation. No cross-commissioning exists between the San Juan County Sheriff and the Navajo tribal police.

3. Utah State Patrol

There are six state patrolmen in the area of the Uintah and Ouray reservation. Three

are stationed in Roosevelt and three at Duchesne. They maintain patrol over state rights-of-way within the reservation and assist the tribal department in investigating traffic accidents. They also assist the tribe in providing in-service training.

5. Municipal Police Departments

There are several major communities within the Uintah and Ouray reservation which maintain city police or a town marshall. These communities are Vernal, Roosevelt, Myton and Duchesne. The departments range in size from one man to five. With the exception of Vernal, these communities are all within the boundaries of the reservation.

Of the approximately 2400 total population of Blanding, Utah, 70 to 75% are Ute and Navajo Indians. This community is located off any reservation and law enforcement protection is provided by the local municipal department, the San Juan County

Sheriff's Office and the Utah State Patrol. All Indians arrested within that jurisdiction are processed through the municipal or state courts and sentenced to this county jail.

5. Federal Bureau of Investigation

The FBI works in conjunction with local and BIA officers on the reservation in the investigation of felonies committed in Indian country. FBI agents provide an excellent source of instructors for training programs and for technical assistance.

B. Uintah and Ouray Judiciary

The tribal judge is appointed to a four-year term. There is one associate judge and a vacancy exists for another. The court shares its clerk with the police department. Some lay advocates appear in court, but they are privately hired and not the result of a legal services program.

The present judge is aggressively seeking improvements and reform of his tribal court and is

an avid attendee of training sessions in Utah, New Mexico and Arizona.

A non-Indian district judge is hired by the tribe to travel from Price to Fort Duchesne to sit in judgment of juvenile cases.

The tribe has adopted CFR-25 as its criminal code, but has drafted and operates under a fairly sophisticated juvenile code of its own.

The tribal court is located within the same facility as the tribal police headquarters and the tribal jail. The courtroom consists of the judge's office.

No court facilities are maintained by the Navajo or Ute Mountain Ute tribes within the state of Utah.

C. Corrections

1. Tribal Jails

The Ute Indian tribe of the Uintah and Ouray reservation maintains a tribal jail at Fort Duchesne, Utah. The jail is totally inadequate and is described more fully in that portion of this plan concerned

with "Needs and Problems." Jail personnel consists of two jailers and a matron and is under the supervision of the tribal police department.

2. Probation and Parole Services

The Ute Indian tribe of the Uintah and Ouray reservation provides the services of a juvenile probation officer who operates under the supervision of the tribal court. No probation or parole services are provided by state or federal agencies to the reservation.

3. Juvenile Detention and Youth Homes

The state of Utah provides youth facilities for Indian children who are residents of Utah. There is also an industrial training school. Duchesne County provides a juvenile facility which is used only occasionally. There is a shelter home provided by the Baptist Church in Uintah County which is licensed by the state of Utah.

The tribe, at this writing, has five children in the Southwest Indian Youth Home and the Ettie Lee Home Shelter.

4. Rehabilitation Facilities

A detoxification unit is located in the Duchesne County Hospital at Roosevelt and operates concurrently with a U. S. Public Health Service Outpatient Clinic. This facility is used jointly by Indians and non-Indians and patient detoxification service is provided for by contract with the hospital.

The Ute Indian tribe of the Uintah and Ouray reservation is currently sponsoring an alcoholism information and counseling program. The purpose of this program is to provide professional and para-professional services to the alcoholic, his family and his employer. This program is designed to increase public understanding of alcoholism and to increase public awareness of the extent and dangers of

excessive drinking. The program also provides a resource for rehabilitation, develops prevention programs, provides education, training and research and attempts to effect a community-wide change in attitudes toward the use of alcohol. Other resources provided by the Bureau of Indian Affairs community service staff are social welfare services, employment assistance and educational counseling.

There are no correctional facilities provided by the Navajo and Ute Mountain Ute tribes within the state of Utah.

D. Educational Programs and Facilities

1. Police

Formal training for tribal police is presented primarily through the Roswell Indian Police Academy located in Roswell, New Mexico. The school operates under the Bureau of Indian Affairs and Thiokol Corporation. All expenses are paid with the exception of the policeman's salary

and his transportation to and from the school.

Tribal police are also invited to attend the Navajo Police Academy basic and specialized training courses.

2. Judiciary

The American Indian Court Judges Association is currently sponsoring a training course for tribal judges under a grant provided by LEAA. The tribal judge will attend a series of six monthly classroom lectures supplemented by an intensive home study course to provide the basic knowledge of judicial processes, procedures, rules of evidence and the rights of the accused.

