

INTERVIEW SHEET

OEO Legal Aid

DATE March 25, 1971

PLACE Denver, Colorado

Informant's Name OEO Legal Aid

Birth Date \_\_\_\_\_

Birthplace \_\_\_\_\_

Tribal, Band, or Other Affiliation \_\_\_\_\_

Family Relationships \_\_\_\_\_

March 25, 1971

Denver, Colorado

Informant's Occupation \_\_\_\_\_

Extended Comments \_\_\_\_\_

Doris Duke Number 1044

The American Indian History Project Supported by Miss Doris Duke

Western History Center, University of Utah

Type Recording Made? Yes  No

Language of Recording English Translator \_\_\_\_\_

Interviewer's Name Floyd O'Neil

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Y: ".....long time on them. But there is one fundamental issue that ah - that I'm curious about how other people feel, and that is when you talk about economic development you can - you're talking about two different things. One is what lawyers traditionally do with regard to businesses, like advise the businesses on taxes, incorporate them, advise them on business licenses, protect them against suits, draft contracts, and so forth. And then you can go a step further, and lawyers can get into ah, the procurement of capital in the management of the business itself in trying to get a business launched. In other words, ah, it's at least possible for Legal Services lawyers to go further than private lawyers would in advising and assisting a business. In other words, economic development for Legal Services lawyers could be a broader concept than business law commercially. Bill?

B: For a couple of minutes, can we address ourselves with the question whether or not the Indian program \_\_\_\_\_ Indian problems are going to want cooperate to coordinate the future. If so, how? Are we going to set up a structure at this conference, or are we going to go away and talk about it again till next year like we have since '66 or - ah - I understand that was the major reason for this conference was to find out whether or not people wanted to work closely together. If so, how are we going to start the co-ordinating process?

- Y: I wish Roger hadn't walked out because if he says he wants to get together with the representatives of the programs, oh, here, I'm sorry, I thought that was you. Excuse me. Well,
- B:            the reservations, now. There are, there are city programs here, also, and non-programs that are not funded through Roger's desk that do a great amount of Indian legal aid work - Seattle, Pine Tree, and this type of thing.
- Y: Well, Roger, is that one of the things that you wanted to take up with the project directors who are - I'm sorry, I
- R:            really the thing            sort of in-house, housekeeping            that this gives them a chance to explore, but I think that Bill's probably right in saying that if we're going to talk about it, it should be in - with - you know, with regard to everybody who's doing something in the field.
- Y: Well, there, ah, one thing, we, we ah, started talking earnestly about the subject, I suppose, at Tempe a year ago, and everybody talked about ah - the desirability of what tritely called the back-up center ah, to be ah, an office that would assist the field programs in Indian law with major problems beyond their capacities, and ah, that's been bandied about for a long time. Ah            had people call me from other reservations on
- B: That's not the type of thing I'm talking about right now,
- Y: Oh, I'm, I'm sorry, I            just the answer because ah - it doesn't address itself to

B: -----this first half \_\_\_\_\_ what program ---let's say that CILS handles a program ah, handles a problem about the service and process on the Indian - on the reservation.

Y: Yes.

B: You successfully litigate the matter with, you know, a fairly significant amount of time \_\_\_\_\_ then all of a sudden Montana Legal Service for Rosebud, or somebody else, is involved with the same question. They're going to know that you've had that type of thing and therefore go through it from the very beginning work the whole thing out themselves, and you know, there may be very significant difficult issues in the way. I think an example of this is the Chahati Case - Chahati Case down in ah- Arizona and New Mexico that said that ah - where a Legal Services attorney went into the court and said that ah - the imposition of the state income-tax on Indian - on a reservation did not interfere with the Indian's right - Indian Tribe's right to self-government, and therefore, the court of appeals was to stringhold that the Indians could be taxed \_\_\_\_\_ this, other than the fact that \_\_\_\_\_ How are you going to co-ordinate and co-operate among the programs? I think this is absolutely crucial. I've had people call me from other reservations on stuff that we handled two or three years ago, and they've never heard of it, and the clearinghouse thing alone is not just the answer because ah - it doesn't address itself to

that particular type of thing. And what it is, is just calling on various expertise around the programs, and there's no sense in four programs litigating financial responsibility on reservation, and all of them going off in their own direction?

- Y: Well, you, there are a series of failures that you're describing. Ahm - one is the failure of ah, some of us and I certainly must plead guilty to ah, when we have a suit to try to spread it around. As wherein we publish a newsletter which describes it for layman, but we don't always get our pleadings out, and things like that. I admit that, and the same is true for other programs. Ah - you know, all of us feel our primary problem is this representing our clients, and we get bogged down in that ah - in the sense of - of not sharing what's going on. I agree, there's a - but, but it's mostly communications, and there have been several proposals talked about here. Which one do you think, you know, I mean this morning, you know, we talked about the clearinghouse that exists, has been talked about, and ah, the idea of a, and an especially Indian clearinghouse. We talked about, Hal Gross's talk about a legislative newsletter. What, what, do you think those things are going to be the answer to anything? Or something that everybody call CILS which is what's happening
- B: I think the ideal thing is, you mentioned this back-up center type thing, but until the original \_\_\_\_\_ so, we don't



know whether that's two months away or two years away. We have to set up something, yet, whereby we can do these things as best we can. And so I think we should address ourselves to that question, what is the best deal?

Y: What - what do you suggest? I'm a little lost at that ---

B: I just - I want to throw it out for discussion.

X: Bill, without money, ah, that's a little difficulty. We worked out the back-up center for over the last year, and one of the expressed purposes of that back-up center will be to do exactly what you talked about.

B: But there is no back-up center, so - what I'm saying is what are we going to do in the interim?

X: Well, I -----

B: Or we - are we going to do nothing?

X: Well, it appears as if we can't do anything because when I've run into a problem, I've called Washington, I've called around and I ah, you know, just haven't got any response. Now, ah, people just don't have the resources to come out and give them the kind of \_\_\_\_\_

Y: Well \_\_\_\_\_

B: That's not what I'm talking about. I'm not talking about proposing that everybody call CILS which is what's happening now most of the time. Everybody calls \_\_\_\_\_ the

answer, but as he says they've got their own decisions, he - they've got to represent. What I'm talking about is, of some way to just get everybody in our efforts. Like, for example, us when we filed our suit last week ah, involving trying to compel the federal government to represent Indians, that some land was taken away from them before this relocation thing was refiled. Everybody should know about it because it affects all the reservations, and we tried this once. And that was when we sued the Secretary of Interior and the other people forced them to ah - take the compilation of the ah, Federal Indian law and bring it up to date, and that was attempted by all the people together on one thing. It was handled by CILS, but

X:

B: ---that's the type of thing. Everybody - a lot of these evils have individual projects are the same identical problem in other - on other reservations throughout the country.

X: But what it takes, though, is someone to go around and find out what is going on in each one of the ah - programs, and no one ever comes out to see what I'm doing, and no one probably comes out to see what you're doing, and we never get to assimilate

Y: Ah - Barney - Barney Regan had something to say.

- X:            know the answer
- L: (lady) Yeah, that's - you know, what I was thinking             
           (just confusion, everyone talking at once)
- X:            we just filed a            some of the things here, what you're talking about is maybe two hundred dollars xeroxing every time you publish            bit of a problem. What about a summary that goes out monthly about what you've done.
- X: Does everybody subscribe to the American Indian Newsletter?  
Does everybody get that?
- X: One suggestion that was made earlier was that each program should've been a small part --part of our budget to a central office like Washington            reservation.
- X: Again, you're - you're talking about field problems.
- X: More money - nobody's got that kind of money
- X:            at the end of each month            I don't know if you set up with your program or not. You just make a list of the current suits this year            you have just filed             
I mean if everybody does that, at least during the interim there will be some exchange.
- X: I'm talking about before the fact, before the suit's filed
- X: Somebody may throw something in that just doesn't belong in a position            They're not similiar - the experience - remote reservation            people who don't stick around

- X: year -----about the time they start going around practice law, they get the hell out of there and go someplace where they have \_\_\_\_\_
- Y: Well, one thing we could surely do - for everybody here for what it's worth - somewhere here - oh, here it is. I have a list of participants, and the list of participants has ah, some people I wouldn't have guessed would be here, I'm not saying, I'm glad it, you know, glad to see the list expand, but ah - it wouldn't hurt if everybody had a mailing list, including all of these - you know, as a - as a starter have - including all of the programs that are listed here, and ah - I mean I - I'll take the responsibility to mimeograph that and get it out. An - we - a mailing list is easy enough to compile from the NLA directory.
- X: \_\_\_\_\_
- Y: Well, I - I don't know that that would ah - be appropriate. I mean, - over ninety percent of our copies go to people in California, mostly to Indians.
- X: How about the \_\_\_\_\_ American - about the one in New Mexico?
- Y: They could do it. Yeah, that'd be \_\_\_\_\_
- X: -----what -----they volunteered in the past.
- X: Is that the Indian law center?
- X: Yeah.

- X: Right. It - it's ah
- X: Yeah, he's the librarian.
- X: Yeah, he will be here tomorrow and
- X:                      every year
- Y: I don't ~~-----~~American Indian Law Center - there it is. I was trying to find it on the list. It is on there. This looks like a pretty comprehensive list. It's growing every year. We seem to have more - which is ah - the way it should be, but like we have a mailing list for somethings that we've sent out, not very often - not nearly often enough, but it's only a third of this list. Just because people have gotten into the field.
- X: One other thing, and this has happened                      programs                      smaller, two and three men offices, there's kind of a turnover, people come into an area that they've never had any experience with, either law school or without law school - or out of law school, I should say. Would it be difficult to work out the mechanics of - when a new attorney, especially a new director, who didn't go into a program - this small program - their first month when they go to some place like CILS                      just familiarize themselves with the area                      and all that kind of stuff.
- X: Well, my problem is that, ah - you know, something that the projects are going to have to take on themselves - xerox these

things. I'm not, you know, I'm strictly ah, you know, the bureaucratic position of the minister grand, and frankly it's some kind of a central effort just to try to get the people together once a year. Ah - that's not my function, but I think it's, you know, it's the least I can do under the circumstances at least - try to draw the people together, but what we really need is resources, and we don't have it now, and that's what you're saying. Ah, and so, you know, if you want to do these things, it's simply got to be up to the projects themselves to do it, ah - until we get - till the government comes up with some money from someplace to put together a facility that would - that would handle this sort of thing.

