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**NOMINATION OF THE ASSISTANT SECRETARY OF THE
INTERIOR FOR INDIAN AFFAIRS**

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HEARINGS

BEFORE THE

UNITED STATES SENATE

SELECT COMMITTEE ON INDIAN AFFAIRS

NINETY-FIFTH CONGRESS

FIRST SESSION

ON

NOMINATION OF

**FORREST J. GERARD TO BE AN ASSISTANT SECRETARY OF THE
INTERIOR, VICE ALBERT C. ZAPANTA, RESIGNED**

SEPTEMBER 9 AND 12, 1977

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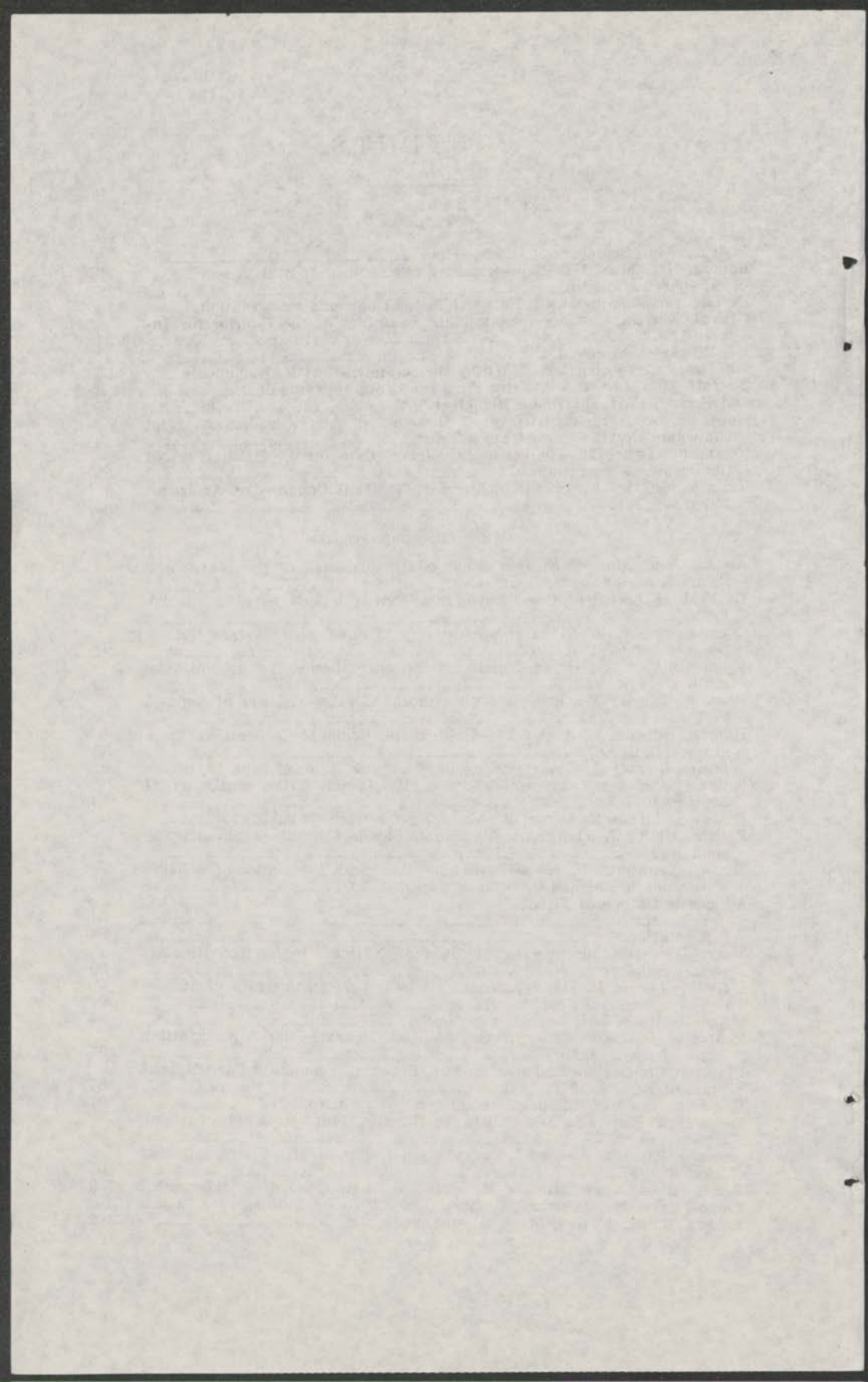
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NOMINATION OF THE ASSISTANT SECRETARY OF THE INTERIOR FOR INDIAN AFFAIRS

FRIDAY, SEPTEMBER 9, 1977

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
Washington, D.C.

The committee met, pursuant to notice, at 10:04 a.m. in room 6202, Dirksen Senate Office Building, Senator James Abourezk (chairman) presiding.

Present: Senators Abourezk, Melcher, Metzenbaum, and Bartlett.
Staff present: Alan Parker, chief counsel; Kathryn Tijerina, counsel; and Michael Cox, minority counsel.

Chairman ABOUREZK. The hearing will come to order.

The purpose of this hearing is to consider the nomination of Forrest J. Gerard to be the Assistant Secretary of the Interior for Indian Affairs.

Today's proceedings are noteworthy because they embody a number of historical firsts. As you know, the Constitution of the United States in article II, section 2, clause 2, states that the President "shall nominate, and by and with the advice and consent of the Senate, shall appoint * * * officers of the United States."

This provision is one of the important checks and balances of our system of government. Further, it is a provision which has studiously been adhered to by the Senate as a body, I should add, I think to a greater and lesser degree. [Laughter.]

Today marks the first occasion of the Senate Select Committee on Indian Affairs' participation in this crucial Senate responsibility. It is the first time in the Senate's history that we have had an opportunity to consider the nomination of an Assistant Secretary to head the executive work in Indian affairs.

In the past the highest post in this area was the Commissioner of the Bureau of Indian Affairs. This new elevation of the position to Assistant Secretary within the Department of the Interior may prove to be of great value to the administration of programs which are vital to the survival of the Indian people.

Under Secretary of the Interior Jim Joseph testified August 1 before this committee that the upgrading was more than symbolic. Rather, as a member of the Department's policy team, the new Assistant Secretary will participate in all policy decisions, including the operation of the non-Indian bureaus in the Interior Department.

Finally, today's proceedings will provide the first opportunity for this committee to examine what policies the nominee for Assistant

Secretary plans to pursue and how he plans to implement those programs for which he is responsible.

The opportunity is enriched by the fact that the Secretary of Interior is here today. Along with the Assistant Secretary he will be most influential in affecting the course of Indian affairs in this administration. He is here today to introduce Mr. Gerard and will be available for questions regarding his view of the role of the Assistant Secretary and the administrative recommendations of the American Indian Policy Review Commission.

Although the confirmation process requires the knowledge of what type of Assistant Secretary the nominee intends to be, some of the issues have already been addressed in previous oversight hearings.

As we noted, Under Secretary of Interior Joseph testified on several points which we will not reconsider in today's hearings. We look forward to what Secretary Andrus has to say in presenting his nominee. We are anxious to hear from Mr. Gerard to gain a clear view of his position on the issues.

Most of the committee's time will be spent in an examination of his credentials, but we will also ask and entertain any questions of Mr. Gerard from tribes and other interested parties who cannot be represented at the committee bench up here.

First at the witness table now is the Secretary of the Interior Cecil Andrus; our colleague from Montana, Senator Metcalf is next to him; and Congressman Max Baucus from Montana.

I would like to first of all to welcome all of you here. Senator Metcalf, I have said this before. This is probably the first time you have not sat on an Indian committee of some sort for an awfully long time. Probably since you came to the Senate.

Senator METCALF. Yes, Mr. Chairman.

Chairman ABOUREZK. Some of the other Members want to make opening comments before we start with the testimony.

Senator Bartlett?

Senator BARTLETT. I thank the chairman.

Mr. Chairman, it is indeed a pleasure for me to welcome Senator Metcalf, Congressman Baucus, and Secretary Andrus to this committee meeting, and to welcome Mr. Gerard. I extend my congratulations to Mr. Gerard on his nomination to be Assistant Secretary of the Interior for Indian Affairs.

I also want to congratulate Secretary Andrus and the administration on their selection of Mr. Gerard, whom I consider an excellent nominee to charge with the responsibility for administering the Federal trust for this country's first Americans.

During the almost 6 years Mr. Gerard served as a staff member of the Interior and Insular Affairs Committee, I had the opportunity to work with him on many Indian matters including such landmark legislation as the Indian Self-Determination and Educational Assistance Act and the Indian Health Care Improvement Act.

I am and have always been impressed with the conscientious and sincere manner in which he addresses and pursues not only the more complex and controversial issues in the Indian affairs field but all matters, large and small, pertaining to the well-being of the Indian people of this country.