II. NEEDS AND PROBLEMS

A. Improvement of Facilities and Equipment

One of the most urgent needs on the Uintah and Ouray reservation is a physical facility housing a modern, up-to-date criminal justice center. The need for this facility will be

stressed again and again under the various headings of Police, Courts and Corrections. An old, unsanitary building, poorly qualified and constantly changing personnel, intermingling of all types of prisoners -- sick and well, old and young, hard-core criminals and misdemeanants with petty offenders in overcrowded cells and tanks -- the general absence of effective rehabilitative programs point up the glaring need.

A modern, up-to-date physical plant, housing dormitory-like quarters, recreational space, kitchen and diningroom, classroom space, counseling offices, a small but dignified courtroom setting and space for judge's chambers, jury room and court administrative functions, police headquarters, radio, records and evidence facilities, provisions for work-release or similar programs, together with proper outdoor areas for recreation and police training; this is what is totally lacking, and this is what is critically needed for gaining respect for the system; for providing the basic tool with which to build modern, far-reaching

and innovative programs; for providing basic humane treatment; and finally, to permit the system as it exists today to perform its most rudimentary tasks with some degree of efficiency and effectiveness.

1. Police

Present police facilities are housed in what was formerly the jailer's quarters of the tribal jail at Fort Duchesne. Office space is shared with the tribal judge and his clerk. A single entrance is used to gain admittance to the jail, police headquarters and the tribal court. Although judicious use is made of the limited space available, visiting, booking, dispatching and interrogation must perforce use the same area. Inadequate space and safeguards are provided for the keeping of both records and evidence. Present police physical facilities do little to enhance the image of the tribal police in the eyes of the reservation

resident, impair police morale, and minimize the efficiency and effectiveness of the police function.

Although the tribal department is adequately equipped in terms of basic equipment, vehicles are in need of replacement and, upon completion of the Bottle Hollow recreational complex, additional equipment will be soon needed to sustain the additional personnel which must be employed to provide security to that area. Visual aids, projectors, books, manuals, periodicals and other training supplies and equipment are needed in order that an effective in-service training program may be instituted and maintained.

2. Corrections

The principles of human dignity to which we all subscribe require that offenders, while under the jurisdiction of the law enforcement and correctional agencies, be accorded the generally accepted standards of decent living and decent human

relations. Their food, clothing and shelter should not be allowed to fall below the generally accepted standards and they should be afforded the conventional conveniences made possible by our technological progress. Their health needs, both physical and mental, should be met in accordance with the best medical standards.

The forces for the prevention and control of crime and delinquency ultimately must find their strength from the constructive qualities of the society itself. The willingness of the society to maintain a rationally organized and properly financed system of corrections directed toward reclamation of criminals and juvenile delinquents is a prerequisite to effective control.

In October of 1965, the Uintah and Ouray tribal Business Committee requested the Bureau of Indian Affairs to survey its

law and order facilities in order to determine the needs to provide suitable law enforcement facilities on their reservation. The following excerpts are taken from the inspection report of the tribal jail facilities conducted on May 17, 1966.

"The tribal jail facility is in need of extensive and expensive refinements to meet standards acceptable to the United States Bureau of Prisons and the Utah State Department of Health. Funds for such an undertaking may not be readily available to the tribe. However, it is recommended that immediate action be taken to eliminate the presently existing hazards to life and general well-being of the current prisoners."

"The jail structure was built by the tribe in 1954. It is almost unbelievable how the building has deteriorated in such a short period of years. It is obvious that most of the damage to the building could be attributed to abusive use by the inmates. However, no police administrator should allow prisoners to deface and otherwise maliciously destroy property, as is evidenced by large hunks of plaster literally hacked from the cell walls,

ceiling lighting fixtures torn from the sockets, and protective mesh wire ripped from its anchorage over the barred windows. In two cell blocks examined there were uninsulated hot wires hanging from the ceiling fixtures. The inmates connect these wires to operate appliances, such as electric fans."

"The cell layout in the jail building is bad because the only access to solitary confinement areas is through the main women and men cell blocks. Most prisoners are serving sentences for drunkenness or disorderly conduct or some minor infraction of the law, and therefore are incarcerated in a large cell block which accommodates a number of people. However, when the nature of the crime or the conduct of the individual dictates that the prisoner should be separated from others, the arresting officer or jailer must pass through the main cell to place the offender in solitary confinement or maximum security cells."

At the time the jail was inspected by the Indian Justice Planning Project, the jail was found to be in no better condition than when inspected by the BIA in 1966. A dead short within the building

rendered the juvenile cell unusable as the barred window was grounded to an electric short and threatened the life of any prisoner occupying the cell. Kitchen facilities were minimal and the prisoners were fed at a counter reminiscent of a midnight diner.

No recreation area or yard is available to the prisoners.