X: \_\_\_\_\_ run through that list and ask some of those people on that list what they think of, what they'd like

Y: Well, I see some more hands ah - \_\_\_\_\_

X: I'm not going to volunteer. Ah - but this - I think that if the projects are sufficiently interested in the exchange of information that they put together a form \_\_\_\_\_ once a month and send to some central location - on such a request to some central location, may be easily put out because there's some law schools in this area. \_\_\_\_\_ Mexico would be very interested in participating in this kind of information exchange because \_\_\_\_\_ going to have to do it.

Y: Well, New Mexico already does this. That's the thing. And they already have their newsletter ah, they have some problems of funding, but I'd say a greater problem they have is the fact that people like me and Bill, are not often enough sending them the materials they need to - I mean we're we're guilty. I - you know.

X: It isn't a matter simply of materials; at this point, it's a matter of constantly sending out information as to what we're doing now and what you plan to do -----

Y: That's right, that's right.

X: -----really -----interested. Now, if I - if I could give you a supply, ah, a couple year's supply of mimeographed forms, you'd have to fill in a couple of things in a couple of different lines, maybe \_\_\_\_\_

Y: If we were all of us better at - at sending things to the clearinghouse, ah - it would be - it would serve a lot of the function we're talking about. The clearinghouse ah - never hears about two-thirds of the important cases that are brought in Indian affairs. I would guess it's about that.

L: (lady) Yeah, you know, what I was going to say this morning. I was going to talk and I really - will compile what we have now; we also have the four tiny catalogues \_\_\_\_\_ and if you want to leave those the cards with your list and mailing instruction. We ah - at special mailing service, I have an idea proposing

\_\_\_\_\_ I can code in every person that's listed in Indian law ah - mailing list and send out whatever you people want \_\_\_\_\_ mail it out to everyone on the list. And ah - you know, the problem is coming from so many different sources sometimes \_\_\_\_\_ one person responsible \_\_\_\_\_.

Y: Well, I'll, I'll take the initiative of getting you a list of these ah - a mailing list - of seeing that gets done. Reed, well, Reed had his hand up for a long time.

R: I don't know if this is a sensible proposal. I've thought about it long enough \_\_\_\_\_. Why don't we try this. Why don't we appoint a committee, ah - let's say three or four, whatever the number seems natural, of the most experienced Indian lawyers among our midst. I mean, it occurs to me that you would be one and Bill would be another, and ah - probably there are a couple of others ah, here that I - I just don't know about. I haven't been in this business long enough. But that committee ah - would be constituted as a group that first of all, would be a reference group. People, before they file suits would be expected - before they file any extraordinary suit, any non-ordinary type of suit, would be expected to at least consult with one of you. Ah - secondly, that ah - rather than sending a whole bunch of pleadings around to forty or fifty people, ah , that at least any, again, non-ordinary pleading, and any non-ordinary brief be sent to every member



of the committee, ah, that the members of the committee take it upon themselves to familiarize themselves rapidly with the materials sent to them, ah , and ah, that therefore, they'll become - at least those four people will become very familiar, if worse, with everything that's going on. Ah -

Y: But that puts the basic monkey on the wrong back. The responsibility shouldn't be on the - in the smaller and newer programs and newer people to come to ah - this committee. The responsibility should be for - for groups like - I mean, I'm I'm confessing errors, groups like ours and Bill's, and the ones that have the cases to get the word to people like the clearinghouse. The clearinghouse abstracts are fine. You don't need to send the whole pleading, I agree. No one's going to read every - if you send every pleading, no one's going to read them. But, the clearinghouse abstract is a rather good description of the case. The problem has been we're not getting the stuff to the clearinghouse.

Y: Yeah?

X: Well, \_\_\_\_\_ follow up, I see, I don't agree with you that the monkey's on the wrong back, I don't think the real problem is that we're communicating with - ah - one and two man reservation programs. Those aren't the only problems. The other problem, and I think it was implicit in what you said, Bill, that is, that somebody's been on the reservation for a couple of months gets

an idea and files to - in an area he's just over his head in.

Ah -----

Y: But if he had the clearinghouse, he should -

R: -----be for him to -----

X: Well, the clearinghouse, you know, the point is that he should consult with an experienced Indian lawyer.

Y: Well, I know, but if - if he has ah - if he has say a case in a certain area - water rights, fishing rights, I don't care, and he has a full compendium of what's available, he's going to know whom to contact.

X: Well, he knows who to contact without reading any goddam thing---

Y: You can't - you can't impose that -----

X: -----outside you or Bill or somebody knows.

Y: Well, that's right \_\_\_\_\_

X: And I think we ----the real-----the really critical thing ah - is that we're approaching it the wrong way. I think the way we should approach it, is that we should make sure that there are three or four of the most experienced people in the field that do know things that are going on, and that they are the people, then, who can be contacted by - by a novice.

Y: Well, people are contacting us, as - as Bill says. That's - I mean - you can't impose that kind of rigid discipline. People aren't going to follow that. That just isn't ah - I

There's been a hand up back here for quite awhile.

- X: I think there could be a little more imagination \_\_\_\_\_  
I'm not sure if maybe everyone understands \_\_\_\_\_ how the  
clearinghouse works. Just to be clear, there's the squib, and  
then like if there's a brief, or there's a painting, it's  
assigned a number - 2816, and pleadings are 'A', the brief's  
'D', and so on. If you - all you have to do is write them a  
letter and state the number and ah - within two days it's in  
the mail to you. And - well, most of you probably know who -  
who the real experienced lawyers are, what their phone numbers  
are on top of \_\_\_\_\_
- L: The phone number's right there.
- X: You're still not getting -----you're still not getting to  
the point. The point is, the suits that have not been brought.  
It's - it is the overall policy. I mean many of the problems  
in the Bureau area where no one discussed about the lawsuit, and  
where everybody is on a reservation should probably be involved  
in the lawsuit. The whole question of the Bureau - the manner  
in which the Bureau handles its trust responsibility in leasing,  
in grazing. And again, relocation, law and order on the reser-  
vation. There's not a reservation in America where people  
aren't being killed right and left because of a serious law  
and order problem. These are the type of things I'm talking

about - the place where the suits have not been brought, and I'm asking whether or not there should be some national co-ordination and everybody arrest themselves for the same problem, rather than all shooting out in different directions, setting up some type of priority system whereby you continue your - your usual functions - your legal aid functions in your office, but I'm talking about a co-ordinated law reform effort in specific areas. It's much more difficult for the Bureau to walk into six different courts in six different areas to fight the same thing than it - I don't like \_\_\_\_\_ I think they did a beautiful job with that commodity food stamp lawsuit, but they filed like twenty-six of them around America on the same day. They had very, very beneficial results, because then they picked the forum after they filed the suits where they felt the second best court, and this type of thing, and they ignored the courts that they felt were racist or whatever the case maybe, and this is the type of thing I think should be addressing ourselves -----

Y: But that takes----- come up with it is sitting next to you.

X: \_\_\_\_\_ classifications of DWI problems. certain way, like

Y: That takes a lot - that takes new resources. in something along

X: I don't know whether it does.

Y: I think it does.

X: \_\_\_\_\_ you studied the problem, and you've blasted the other suggestion, now we'll give it back to you to come up with a suggestion -----

X: Well, I'm \_\_\_\_\_ you've got a new suggestion. What I'm saying is the other suggestions are not addressing themselves to what is the most crucial problem.

X: We need some one to co-ordinate it, Bill, and it takes money to get someone to do that.

X: Now if one of you could stay up to operate it long as it runs -----

B: Well, what I'm \_\_\_\_\_ an every year they express an interest, and then we'll come back again next year, only this time it will be the University of Hawaii and nobody will have done anything.

X: That's why we're questioning that we ought to come up with anything

X: \_\_\_\_\_ come up with two-hundred and fifty thousand dollars a year.

X: Well, if Charley can come up with it is sitting next to you.

X: Is it possible to use one of the existing centers now, like the Indian Law Center, perhaps, then let's do something along the lines -----

Y: Well, the - this -----

- X: March twelfth, what's that - ah - cor-ordinate yourself with the clearinghouse, too. All the pleadings be filed there \_\_\_\_\_ out of one of the existing centers.
- Y: Well, if the Amer - the Indian - the so-called American Indian Law Center had no full-time practicing lawyer in Indian law, it's ah - run by the librarian of the New Mexico University law school who runs it on a shoestring. He barely has enough money to get it out in any month, ah and that's mainly a scholarship program which is a - you know, really important program to get ah - Indian students into law school and, you know, that's - that's what they're all here. Ahm - but, that's you know, it just doesn't have the capacity or set-up to do what you're suggesting, and ah, the only thing that right now has the kind of machinery to get out the reports of the cases is the clearinghouse. I mean, that - there's just nothing else I know of that -----
- X: What was that suggestion made this morning by the native, you know, to the American -----
- Y: Well, that's a proposal for the future. Something like that gets off the ground, of course, we'll have something better. We'll have something that's exclusively Indian, rather than the clearinghouse which is everything. But ah - that's not started. That's in the future. And we talked about a back-up center, and that's not started either. I - I don't know, I

think we're flailing a dead horse, and I have another subject I'd like to bring up. I'm not ah - if I may.

X: Let me just say that in - in my defense that - you know, in the year that I've been at this, I've made every conceivable effort in OEO to try and get back-up center. To me, it's the thing that we've got to have, but I have not succeeded, and that's really, you know, yet, but that's really what we've got to have. And Steve was here today, that maybe we'll, you know, appreciate the ----- and put it together.

X: -----make some commitments.

X: But he's got - he's got the money \_\_\_\_\_ and so ----you know, that's - that's where it is, but ----it's not as dull - you know, I'm not aware and - and everybody else isn't aware, and that we're trying, but so far \_\_\_\_\_

X: Well, what - what'd we decide? Have we decided that we're going to do nothing? I mean I - I don't. Are we going to clap ourselves over the hand and - and - and \_\_\_\_\_?

Y: Well, no, I - I think some -----I think that ah - of - a couple of good suggestions have been made about the better utilization of the clearinghouse, that it would ah - compile past Indian materials that it's got and send them out. It would compile a list of - a mailing list for Indian programs, that it would distribute things too, on request. Is this, do I understand

think that those of you who have not considered the question

this? I think those are useful proposals. I - and I'm not trying to knock it.