Mr. Gerard brings to the position of Assistant Secretary for Indian Affairs a wealth of knowledge and experience, and a dedication to Indian issues and concerns, as well as the skills of an effective and persuasive advocate for Indian rights.

For too long now, the operations of the Bureau of Indian Affairs have been seriously hampered by a lack of permanent leadership. I have every confidence that Mr. Gerard can fill this void, and it is my hope the committee will move expeditiously on this nomination.

Again, Mr. Gerard, I welcome you to the committee and congratulate you and the administration on your selection for this important post.

Mr. Chairman, I thank you.

Chairman ABOUREZK. Senator Melcher?

Senator MELCHER. Thank you, Mr. Chairman.

I, too, welcome my colleagues from Montana—Senator Metcalf and Congressman Baucus. It is great to see you again, Mr. Secretary.

I think you made a particularly fine appointment, Mr. Secretary. We have a Native American heading the Bureau of Indian Affairs and a member of the Blackfoot Tribe—one of the great American tribes. This appointment ought to be an example for all appointments. When you bring into a top level position somebody who has a background to really perform—we have great confidence in your performance for us. I do not think that you are going to disappoint us.

I would like so say that this career started in college, of course. You graduated from the University of Montana or Montana State, did you not?

Mr. GERARD. The university.

Senator MELCHER. The University of Montana.

An employee of my staff, Mary Condon Jerome, takes great pride in the fact that she gave you your first position as a superintendent of public instruction in Montana. What was your job? Career development? You performed well there, and you have performed well in every capacity that I am aware of since then. I think it is a tremendous appointment, Mr. Secretary.

We are greatly honored that you made that appointment speaking as a Montanan. I think speaking for the country, and in particular for Native Americans you have made an outstanding appointment.

Thank you very much, Mr. Chairman.

Chairman ABOUREZK. Senator Metcalf has a statement he would like to make. I understand that he has to go immediately to another committee meeting.

STATEMENT OF HON. LEE METCALF, U.S. SENATOR FROM THE STATE OF MONTANA

Senator METCALF. Thank you very much, Mr. Chairman.

As you commented earlier, I have been in the Congress for 25 years. In 23 of those years I have served on an Indian committee either in the House of Representatives or in the Senate. For 2 years I was a member of the Ways and Means Committee of the House of Representatives and unable to serve on any other committee.

When I first came to Congress, Mr. Chairman, the flag was out for termination of the Indians. Lo and behold, as in "Abou Ben Adhem," the Flathead Tribe was the first one. Their name led all the rest.

I have long advocated termination, but I have advocated termination of the Bureau of Indian Affairs rather than termination of the Indian tribes and control over them. I believe that one of the first steps toward such termination is the creation of this new Cabinet appointment.

I worked as a Senator, as the chairman of this committee knows, for the reorganization of the committees so that we could have this new Indian committee. Of course, I worked on the Indian Claims Committee under the admirable leadership of the Senator from North Dakota.

In all these years I have worked for the benefit of Indians and Indian affairs as I saw it. Therefore, I am very pleased this morning to come here and advocate the confirmation of my friend and colleague from the State of Montana for the new position of Assistant Secretary of the Interior for Indian Affairs. It is a position that has been long needed.

During the time that I worked on the Indian committees, at one time I was chairman of the Subcommittee on Indian Affairs of the Senate Interior Committee. That was the year we passed the Alaska Native Claims Act, Mr. Chairman. We have worked for major legislation with Forrest Gerard. Some of the legislation which bears his imprint includes such things as the Indian Health Self-Care Improvement Act, the Indian Self-Determination and Education Act, the Indian Financing Act, the Sub-Marginal Lands Act, and many, many others.

Forrest is a professional and a diplomat. He is knowledgeable and courageous. He is supported by the Montana Inter-Tribal Policy Board. I am delighted to see that my old friend, Earl Old Person, is going to be on the list of witnesses this morning.

I compliment the Secretary of the Interior for this appointment. Montanans, as my friend and colleague has suggested, are very pleased that we at last have a Montanan in one of the major positions in this new administration. I wholeheartedly endorse him and urge his early confirmation.

Senator Melcher suggested that Mary Condon, who used to be the State superintendent of public instruction when I was working in the State of Montana, advocated and gave Forrest his first job.

I am here this morning with an endorsement that is even earlier than Mary's. I have a letter from May Vallance, who now lives in Hamilton, Mont. She says, "My wish now is for you to vote for the confirmation of Forrest Gerard for first Assistant Secretary of the Interior for Indian Affairs." One never saw a happier, more excited ex-school teacher than I when it was announced over the radio.

Forrest was one of the 45 pupils I had on my rolls, Senator Melcher, in the fourth grade at Browning in 1935 and 1936. Of all the youngsters, I definitely remember Forrest and have followed his career with great interest and much pride.

My, how I would enjoy being present at his confirmation.

I wish May could be here. I endorse that early accolade from a schoolteacher of his. I am delighted that the State of Montana and this outstanding citizen from Montana has been recognized with this appointment by Secretary Andrus.

Thank you very much.

Chairman ABOUREZK. Thank you, Senator Metcalf.

Before you go, I just want to say that when I first got elected to the Senate as a Democrat, one of my old teachers put her head in her hands and said, "My God, what did I do wrong?" I am glad there are teachers around.

Senator METCALF. She probably taught you spelling, Senator.

Thank you very much.

Chairman ABOUREZK. Thank you, Senator.

One of the distinguished Congressmen from Montana, Max Baucus, is here to make a statement.

Max, I would like to welcome you to the committee.

STATEMENT OF HON. MAX BAUCUS, U.S. REPRESENTATIVE FROM THE STATE OF MONTANA

Congressman BAUCUS. Thank you very much, Mr. Chairman.

I have a prepared statement which I would like to submit for the record with the committee's permission, and which I will briefly summarize.

Chairman ABOUREZK. Without objection.

[The prepared statement of Congressman Max Baucus follows:]

STATEMENT OF REPRESENTATIVE MAX BAUCUS AT THE CONFIRMATION HEARING OF FORREST GERARD TO BE ASSISTANT SECRETARY OF INTERIOR FOR INDIAN AFFAIRS

Senator Abourezk, Senator Metcalf, Senator Melcher and members of the Select Committee on Indian Affairs. I am grateful for the invitation to appear before this Committee to support the nomination of Forrest J. Gerard to be Assistant Secretary of Interior for Indian Affairs.

Montana, like many western states, shares a vital concern and interest in the policies of the Federal government regarding native Americans. Forrest Gerard understands those concerns and the effectiveness of past and current Federal Indian policies.

Forrest, a member of the Blackfeet Tribe, was born in Browning, Montana. He graduated from Montana State University. He came to Washington, D.C., in 1957 as Tribal Relations Officer for the Indian Health Service. Forrest is no stranger to the Hill. He served as staff assistant for the Senate Subcommittee on Indian Affairs where he was involved in the development of the Indian Self-Determination and Education Assistance Act, and legislation establishing the American Indian Policy Review Commission.

Forrest has proven himself an intelligent advocate as well as an outstanding executive in his work with the Senate Interior Committee, Bureau of Indian Affairs and the Indian Health Service.

It is indeed a pleasure and a high honor for me to support the nomination of Forrest Gerard. My fellow Montanans are proud of Forrest's past accomplishments and extend their best wishes to him as the Interior Department's first Assistant Secretary for Indian Affairs.

Thank you very much.

Representative BAUCUS. I will not add into all of the praise that has been heaped upon Forrest Gerard mostly because it is repetitious. I do, however, wish to join in as fully as I possibly can in that praise.

I would like to say for Senator Metcalf's information that I ran into May Vallance just about 1 week ago in Montana and she just as eagerly in person encouraged me to do what I could to help the confirmation of Forrest Gerard. She spoke about him in terms as glowing in person as she did in her letter to Senator Metcalf.

Forrest is a Montanan. It is for that reason that I am proud to be here urging this committee's affirmation of his confirmation.

Second, as has been pointed out, he has a lot of experience in Montana on reservations. He is a Blackfeet member. He knows what the problems are.

Third, as Senator Metcalf detailed, he has spent extensive time here in the Senate on various committees and also at the Bureau of Indian Affairs. He has had the Federal experience.

Although I have not known Forrest personally for very long, in the short time that I have known him he has impressed me as a man of sound judgment and the kind of reserve that is necessary to make solid decisions. I know first impressions can sometimes be dangerous, but I can tell you that based upon the few moments I have in speaking with him that I feel very good about him.

Therefore, I urge the committee to act expeditiously. I am sure that all of us will be very proud of him in the years to come.

Thank you very much.

Chairman ABOUREZK. Thank you very much, Congressman Baucus.

You are welcome to stay if you would like, unless you have to get back. You are welcome either way.

Representative BAUCUS. I should return to the other side; thank you.

Chairman ABOUREZK. Thank you.

Before we start, Mr. Secretary, I would first like to swear Forrest in.

Will you raise your right hand?