The construction of a modern rehabilitative center with separate and removed facilities for juvenile offenders is one of the first priorities for this reservation. The juvenile facility should provide modern space and equipment for diagnosis, evaluation and treatment of emotionally disturbed children and youth.

### 3. Courts

The courtroom facility for the Uintah and Ouray tribal court has been previously described in this section. Not even the most basic courtroom facility exists.

The tribal court operates in and from a small, 8 foot by 10 foot office to which access is gained by proceeding from the public entrance through the police headquarters and into the judge's back office. The court clerk occupies a desk next to the police dispatcher. The judge has no library and very little in the way of office supplies, equipment and records.

A modern criminal justice center, housing a small but dignified courtroom setting, a jury room, judge's chambers, clerk's offices and a separate public entrance is sorely needed. Space should also be provided adjacent to the judge's chambers for the use a probation officer who would operate under the jurisdiction of the tribal court. Modern furnishings, equipment and records keeping methods and facilities are also of urgent need.



B. Upgrading Personnel

1. Police

The present tribal police personnel in Utah have all received formal academy training in police work with the exception of two newly hired officers at the Uintah and Ouray reservation. These two men are expected to attend either the Utah State Patrol Academy or the Roswell Indian Police Academy within the coming year. The Uintah and Ouray tribal police department has no minimum training standards for their officers. Although the department is training-conscious, an incentive to achieve a minimum level of education and training is lacking both by virtue of stated employment standards and minimum training standards.

The Uintah and Ouray tribal police department should establish and follow a set course of instruction directed toward in-service training. The availability of a

National Academy trained chief, Utah state patrolmen, Sheriffs' officers and the FBI should ensure the success of such a program.

To assist in inspiring young high school students of the reservation to attend college and to attract college-trained personnel to their department in the future, a pay incentive program based upon education and training should be implemented and coordinated with a cadet program. Replacement through normal attrition would then go far toward upgrading this department.

2. Courts

Although the present judge of the Uintah and Ouray reservation is conscious of upgrading his court and his own skills, additional training is needed for both the judge and his clerk. If, at the time of this printing, the position of associate judge has remained unfilled, it should be filled at the earliest practical time and

both judges should then avail themselves of the training course offered by the American Indian Court Judges Association. Until such time as a professional attorney or legal advisor to the department can be hired, a lay prosecutor should be appointed and trained at the Navajo Academy in order to assure a balanced judicial process.

C. Law Reform

1. Corrections

a. Juvenile Delinquency

As quoted in the report of the Task Force on Corrections, the President's Commission on Law Enforcement and Administration of Justice, "The general underlying premise for new directions in corrections is that crime and delinquency are symptoms of failure and disorganization of community as well as of individual offenders. The task of corrections therefore, includes building or rebuilding solid ties between

offender and community, integrating or reintegrating the offender into community life. This requires not only efforts directed toward changing the individual offender which has been almost the exclusive focus of rehabilitation, but also mobilization and change of the community and its institutions."

The focus of corrections is intervention in delinquent and criminal careers, through management and control of crisis and programs designed to overcome handicapping deficiencies. The deeper an offender has been plunged into correctional processes, and the longer he has to be locked up, however humanely, the greater the cost and the more difficult the road back to the point of socialization that will permit successful reintegration into the community. A person's need for control

or for help are not necessarily related to his legal status.

b. Juvenile Delinquency and Adult Crime

The delinquent children and youth on Indian reservations are unable to cope with the problems and frustrations of the real world in which apathy, prejudices and discrimination present obstacles to the processes leading to community integration. Caught in a seemingly hopeless, helpless situation in which a reservation subculture is in conflict with the culture of the dominant society; residing on a reservation where the disintegration of the Indian culture has left a cultural void filled by family disorganization, broken homes, poverty, alcoholism and child neglect; and required to exist in a world of dependency, they have refused to accept the norms and mores of the dominant society. These factors and others contribute to a deep sense of inadequacy,

hostility and disrespect for law and order.

Evidence present in statistics indicates the extent of the social breakdown and the demoralization of the juvenile and adult population. There is strong evidence to indicate a competitive atmosphere among juveniles to become the most delinquent. Apprehension and incarceration is a status symbol. The youth who can create the most havoc or commit the most severe crime is too often not looked upon with disfavor but is upheld by his peers and even, at times, excused by his parents and other adults. Persons interviewed, including law enforcement personnel, social workers and others, expressed the opinion that most crime and delinquency on reservations was related to the use of alcohol by the law violator. It has often been said that "offenders are not born criminals, but that they are a

mirror of their environment," basically their home and community. Being a criminal is a social role, not just a personal feeling. Before the offender can change, there must be some alteration in the social structure within the community of which he is a part. For offenders to struggle with and do something about their own behavior, people and institutions in the community must also be altered. There does not appear to be a convenient centrally organized community service system at the Uintah and Ouray reservation. Although inroads have been made, especially in the area of juvenile work, intensive case work services is still inadequate and there is far too limited a rehabilitative staff to deal with repeat offenders. In general to overcome the problems outlined above, there is a need for a massive social welfare effort to overcome these many social problems. A comprehensive

program for prevention of youth and adult crime must be developed. A rehabilitation plan must be inaugurated utilizing all branches of the Bureau of Indian Affairs community services and all state and federal resources.