L: (lady) -----try a make it a little more significant to them \_\_\_\_\_ before you get any kind of newsletter (the lady talks for a little while, but her voice is too faint).

X: That would be a little hard \_\_\_\_\_ In fact, \_\_\_\_\_ everybody knows that that's really hard. I would think \_\_\_\_\_ an effort to contact each project director on a regular basis and say 'Tell me what's going on,' and put it together.

Y: Well, ah, I still think most of the things we can say have been said and we're - we're going to go on ah - tiring everybody out, and I - I ah, there's another subject that - I'm very sorry that Dan Rosenfil isn't here, but it's a subject that I think it's one there'll be a lot of general discussion on, but that's the - the subject of - of Indian water-rights which is ah - gotten a lot of glamorous press in some areas, but the -----the thing that -----that's very troubling to me is that Indian water rights problems have come and gone in various areas, and lawyers have not recognized them. Indians have forfeited their water rights because they were - because lawyers there were not familiar with what - what those rights were, and most there's a significant example of that in the Southwest, and there's some lesser examples elsewhere, and I think that those of you who have not considered the question



before ah - could well just read a few cases and be ready to recognize these things when they come up. We have found ah, Indian water rights problems to be relevant to a whole series of other things. I mean most recently, we're fighting a subdivision in California on the ground that potentially it plans to use Indian water for the - for the lots, and so far that's succeeding. I mean the - the county is not approving the subdivision on that basis. But that's a rather strange example. Now, the key to the Economic Development of many Indian reservations, particularly in the Southwest, but perhaps elsewhere, certainly water rights cases have come up in the Northwest which is water-rich, ah - is the protection and development of these water-rights. They - they can ah - mean economic health or death to ah - dry areas. The basic, the basic legal point is that most west - most states west of the Mississippi are what's called appropriated water rights, and water rights states which means that - basically that means that the guy that gets there first and puts the water to what's called beneficial use, which means hard Chamber of Commerce type uses ah - gets to - the right to that water forever, and if the Indians are - are too poor to put the water to use and too late, were it not for the special rights granted Indians by the courts ah - they would lose out, and

in many areas by default because there's no one - no lawyers around who recognize Indian water rights, that default has taken place, and the ah - you know, the local commercial interest have, in effect, stolen the water. Ah - that certainly has been true in Southern California and in, to even greater extent, parts of the Southwest. One of the problems with Indian water rights is once the horse is out of the barn, it's awful hard to get him back. Look at Pyramid Lake. If the Indian people at Pyramid Lake had had a competent attorney in 1902 when they started stealing their water, he might have enjoined it then, perhaps. Certainly, the water rights cases go back about that far. Winters is a 190' something case, the basic case. But they didn't, and now, you know, the - the city of Reno is using their water. Well, you're not going to destroy the city of Reno. That's the horse out of the barn, so the crucial - there's a real preventive need here, to recognize these problems ahead of time. The Navajo Tribal Council forfeited Navajo rights to the - to the Colorado River - I think they've attempted to rescind it, but there's a lot of question about that, ahm - because they weren't advised by their tribal attorneys, the private attorney, ah - about what they were doing. They did it without knowing, and ah - now that the - the basic rule is stated in Winters Against United States the best exposition of it is Arizona gives California,

U.S. Supreme Court 1963. Ah - but the basic rule is that upon the creation of an Indian Reservation whether by executive order or statute or treaty, no matter how, the government impliedly set aside by use of its superior power enough water to - for the present and future uses of that reservation. It's usually measured in dry areas by irrigatable acreage, but it's measured in different ways in different areas. Now that - ah that rule is so strong that in Arizona Against California the court ah - did something that logically doesn't fit at all. Ah - that rule, you'd say, Well, the government has power over the water because the land is all government land initially, but after it's patented out, ah - the government would lose the authority to reserve that kind of water, yet in Arizona Against California the court ruled in - in certain instances that lands reacquired for private sources had this paramount water right. Well, that may not be logical, but it's the law, and it's ah - it's one of the most powerful economic weapons that Indians - Indians lands have for the future, and ah I - with that ah - tirade, ahm, I'll ask if anyone has particular questions about it. I think if you read Arizona against California you get a good feel for what's it's all about. There're a a lot of particular issues about

navigable streams versus ground water. The rule applies to ground water. It's not based on navigable waters. That's a myth that some people have picked up. But it's the law - the law is not confined in navigable waters. Ground waters, non-navigable streams, navigable streams - it doesn't matter. Ahm , O.K. end - end of tirade. Does anyone have any remarks about the subject?

X: \_\_\_\_\_ I just thought I would point out, something that doesn't deal especially with Indian water rights, but ah - a Professor Gray who's with the Department of Transportation brought a casebook out on Departmental Law which has a \_\_\_\_\_ section dealing with water rights of different states, how they - how they handle their water ah - problems \_\_\_\_\_ reference and sources. It's a rather new book put out by Dean and A. But it's very good on - on water rights and water laws. \_\_\_\_\_

Y: Yeah, we - we have a set of that. I agree it is. It's a good set. It's very expensive though. But ah - major law - libraries would have it, I suppose. Ah -----

X: \_\_\_\_\_ involved specifically ah - Indian water rights \_\_\_\_\_ but we're in the midst of litigation, now, challenging the right of the corporation and private development, putting the dam, creating an artificial lake \_\_\_\_\_ Navajo reservation

area. We're going to be using ah - basic water rights \_\_\_\_\_  
question that they're interchanging water from different water  
\_\_\_\_\_ and they're going to develop a complicated pipe  
system whereby ah - they level off a number of lakes in the  
area \_\_\_\_\_ and they're also going to affect the \_\_\_\_\_  
down the stream as well as upstream by the purchase of this  
dam.

Y: Well, you're in a - you're in a peculiar situation because of -  
most Indian people are not in \_\_\_\_\_ states and you are.  
Ah - so \_\_\_\_\_ rights are ah - a nice common law rule that  
really don't have much relevancy.

X: And most of Europe's-----

Y: Right.

X: ---I pointed out in most cases where you meet - encounter  
that - we have quite a vault of information - available.

Y: Well, that's - that's good to know.

X: Don't some of your Indian war \_\_\_\_\_ California possible  
defended \_\_\_\_\_ California has -----co-existence with the

Y: Yes.

X: I mean if you're any of the - of the ah - the bordering states  
that are -----I mean if you're in the like the Colorado  
ah - Utah - Nevada -----You don't have to worry there about

rights. If you're in Washington, Oregon, California----

Y: Oregon is right ----it's ah ----appropriate, and I believe Washington is, too.

X: Not completely, though, because I think there are some -----

Y: Oregon ----Oregon is totally appropriate, I'm quite sure of that. I've got a case there.

X: gets all the water - in most western states. Ah, well.

Y: Well, then maybe ----pre-enactment, but that's a long time ago. Lindsay?

X: you may have said this already I understand waters have to have contingent stream -----I mean a continuous

stream -----I mean a continuous stream

Y: Ah -----we don't think so. We think ground water ah, are, it's out of a hole in the ground -----

X: an underwater stream. There have to - there has to be some kind of flowing ah -----

Y: Oh, oh, agreed - agreed.

X: -----through or on a reservation. You can't establish if you could in a few ah of water rights say in the

-----

Y: Well, -----

X: -----when it rains in the upper valley, why -----

Y: But the - the Indian people have the same appropriation rights

as any other citizen. Sure, they can - they can follow the appropriation law of the state as to that water in the next valley, ah - but they're not going to have the capital to do it. That's - the reason the significance of Indian water rights are, they head off the - the problem that the guy with the - there with the capital first is usually the guy that gets all the water ah - in most western states. Ahm, well, I, I don't know. Does someone else have other topics they want to bring up. I - I don't want to - we've - we've dwelt too long on some topics, and I - it's in - it's good to keep moving. I - did you want -----

X: I just wanted \_\_\_\_\_ discussion \_\_\_\_\_ it's my understanding that ah - Washington Neighborhood Legal Service is, is about to come out with an \_\_\_\_\_ on training. Ah \_\_\_\_\_ one of the backdoors we might get into \_\_\_\_\_ it's going to be a training program that's going to be put up for grabs \_\_\_\_\_ and it occurred to me that since the Northwestern thing ah - came to an end. You know, it occurred to me that one of the ways to get around is to write a special \_\_\_\_\_ we ought to kick around \_\_\_\_\_.

Y: It sounds like witchy training to me \_\_\_\_\_.

X: Well, due to this incredible bureaucratic miasma, mainly in the form of \_\_\_\_\_ believe it or not, some question \_\_\_\_\_

over the last minute whether they were going to be able to fund that project \_\_\_\_\_ assumed that it could be done all along. Our situation is that Legal Services is - is hardly the most popular ah - part of OEO and ah - not exactly paying

Are there any city programs represented?  
\_\_\_\_\_

X: Well, I knew I'd be sorry I raised the issue.

Y: Well, I think one experience we've had that I'm afraid it's what brought to mind was that all of our programs have had people come to us as regies and ah - at least couple of years ago, the regie program had a long training session, a month long or something like that, and the effect on us was it caused a couple of our people to flunk the bar. That was about all it did. Ah - they missed the bar study period and, they didn't learn anything that was really important to us, ah, and your Indian training component would have to ah - somehow be supplied with the kind of talent that would make it work.

X: Yeah, I should think it would be supplied by the ah - Board \_\_\_\_\_ committee that ah - was referred to ah before. I mean, as far as some of the back-up centers are concerned, we don't want some ah - you know, we don't want Boise-Cascade here or some other jokers coming in training people in ah in housing or juvenile law, or health law, or anything else \_\_\_\_\_



- Y: Who wants to toss out a new ah - beanbag, just for -----  
wrote down some things before we came, and -----
- X: I think the problem is \_\_\_\_\_
- Y: Problem's what?
- X: Are there any city programs represented?
- X: Seattle.
- Y: Seattle.
- X: This has really started out less than a year ago, and we got  
into fishing rights pretty much from the beginning, and are  
involved with a measure \_\_\_\_\_ mentioned before on the  
fishing rights as far as that goes, there's really not ah ---  
\_\_\_\_\_ and as an example, we're really not aware of  
other people that are involved \_\_\_\_\_. I think Burnie has  
been doing some stuff on it. Dave Ketchum is pretty much  
aware of what's happening in that area. Ah - I should let  
John \_\_\_\_\_ talk about \_\_\_\_\_ fishing rights.
- X: Ah - well, one thing that's bothering us is the activation  
of \_\_\_\_\_ of half reservation land or off reservation  
land which was within the ah - old reservation boundaries,  
taxation and extension of city services into the reservation  
area and what effect that has on the retrocession of Public  
Law 280 because \_\_\_\_\_ cross the jurisdiction in other  
areas rather than the civil colonel law area over reservation  
land.