Do you, Forrest Gerard, swear to tell the whole truth and nothing but the truth in the testimony you are about to give?

Mr. GERARD. I do, sir.

Chairman ABOUREZK. Secretary Andrus, I would like to welcome you once again to the committee. Do you have an opening statement that you would like to make?

STATEMENT OF CECIL ANDRUS, SECRETARY OF THE DEPARTMENT OF THE INTERIOR

Secretary ANDRUS. Mr. Chairman and members of the committee, yes, I do. May I deviate from the norm briefly, though, prior to doing that, with your permission? I would like to introduce to you Mrs. Gerard. She is an outstanding lady who is seated right behind us here. I would like to introduce her to you.

Chairman ABOUREZK. Mrs. Gerard, will you stand up, please? [Applause.]

Secretary ANDRUS. Thank you, Mr. Chairman.

As you know, this administration conducted an extensive search for qualified candidates for the position of Assistant Secretary for Indian Affairs of the Department of the Interior.

As you pointed out, Mr. Chairman, this is a new position which was created because President Carter, myself, other members of the ad-

ministration, and you in an early discussion I had with you prior to my confirmation determined that this was a needed position in our opinion.

We did not create this position, Mr. Chairman, to circumvent any plans that the Indian people of America might have coming out of the American Indian Policy Review Commission with regard to a separate agency. You have heard me testify on that matter and others have also. I see no reason to repeat it unless, of course, it is your desire.

We went to the Indian nations of America for their recommendations. Senator Melcher, Senator Metcalf, and others have complimented me because of my choice in the man I am about to introduce to you. I appreciate the accolades, but I would have to submit to you, Mr. Chairman, that these recommendations came from Indian leaders of the Indian nations of America.

We followed their lead. Within the Department of the Interior we consulted with, by letter, more than 250 leaders of the Indian nations. We asked for their recommendations. Our initial listing came to 37 outstanding individuals. That was reduced by the recommendations of the members of the Indian community of America to 25.

We started an extensive interview program within Interior. Under Secretary Joseph admittedly did most of the preliminary work in this regard. I personally met with and interviewed eight individuals.

Mr. Chairman, when you take a search like that and then you condense it to eight individuals you have eight outstanding individuals that you can choose from. It is a very difficult job, but we made that choice, Mr. Chairman, after the meetings and questioning of the individuals.

There has always been some concern on the part of the tribal leaders with respect to policy initiatives in the area of Indian affairs. I want to say that this is not an area that we have overlooked. Rather, it is an area in which this Administration and myself, as Secretary of the Interior, will look to the Assistant Secretary for Indian Affairs to take the lead—in those areas of policy initiative for Indian affairs.

This person will be charged with the responsibility for formulating and helping to formulate the final policy of this administration in the Department of the Interior as we deal with areas of vital concern to all of us.

Having said that, let me get to the nominee himself, if I might.

Mr. Chairman, it gives me pleasure to introduce to you and the members of this committee our nominee. I think, however, that all of you are well acquainted with this gentleman. President Carter has selected for nomination to fill the position of Assistant Secretary for Indian Affairs, Mr. Forrest J. Gerard.

It is with a great deal of personal pleasure and pride that I present him to you and your colleagues this morning, Mr. Chairman.

As I said, he is no stranger to the committee. Senator Metcalf pointed out that he has a 20-year record of representing the Indian nations of America here as a committee staff person working with and for Federal agencies and independent consultants for many of the Indian nations.

He has established a reputation that I think makes him well qualified to serve in this position. I believe firmly that it is an outstanding choice for the position.

I came to the secretaryship of Interior from the governorship of the State of Idaho. We have five reservations in the State of Idaho. I am very familiar with the complex problems that face the Indian people of America.

I firmly believe that the first step that we must make in order to solve and resolve some of the problems that face us in this regard in the Department of the Interior is to have an Assistant Secretary for Indian Affairs who sits at the policy level instead of the Commissioner level where things filter down.

That is the reason why President Carter approved our plan to move that position upward. I believe that the place to start with our problems is in the Department. Consequently, the position of Assistant Secretary for Indian Affairs was created to allow this timely participation in our policy decisions.

The evaluation which has taken place by the tribes of America and the consultation that we have had with their leaders has brought us to the day when we are in a position to recommend to you our nominee.

I feel that Mr. Gerard is the best nominee for the position. I have not known him in the past. He came to me via the Indian nations of America as one of their outstanding recommendations.

I have worked with him as a consultant these last few months. I have gotten to know him, and I can say to you, Mr. Chairman, that I underscore what the Indian nations said to me earlier and what you heard your colleagues say to you today.

I am here to introduce him to you, but to make it plain to all the world that we support his candidacy. He has the unqualified support of President Carter and myself for the position of Assistant Secretary for Indian Affairs in the Department of the Interior.

Chairman ABOUREZK. Thank you, Mr. Secretary.

The search which you briefly described took a period of several months. That was a result of your initial commitments, I think.

Secretary ANDRUS. Yes.

Chairman ABOUREZK. I think there is a commitment, probably made here today, that you intend to allow the Indian people to have a major voice in making policy with respect to themselves.

Secretary ANDRUS. Yes, sir.

Chairman ABOUREZK. In the search I think you wrote letters to every tribe in the United States.

Secretary ANDRUS. Yes, sir.

Chairman ABOUREZK. If the information that I received from the Interior Department is accurate, according to the responses you received your nominee was not the overwhelming choice of the tribes during the straw poll that you took with the tribes. Am I accurate in that statement?

Secretary ANDRUS. You are accurate, Mr. Chairman. As I pointed out, initially there were 37 recommendations which were then narrowed down. No; it was not an initial landslide in favor of one name.

Chairman ABOUREZK. When you got down to the nub of it: Did you submit two names to the White House with a recommendation for Mr. Gerard of the two names?

Secretary ANDRUS. Mr. Chairman, I do not recall whether we submitted two names or three names. I can go to my files to answer that,

but I do not have them with me. However, our recommendation was Mr. Gerard of the two or three names that we submitted.

Chairman ABOUREZK. Who were the other two?

Secretary ANDRUS. Mel Tonasket was one.

Mr. Chairman, so that I do not make a mistake in the record, let me point out that Mel Tonasket was one. If that third name went over there I do not recall who it was. I did not anticipate the question and I did not bring the file with me. It has been some time.

There was a third name in the final determination within Interior. I frankly do not recall whether it went to the White House or not, but I can clarify it and get back to you.

Chairman ABOUREZK. All I had heard was two names.

Secretary ANDRUS. Well, Mel Tonasket's name also was high on that list. When you get to that level it is difficult to pick and choose.

Chairman ABOUREZK. I am trying to get these figures right. Just to check with you, the survey showed that Mr. Gerard had the support of 14 tribes while Mr. Tonasket had the support of 37 tribes. Is that accurate? I am taking this from the news summary from the Department of the Interior.

Secretary ANDRUS. Mr. Chairman, it was some time ago. I cannot verify those figures, but both men had substantial support. If it is your desire I can go back to our files and get you the exact number.

Chairman ABOUREZK. We would like to have that for the record. Would that be a rough estimate of what the figures are like?

Secretary ANDRUS. I cannot quarrel with them, Senator.

Chairman ABOUREZK. The selection of somebody to head the Indian department in the United States at this particular time, Mr. Secretary, comes for the Indian people and perhaps for the Nation itself at one of the most crucial times. There are a number of reasons for that.

The Indian people are now just beginning to get their act together around the country. As you know, the Indian Bureau and the Government as a whole has practiced, for at least a century, the practice of divide and rule of the Indian people. The reason for that is to prevent them from acquiring too much political power. It is a matter of the balance of power between the agencies which are supposed to undertake a stewardship of Indian affairs and the Indians themselves.

This administration came into power with kind of a breath of fresh air. I think that we contribute a great deal to that breath of fresh air by announcing that it is time to stop having white people decide what was good for Indians and to allow Indians to decide what was good for them.

I do not think anybody is going to argue about the past abuses of the Indian people. What we really have to do is not continue to beat that drum, but to use it as a backdrop and not as a reason for doing the right thing today.

I was very excited about the promise of this administration. The reason for that is that I see the Indian people in this country as almost totally politically powerless. As a result, they are extremely vulnerable to the whims of the Government and to the whims of the non-Indian neighbors who live around the reservations who are making consistent attacks on the resources and the land of the Indian people.

Over the years Congress has cooperated with those desires—over many years—opening up Indian lands for settlement and for sale. Today we find that people who once owned the entire Nation are almost totally stripped of their land base—a base that is extremely important now. It is much more important than money or other material things ever were.

As this administration came into being the pronouncements were that that was going to change. While we may not give the United States back to the Indians—and I think everybody understands how unrealistic that would be—at least we would attempt to stop the erosion of the Indian land base and would try to help Indian people restore their dignity so that they can operate on the level that they want to operate on.

We were told that eventually the Government would stop the divisive tactics that have been employed to keep the Indian people politically powerless.