## 2. Courts

The Ute Indian tribe of the Uintah and Ouray reservation should consider the adoption of its own criminal code rather than its application of CFR-25. A modern, progressive criminal code, designed by and for the tribe, coupled with a public education program to acquaint tribal members with its contents and its purpose, would go far toward improving the process of justice at the Uintah and Ouray reservation.

A great need exists to resolve the manifold jurisdictional problems which exist upon all Indian reservations.

State legislation is needed to recognize tribal governments, courts and police and to extend more states services to its Indian population.

D. Manpower Utilization

i. Police

The Uintah and Ouray tribal police force is presently of adequate size for the number and types of offenses with which they must deal. However, upon completion of the Bottle-Hollow complex within a year or so, two additional officers will be needed to patrol and provide security for that complex.

Steps should be taken to provide training in public relations to the entire department and to one officer in particular as the department's "public relations officer." Additional training, and pay incentive, should also be provided another officer of the department to train as the department's "juvenile officer." Both these

officers would then participate in in-service training programs to acquaint the balance of the department with the necessity and techniques of work in both the field of public relations and in the field of juvenile and deviant behavior.

2. Corrections

Adult probation and parole services should be provided the Indian tribal court. A closer relationship could then be developed between all the community service resources, the tribal courts and adults in trouble. Supervised probation would become a reality and all the rehabilitation resources would become more meaningful.

E. Research and Development

1. Corrections

The Uintah and Ouray reservation is unique among Indian reservations in the west. This uniqueness stems not only from its isolation from other tribes but of its fractionated social structure within its

own reservation boundaries. For instance, there are seven communities composed of Indian and non-Indian people on the reservation and of the 1226 enrolled members of the tribe, 1111 live in those seven communities. The tribal member then, usually finds himself a member of the minority culture even on his own reservation and within his own community. Just what impact this social fragmentation may have in terms of behavioral problems can only be surmised. However, suicide and suicide attempts, chronic misuse of alcohol and other behavioral problems are not only symptoms of social change but of resistance thereto.

Most social scientists would share the opinion that as an individual's behavior, belief and attitudes are shared with members of his cultural group, it may be necessary to effect a change in the goals or systems of behavior of the whole group

before any given individual will change in some particular respect. No knowledge of the way an individual of a given constitution and capacity may be able to accept or reject change can ever be used alone, without giving due weight to the nature of the culture of which he is a part, and his position in the particular social group within which he lives.

Is the extremely high incidence of suicide and alcoholism, crime and delinquency on the Uintah and Ouray reservation due, in part, to the social stresses within the fragmented social-cultural patterns of the seven Indian/non-Indian communities on the reservation? It is believed that research and inquiry should be made into new concepts, programs, development of possible projects and theories to try and discover the impact and effect of social isolation and social fragmentation upon this Indian Community.

F. Information Systems

1. Police

A standardized and improved record-keeping system should be instituted for the Uintah and Ouray tribal police. The system should provide more accurate annual statistics to assist in operational and administrative planning. An improved record system could supplement the proposed "Utah Criminal Justice Information System" and would be of great benefit to the tribal officer in the field.

2. Courts

Tribal court administrative functions and record-keeping should be standardized and training provided all court personnel in its proper function and use.

G. Rehabilitation

1. Corrections

This is probably the most significant of functional categories for the Uintah and Ouray reservation as well as all others.

In recent years youth under eighteen years of age have increased in tremendous numbers. As an example on the Navajo reservation 53% of the entire population is under the age of eighteen. Almost without exception, the many tribal leaders and officials interviewed by the Indian Justice Planning Project expressed the opinion that juvenile crime and adult alcoholism are of greatest concern to the people on the Uintah and Ouray reservation.

The information provided indicates that a massive effort by the Ute Indian tribe must be undertaken to develop innovative and effective programs, coordinating all community services and designed to rehabilitate juvenile offenders and those with problems related to alcoholism.