Y: Well -----

X: Has anybody had any experience with this -----whole city annexation \_\_\_\_\_ reservation land? I suggest they can't do it.

Y: Well, ah - we -

X: Well, reservation land that

X: What are they going to tax?

X: What're they going to what?

X: What're they going to tax?

X: I really don't know \_\_\_\_\_

Y: Well, we talked ah - you know, that Uthrong Public Law 280 is an extra hooker into the jurisdiction question which - Public Law 280 only affects some states including Washington, California, Wisconsin, and one of our jurisdiction cases, the one I told you about earlier, about the fact that the Hoopa Reservation had this area open to settlement, and ah - everybody thought it had ceased to be part of the reservation but the records show otherwise. Ah - one of the arguments in that - one of the issues in that case was the effect of Public Law 280. Ahm - and ah - another case that raises the affect of Public Law 280 on this type of reservation jurisdiction issue that we have - has a fairly interesting set of facts. An Indian was arrested ah - for fishing illegally

ah - on the Hoopa Reservation, and he's a Carok Indian, not a member of the Hoopa Tribe, his wife is a Hoopa, his children are registered Hoopas, he lives there, he has a home there, but he's not a member of the tribe. And the state asserted that it has the right to prosecute him because he was not - they said, if we - if he was a Hoopa Indian they wouldn't, they couldn't prosecute him. They admit that, but they say they have a right to prosecute him because he's not. And that's raised a whole bunch of cute issues, including the effect of Public Law 280 on hunting and fishing rights. We've briefed that. I'd certainly be happy to supply the briefs to you if -----

X: \_\_\_\_\_ but tradition has been that the traditional \_\_\_\_\_ exchange in their fishing rights \_\_\_\_\_ multilateral agreements about the exchange of fishing and hunting rights by, you know, non- nontribal members. That may be something that you might be able to \_\_\_\_\_ the jury cause that seems to be, you know, the pattern of past history down there. So that, you know, you didn't have to be a member of the tribe. You had to be a member of a tribe that reciprocated traditionally in the past \_\_\_\_\_ it was pretty common among the, well, it seems to be fairly common among the Yakimas on the Columbia River, as well as the other river tribes in Washington avoid

X: Prosecution \_\_\_\_\_

X: Also, there was ah - this Superior Court case \_\_\_\_\_

X: Apparently it was someone who has the color for playing ah -  
Y: this sort of thing \_\_\_\_\_ question comes up \_\_\_\_\_ small  
X: bands, small tribes.

X: \_\_\_\_\_ case where ah - when reservation land ah - any  
\_\_\_\_\_ reservation land was taken for a ah - military install-  
ation, and they were given land in lieu of that reservation land  
down on the river below you know, near the old reservation, ah  
it's now in trust. United States in trust put at individual  
Indians, and the state is asserting jurisdiction over that  
piece of land ah - for purposes of fishing rights saying that  
they have complete jurisdiction over that piece of land, even  
though they don't assert jurisdiction over the existing  
reservation now - the \_\_\_\_\_ reservation. The question what -  
I mean, what status is that - that little piece of land have  
\_\_\_\_\_ has anybody else encountered this kind of thing?

Y: What was the status of the land before it was ah --

X: Private - quite private.

Y: Well, you read - there's a provision in the Constitution  
about - that's relevant to that - that troublesome about the  
Federal Government reacquiring jurisdiction ah - is someone  
more familiar with this than I am? There's -----



it go in that dichotomy and that - that's the question -----

X: -----pay for other purposes, for example, property tax, etc., doesn't place jurisdiction.

Y: Well, that's - that's because of no, that - right, for property taxes, you can't - sure, they can't tax federally owned land cause the Federal Government's proprietor, but they have jurisdiction over the civil and criminal affairs on that land, even though, it's federally owned. If - if the Federal Government that remains the state jurisdiction and must, I think Constitutionally must. Unless it's got this excuse of this - I wish I had the Constitution before me. It's a strange provision - that they use.

X: We got this problem on one of the reservations \_\_\_\_\_ purchases land, and ah - the state's position on that reservation \_\_\_\_\_ fishing laws on that reservation.

Y: I think that that's wrong. I mean I think that the cases in court that have interpreted the provision of the Constitution that allows the Federal Government to assert jurisdiction then what that provision of the Constitution I've been talking about, say basically, that if it's inconsistent with the federal purpose, the Federal Government has the power to take the jurisdiction back, and that's the excuse they've used in the military and other things like that, and I think

you can make a pretty good argument that it's inconsistent with the federal purpose for the state to assert jurisdiction over trust Indians.

X: I agree we have to make \_\_\_\_\_ on that reservation.

Y: Yeah. And, ah -

X: \_\_\_\_\_ there a bunch of post office cases on that.

Y: D-----right.

X: -----criminal cases on one of the reservations -----

X: -----similar to crimes act on a military -----

Y: Well, sometimes there're particular acts, but ----- that ----- that's the general line of problems, yeah, there -----

X: \_\_\_\_\_ cases that aren't ah \_\_\_\_\_ litigating on hunting and fishing and trapping all involve that type of land. Ah - they have ceded all of the land in Wisconsin and retained only the right to hunt, fish, and trap in Wisconsin \_\_\_\_\_ and then by executive decree that was cancelled, and subsequently ah - reservations were created \_\_\_\_\_ ah - the Red Cliff Reservation and the Badger Reservation were both created subsequent to that.

Y: But were they created out of federally owned land, like BLM land?

X: No, no, no. They were re-----

Y: They - they were purchased -----

X: -----purchases from the state. As a matter of fact, this is why, why they are arguing that ah - while we have got ah - the right to hunt, fish, and trap on those reservations, but we do not have the right to fish in the adjacent waters in Lake Superior, ah - because ah - that part has never been reacquired by the federal government and, therefore, the federal government \_\_\_\_\_ treaty has given the Red Cliffs and Bad River the right to fish in Lake Superior.

Y: Hmmmmmmm.

X: Now, it's interesting to get around that loophole ----- which they also \_\_\_\_\_ reservation does have a right to hunt, fish, and trap.

Y: Well, I just remembered the word in the Constitutional provision that's so archaic. I think they use the word 'blockhouse' and that's the thing that they use to say the military bases. They have the Constitutional power to reassert jurisdiction over purchased land for military bases. It's an obscure little provision in the constitution. I think it says 'block-houses.'

X: \_\_\_\_\_ don't have it in the Green book?

Y: No. Well, ah, once again, maybe if - well, it's approaching five o'clock. Where's Roger?

X: Roger.

X: Roger.



- Y: How late do you want to go? It's about five.
- R: We'd better stop now, and \_\_\_\_\_."
- Xi: We're not going to have any audience left at all here.
- Y: How about that.
- C: See if I can get \_\_\_\_\_. Before we get into the Juvenile Law Center presentation, I've had a couple of people ask me for a couple of minutes to talk about some things that are relevant. Tom Texens from Pine Tree Legal Services which is in Maine wanted to say something about housing. And, Pete Tob wanted to talk with, just a minute about what's happening in with regard to Matt Lewis. So, if you don't mind I'll have these guys go ahead.
- I: What can I say, Roger?
- C: Even if you - even if you mind.
- Xi: That's all right, run right over me.
- C: Tom, where are you?
- T: Yeah, I just wanted to add a P.S. to the discussion. I represent a group of sh - a tribe of so-called Eight Indians in Maine, and they got about a million dollars from the sh - sh - for water and sewer. I don't know if this is because \_\_\_\_\_ Ineligible for Public Health, but sh, they did a very nice job and sh - it might be a good precedent for

- C: (Chairman) "O.K. I just wanted to mention that there's still coffee downstairs. So if you want to slip out at some point and get a cup, there's coffee down there and ah -
- X: We're not going to have any audience left at all here.
- Y: How about that.
- C: See if I can get \_\_\_\_\_. Before we get into the Juvenile Law Center presentation I've had a couple of people ask me for a couple of minutes to talk about some things that are relevant. Tom Terene from Pine Tree Legal Services which is in Maine wanted to say something about housing. And, Pete Zah wanted to talk with, just a minute about what's happening in, with regard to Fort Lewis. So, if you don't mind I'll have these guys go ahead.
- X: What can I say, Roger?
- C: Even if you - even if you mind.
- X: That's all right, run right over me.
- C: Tom, where are you?
- T: Yeah, I just wanted to add a P.S. to the discussion. I represent a group of ah - a tribe of so-called Eight Indians in Maine, and they got about a million dollars from the DA ah - for water and sewer. I don't know if this is because \_\_\_\_\_ ineligible for Public Health, but ah, they did a very nice job and ah - it might be a good precedence for

someone else school if anybody else is having problems with ah, Public Health ah, service under the Government. That's it.

C: And now, for a real live Indian, folks. Where is he? Pete, O.K.

Z: Yeah, one of the things that we wanted to bring up, ah - it might not have any direct relationship to ah - what we've been talking about this morning, but ah, I'd like to give at least five minutes to ah - the Fort Lewis who are here with us today. And ah - they have a very unique problem. I think they would like to explain it themselves so that, perhaps the ah poverty lawyer, lawyer's brilliancy could be channeled into some of their           . So ah, I'd like to have Steve Wallace to speak at this time to explain the situation.