I just want to say that while endorsements are wonderful, I think it is the intention of yourself and your nominee for Assistant Secretary and of the entire Government establishment which deals with Indians, which is really important.

I think that if we are to try to maintain any kind of a superior moral position, which I think we have in the United States today, we somehow have to make the commitment. Not only the Congress, but the administration has to make a commitment that we intend to do what we believe is right and not what we believe is politically expedient or politically wise at the time.

With that kind of lengthy background, I wonder if you would comment on how you see the role of the new Assistant Secretary in the Department of the Interior with respect to Indian Affairs?

I intend to ask the same question of Mr. Gerard, of course.

Secretary ANDRUS. Mr. Chairman, let me say that your statement prior to the question was, I think, a good analysis of some of the abuses in the past. I concur with your comment where you said that it depends upon the commitment of the people involved at the policy level in this administration. I concur with that comment.

Let me repeat, as closely as I can recall, the statements that I made during the confirmation hearing in this regard. Too many decisions were being made in the Department of the Interior without input from the representatives of the Indian nations of America. They then were put into a defensive posture and found themselves fighting to undo a regulation or rule or sometimes a statute that had been imposed upon them without any of their input initially.

I said then, and I repeat to you now, that I think it is important that we elevate the head of the Indian Affairs portion of Interior to a full Assistant Secretary so that they sit in the policy meeting that we have each and every Wednesday morning in my office—comprised of the Secretary, the Under Secretary, the Solicitor, and the Assistant Secretaries. It is important to do that so that the input is at that level and we have the opportunity to make the considerations necessary with full knowledge of the needs and desires of the Indian nations of America.

I see that role changing to a role more of policy than what it has been in the past. The former position of commissioner did not have

that access, frankly. He did not have that clout or that visibility. I see the Assistant Secretary for Indian Affairs running the Bureau of Indian Affairs with the support of his designees and sitting on the policy council of the Department of the Interior, whereby we will then make recommendations to the administration in all areas. It is difficult to separate them when you are dealing with land, water, minerals, and others. It is difficult to separate the Indian lands from the non-Indian lands.

This is where I think increased participation will benefit all Americans—not just the Indians, although they will certainly be benefited.

Chairman ABOUREZK. Do you anticipate that the Assistant Secretary will supervise interagency coordination of Indian Affairs in all of the other agencies that have Indian desks—for example, HUD and HEW?

Secretary ANDRUS. Mr. Chairman, I had not thought about it that way. It depends on what definition of the word "supervise" you are referring to. Do you mean to supervise, oversee, and direct? In that case, my answer is, "No". He would not have control over other areas within Interior.

If you are referring to consultation and knowledge supervision portion of the definition of the word "supervise" I would have to say "Yes".

As far as direction in somebody else's turf, the answer is "No". He has consultation at the policy level to overcome that.

Chairman ABOUREZK. Have you taken any steps, or do you intend to take any steps to have somebody appointed as an overall supervisor of Indian affairs throughout the Government? It is kind of a catch-as-catch-can operation right now. Is there anything you intend to do in that regard?

Secretary ANDRUS. Mr. Chairman, not until we have achieved the confirmation of the Assistant Secretary for Indian Affairs. That is the person who has to have a strong voice in any move that we would make at Interior. I would not take it upon myself to change what I said to the Indian nations.

You will help us to select that individual. That individual will be the Assistant Secretary and then he also will speak for you in our councils.

For me to make that decision or make that movement prior to when he is on board would, I think, not be keeping faith with what I told him before, sir.

Chairman ABOUREZK. Do you have any plans to perhaps go to President Carter to request that someone be named as an overall supervisor of Indian affairs Government-wide?

We have been having oversight hearings. Just yesterday we had one of a continuing series. We find that other agencies who deal with Indian people—such as HEW and HUD—really are not coordinated at all. They just go off in different directions. There is a great deal of money and time wasted. It is very inefficient.

Secretary ANDRUS. Mr. Chairman, I am familiar with the accusations that have been made. I would really want to consult with my Assistant Secretary for Indian Affairs before I would make a flat commitment in that regard. However, you are going to find, Mr. Chairman, that with the internal reorganization that is discussed in

the American Indian Policy Review Commission's report and the changes that I am sure Mr. Gerard will outline for you here today, that there will be closer cooperation and more knowledge within the Department and therefore the Indian nations.

Maybe we can resolve this. I have no objections to what you are suggesting, but I have not formulated a plan to do it as yet.

Chairman ABOUREZK. Mr. Bartlett, do you have questions for the witness? At this time I would like to restrict questions to just Secretary Andrus.

Senator BARTLETT. I do not have a question, Mr. Secretary.

I would like to compliment you and the President on—by Executive action—creating a position of Assistant Secretary for Indian Affairs. We have tried to do that for the last 4 years. I feel that it is very important to have an administrative position equal to the other Assistant Secretaries. I feel that this is going to strengthen greatly the ability of the leader of Indian affairs and the Secretary to have a good program. It is a good approach. It is an opportunity to coordinate throughout the other branches of Government an Indian program which has not existed before.

Therefore, I compliment you on that. I think that is a big first step.

I understand that Mr. Gerard is receptive to the recommendations, generally speaking. He is receptive to the recommendations of the management study that took place as a part of the review.

I am very pleased with this because I think this is an approach to finding solutions which is unique but very effective. It has been with various State governments. Governors had undertaken it during the late 1960's and early 1970's.

Therefore, I am very pleased with what I have been hearing, and with your selection of Mr. Gerard. I am very pleased to be here at this meeting, and I am looking forward to an opportunity to vote "aye" on his confirmation and speeding this up.

I have no questions. I just wanted to make that comment.

Secretary ANDRUS. I thank you, Senator.

Chairman ABOUREZK. Senator Melcher?

Senator MELCHER. Thank you, Mr. Chairman.

Mr. Secretary, you mentioned among things the land and minerals belonging to Indian tribes. It has been my observation that tribes vary on what their goal is for their land or for their minerals. They make those decisions within the tribes themselves. It has been my observation there is just not a blanket approach by the tribes for, as an example, coal development. Each tribe looks at their own coal resource and makes its own determination within the tribe about what they want to do.

I think that is a good process. It is the only logical process. You mentioned that in Idaho there are five reservations and a few more in Montana. I think it is clear that your purpose, and the purpose of the Assistant Secretary, is not to attempt a blanket approach to the management of land of an individual tribe or the management of their minerals that they have on the individual tribes. You will want to listen to each tribe's proposal. Is that not correct?

Secretary ANDRUS. Senator, that is correct.

Senator MELCHER. And to be of help?

Secretary ANDRUS. Yes, sir.

Senator MELCHER. When we talk about housing, health, and education: Those needs vary too, do they not? They vary by tribe and also by reservation.

Secretary ANDRUS. Certainly, Senator. Sheer numbers themselves cause a difference of need from tribe to tribe and area to area.

Senator MELCHER. A tribe may approach any one of these problems in a different way, having made their decisions on a tribal level. Then they may ask for help from the Department, even though it may vary in another department in our Federal Government, for instance in the House.

Secretary ANDRUS. Yes, sir.

Senator MELCHER. Is it your approach that you will be of assistance to those tribes in relating to other branches of the Federal Government?

Secretary ANDRUS. Mr. Chairman and Senators, that is our approach. We have been attempting to carry that out in the few short months that we are here, but I think the philosophy is even more concise than that in that the change that we are there to assist them, in the best way we can, with finances and technical support after they make their self-determination.

Senator MELCHER. In this effort, as I understand it, you will revise the Bureau of Indian Affairs and its function and coordination or its work with the tribes and its coordination with other Federal agencies. The first step to that is the appointment of an Assistant Secretary to emphasize and expedite that accomplishment, is it not?

Secretary ANDRUS. That is correct.

Senator MELCHER. I think that is a big giant step towards that goal. I would hope that coordination results within the other agencies—whether it is health, education, or housing—and that having better coordination more expeditious service could be performed.

I hate to use this term, because it kind of gets overworked, but isn't this also what people like to call "cost effectiveness"? That is also a part of the goal—making the money that is spent more effective for the individual Indian people themselves.

Secretary ANDRUS. Absolutely.

Senator MELCHER. As the architect of that you are recommending Forrest Gerard as the Assistant Secretary of Interior. I repeat again that I very much approve of him. I think it is a big step. It is not to be minimized as just a gesture to the native Americans. It is a big step forward on their behalf.

Secretary ANDRUS. Yes, sir, this administration has not attempted to describe it in any other manner. When we have discussed the American Indian Policy Review Commission's report, when Under Secretary Joseph testified before this committee on or about August 1, our public statements have consistently pointed out that it is a new direction in that regard. We intend to respect the trust responsibility and the obligations that we have in Interior until the Indian nations themselves make a determination that they would like to do something else.

Senator MELCHER. Thank you, Mr. Secretary.

Chairman ABOUREZK. Mr. Secretary, I just have one more question with regard to trust responsibility.