Courts, police, high schools and other sources which first come into contact with first offenders or the very young,

should be urged to make the fullest possible use of existing community services as referral aids and to assist families with potentially delinquent children. To increase the effectiveness of corrections and rehabilitation, juveniles and adults must be provided with more adequate probation and parole services. Correctional facilities must be provided with separate facilities for juveniles, adults and persons in pre-trial incarceration. A "built-in" rehabilitation program must be developed to accompany facility plans. A regional type facility should be provided where youth may receive evaluation, diagnosis and treatment. This type of facility would provide intervention in delinquent behavior and provide corrective measures through diagnosis, evaluation and treatment.

H. Community Relations and Education

1. Police

The citizens of the Uintah and Ouray reservation do not seem concerned or interested in their law and order program. There is an evident lack of cooperation between the schools and tribal law enforcement officials. The tribal chief of police has attempted to encourage a cadet program, athletics and other group activities for juveniles between the ages of 12 and 18. These efforts, however, have not met with success. Although the juveniles seem to want these type activities, they are not willing to sacrifice their present freedom for discipline and group supervision. Public contacts on the part of the police are generally limited to those arising from complaints. This type contact alone gives all citizens, and especially the young, a limited image of police activities. Children feel the police are in



existence to punish, to make arrests and to take their parents away.

These attitudes must be changed before the criminal justice on the Uintah and Ouray reservation may be improved and upgraded. Programs must be created and implemented on this reservation to improve community involvement on the part of the police, reservation residents, local municipal governments, county governments, Bureau of Indian Affairs, Public Health Service, public schools and other resources which are related and which have an effect on the reservation's law enforcement program.

2. Corrections

There must be a greater effort to acquaint the reservation residents with the current alcoholism program currently funded and implemented by the tribe. Although the program has already met with marked success, additional inroads must be made through other community services organizations to make the services of the

alcoholism program accepted and felt by more members of the tribe.

III. THE ANNUAL ACTION PROGRAM

A. Equipment and Facilities

1. Police

a. Police Facility

(1) Objective

The objective of this program is to assist the Uintah and Ouray Indian reservation to obtain a criminal justice center which would house all offices and courtrooms to be used in the criminal justice system. To improve the effectiveness of the criminal justice system and to improve the image and acceptance of the system in the eyes of the reservation residents.

(2) Implementation

It is anticipated that the first six months of 1971 would be devoted

to a study conducted by community leaders, law enforcement officials, welfare people, public health service and rehabilitation resources of the county, Bureau of Indian Affairs and others to determine the size of the facility required, the equipment needed, the best possible floor plan to utilize the building for its intended purpose; and the second six months would be utilized for architectural assistance, critique of plans and meeting with the Utah Law Enforcement Planning Agency, LEAA and the National Indian Justice Planning Association for technical assistance and preparation of applications for funding.

(3) Budget

Refer to Corrections Budget. It is planned that the proposed

facility will house all criminal justice facilities including police, courts and corrections.

(4) Past Progress

No past progress has been made. Although attempts have been made toward improvement, the present facility has been condemned on several occasions.

b. Police Equipment

(1) Objective

To provide the Uintah and Ouray tribal police with technical and routine operational equipment needed to increase the detection and apprehension of federal, state and local law violators.

(2) Implementation

Grants made available under this program will provide the tribal police with two portable radios, two cameras, fingerprint equipment

uniforms and equipment to outfit at least two additional patrolmen. Equipment will also be needed to furnish the proposed criminal justice center upon its completion. A search and rescue van will aid the reservation, two counties and several towns over which the Indian reservation extends.

(3) Budget

(a) LEAA Support Requested	\$12,720.00
(b) State Support	-0-
(c) Tribal Support	8,480.00
(d) Other Support	-0-
(e) Program Total	<u>\$21,200.00</u>
(f) Ratio:	
60% Federal	- 40% Tribal

(4) Past Progress

This is a new program.

c. Training Equipment

(1) Objective

To provide the Uintah and Ouray reservation with the necessary

equipment to maintain an effective in-service training program.

(2) Implementation

This program will provide the tribal police with movie projectors, slide projectors, films, textbooks and other training aids to be used during in-service training sessions. As there are several other law enforcement agencies within the reservation area, regional in-service training programs could be developed to assist all such agencies.

(3) Budget

(a) LEAA Support Requested	\$6,000.00
(b) State Support	-0-
(c) Tribal Support	4,000.00
(d) Other Support	-0-
(e) Program Total	<u>\$10,000.00</u>
(f) Ratio:	
60% Federal	- 40% Tribal

(4) Past Progress

This is a new program.

2. Corrections

a. Criminal Justice Center

(1) Objective

To improve effectiveness of correctional facilities by the construction of a new one in conjunction with an entire criminal justice center, for the protection, health and welfare of the inmate. To provide separate detention facilities for juveniles and persons awaiting trial.

(2) Implementation

Implementation of this program will follow that as set out in the "Police" section of this functional category.