W: Well, in Fort Lewis, there's agreement between the United States Government and the State of Colorado. Fort Lewis would be given ah, some land. In return it would give free tuition to all Indians, ah, and ah, since in 1910 they made the land trade at some site of the original Fort Lewis campus Hesperus Colorado. And in 1956 Fort Lewis moved from Hesperus to Durango and became a four year college and there's quite an influx of Indians students. And now in 1970 they say that they no longer            state Attorney General from Colorado said that the school is no longer obligated to give free tuition to the college. And in 1957 while applying for preservation

of, ah, of the school they stated that they will give free tuition to Indian students. In 1967 the State Attorney General reaffirmed this, saying that they would. Now, in March, 1970, he said they wouldn't. This was no longer necessary. It was no longer needed. At the same time, this last week, House Bill Fourteen, 1452, was introduced, which was limited tuition where it was only to Colorado residents. And all this \_\_\_\_\_ could not get money from some other source. Now this to me is, at Fort Lewis, see, this is a call it a breach of contract \_\_\_\_\_ 'cause we can't go to school there any more. And ah, the school is saying that they have no money to give the tuition waivers, and which \_\_\_\_\_ is mounting to around two-hundred thousand dollars, or, no, twenty-two thousand dollars, I'm sorry. Well, at the present time Fort Lewis is getting around two-hundred and fifty thousand dollars through Indian oriented ah, programs. Title One or Title Three, Ford Foundation Indian Studies, Cooperative Education, and a few others. Ah, John Echohawk here is ah \_\_\_\_\_ put a legal aspect, and I'd like him to say something modestly in Zuni.

E: \_\_\_\_\_ questions have been about the fact that Fort Lewis campus has been shifted from the site of the original land to another site in town. Ah, the governing board at

Fort Lewis College and the, the State Board of Agriculture, and the State Board of Agriculture has retained ah, retained control over the original land and now uses it as an agricultural experimental station which is ah, also part of the college system, too. One leg of the argument against, ah, against the attorney General's assertion that the fact that the land is moved now extinguishes any obligations the state of Colorado has. Also, especially whether the state has the authority to make the authority ah, to use that land as an agricultural experimental station because, they assert that in, that by an act of 1916, they were authorized to ah, exchange uses of the property. That 1916 act was ah, introduced and passed specifically ah, in regard to some other property the state of Colorado. Nowhere in there was it specifically mentioned that this Fort Lewis property was intended ah, to be included in this 1916 act. It's all very complicated could be very difficult \_\_\_\_\_. The fact of the matter is though, the state of Colorado \_\_\_\_\_ to amend the existing state law \_\_\_\_\_.

C: Did you say something about a hearing; Peter?

Z: My understanding is that today at three o'clock \_\_\_\_\_ appearing on this issue \_\_\_\_\_ I think ah, those original American who have tried to enter these schools, you know,

over a hundred times. I think in listening to ah, what has ah, been happening this morning, I'd like to ah, ask Roger one you other favor, and that is that we've been talking in terms of, you know, the different kinds of lawsuits \_\_\_\_\_ all morning, and ah, one of my concerns, I guess, I mean, you know, most of the Indian people are concerned about the preventive aspect. Ah, I've heard a lot of speeches about, you know, how we can ah, sue and attack ah, outside towns or merchants, ah, dealers, car-dealers, and what have you. But, I think at some point we have to shoot. You know, the whole direction of Legal Services program in its mission, the idea of preventive law, so that rather than, let's say, ah, DNA defending an average of five-hundred ah, car-dealer repossession cases ah, on the Navajo reservation per month, we can bring in our own car-dealers into the reservation, owned by Indians and run by Indians. And I'd like for, you know, this assembly here to ah, allocate some time to discussing some of those problems, and ah, and I think I also would like would like to request that there be some time be given to economic development. And ah, I think it's dangerous on one side to, to satisfy, maybe, ah, someone's ego in cheating the law, but it really does not affect our poverty people. And I think ah, we have to work both, you know, with the Indians and communities and

trying to understand what is it that \_\_\_\_\_ are doing and ah, the only way we can bring an effective change is if he, if you ah, work at the social changes ah, in the community, so that ah, our efforts wouldn't be wasted. And ah, I'd like for us to \_\_\_\_\_ today and tomorrow sometime \_\_\_\_\_ discussing it.

C: Barney?

B: Did anybody file any suit on this ah, Fort Lewis \_\_\_\_\_? Has anybody?

Z: No.

B: Was there any ah, is someone going to?

X: Yes, there are plans depending on what happens in the legislature.

Y: Is the Colorado Rural Indian Services involved in it?

Z: No.

C: Ah, OK.-----

X: Mainly it's getting American \_\_\_\_\_ DNA.

C: O.K.

W: I'd like to add that ah, I have here several copies of a newspaper article that came out in November, I believe it was, and it pretty well states both Indian and ah, the administrative point of view on this ah, tuition business at Fort Lewis. I'd like to, you know set the liberty to pass it out

and have - and get a recycle of what happens. Just a few copies. I'd like for everybody to know about this. This is something that - if we lose this tuition at Fort Lewis College, not only is the Navajo Tribe will be hurting for money, they have to cut down on the number of students they put into college \_\_\_\_\_. So this isn't just a matter of affecting just Fort Lewis. It's a matter affecting all Indians. And if the lawyers are going to do anything \_\_\_\_\_. Right now there are about two hundred Indians at Fort Lewis. They're expecting three hundred and fifty next year. Ah, if this goes into effect, there won't be any next year. And it's going to hurt the Indian education. It's going to hurt just about everybody. So, I'd like to see some help being given.

C: Well, I hope the program will respond. That's about the best I can do. Ah, with regard to Pete's point, we will have several, at least hopefully, two more, likely opportunities for open discussion, and if that's as I said, it's up to you to decide what to talk about, so that's, that's fine. We'll talk about what he wants to discuss. With, with regard to programs, ah, DNA particularly, I felt ah, and it, of course, any program has the right to move in whatever direction it chooses. Ah, and I think that DNA is in a particularly good position to move in those directions because of the considerable



resource that it has. And it's been my feeling that that is the way it should go, and I think I've said that in writing. Ah, Pete?

Z: Yeah, Roger, my point was, you know, ah, was this, I think DNA is making the ah, the transition right now. It's now beginning to turn the corners into that direction. But I'm concerned not only with, you know, ah, DNA, but other programs.

C: Right.

Z: And ah, I asked ah, Bill Jankle over here ah, this morning, ah I says ah, 'How many ah, Indian people, or how many employees do you have in the program?' And he said 'Fifteen.' 'And ah, how many of them are Indians?' 'Ten.' 'Ah, How many of them are lawyers?' 'Five, and they're all here.' What about those Indians that he left behind. And I think if we are going to develop the reservation, and if we are going to develop the Indian communities we've got to bring these people along. And, ah, then I think if it wasn't for DNA, we probably could have, you know, maybe one Indian here. But my point is this, that we need those people, and we need to motivate them. Ah, there's a lot of ah, talk about, you know, we need more Indian lawyers, and sure we do. There's a lot of talk this morning about, you know, the trustee relationship between the BIA and the Indian tribes. What about lawyers and clients?

And I think we need to discuss some of these things so that ah, you know, we wouldn't, you know, tell the county lawyers what our feelings are in this particular area.

C: Well, if it's all right, we'll hold off until we hear from Backup center, and then move into that. O.K. Ahm, we'll hear then from Ted Louer from the National Juvenile Law Center, ah, then he can handle it however he wants.

L: Mmmm, thank you Roger. I see our time's about up, so we'll have time for just about one more question. Anybody want to ask a question, then we'll, then we'll turn it back. All right, no. I'm ah, I'm from the National Juvenile Law Center. I'm sorry I left my official beany with repeller on top at home so you'll have a little trouble picking me out in the crowd. I noticed originally that I was announced here as David Kirk speaking at 2:30 p.m. and at three. I wish he'd, that ah, Roger had left it that way because ah, we all know that Kirk is a brilliant person and, consequently, when you saw my bad performance you'd say Kirk just had a bad day. the courts now you'll think I'm doing the best I can which is about the truth. Ah, for levity, you know, you're staying over at the Brown Palace, you know, there's a bunch of people over there walking around with badges on, green and white that say ah, AAAASS. Now, I thought when I first saw it, they ought to get themselves

a new printer. So I stopped and asked ah, a young man there, said, what's that all about? And he looked at me a little startled as though I didn't, you know, I was stupid because I didn't know it. So he said, Why that's the American Association for the Advancement of Slavic Studies, he said. I'd be better off the way before, maybe. Ah, anyway, I'm from the National Juvenile Law Center. We're in St. Louis. We've been going for, oh, the better part of a year now. We got started about last ah, July. We've got about ah, half a dozen lawyers, and some secretaries there. We're at St. Louis University. We're a backup center. Our job, then, is primarily to help Legal Services lawyers, to help you, in other words, with regard to problems in the juvenile law area. Of course, juvenile law principally brings to mind the idea of juvenile delinquency. But it's really broader than that as far as the interest of the Center are concerned. Ah, you've got also problems, for example, of neglect and dependency with regard to children when they're trying to, when the courts or someone is trying to take children away from parents. You've got also the whole complex area which has been long neglected, of rights of children. In our society, what are children's rights? What is the relationship between parents and children, for example. Ah, we're exploring these things. Ah, most of

our work involves requests for assistance in trying to handle these. We're doing some work in education, some work in law reform. And we've been trying, so far, to deal with all the requests we can - we get in trying to get some kind of an answer ah, that we hope is helpful. I don't see anybody here that I, that we have actually failed to help, so I can feel pretty safe about that. There are a couple of people, I think, we've probably not done very much for. But ah, we're trying at that. Now, frankly I don't know very much about Indian juvenile law. Ah, in fact, ah, I am standing here with a much greater amount of humility than when I came this morning because after I listened to the discussion about jurisdiction this morning, and heard Mr. Becker ah, citing statutes and quoting from cases, I suddenly realized, I'm probably out of my league here. But we'll do the best we can. We'll talk about juvenile problems because - then I - then it occurred to me, really, that ah, that, it'll, juvenile law is a, is an area that is really unique, after all, the primary underlying assumption of juvenile law is that children are wards of the state, that they're not competent to deal with their own affairs, that the government has to act for them. Of course, you never heard about that before, have you? In fact, the Government, of course, always acts in the best interest of the child,

so therefore, the child can never question what it is the Government is doing to him, cause it's in his best interest, so therefore, he ought to shut up. And, of course, ah, this is the old approach we say. It doesn't exist any more and yet, I came across a letter ah, earlier this week from one judge to another judge. He said, 'Well, we're doing too much worrying today about Constitutional rights. It's just a lot of Mickey Mouse business,' he said. 'The real question is, will it work?' Well, the rule that we want to put in, or the application of the rule, or the procedure, will it work? That's the real question. Of course, that takes you back to Mussolini making the trains run on time; therefore, having a perfect form of government. So even the judges are a little bit ah, remiss, a little bit lax, it seems to me about what we're doing in the area of juvenile law. So, as we don't know too much about Indian juvenile law, but we're willing to learn, and we're willing to try to deal with your problems as best we can. Now, in that regard, I'd like to spend just a few minutes talking to the extent - to show you that I recognize, the least, what some of your problems are. I know, for example, that with regard to Indian juvenile code, that some tribes have codes and some do not. I've examined about ten of these codes. I realize that with regard to the tribes that don't have