I have not seen the statement, but I understand that Attorney General Griffin Bell made the remark, a day or two ago, that he is coming more and more to the feeling that the Justice Department has a very strong conflict of interest with regard to their trust responsibility toward the Indian tribes. I do not know if you saw the statement.

Secretary ANDRUS. No, sir, I did not.

Chairman ABOUREZK. It is out of the Atlanta Constitution.

Attorney General Bell is studying ways to extricate the Justice Department from what he sees as a major conflict of interest involving Indian rights cases.

I think he talked about the *Passamaquoddy* case.

The thrust of the interview with Griffin Bell was that he is being told by other people in the administration—and specifically Judge Gunter, who was appointed by President Carter, to look into the *Maine* case—that he has a conflict in the Justice Department, and he wants Justice to withdraw from the legal representation of Indian tribes, although he believes that the Interior Department is the trustee.

I think the generally accepted view is that the Government is the trustee and that all agencies in Government, therefore, fall under that responsibility. What is your view of that?

Secretary ANDRUS. Mr. Chairman, when I respond to a newspaper article of another Cabinet level officer of the administration I do it with a little bit of trepidation.

Chairman ABOUREZK. Do not respond to the article. Just talk about the concept.

Secretary ANDRUS. I concur with what you pointed out. It is the Government. The Interior Department has been delegated the trust responsibility for the Government, but that does not alter who has the initial ultimate responsibility. Really it is the Government of the United States.

If we talk about a conflict—and I have had 30 seconds to think about it here—I can see how Judge Bell would be concerned about himself being chief legal counsel for the President of the United States. He would have to give the President advice on one hand that the Department would have a problem with on the other hand, but I do not think that that would cut across the lines of the entire Justice Department.

I do not think that he, himself, as chief legal counsel to the President would be in conflict personally, but I would have to say that your analysis of what I think our trust responsibilities are is very accurate.

Chairman ABOUREZK. I think that is the generally accepted view.

Now the question arises in this *Maine* case. Judge Gunter made a recommendation that the tribes of Maine either accept whatever it was he offered—\$25 million and 400,000 acres—or tough luck. They would have to go to court and try to win that little amount. We have the power to legislate them out of existence.

I know that was only a recommendation by Judge Gunter to the President. The question therefore arises: What if the President were to recommend that to Congress? In my view, that would be a direct violation of the President's trust responsibility. It is a very difficult question. He has to balance the politics of the situation with the people

in Maine, and other people who are fearful of the claims, with his legal responsibility toward the tribes.

I imagine a lot of people in the administration are having a very uncomfortable feeling over this conflict of interest. If that feeling persists—even though I would tend to agree to a change in the legal terminology—and the Justice Department begins to draw back in their defense of Indian trust rights: Do you think it would be advisable to establish something that has been talked about for a number of years here—an Indian Trust Council Authority? There would be a group of lawyers whose specific responsibility is to defend and prosecute Indian trust rights.

Secretary ANDRUS. Mr. Chairman, I can see the wisdom of that if we got to the point that you describe. However, I question whether we have arrived at that point. I would point out that Judge Gunter—the retired supreme court justice from the State of Georgia—is not the Attorney General of the United States. We are not into a conflict posture there, as I see it.

I recognize that the Trust Council Authority, which has been suggested, could become a reality sometime, but until such time as we arrive at the point that you outlined hypothetically I do not believe it is a situation that we would have to speak to.

Chairman ABOUREZK. Senator Bartlett?

Senator BARTLETT. I would just like to say that I think this is a sticky wicket. This question has been raised before. It centers around the problem of the Justice Department representing the Government and representing the Indian tribe when the litigation is between the Indian tribe and the Government. Obviously, there is a conflict of interest.

I think it has been felt that in many cases the Indian tribe has suffered from this conflict. There have been a number of discussions regarding how to properly resolve this. I do not have a definite opinion myself, although I have heard several different alternatives suggested.

This is a sticky wicket that has been kicked around a lot. I think it will be discussed further. The situation of the Justice Department being in a conflict-of-interest position is not good and this should be improved. I certainly could make some suggestions on it. It is something that is of interest to the Bureau of Indian Affairs and the Interior Department as the real representatives of the Indians of this country. They want to make certain that the legal interests of the Indians are properly represented.

I do not think the Justice Department has in mind doing in the Indians, but I do think their loyalties may be more with the so-called "Government side" than with someone attacking the Government.

Secretary ANDRUS. Mr. Chairman and Senator, I have recognized what you point out very well. I think though that in all fairness I would, as Secretary of the Interior, have to go to the Indian nations and say, "Has that changed in recent years?" I think that I would get an affirmative.

Again, the alternative that the chairman pointed out a moment ago is something that I am not opposed to. I would like to think that we can handle it with our trust responsibilities. Legal representation for the Indian tribes is a part of my trust. It has been delegated to

me. I will not walk away from it and I am sure that the Assistant Secretary designate, seated beside me, can speak for himself in that regard.

Senator MELCHER. Mr. Chairman, I would just cast out the observation that the trust responsibility and the trust status is, after all, what Congress has said it is. Congress is probably going to be the final arbiter of the Maine case anyway.

I do not want to propose a problem, as if it is one that we sit back and do nothing about, because in the final analysis the Congress will probably be called upon to make the final decision. We have been called upon to do this many times before in Indian matters.

Chairman ABOUREZK. I might point out, Mr. Secretary, before we wrap up your testimony, that the Justice Department has in the past refused to bring suit in many, many cases referred to the Justice Department by your Department. It happened before you got in and I think it is probably still happening. You probably know of cases in the immediate past.

In some cases they have dragged their feet for 2 or 3 years making it extremely difficult for the Indian people to protect their rights even if they do eventually come into the case.

Therefore, it is not a new feeling. I think Griffin Bell has exercised his trust responsibility more vigorously than any other Attorney General. He is now beginning to feel qualms about it. I do not think that is necessarily a bad motive on his part. I think he is just feeling uncomfortable. As I know him he is a very frank and honest man. He expresses his feelings in public, which is very admirable on his part. It is good that we know about his feelings at this point so that we can take some steps to protect the trust responsibility.

Unless someone else has questions for the Secretary I think we can conclude this portion of the testimony.

Secretary ANDRUS. Mr. Chairman, thank you very much for permitting me the very generous amount of time that you have given me. With your permission, I would like to remain. I have about 15 minutes prior to another meeting. I would like to listen to Mr. Gerard's statement and make myself available to you even after I leave today, by telephone or letter, for any further information. I appreciate your courtesy.

Now, Mr. Chairman, I would like to introduce to you the man you have already sworn in. He is a man that we think will do an outstanding job as Assistant Secretary for Indian Affairs for the Department of Interior—Mr. Forrest Gerard.

Chairman ABOUREZK. Thank you, Mr. Secretary.

Forrest, welcome to the committee. Do you have an opening statement you would like to make?

STATEMENT OF FORREST J. GERARD, NOMINEE FOR ASSISTANT SECRETARY OF INTERIOR FOR INDIAN AFFAIRS

Mr. GERARD. Mr. Chairman and members of the committee, I previously submitted a formal statement to your staff. With your permission I would request that that be made a part of the record.

Chairman ABOUREZK. Without objection.

[The prepared statement of Forrest J. Gerard follows:]

STATEMENT OF FORREST J. GERARD, ASSISTANT SECRETARY OF INTERIOR
FOR INDIAN AFFAIRS, DESIGNATE, BEFORE THE SENATE SELECT COMMITTEE
ON INDIAN AFFAIRS, FRIDAY, SEPTEMBER 9, 1977.

Mr. Chairman and Members of the Committee:

I am honored that President Carter and Secretary Andrus have placed their confidence in me and have nominated me to serve as Assistant Secretary of the Interior for Indian Affairs.

I accepted the nomination fully aware of the important responsibilities that the Assistant Secretary will be required to fulfill on behalf of Indian people and the Administration.

As you are probably aware I was born and raised on the Blackfeet Reservation in northwestern Montana, and I am an enrolled member of that tribe.

I believe my experience in both the legislative and executive branches of government as well as my broad contact with Indian tribes through the years will serve me well if confirmed. It also has made me acutely aware of the unique trust relationship between the United States Government and Indian tribes.

This trust relationship places a solemn, legal and moral obligation on the United States to protect valuable Indian lands and natural resources. It also places a responsibility on the federal government to assure that tribal governments are allowed to participate fully in the decisions that affect their reservations.

These responsibilities cannot be taken lightly. Therefore, if confirmed, I would be committed to:

1. strengthening the Bureau's capacity to carry out the responsibility of the trust;
2. strengthen tribal governments; and
3. improve service delivery to the tribes either through direct programs by the Bureau or through self-determination mechanisms initiated by the tribes.

In order to carry out these commitments I will act as advocate for the Indian people, keeping in mind always the trust relationship.