(3) Budget

(a) LEAA Support Requested	\$100,000.00
(b) State Support	-0-
(c) Tribal Support	100,000.00
(d) Other Support	-0-
(e) Program Total	<u>\$200,000.00</u>
(f) Ratio: 50% Federal - 50% Tribal	

(4) Past Progress

None.

b. Diagnostic, Treatment and Rehabilitation Center

(1) To provide rehabilitative services for youth who enter the criminal justice system. The center would be designed around programs providing diagnosis, evaluation and treatment as an alternative to incarceration.

(2) Implementation

The programs and facility would be designed with the best possible technical assistance available and would be intended for short term care only for approximately 10 to 15 juveniles.

(3) Budget

(a) LEAA Support Requested	\$50,000.00
(b) State Support	-0-
(c) Tribal Support	50,000.00
(d) Other Support	-0-
(e) Program Total	<u>\$100,000.00</u>

(f) Ratio:

50% Federal - 50% Tribal

(4) Past Progress

None.

B. Upgrading Personnel

1. Police

a. Police Basic and In-Service Training Programs

(1) Objective

To upgrade law enforcement personnel on the Uintah and Ouray Indian reservation by assisting in providing in-service training programs by sending personnel to basic and specialized training schools. The goal of this project would be to increase the knowledge and skills of tribal police officers and to improve each officer's competence in performing his duties.

(2) Implementation

Grants made available under this program will provide basic training

for tribal police presently employed or to be hired during the coming year at either the Utah State Patrol Academy or the Roswell Police Academy. In-service and specialized schools will be made available to all personnel. It is anticipated that the in-service training would be extended to include the two county sheriffs' offices, four small municipal departments and the tribal police.

(3) Budget

(a) LEAA Support Requested	\$6,600.00
(b) State Support	-0-
(c) Tribal Support	4,400.00
(d) Other Support	-0-
(e) Program Total	<u>\$11,000.00</u>
(f) Ratio:	

60% Federal - 40% Tribal

(4) Past Progress

The tribe was funded in the amount of \$5,938.00 in 1969 for police

training. Those funds are presently being used for that purpose.

2. Courts

a. Judges' Training

(1) Objective

To acquaint the tribal judges with a basic understanding of judicial process, legal terminology, procedure, rules of evidence and the rights of the accused.

(2) Implementation

Courses will be provided during the coming year by the American Indian Trial Judges Association under a grant previously approved by LEAA. It is expected that the Uintah and Ouray tribal judge will take advantage of this course of study and will involve six trips to Phoenix for the purpose of attending one classroom period per month, with home study courses

between classroom periods. Travel and per diem will be needed for these six trips.

(3) Budget

(a) LEAA Support Requested	\$ 600.00
(b) State Support	-0-
(c) Tribal Support	400.00
(d) Other Support	-0-
(e) Program Total	<u>\$1,000.00</u>
(f) Ratio:	

60% Federal - 40% Tribal

(4) Past Progress

None.

3. Corrections

a. Training of Male and Female Probation Officers

(1) Objective

To improve prevention and control of juvenile delinquency and adult crime by providing a juvenile and adult probation service for the tribal court on the Uintah and

Ouray reservation.

(3) Implementation

It is anticipated that the Ute Tribal Business Committee will submit an application for combined training of juvenile and adult probation officers. These officers would be selected from among persons indigenous to the reservation and would provide services to both adults and juveniles. Training would be accomplished by attending on the job training programs presently available or which become available. Providing probation services to the Indian court will provide an alternative to incarceration. This program is projected through 1972.

(3) Budget

(a) LEAA Support Requested	\$ 6,000.00
(b) State Support	-0-
(c) Tribal Support	4,000.00
(d) Program Total	<u>\$10,000.00</u>
(e) Ratio:	
60% Federal	- 40% Local

(4) Prior Funding

None.

C. Law Reform

1. Police Courts and Corrections

a. Code Revision

(1) Objective

The objective of this program is to revise the criminal code of the Ute tribe of the Uintah and Ouray reservation; to more adequately meet the needs of reservation residents and to coincide, where possible, with the Revised Utah Penal Code.

(2) Implementation

This program will be implemented by the Tribal Business Committee in working in harmony with the police, courts and corrections services of the Uintah and Ouray criminal justice system. It is anticipated that assistance will be provided to the tribe by its tribal attorney and by students of the Utah Law School.

(3) Budget

(1) LEAA Support Requested	\$1,200.00
(2) State Support	-0-
(3) Tribal Support	800.00
(4) Other Support	-0-
(5) Program Total	<u>\$2,000.00</u>
(6) Ratio:	

60% Federal - 40% Tribal

(4) Past Progress

None.

D. Manpower Utilization

1. Police

a. Additional Personnel

(1) Objective

To increase the effectiveness of the tribal police department in training and assigning one officer each to work in the field of public relations and juveniles. To improve police-community relations and to more effectively accomplish the goals and duties of the tribal police department.