juvenile codes that you're thrown back upon the Federal law, the code of Federal regulations got a provision in it which, in very broad terms says that when an Indian under eighteen years of age is accused of committing one of the offenses which is otherwise enumerated in the code, that the judge may, in his discretion, hear and determine the case in a private and in an informal manner. And if the accused is found to be guilty, may, in lieu of sentence, place such delinquent, for a designated period, under the supervision of a responsible person selected by him, or may take some other action as he may deem it advisable in the circumstances. It's that last clause there, I think, which really aims at the roots of what, what's completely wrong with juvenile law as we found it. May take such other action as he may deem advisable in the circumstances. So we think the kid's ears ought to be cut off, he cuts the kid's ears off, I guess. That must be the limitation of file. There're no standards here. And most lawyers coming in contact with problems of juvenile courts find there's just no standards, that everything is a kind of a loose of amorphous mass that seems to be run by sociologists and social workers, and there's very little place for the lawyer in the whole process. Now, a - in looking at the different tribal codes, I realize there's a tremendous amount of disparity

between tribal codes as to the juvenile law which is going to be applied. For example, well, some provisions, actually, ah, if the law and order people got ahold of them, they would think they were probably great. For example, in a couple of the codes, there were provisions imposing parental responsibility. One code said that the parent could be sent to jail if his child was out after curfew. Ah, and others imposed a jail sentence or fine for the improper and negligent training of a child. I don't know how you negligently train a child, but whatever it was, apparently a person could be fined or imprisoned for it. These are further illustrations of really how loose this whole area is. There were no other standards than that. Now, the matter of jurisdiction, for example, is one where there is a substantial difference, it seems, from juvenile code to juvenile code. Most of them, age-wise, of course, talk about persons under eighteen years of age. That's the federal standard, and that's the standard that tribes have generally adopted in their codes. But if we say, well, over what persons under eighteen years of age does the court have jurisdiction? We find that some of the codes talk in terms of territorial limitations. That it's only occurrences which happen upon tribal or allotted land that the court is going to be concerned with. Others, apparently, ah, say that no matter

where the act or offense occurs, or where the neglect occurs, that the court will have jurisdiction over the particular child, apparently, as long as he's amenable otherwise, to the jurisdiction of the juvenile, to the tribal court. Ah, we find that with regard to subject matter, there's also a substantial difference. Ah, some deal only with delinquents. Some deal with persons who are claimed to be unmanageable children - children who, possibly, in need of supervision because they don't obey their parents, or because they don't go to school. Others deal with dependency and neglect, in addition to the other two categories. And even if we try to define what is meant by delinquency on various - in various tribal courts, we find that the definitions here are widely divergent. Some only talk in terms of violation of the tribal code. If they, Indian child under eighteen violates the tribal code, the tribal court may deal with him under the provisions of the tribal juvenile code. Others talk about whether it's a violation of tribal code or federal law. Some go so far and say if there's a violation of the tribal code or federal law or state law, or even a municipal ordinance. Now, obviously, these have a territorial basis which is far beyond that of the ah, of the reservation itself. Now, I think, also you've got problems, I suppose, or some divergencies at any rate, with



regard to whether the tribal court is going to exercise exclusive jurisdiction over these children, or whether there has been some granted jurisdiction, to some degree, to state courts. And here of course, you have to ascertain whether there is the proper statutory basis for this, or you run into a situation ah, like the ah, Supreme Court of the United States was confronted with in the Kennerly Case which was decided in January of this year, as to whether the state courts do have jurisdiction over particular juveniles, and, of course, you don't have the necessary legislation, the necessary approval by a majority of the adult members of the tribe, ah, you find yourself in a position where the jurisdiction may be questionable. Now, I recognize also, that there are some peculiar problems of tribal court jurisdiction. For example, the fact that, although in a state juvenile court, a child who has committed a serious or major offense can be dealt with in that state court. In the tribal court there is a clear limitation as to the kinds of things the tribal court there can deal with. So if a Indian child under eighteen is charged with murder, for example, he would be dealt with in a state court, generally speaking, in the juvenile court. But under, under, not, ah, well, I'm just saying if he were, if he were a state, if he were a non-Indian living simply in a city in the state, he was, he's

charged with murder, he'd probably would go first to the juvenile court. But here, apparently, ah, the jurisdiction, lies in the Federal court, and what happens after that, I'm really not certain. Because the Federal, there's a Federal Juvenile Delinquency Act, but the Federal courts very seldom, if ever, apply this. They usually try to turn children back into the state courts, if it's possible to do so. So, this is a problem I don't know the answer to, in terms of the problems of jurisdiction with regard to major crimes by juveniles. I noticed that one of the codes indicated that if a juvenile commits a major crime, that ah, the juvenile tribal court will not take jurisdiction over the matter until the, a reasonable amount of time has expired to allow the elapsed to allow the Federal Court to act. The Federal Court then fails to act, apparently, the tribal court will take jurisdiction and deal with the child as a juvenile offender. So, there are a number of rather peculiar problems here. I noticed another thing about the juvenile codes that you have within the tribal code, the age and the complexities of these codes, really are strikingly different. Some of the codes originate, I think, back in the 1950's before a number of the Supreme Court decisions, such as Gul and Kent and Wenship ah, and before we have had some modern suggestions for legislation, ah, such as the Uniform

Juvenile Court Act, or the Model Juvenile court rule, ah, which actually lay out in much more full detail the procedural aspects of juvenile court jurisdiction. Ah, some of these are very recent, and some of them reflect ah, current day scholarship, and a real effort to require the court to go through, jurisdictionally and procedurally the steps that are consistent with due process. Now, as I've said, I've seen only about ah, ten codes, and there're a lot I haven't seen. Ah, we in the Juvenile Law Center would like very much to collect some of these codes so we can compare them - we have a basis for comparison, and also a basis if you have a problem to for answering the problem. Ah, with regard to the position of you as Legal Services Attorneys in the juvenile delinquency, or juvenile aspect, or juvenile part of the tribal court, ah, and I don't know what you do. I must confess ignorance as to that. Do very many of you get in there and rep - and are able to represent juveniles in the tribal court. I noticed that ah, many of the tribal codes say that ah, the child may have counsel appointed, but the counsel has to be a member of the tribe. I noticed also that as far as the ah, Indian Civil Rights Act of 1968, it ah, said that ah, an Indian had the right to counsel, but then it went on to say, at his own expense, ah, which obviously would be, now you could hire somebody, but ah, in terms of getting

legal services, or someone else in there to represent him,  
 I'm not so sure. What - what is, what is your practice in  
 that regard? Do you go into the - the tribal court and repres-  
 in behalf of juveniles, or not? Don't everybody speak at once,  
 now.

X:

\_\_\_\_\_

L:

I mean you ----- concerned. \_\_\_\_\_ lays down certain

X:

-----like anybody else \_\_\_\_\_ reservation \_\_\_\_\_

L:

You never had any trouble \_\_\_\_\_

X:

\_\_\_\_\_

Y:

Oh, with a juvenile. \_\_\_\_\_

X:

\_\_\_\_\_

Y:

All right. What about the rest of you? \_\_\_\_\_

Y:

-----I think we ought to distinguish between closed and open  
 reservations. \_\_\_\_\_

L:

All right. \_\_\_\_\_

Y:

Ah, for example, \_\_\_\_\_ counsel juveniles ah, on our  
 \_\_\_\_\_ reservation ah, to the extent that we forced the  
 state to pay for counsel for them if they, they can't afford  
 it, ah, themselves. Ah, we make sure that the state comes up  
 with the cash rather than utilizing our resources which are  
 rather meager. But we, we've been doing this ah \_\_\_\_\_  
 our program \_\_\_\_\_.

- L: Well, maybe there's not any problem here.
- Y: I wouldn't say that there's no problem. Ah, just like we found out many times                      guide lines                      it's a matter of carrying on the war                      and getting the courts to comply with some of the                      interest of the child, and
- L: As we've seen it, the real problem here comes down to this as far as say                      is concerned.                      lays down certain requirements with regard to most of the charge, some time in which to prepare, the matter of confrontation of witnesses, the matter of right to counsel, but, there's a kind of trickle down approach here, as you all well know. The Supreme Court may be talking up here today, but maybe, darn near ten years before this really gets down to some of the localities as far as the actual application is concerned. Take the right to counsel, for example. Ah, we're, we still see that, in most parts in most places, that the juvenile's waive counsel with apparent impunity - the judges don't see anything wrong with this, after all, the attorney in the court just sort of fouls things up anyway. Besides, they're acting in the interest of the child, so what does the lawyer, what's a lawyer coming in here and messing around for? Again, you see, back to the problem of what does the lawyer for the juvenile in the court do? What's his function? Is he in there to serve as an adversary,

as an advocate for that child, or should he simply go in there and decide to act in the best interest of the child, so ah, therefore, pretty much turn the child over to the court, and the child, indeed, has done the act he's charged with, realizing the court is going to act in the best interest of the child, and consequently, would not be in the best interest of the child, so the child will be acquitted and turned back out in the street. This is the argument that's frequently made for, by supporters of the juvenile court by saying, why're you lawyers in there? You should, it's not a criminal case. This is not a criminal trial, they said. We're acting in the best interest of the child, so therefore, roll over and play dead. Ah, it sometimes, it shouldn't be too hard to overcome, finding a basis for it. Because, first of all, in spite of the fact they say they're acting in the best interest of the child, I think we could probably safely say that most children are probably better off outside the system, even the ones that get in the system. But most kids if they're left alone are going to grow up into pretty ah, fairly, much well-respecting adults. And so, the question is, how - to what extent should you be extending the jurisdiction of the court over an unwilling child. Well, it could seem that as far as the child is concerned, that ah - to what extent should you be extending the

jurisdiction of the court over an unwilling child. So it would seem that, as far as the child is concerned, that ah, your obligation to him ought to be the same as to any client, that, if he feels his best interest is not to be adjudicated, then it's a matter of fighting for him. Simple as that. Now, there may be another dimension to this, and that is assuming that the court has found that the acts charged in the petition against the child are true, then, the next step is what happens, you see. Well, the court having taken jurisdiction over the child has really only gone the first step, and the next step may be the - the giant step - the really important one, that is what is the child - what does the court do with the child? What happens to the child next. Of course, here the court has such a wide range of possibilities available to it. The court ah, could simply tell the child to go home and go back to its parents and be a good kid.