For the past 150 years the Bureau of Indian Affairs has been the agency in the federal government charged with carrying out the major portion of the trust responsibility to Indian tribes. Because of this long standing role the Bureau has often been criticized for its seeming inability to carry out the trust and program responsibilities to the tribes. Although some criticism is surely warranted, the Bureau has not always been able to respond fully to all demands because of inadequate staffing, structure and resources.

Recently there has been an increasing awareness on the part of Congress and the Administration that changes must be made not only in the Bureau but in Indian Affairs generally so that the needs of Indian people will be better served.

This awareness is evidenced by the enactment of Public Law 93-638, the Indian Self-Determination and Education Assistance Act, and the completion of the study of Indian Affairs by the Policy Review Commission. Both have underscored the need for a major overhaul of the Bureau.

In the first instance, P.L. 93-638 added a new dimension to Indian affairs by institutionalizing the concept of tribes being able to determine for themselves the priorities on their reservations. In doing this it also created new roles not only for the Bureau, but for the tribal governments as well.

The Act made it possible for tribes to exercise, at their option, direct control and management of a great number of Bureau programs previously dominated totally by federal officials.

For the Bureau, the Act placed high-level managers in the position of having to give up control of programs (manpower, money and materials), to the tribes. It also added the responsibility to provide training and technical assistance to tribes to allow them to assume their new roles.

Unfortunately, experience has shown that P. L. 93-638 has not been implemented as smoothly and as effectively as it might have been if the Bureau's organizational structure had been geared to a rapid relinquishment of programs. Also it should have been impressed upon

Bureau employees that the new law represents a process and not just another program to be added to the organization's long list of activities.

Secondly, the American Indian Policy Review Commission's mandated report represents the most exhaustive study of American Indian Affairs since the Merriam Report was published in 1928. The Commission Chairman and its members, the staff and the task forces are to be commended for their dedicated efforts that resulted in the final report to Congress. This report of 602 pages and more than 200 separate recommendations will have a profound impact on all of Indian affairs. Taken together the recommendations stand as a guide for undertaking constructive policy initiatives in this field.

The need and format for a reorganization of the Bureau was brought into sharp focus in the Bureau of Indian Affairs Management Study done for the Commission. That report calls for a radical restructuring of the Bureau and redelegation of authorities to the tribal level.

When this Committee held hearings on that study July 29, 1977, Under Secretary James Joseph underscored the Administration's commitment to improve the role of the Bureau through reorganization. He also said the Department of the Interior would use the Management Study as a guide for such reorganization.

I want to reinforce the Under Secretary's commitment to use the Management Study as a guide because the study suggests that such a

reorganization be accomplished through a rational process rather than in a piecemeal fashion.

I want to further state that throughout this process the Indian community will be given every opportunity to fully participate.

The Administration, in statements by both the Secretary and Under Secretary of the Interior, has clearly demonstrated the importance it places on a fundamental reform of the Bureau.

We also have heard the House and Senate Appropriations Committees say there must be meaningful reform of the Bureau. The Indian people, both individually and collectively, have called for fundamental changes in the Bureau to make the trust relationship a vibrant and working force. Therefore, let us accept the proposition that many voices are calling for a major reorganization of the Bureau of Indian Affairs but let us also ask ourselves the question, "Reorganization to what end?"

I believe that if the Bureau is going to assume a long range role in Indian affairs which will have meaning and substance for those affected by it, it must stop taking an ad hoc, short-sighted approach to planning problems facing Indian tribes.

It seems that the Bureau often has operated on a never-ending crisis syndrome of reacting as the emergency arises. This approach does nothing to solve the complex problems facing Indian tribes.

Consequently, I want to see the Bureau moving toward an organization that would develop more comprehensive planning processes in order to achieve both short and long-range goals and objectives.

Mr. Chairman, as a first step in strengthening the administration of Indian affairs within the Department of the Interior, Secretary Andrus announced the creation of a new position -- Assistant Secretary for Indian Affairs. This change of status provides an unparalleled opportunity for Indians to influence policy at the highest levels of the Department. The Assistant Secretary will participate more in policy formulation in the Office of the Secretary and will be more directly involved with the Office of Management and Budget, and the Congress. Never before in the long history of Federal-Indian relations has the head of the Bureau been so strategically placed within the Executive Branch. The extent to which this new position serves the best interests of Indian people will depend in part on my personal and professional abilities to interrelate with other decision-makers throughout Government. I believe that my varied experience in the Executive and Legislative Branches of Government will serve to help me fulfill that role.

In conclusion, my long-range view of the Bureau of Indian Affairs is one of an organization that will be seen by the Indian tribes as an advocate rather than an adversary; that will serve as a dynamic force

in carrying out the unique trust relationship between Indian tribes and the United States Government; and that will fulfill its trustee and programmatic responsibilities to Indians.

Mr. GERARD. I would like to offer some summary observations, with your permission.

Mr. Chairman and members of the committee, I want to state at the outset that I am, of course, honored that President Carter and Secretary Andrus have seen fit to place their confidence in me and nominate me to this high post in Indian Affairs.

I also want to say that for the first time I now understand how countless witnesses felt that I stared at from behind the podium. It is a little different feeling, I might add.

I also want to just comment briefly on my fourth grade teacher. I vividly recall her because I was not exactly the model student and she did not believe in modern educational techniques and was not above using the ruler on me occasionally.

In any event, I think enough has been said about my background. I do not want to get into that. I do want to say, however, that as a result of that background I have a deep appreciation for the trust relationship between the U.S. Government and Indian tribes.

Simply stated, I believe that that relation places an obligation on the part of the United States to protect valuable Indian lands and other natural resources. I think there is an additional responsibility to help strengthen tribal government so that they can be the mechanism to make priority determinations in the Indian community.

I do not view these responsibilities lightly. If confirmed, I would be committed to three basic principles to begin with: (1) to strengthen the Bureau of Indian Affairs' capacity to fulfill its trustee role; (2) to help the continued strength in tribal government; and (3) the area that you talked about this morning—to improve service delivery to the tribes whether it be through direct Federal programs or through self-determination mechanisms initiated at the tribal level.

I believe that what this comes down to basically for an Assistant Secretary for Indian Affairs is that while he is a public official—and of course he is daily confronted with constraints in that posture—in this field he must serve as a strong advocate for the Indian people.

I am convinced that with the new framework that Secretary Andrus has created within the Department we really have an unparalleled opportunity to deal with Indian policy at a level that has never been reached before in the history of Indian Affairs.

I would like to get into a little more detail on why I believe this to be the case. The Secretary mentioned that in the past the Commissioner did not enjoy this kind of relationship at the policy level. For many years—as you know, and the staff is fully aware of this—the Commissioners reported to the Secretary through one of the other Assistant Secretaries, so that there was always that control in between them. In this fashion the Assistant Secretary for Indian Affairs will be on a par with the other decisionmakers who have a direct line to the Secretary. There will be a more direct line to the Solicitor. That is very important at getting at many of the legal issues.

I want to talk a little bit about intergovernmental coordination. First of all, I think we have to view that within two contexts: A positive and a negative. The positive context is in this regard: Prior to the 1960's Indian people and Indian tribes really had about one agency they could look to for services. That was to the Bureau of Indian

Affairs, although the Indian Health Service had been moved out in 1955.

As a result of the Nation's concern for poverty stricken who are depressed, landmark legislation was enacted throughout the 1960's. This created a multitude of new social action programs which became available to citizens in need. Indians, being citizens, qualified for many of those programs.

Briefly, what I am saying is that what this has done is to create additional resources—financial and otherwise—for the tribes and Indian people gathered throughout the other departments and agencies.

As I view the mission of the other departments and agencies, it is mostly national. However, I would agree with your analysis that the trust responsibility should be viewed as a governmentwide responsibility.

I think where we run into trouble with the other agencies is that they think more in terms of their national mission. It is difficult for them to focus down and deal with a lot of the unusual characteristics of the Indian field.

I had an experience in the late 1960's while in the Department of HEW. I would like to relate it to the committee. It will only take a moment.

You almost begin to believe that interdepartmental coordination at times is a myth. During that era there was a lot of attention on Indian education. One of my associates and I tried to devise an actual planning mechanism. We worked this out on paper. I would be willing to resurrect this for the committee's benefit if you would like to view it.

It would have forced the U.S. Office of Education and the Bureau of Indian Affairs education people to sit down and begin some long-range planning to look at the problems and more importantly how they would apply their resources to the process.

We thought we had done a wonderful job and discussed it separately with representatives in both the Bureau's Education Division and the U.S. Office of Education. The reward for our efforts was really to incur the wrath of both agencies.

I point this out because I think what it illustrates is a real issue here in our discussion of interdepartmental coordination. There is a lot of jealousy about one's own turf.

Getting back to the situation here of the Assistant Secretary for Indian Affairs, I am going to be very candid with your committee and point out that I have no magical solution to it. I do, however, have a few ideas about how I would like to approach it.