(2) Implementation

Grants under this program will provide for training expenses and necessary salary increments for both members of the department who will assume these additional duties and assist the chief in the performance of his duties.



(3) Budget

(a) LEAA Support Requested	\$4,800.00
(b) State Support	-0-
(c) Tribal Support	3,200.00
(d) Other Support	-0-
(e) Program Total	<u>\$8,000.00</u>
(f) Ratio:	

60% Federal - 40% Tribal

(4) Past Progress

None.

E. Research and Development

While there is a need for basic social research in the causes and effects of social fragmentation on this reservation, no programs are anticipated for the coming year due to lack of funds.

F. Information Systems

1. Police Courts and Corrections

a. Standardization in Collection of Criminal Justice Statistics

(1) Objective

To improve the present records keeping system, to form a sound basis upon which to base future

planning in both administrative and operational fields. To provide reliable information to other law enforcement agencies and to provide adequate information to the rehabilitation services upon which to base improvement programs.

(2) Implementation

Grants made available under this project will be used to obtain assistance in establishing a simple but effective records-keeping system for both police and courts and to obtain the necessary physical equipment and space for collection and retrieval.

(3) Budget

(a) LEAA Support Requested	\$3,600.00
(b) State Support	-0-
(c) Tribal Support	2,400.00
(d) Other Support	-0-
(e) Program Total	<u>\$6,000.00</u>
(f) Ratio:	
60% Federal - 40% Tribal	

G. Rehabilitation

1. Police Courts and Corrections

While rehabilitation has been termed a major problem and primary goal on this reservation, those facilities and services directed to this end have been adequately covered in other functional categories within the Annual Action Program.

H. Community Relations and Education

1. Police Courts and Corrections

a. Public Education and Community Involvement

(1) Objective

To improve the relationship between the criminal justice system and the general public; to provide the public with additional knowledge of tribal laws, state and federal codes and with criminal justice procedures; and to acquaint the general public with the responsibilities and duties of all facets

of the criminal justice system.

(2) Implementation

It is anticipated that through the medium of public talks and discussions at community gatherings and at public schools with the use of visual aids the awareness on the part of the reservation residents will be increased in the area of criminal justice and the responsibility of both citizens and government toward its successful maintenance and that the image and acceptance of the tribal criminal justice system will be enhanced.

(3) Budget

(a) LEAA Support Requested	\$6,000.00
(b) State Support	-0-
(c) Tribal Support	4,000.00
(d) Other Support	-0-
(e) Program Total	<u>\$10,000.00</u>
(f) Ratio:	

60% Federal - 40% Tribal

IV. THE MULTI-YEAR PLAN

A. Equipment and Facilities

The primary target of this program is for the development and construction of new police-courts-correctional facilities. In addition to providing and modern facilities to use as a tool in development of on-going, innovative programs, it is believed that this project, when completed, will have a great effect upon reservation residents, improving the criminal justice system and increasing public cooperation and involvement in predelinquent and rehabilitative efforts.

Secondary programs are aimed at providing the necessary basic routine equipment, communications, investigative tools and vehicles, as well as training aids, for the purpose of supporting the programs in all functional categories.

GOAL OBJECTIVE	Improve Equipment and Facilities Improve Equipment and Construct Corrections and Rehabilitative Facilities	PROGRAM APPROACH			TOTAL
		1971	1972	1973	
1.	Construct criminal justice center.	\$200,000.00			\$200,000.00
2.	Construct and equip diagnostic treatment and rehabilitation center.			\$100,000.00	100,000.00
3.	Training Equipment.	10,000.00			10,000.00
4.	Police Equipment	21,200.00			21,200.00

B. Upgrading Personnel

1. Basic and in-service training will be made available to all law enforcement personnel employed by the police department. For the purpose of increasing their knowledge of laws and police procedures in order to increase their competency in effecting their duties.

An additional officer will be employed to supplement the present department in the field of public relations for the purpose of improving the image of the tribal police department and for stimulating community involvement in the criminal justice system.

2. The tribal judge will be trained under the auspices of the National American Indian Court Judges Association.

3. A male and a female probation officer will be trained to supplement the efforts now underway and to provide a probationary arm for the tribal court.

GOAL		Upgrade the Training of Tribal Police, Court and Correction Services			
OBJECTIVE		To Elevate the Standards of the Criminal Justice Services and to Increase Community Involvement in the System			
PROGRAM APPROACH		1971	1972	1973	TOTAL
1.	Provide police basic and in-service training.	\$11,000.00			\$11,000.00
2.	Provide judges' training ability	1,000.00			1,000.00
3.	Train male and female probation officers.	10,000.00			10,000.00

C. Law Reform

The objective of this program is to revise the criminal code of the Ute tribe through assistance from the tribal attorney and from law students.