There's this one thing that I'm fascinated with the entire - The court could send the child back to the parents and put the child to some extent under the supervision of a probation officer of the court. The court could take the child out of the home and put it in a foster home somewhere, or try to find some other institution for it, or it could send it to a state institution which resembles, of course, a penitentiary, right?

- X: \_\_\_\_\_ issue an order, or hold some kind of a hearing in the tribal court and then ah, defer ah, all handling of the case to state court, and of course, they release the youth of the eight facilities \_\_\_\_\_ the boy's reformatory, girl's reformatory, and other institutions that are capable of a state \_\_\_\_\_ they refuse ah, to hear any \_\_\_\_\_ neglect, general problems, anything coming off the reservation. \_\_\_\_\_ they don't have the facilities available to them except the state facilities; there are no Federal facilities that - that handle these kind of things - that I know of, anyway. Of course, ah, this goes into the - I'm not talking about the hard-core bad kids \_\_\_\_\_
- C: Lookout Mountains - mountains are you -----
- X: \_\_\_\_\_, pardon?
- C: Yes, I think what Lookout Mountain and Mount View and a place like that in Colorado?
- X: There's this one thing that I'm fascinated with the entire - entire meeting today was that no one has brought the question of putting the arm on the tribe. Ah, that is a governmental institution and ah, in my experience anyway, they are sadly lacking in the ah - taking care of their governmental responsibilities. And I think it's time that - they were boxed around a little bit, too. They're going to have to spend some of



their money in towards their facility. Or maybe go get some from            in any event, they're going to have to start providing for themselves.

C: This opens up a whole big basket of bees, really. Because what it amounts to, you see, is this, and this is one of the - one of the most serious problems we have across the country. It isn't just related to Indians or - tribal courts, and that is the question. Well, what alternatives are available to the court after the child is adjudicated? Of course, here if you're an attorney in such a case, your job isn't over when your child has been adjudicated, or your client has. You have, it seems, an affirmative obligation to go on and try to propose some alternatives or one alternative in any rate for disposition as far as that child is concerned. And of course, what you have here is that you may feel a little bit out of your element because in comes the probation officer, or the juvenile officer, and he's trained and he knows what's going on in the community, what is available, and he comes in with a - a plan that he has created. And of course, the reason the kid is probably there in the first place is because the juvenile officer took a dislike to him and felt that he couldn't deal with him outside of the court so he wants to have him adjudicated, and when that occurs, you see, then he's already

got some idea in mind as to what he wants done with the kid - institutionalized many times - sent off, get him out of the community, and it's up to you to be able to present some alternative which will be consistent with the interest of the child to that court. And of course, if the court has got only a very limited number of alternatives available to it, then they can either send the kid home to his parents under supervision, or send the kid to an institution. There's nothing else. Ah, it's kind of a hard way to go. Now, again, if the child is sent to the institution, what happens to him there. Here we have, of course, this whole unexplored so-called 'right to treatment', 'cause the reason for sending a child to the institution is what? Punishment? Hardly. At least this is not the philosophy. This is not the expressed philosophy of the juvenile law. It isn't even to ah - teach him discipline, necessarily. Generally, the codes ah, ah - the purpose is ah - to provide - to afford him such care and treatment outside of his home as he should have had in his home. Well, if you look at most state institutions for juveniles, it doesn't exactly look like anybody's home. And so, again, you send a juvenile to an institution. Here's a kid who probably needs education worse than anyone else in the community of a comparable age, and yet, how much education

L: does he get there? Well, first of all, the institutional  
X: authorities probably don't want to educate him to begin with,  
so therefore, they convince him that ah, well, you'd rather go  
L: out and work in the bean-field, wouldn't you, than go to school?  
Of course, he don't like school anyway, so he says, 'Yeah, I  
think I'd rather go out and work in the bean-field, or to go  
milk the cow.' Ah, in addition, even if he's getting education,  
it's probably only half a day, whereas other children in the  
community getting a whole day. You see, there's no, there's  
no parity of treatment here, even though these are the children  
the state has singled out in their best interests to be given  
intensive education and treatment. Yes?

X: Ah, can I ask what the national juvenile law-center does in  
terms of providing ah - resource for the files on alternative  
ah, for the youth \_\_\_\_\_? I think you struck another  
chord. One of our major problems there is on reservations, and  
that is that the law and order ah, juvenile office are generally  
more eager about alternatives than even the lawyers \_\_\_\_\_  
about. We don't know what ah, vocational training ah,  
alternatives there may be now \_\_\_\_\_ juveniles from broken  
homes \_\_\_\_\_ drop out of school and want to go somewhere,  
and for want of another alternative \_\_\_\_\_. So we,  
we really need ah - something like a resource file -----

L: Mmmmm.

X:            it would have to be nationwide ah - resource file, now does your organization provide some -----

L: We don't have such a resource file at the moment. We've got some scattered resources that are known to us, but this is something that we certainly ought to do, and I think we are doing it. Ah - and I think probably then it would be wise for us to put together some kind of - what? Ah - kind of a dictionary of resources, as it were, to give lawyers a better idea as to what it - kind of proposals they could make. Part of this, though, of course, is back to putting the arm on the tribe again, maybe, or somebody, because unless the community has the resources available in it, there's not very much you can do. 'Cause the - the thrust, at least of thinking right now, for example, is this, is this that really too many kids get into the juvenile court to begin with. They have these classifications of kids as unmanageable - the kid who won't go to school. Is this a kid who ought to be sent off as though - be treated like he's a criminal? Probably not. Certainly not. But, we channel all these kids into the court, and the court deals with them as though - very similar fashion, as though they committed a crime. Ah - and the thrust is try to develop some community resources outside of juvenile court.

Youth Service Bureaus, for example, ah - the President's Commission on Crime ah - strongly recommended these. There are some experimental ones. There's some funding, some LEAA funding, for example, which has been made available for - for things of this sort - to create additional community alternatives in the hope that by keeping the child out of the court system, they'll be able to deal with him in his home, \_\_\_\_\_ you don't --they don't make a - Federal felony case out of everyday everytime the kid doesn't go to school, in other words if they do, the code tends to do that. Well, this is - this is one of the problems. This is one of the areas we try to work toward. There - there are some light treatment suits pending now, and I can see that this is the area, I think in which ah, not only possibly with regard to juveniles, maybe with regard to adults that - it's right over the horizon, in terms of what is it that the state is undertaking to do with people the state is confining? -- or taking jurisdiction over and limiting the freedom of? the state, I think, has got some very ill-defined ideas as to what the state is trying to do. Now, of course, if you go back to the grass roots on this, you discover that we're - we're in a period of sub-reaction in the country, in a sense, that the people are running scared. The people are afraid to walk on the streets - in the daytime or at night.

And this is a great genuine fear. Whether it is a fear that has any basis in reality sufficient to justify the fear is is another question, but the fear is real and people are - are wanting to act upon this fear. So if you look around the - right now for example, look around the country, you'll find that the number of legislatures this year, there have been introduced some rather repressive provisions. For example, to knock the juvenile age down a year or two. So that any kid who's over fifteen who gets himself in a scrape is going to be dealt with as an adult, and prosecute him in adult court. That will teach him a lesson. Or if a child is charged with a serious criminal act of any kind which would amount to a felony, don't deal with him in the juvenile court, it's too serious a matter, send him over and let me prosecute him in the criminal - even if he's over fourteen. Ah - things of this sort. The idea is that the public is, is to some extent, is to its end. Fear is there - people don't want to do, see, this - this repressive feeling. At the same time, you know, we're in a position in which we've got the door open with regard to how we're going to deal with juveniles. We've got to move forward. Yes, question?

X: Well, I agree with you one-hundred percent, but I want to return to what can you do for us -----

- L: All right.
- X: --as ah - not only in adjudicated cases, but also in other instances where youth comes in \_\_\_\_\_ and ah - want to do something, and ah - the only thing we know about is how \_\_\_\_\_ job corps \_\_\_\_\_ we don't know where to send him. \_\_\_\_\_ they aren't getting along in school and they really have no interest in it \_\_\_\_\_ you know, -----actually force them to go to ah - to their math class. Now, we need somebody who'll give us an alternative resources that we can suggest, not only to juvenile officers and court and that's ah - kind of appropriate \_\_\_\_\_ with - with the children themselves \_\_\_\_\_
- L: Ah, I agree with you and I - I think - yeah -----
- X: South Dakota, I think is probably ah \_\_\_\_\_ a long time, now, before the state actually resolves any meaningful resources in the state. There are a couple of \_\_\_\_\_ been going on in the state, and ah - since the relocation thing has eighteen year old ah - age limit, ah - there must be some things for kids under the age of eighteen ah - they can ah - you know, something like vocational training area \_\_\_\_\_.
- L: All right, all right, not - not only, not only do I agree with you, I say, we - we will undertake to put something of that sort together, and ah, I think it is valuable, and ---
- X: To keep it current.