I believe that by operating as an Assistant Secretary it would give one an opportunity to deal with his peers in other departments and to begin pointing out some of the specific areas where we might think about coordination. Economic development might be a good example.

I find it a little difficult to believe that the Bureau cannot discover the fact that Economic Development Administration, for example, is building a facility on some reservation that they are expected to help run in a later year. I have to agree that that is an inexcusable situation.

What I would hope is that if one policymaker is speaking to another policymaker it is possible in this new atmosphere that we might be in a better position to get our subordinates to begin sitting down and planning in some of these specific areas.

A second step that I would consider to be absolutely crucial would be to develop a strong intergovernmental relations component within the Bureau of Indian Affairs. Specifically what I would have in mind here—if this is possible—would be to try to recruit to head that kind of a unit someone with a legal background—a tough, consumer-minded person.

If we are going to play a coordinating role within the Bureau, then I think it is critical that we know more about the statutory base of many of the other programs and services in other departments.

The Commission report, which I want to address in a few more minutes, does provide what the members of your staff believe is a final solution to coordination. That is to create a separate agency, of course, and pull a lot of these functions and activities under one department.

In responding to my views on the separate agency concept I think that I would have to say that I run hot and cold on it. There are a lot of pros and cons, as you have talked about with your staff. I would be willing to elaborate on those, if you care to, in the pursuit of questions here in a few minutes.

The other point that I want to pick up on that was discussed here this morning was the Trust Council Authority concept. I believe you were chairman at the time, Senator Abourezk, in the 93d Congress, when we held very extensive hearings on that proposal—the administration bill, which you recall.

A couple of the concerns I had have to go to the public administration aspects since I am not an attorney. One of the things that bothered me considerably during the hearings on that concept was the fact that we could never get a very firm commitment out of the administration on the extent to which they would be willing to fund that independent legal arm for Indian affairs.

You will recall that we were given one figure at the hearing, and in a followup to our formal request we were given even a lesser figure which would have supported a very small number of attorneys.

Assuming that you had that kind of a small unit representing Indian legal affairs, and the economy drives do occur in government and we are faced with a blanket reduction in appropriations in staffing, a very minimal reduction in budget or staff for that kind of unit would be far more devastating, for example, than the Department of Interior or the Department of Justice who would be on the other side under that circumstance.

From that standpoint I have always been bothered by the Trust Counsel Authority.

Also, there was one vital legal question that was never really clarified during those hearings. That was whether or not Justice would play a continuing role in some of the legal considerations if the Trust Counsel Authority was developed.

I would point out though, that in terms of the conflict of interest, I found it very interesting that in the appropriations process for the 1978 fiscal year for the Bureau of Indian Affairs the House Committee added \$500,000 to the Bureau's budget. This was an add-on to provide legal representation when that is unavailable by the United States. There was another amount—I believe \$160,000—that was approved to fulfill a commitment that had been made by the previous administration in behalf of the northern Cheyenne tribes, Senator Melcher,

to deal with some of the conflicts that they were faced with on the coal renegotiation and leases and so on.

The interesting part of that add-on was that the Congress—both the House and the Senate—agreed to treat that situation similar to fire suppression. In other words, because of the inability of the agency to predict when certain actions might be filed, both the House and the Senate committees indicated that they would be willing to consider add-ons for that purpose.

It would seem to me that short of the Trust Counsel Authority being set up independently there might be some other alternatives that we could explore with the Congress and through the administration. I am certainly not going to commit the Secretary or the administration to any massive appropriations requests.

In my short period of time over there, and in talking to a number of tribal leaders, they certainly pointed out that this is one critical area where they feel they need help in having some independent or outside legal assistance because of internal conflicts either at Interior or at the Department of Justice.

I think it is important from the broader standpoint to consider a couple of dynamics in the field that I think really focus in on the Bureau of Indian Affairs and point out the need for a major reform or overhaul that everyone seems to agree is in order.

I would point specifically first to the congressional enactment of the Indian Self-Determination and Education Assistance Act, Public Law 93-638. Briefly, that act, in my view, added a new dimension to Federal-Indian relations, because it institutionalized the opportunity and right for Indian tribes to set their own priorities to assume the control and management of programs previously dominated entirely by Federal officials.

In doing so, however, I think the act also implies that tribes should assume new accountabilities for the management of those programs and for the use of Federal funds.

Second, what I think that act did was to impose upon the high level managers the responsibility of relinquishing control of programs—men, money, and materials. That is the life blood of bureaucracy. Bureaucracy being the creature it is, managers usually do not like to relinquish control of those items.

What I am saying is that I do not believe the act has been implemented as smoothly and effectively as it might have been had the Bureau been structured adequately, had the employees been imbued with the understanding that this was optional on the part of the tribes, and if—equally importantly—self-determination were viewed as a process that permeates all of the Bureau's activities rather than just another program to be added to the long list of activities. I would submit that that is the manner in which it has been established.

The second major dynamic that I would like to mention is completion of the American Indian Policy Review Commission's mandated study.

I think we would all agree, Senator Abourezk, that that study and the completion of the report represents the most exhaustive overall review of Indian Affairs since the Meriam report was published in 1928. I would personally commend you, as chairman, the commission members, your staff, and the hard-working task force members for

completing that report in the period of time that was imposed upon the Commission. I think it was a monumental undertaking. As you know, the report is over 600 pages. There are 200 separate recommendations.

I think, taken together, the report and the recommendations stand to influence Indian policy now and for the years ahead.

More specifically, looking to the management study that has been alluded to—I believe your committee held a hearing on that in the latter part of July, Under Secretary Joseph testified at that hearing—I believe that the management study, together with the creation of the new Assistant Secretary for Indian Affairs post in the Department really has set a springboard whereby we might be able to deal a little more realistically with a number of the problems that we all know exist. You have cited a couple this morning.

Under Secretary Joseph committed the Department and the administration very firmly to utilize that management study as a guide in the reform efforts and reorganization of the Bureau of Indian Affairs.

As the nominee for the post in question, I want to echo my support for the use of that document in restructuring the Bureau of Indian Affairs. I would like to elaborate just a little about why I am prepared to echo his views.

The report suggests the restructuring of the Bureau through a well-defined process rather than by doing it on a piecemeal basis; also the manner in which the report is written—and I believe the manner in which the Under Secretary is committed to use it—there will be some checks and balances, so to speak. In other words, there is a willingness on his part to follow the report's recommendation and provide you, the committee, with periodic status reports on how we would proceed.

You will recall from the Under Secretary's statement that the Assistant Secretary would play a critical role in the implementation of that restructuring.

I do want to add, however, that there are a couple of points in the report that I would like to be on record as wanting to clarify in the future. I am still a little confused on the so-called matrix approach—in other words, the belief that an employee might be able to report up two different lines in an organization.

If confirmed, I would want the opportunity to confer with the authors of that report and try to observe some precedents where this has been used in the past. I would like to see what kinds of successes or failures there have been, whether it be in Government or in private industry.

Second, the management study states rather emphatically that if the reorganization that they suggest is followed certain stages would occur. I would not want to be called up here 2 or 3 years later and asked why *x* millions of dollars were not saved.

In other words, what I am saying is that the report is not really too clear on how those savings could actually occur. I think that in all fairness to the commission and the agencies there needs to be further clarification in that regard.

If these kinds of dynamics—Indian self-determination and our apparent inability to implement it properly, the American Indian Policy Review Commission's management study of the Bureau, and so forth—are not enough to convince us that the agency charged with

carrying out trust responsibility should be restructured and reorganized, I can add a couple of other pressures that I think are very obvious and before us.

Both the House and Senate Appropriations Committees in reviewing the Bureau's 1978 fiscal year budget handed down the harshest indictment of their response for certain kinds of information that I have witnessed in the 20 years or so that I have been in Washington, D.C. There is a clear message in that indictment that something needs to be done.

Second, we have the continuing criticism and demand from Indian people individually and collectively that the Bureau be restructured and reshaped to make it more responsive to their demands and needs.

Having said all of this, I do want to say something in fairness to a lot of employees in the Bureau of Indian Affairs. The management study acknowledged this also. I happen to think that there are many well qualified professional and technical people within that Bureau. It is a large organization which has close to 14,000 employees today. When you get that number of employees I think you are going to have highly qualified employees, you are going to have mediocre employees, and you are going to probably have employees who do not care about their job or performance.

Nonetheless, it is the group that does care about doing a good job that I am very interested in at this moment. I think what they need more than anything else is the kind of climate, leadership, and direction that would permit them to do the job they want to do in behalf of Indian people. That would be in fulfillment of a good portion of the trust responsibility I submit.

Among some of the other things that I would want to do quickly would be to put the kind of team together that would share the commitment that I have on reshaping the Bureau, which would parallel the Department.

The first move that I have made in this direction—and I am not being presumptuous on being confirmed by this committee, but in any event I did want to start moving in this direction—was to select as one of my key assistants a very able person by the name of George Goodwin. I want to give George's background just briefly and ask if I might have the opportunity to introduce him to the committee.