GOAL OBJECTIVE	Upgrade and Revise Tribal Criminal Code To Provide a Modern Criminal Code to Meet the Unique Needs of the Ute Tribe			TOTAL
	PROGRAM APPROACH	1971	1972	
1. Code Revision		\$2,000.00		\$2,000.00

D. Manpower Utilization

The goal under this functional category will be to provide training expenses and necessary salary increments for two members of the tribal police department who will assume the duties of juvenile officer and police-community relations officer.

GOAL	OBJECTIVE	Increase Manpower Utilization in Tribal Police Department To Establish a Juvenile Department Within the Tribal Police Department and to Improve Police-Community Relations			TOTAL
		PROGRAM APPROACH	1971	1972	1973
	1. Training and Salary Increment.		\$8,000.00	\$8,000.00	\$8,000.00
					\$24,000.00

E. Research and Development

No programs are designed within this functional category during the coming year. However, it is anticipated that programs and their costs will be formulated for ensuing years.

F. Information Systems

The purpose of the program within this category is to improve the record-keeping system of the tribal criminal justice departments. The completion of this project should result in the formulation of a sound basis upon which to base future planning in both administrative and operational fields. Adequate records will provide reliable information to the tribal and requesting law enforcement agencies.

GOAL	To Develop an Improved Record-Keeping System
OBJECTIVE	To Obtain Technical Assistance and Equipment Necessary for Modern Records System.

PROGRAM APPROACH	1971	1972	1973	TOTAL
1. Improve record-keeping and gathering system.	\$6,000.00	\$6,000.00		\$12,000.00

### G. Rehabilitation

The rehabilitation services required on the Uintah and Ouray Indian Reservation involve primarily training of probation personnel and the construction and equipping of correctional facilities. These needs have been adequately described within other functional categories.



H. Community Relations and Education

In order for the upgrading of law enforcement personnel on the reservation to have a meaningful beginning, there must be total community involvement and support; thus programs under this category will be aimed at both the police and the citizens of the reservation in an attempt to increase community involvement in the law and order process.

Accomplishment of these goals should be achieved through the provision of the necessary equipment and materials needed to establish a sufficient public relations program. A result of the program should be an increase in public cooperation and the betterment of public opinion of law enforcement personnel, bureau, public and federal agencies related to and supporting the criminal justice system on the Uintah and Ouray reservation.

GOAL	Improved Public Relations and Community Involvement			
OBJECTIVE	Provide Necessary Equipment for Police Public Relations Officer and Other Agencies			
PROGRAM APPROACH	1971	1972	1973	TOTAL
1. Equipment	\$10,000.00	\$3,000.00	\$5,000.00	\$18,000.00

V. RELATED PLANS AND SYSTEMS

The Ute Indian tribe of the Uintah and Ouray reservation has provided tribal funds in the amount of \$41,000.00 for a program designed to reduce the problems associated with the misuse of alcohol. The program is administered by a project director who answers to a tribal board of directors. The purpose of the program is to provide professional and para-professional services to the alcoholic, his family, his employer and other interested people and agencies of the community. The program staff consists of a clinical social worker, three field workers and a secretary who answer to the director. There are also six volunteer, unpaid professional consultants assisting the program.

TECHNICAL ASSISTANCE AND SERVICES

Utah has joined with the states of New Mexico, Arizona and Colorado in supporting the application of the "National Indian Justice Planning Association," of which the states are members, for a sole source grant from LEAA to provide technical assistance to tribes, to the states and to LEAA in all matters appertaining to law enforcement on Indian reservations within the member states.

The National Indian Justice Planning Association will assist the tribes in implementing their individual tribal plans through applications for program funding; it will assist the member states in coordinating Indian projects with state-wide plans; it will render such services to LEAA as might be requested by the Indian Desk; it will provide training to tribal leaders in the planning process in order that tribal plans may be updated and the planning process continued. It is contemplated that other states will become members of the association and, in that event, a similar planning effort as has been accomplished by the Indian Justice Planning Project will be provided the new member states during the coming year.

ADDENDUM

With the exception of the tri-state Navajo plan and the plan for the Ute Indian Tribe of the Uintah and Ouray Reservation, the sheer bulk of the remainder of the individual tribal law enforcement plans disallow their inclusion in this bound volume.

It is contemplated that a folio of tribal plans will be made available when those plans have been finally approved by the respective tribal councils.

Those persons or organizations having a particular interest in those plans, or any of them, should direct their requests for the same to the National Indian Justice Planning Association, 126 Old Post Office Building, Cathedral Place, Santa Fe, New Mexico 87501.

**END**