L: Yes, I mean - obviously, we can't just put it together one - one point in time. We're going to have to keep on top of it. I think this is something that could certainly be helpful not only to you or dealing with Indian children, but also to - to Legal Services lawyers generally - we're dealing with juvenile court. That was a good suggestion, I think we'll act upon it. Some of the other things that you may get involved in, of course, is the matter of - well, the revision of the tribal code, as far as the juvenile part is concerned. Some of these are, I think, overdue for revision. And here, I hope we can be of help to you if you want some help. Ah, one thing and being able to compile the codes. We're doing some work with regard to legislation outside as far as state legislation is concerned - working out some state court rules, and things of this sort, and I think we've got a pretty good assortment of what is possible at any rate with regard to the content of codes. So, ah - if you don't have a code, or if the code is one that was adopted in 1956, it may be high time to think about the possibility of suggesting a code, and many times if you can present a code which is not particularly radical, which ah - seems to provide the due process protections, and doesn't overload the court at the same time, ah, doesn't cost too much apparently, ah - it may be that you - be possible



to have this - get this adopted. Ah - as I've indicated, we're certainly willing to, to help in this regard. Now, we've mentioned some of the current problems that we got - possibly I could just mention ah, a few others, and then we can stop if you don't have any more questions. We - I suppose with regard to one aspect of juvenile law, and that is the question of neglect and dependency, you've got a serious problem ah, of, a conceptual problem with regard to Indian children. Here's an area, I'm sure, where so-called 'middle-class white standards' are sought to be imposed. And, how do you deal with this? In other words, is, is the expectation, let's say, of a person ah, of a court general - let's say a state court. Assuming that a state court has jurisdiction over people. What is the expectation of that particular state court judge who must decide whether these children are being neglected by their parents. How must the parents react towards these children or act toward them, or how must the parents treat them, before it's felt that they're not neglecting the children? So again, this is one of these standards that is so very loose, because by and large, the word 'neglect' is about as specific as it gets. And here, of course, we have to be very careful that we're not seeking to impose upon people, upon parents and their children, standards

which, well, you know, the judge's standards. And here, again, I think, the lawyer's got to be aware of the fact that the judge and his juvenile officer together represent a very nice working team, and they have, in many instances ah, for years, slid cases on through without anybody opposing them, and they're going to resent opposition, but there it is. It's a very real problem. I think it's one we have to come to - come to grips with. We've got some other problems. For example, the matter of what children should be prosecuted or dealt with as adults. In most states, practically all, it's possible, if a child is over fourteen and he's committed an act which would have been a felony if he'd been an adult, it's possible for the court to waive jurisdiction over this child until permitted to be prosecuted as an adult, and consequently sent to the penitentiary, if he is convicted. Ah, we would see here, then, that the crucial - the critical point is the right to have a waiver hearing, and the right to have the judge act by some definable standards as to why it is he may be waiving or not waiving the jurisdiction of the juvenile court over the child. Now, similar provisions exist under your Indian juvenile codes - allowing the judge to have discretion as to whether this child should be dealt with, basically, as a juvenile, or whether he should be concerned, it's not only a matter of trying to compile some

dealt with as an adult prosecuted for - criminally for a violation of the tribal code. And here's an area where definable standards are really just beginning to be put together. For a long time, the standards were very vague. Was a child a proper subject to be dealt with by a juvenile court? That was the standard. Now, I think, we're beginning to see that what the court has to look at is really the specific child, the prior history of that child, the prior history of that child to the court, as the court before this tried to deal with that child, and tried to treat him. What are the resources that are available to the court if the court continues to deal with the child as a juvenile. And contrast that with what are the resources available to the court if the court continues to deal with the child as an adult. Can the court do a better job of dealing with this child if that - if he's prosecuted as an adult and fined or imprisoned if he's found guilty, rather than treating him under juvenile probation, for example. These things must be carefully contrasted. Bill?

B: Ted, is your program funded so that you can send someone out and handle litigation \_\_\_\_\_ program \_\_\_\_\_?

L: Yes. Yes, we can. We have done this. We, we are doing it. Ah, again, so this is, ah, possibly as far as our services are concerned, it's not only a matter of trying to compile some

X: things for you, it's not only a matter of, of helping with  
L: legislation. It's also a matter of helping with litigation,  
X: and we'll come in at any stage and will help to the extent that  
L: you want. If you want somebody to come out and deal with you  
in the field, fine. At the beginning of the case or later on.  
X: If you want us to help ah, early or late, if it wants to  
L: do legal research in St. Louis and send off to you a memoranda,  
X: or help you write a brief or whatever, this is what we're  
in business for.

X: \_\_\_\_\_ should have people that also try to hold action  
the sooner \_\_\_\_\_

L: Yeah, I think so.

X: -----working on it.

L: Yeah. We've got - we've got a couple of fairly seasoned  
trail lawyers. I think we can handle that. Yeah?

X: Ah, is your program ah, considered at all the - what the

L: \_\_\_\_\_ say the most ah, difficult question we've had to,  
is the one where the probation officer is trying to take  
ah, children away from Indian parents and put them in white  
foster homes. Now, that - that's not juvenile court in a  
sense of the juvenile being accused of something, but it's  
a juvenile matter and you - your - I assume ---

L: Yeah. \_\_\_\_\_, well, we singled out some, for example,

- X: -----you've come to that. Now the court----- education
- L: This is basically a matter of neglect or dependency.
- X: Right. we haven't - we haven't pushed that particular issue.
- L: The - the parents are not taking care of the child, so obviously we have to take the child away from ----- concept
- X: Yes. the point of view of just children generally? Or - this
- L: ----the parents and put him over here someplace. also have the
- X: Now, that raises two issues. One is the - the middle-class standards issue, for instance, which you raised, but, second one is that we have been, we've talked with ah, some ah, out of universities type experts who have been willing to testify in trials to the effect that it's psychologically damaging on an Indian child to take him out of an Indian home and put, in other words, that's a value the court should consider. And I wondered whether you got into that kind of issue at all. Or what's, what comments you might have on it. anyone
- L: Well, it's a very, I mean ah, as you, as you've already indicated, it is an important issue in terms of what the ah, of the cultural upbringing of the child, and to pull him out of one of his \_\_\_\_\_ family and put him with another. Ah, in terms of experts, obviously we have to go around and find our experts. We have to go around and find our experts. We haven't, we found, well, we singled out some, for example,

with regard to the area of treatment, right to education \_\_\_\_\_

X: \_\_\_\_\_

L: Well, we haven't - we haven't pushed that particular issue, the one you've raised, no. We're willing to. Yes?

X: Do you do any work on right to education concept \_\_\_\_\_?

L: From the point of view of just children generally? Or - this is an area that has interested us; of course, we also have the Harvard Educational Law Center which is likewise, interested in this, and so ah, we're, I think, going to try to work together to figure out where we can best act without a lot of duplication. But we have been interested in the educational area, but our interest, primarily to date, has been in the area of school discipline, and the creation of adequate procedures in the school disciplinary areas so that when - so that children aren't just expelled from school without any due process at all - without a right to a hearing, for example. Anyone else? Roger? Do you want it back?

C: O.K. Thank you, Ted.

L: Thank you.

X: \_\_\_\_\_ with regards to the fact that the girls do not have any programs at all \_\_\_\_\_ they have no place, for example, \_\_\_\_\_ other than turn them over to the state Welfare Agency to be placed off the reservations. They have no programs

- L: virtually none - of the reservations programs, they deal with any funding for juveniles. This comes under the NYC programs  
But there's nothing in the Bureau to push out to whether or not they have a permanent \_\_\_\_\_
- L: Arguably that duty does exist. We haven't dealt specifically with the problem of whether the Bureau of Indian Affairs, or the tribe or anybody else has got this particular kind of duty. Ah, we have been engaged in some problems with regard to the facilities the states must provide with regard to juveniles who are going to be incarcerated, or otherwise institutionalized. I think there's a very great parallel between the two. We haven't gotten into the Indian area yet.
- X: In the area of facilities, there is a, near Tucson, a facility \_\_\_\_\_ center, ah, which is operated on the basis of a grant from HEW and sponsored by the Bureau of Indians Affairs \_\_\_\_\_ or imprisoned, ah, which does operate as a, \_\_\_\_\_ school ah, area \_\_\_\_\_ I think it \_\_\_\_\_ develop \_\_\_\_\_ they started last summer \_\_\_\_\_ a year old \_\_\_\_\_ available \_\_\_\_\_ a number of kids were getting out \_\_\_\_\_.
- L: What kinds of children are they sending to this institution?
- X: Well, they require that you be committed. Before you go there -
- L: Yeah.
- X: --they require ah --so that they normally get \_\_\_\_\_ cases.
- L: Yeah.

- L: Like, are they getting, you know, ah - fairly ah, high-classed ones in a sense that the - they are not the absolute problem child?
- X: Ah - they try to screen out kids with obvious classifiable psychiatric disorders. It's not always possible to do that. It's been one of the largest problems they had is having people up there in need of - of kinds of ah - of medical treatment \_\_\_\_\_ but ah, they are - they're looking for kids who have ah - social non - ah - medical \_\_\_\_\_
- When I studied psychology \_\_\_\_\_
- L: But they're dealing with some they can treat as they think - the educable or treatable? Well, apparently what you need is probably several different kinds of institutions because there are some kids who are really hard-core offenders, and you have to deal with them differently than deal with one who you're institutionalizing largely because he doesn't have any home and he got into some trouble. The difficulty is we tend to lump them all together.
- X: \_\_\_\_\_ and he talks to ah - BIA Social Services and ah - BIA probation officer, and the state juvenile officers, ah, county attorney in charge of juvenile affairs and find out from them what resources are available and what alternatives there are. He'll know more than ah, anyone of them, ah, and if he goes around and visits a couple of places \_\_\_\_\_.
- L: Yeah.



X: \_\_\_\_\_ ah, juvenile officers ah, and ah, the county, you know, county's \_\_\_\_\_ officers aren't, aren't, they're not knowledgeable about the places they send their \_\_\_\_\_ because they've never been there.

L: M-hmm. Now, if you can ever make your judge go to the place where he's sending the kids, just to visit, I don't mean to stay, if you send him there permanently it might be a good idea sometimes, but ah, if you can just make him go visit there, most judges have never visited the places where they send kids. They absolutely refuse to do it. Ah, talking to people in state institutions for children, they say, Well, if five percent of the state judges have visited, they think it's a fairly high number. Judges just don't want to do this. They won't even take a look at where they're sending the kids. They don't have any idea. So there they are blindly sending the kids where the juvenile officer suggests the kid be sent. Then they wash their hands of the whole thing and say, 'Oh, what else can we do.' Of course, that's obvious enough, the answer of course, that's obviously not the answer...

- X: Congressman \_\_\_\_\_
- L: We could talk about that for awhile, too, Bill. We could suggest that only people over sixty fight wars, I suppose that would probably benefit a number of wars \_\_\_\_\_
- C: Thanks again, Ted, appreciate it. Ah - we've got a little more time. I need a little time before ah - it's time for the cocktail thing, to talk to the director to a representative from Indian Legal Services programs that I supervise. Ah, but, if you want ah, we can go back into sort of general discussion again, if Rick would take it over. Ah, I want very much to talk about the things that Pete Zah wanted to, but he's not here, so - there'll be time, hopefully, tomorrow. And I do hope that everyone will stay, ah - tomorrow afternoon which looks like going to be the best opportunity to talk in general, and also the Indian law students I think will have more time with us, and I suppose they'll want to participate. So, Rick, do you want to ---?
- R: It would have been ah ----"