George is of Chippewa descent from the State of Minnesota. He is currently serving as the area director in the Minneapolis area. He came up through the ranks of what we call community action programs from OEO. He has brought a fresh attitude and understanding to the Minneapolis area office. I think that he and I would tend to complement one another with that area background.

George was educated in Minnesota schools, and he has an outstanding record of performance. He is highly respected in the Indian community and is well known, I believe, by members of your own staff. I would like to just take a moment to introduce George Goodwin.

Chairman ABOUREZK. George, welcome to the committee.

Mr. GERARD. If I could conclude, Mr. Chairman, I would say this: My view of the Assistant Secretary's position would be along these lines. In the past the Commissioners were responsible for running the Bureau on a day-to-day basis. They were the men who fought the

crisis syndrome. There are many of them confronting the organization each day.

On the other hand, the key policy during that era, I submit, was really made by other people at higher levels. As I understand Secretary Andrus' perception of this new position—and it parallels my own thinking—is that the Assistant Secretary would not be involved so much with the day-to-day operations of that Bureau. That would be left to these key deputies and the team of people who share his views, his philosophies, and so on.

The Assistant Secretary, on the other hand, would operate at the departmental level out of the office of the Secretary as explained briefly by Secretary Andrus. He would be on a par with those other Assistant Secretaries and the Solicitor. I think he would be more involved in formulating policy initiatives. For example, in the area of intergovernmental relations or coordination, it could be developed hopefully free of some of those day-to-day pressures.

In addition, I think that that person would deal a little more closely, perhaps, than the Commissioners have in the past with the Office of Management and Budget, which is a very critical element in our system of Government. That person would also deal a little more closely with the Congress and most certainly the Indian community.

That is my general perception and how I would view my role if confirmed by the committee and the U.S. Senate. That is how I would fulfill that kind of responsibility. I have been around Government long enough that I do not pretend to have any magical solutions. However, I believe I could bring to the position an experience that covers a span of almost 20 years in the executive and legislative branches of Government. I understand the intent of some of the legislation which was enacted up here.

I think I would be remiss if I did not say that we are perhaps in the most difficult era in Indian affairs that we have faced since the Indian wars. What I am alluding to here is the fact that many of our legal victories, ranging from fishing rights to the land claims that you discussed today, have created new kinds of pressures on the Indian field. I think it is more important than ever that we have an organization that is responsive to these demands.

I hope that what I could bring to this position, personally and professionally, would be my understanding of how the Congress works, and hopefully an ability to visit individual Members and their staffs. I think it is going to be very important that we try to get some of these major claims behind us and settled in a negotiated fashion rather than long, acrimonious litigation, or rather to some hard-fought legislative effort. It may be that some of them would have to be ratified legislatively.

I believe this is where we are today. I view it as a monumental challenge.

In closing, I would only add that I suppose that ego gets in the way of some of this as well. It is for that reason that I was willing to accept Secretary Andrus' offer and agree to be his nominee for this position.

Thank you, sir.

Chairman ABOUREZK. First of all, I have kind of a basic question which requires a serious answer.

Some committees have had trouble over the responsiveness of officials who have been appointed and who had refused to testify at later committee hearings. Therefore, this is a standard question that I would like to ask you:

Will you hold yourself available, after reasonable notice, to appear before this committee and other congressional committees to present administration positions on pending legislation and to respond to questions on matters the committee may be investigating at any given time?

Mr. GERARD. Yes, sir, I would do that.

Chairman ABOUREZK. Would you direct your subordinates to do so as well?

Mr. GERARD. I would do so.

Chairman ABOUREZK. Thank you.

I am going to ask you, Forrest, a similar question to what I asked Secretary Andrus. I have no great question about your own technical competence. I have worked with you long enough to know what you are capable of doing.

What I am concerned with more than anything else is your intentions and the intentions of the entire administration so far as the responsibilities which have been given to you. Just as a bit of background on that, the comment you made about an ego satisfaction to being appointed, we are all human and there is nothing wrong with that at all.

My opinion of public service, which is essentially what you are getting back into now, is that whatever other motives might be involved with it—whether it is ego satisfaction or whatever—those of us who go into public service go with just that intention. We are there to serve the public or our constituency with everything we can give them. We see ourselves as advocates or as lawyers for that particular client.

Rather than to try to enhance our own stature or our own progress it is much more important to enhance the progress of the people we have chosen to serve.

With regard to the post of Assistant Secretary for Indian Affairs: To me it is extremely important that the intentions of that person, and yourself as nominee, be to try to put an end to what has been an unfortunate activity on the part of Commissioners of Indian Affairs, of area directors, and of a great many bureaucrats working in Indian affairs, that perhaps it might be better to intend—although you know it will never happen—to work yourself out of a job rather than to work yourself into a perpetual job.

In my view, the intentions are all-important. They are extremely important. The technical expertise that you might bring to the job can work either for good or for bad. I think you probably recognize that as a fact.

It is important that you have in your own mind, without reservation, that you will use your technical competence to try to restore to the Indian people the kind of dignity they once had—the independence and the self reliance—and to put an end to the divisiveness sponsored, encouraged, and undertaken by the Government in its dealings with the Indian people.

To repeat what I said to Secretary Andrus, in my view it really is a balance of power condition. The bureaucrats dealing with Indian affairs see any increase in power of the Indian tribes or Indian people as a decrease in their own power. This is not true of all employees, of course. There are exceptions to all of these rules.

To me, power hungry bureaucrats are an element of public service which I find very distasteful. The objective of anybody given the responsibility of stewardship over Indian Affairs should be to try to restore to the Indian people that dignity by, first of all, restoring some semblance of political power so that they can live at the level they choose to live at.

My question to you, then, is for your comment. Do you see it the same way I do, or do you see it in a different way? How do you see it?

Mr. GERARD. Senator, I would have to share your views that for too long the tribes and their respective members have been on the lower end of the totem pole. I think our real responsibility, now that we do have some policies in place that permit us to turn more of these functions and activities over to the Indians is to get that kind of structure in place which will allow just that.

I understand what you are saying about intentions, because I know you have listened to a lot of nominees in the new administration. For my own part, by going back into public service I recognize that I am going in under a slightly different mantle this time. I am going in as a political appointee. I am going to say this: As the political appointee I bear no responsibility for what has happened in the past and I am not wed to the old system within the Bureau.

I might be able to give you a couple of examples of some of the things my deputy-to-be and I have already agreed upon and that we have sold to the leadership within the Department. I think these examples strike at some of the things we have talked about.

I think we are the first bureau within the Department to do this.

1. We are going to ask for a sweeping fiscal audit of the Bureau of Indian Affairs funds. In other words, to get at some of these criticisms that money is used as a reward and punishment device at the area level and elsewhere, we have been sitting down with the staff of the Assistant Secretary for Planning, Budgeting, and Administration.

We will probably design that audit or review within the Department. I think that our budget can bear it. What we would like to do is to have that audit undertaken by a prestigious accounting firm outside of the Government, because our commitment here is to have that be an independent evaluation. We do not want the accusation to come back at us that "This is the system examining itself again." That is No. 1.

2. We have action surveys in mind which we would put into motion immediately. One would be undertaken by a gentleman that I believe you already know—Mr. Jack Rushing. He is joining the Department on an assignment from industry. Mr. Rushing has an outstanding background in law, economics, and fiscal affairs.

We would use him to review immediately the Indian Financing Act to try to discover how it has been implemented, what the successes are, and what the problems are that seem to be inherent in it. The whole idea here would be to try to complete that study in time to come back to you in the next session of this Congress when the guaranteed loan provision—I am sure—and the revolving fund—I believe—come up for reauthorization. We hope that kind of a review would give us the justification for a new amendment and perhaps make that a more effective tool for the Indian people.

3. In talking about the Indian Self-Determination Act, we are com-

mitted to putting a team together to undertake a rapid review of how that act is implemented to determine what some of the procedural problems are. We would like to utilize your committee hearing, as well, to see if working together we cannot devise the kind of amendments that would make that a more effective tool for Indians as well.

This is the manner in which I am trying to translate some of my intentions to actual reality in changing the system.

Chairman ABOUREZK. Incidentally, in the audit that you contemplate, there is an Indian tribal organization, the National Tribal Chairmen's Association—which is under a new leadership now—is a great improvement over what it had been before. Do you intend to include in your audit the use of funds by that organization prior to the new leadership that came in?

I am specifically referring to moneys that the NTCA might have used to finance a lawsuit against the U.S. Congress, in their joint committee the American Indian Policy Review Commission. More specifically a law firm that represented them in that lawsuit—I cannot think of the name of the firm, now—which claimed that it was doing a pro bona, yet there is evidence that there was something like \$25,000 in fees paid to that law firm for ostensibly some other purpose.

I wonder if you might include that in your audit as well.

Mr. GERARD. Mr. Chairman, we are not planning to include a review of the NTCA contract within the broader audit. However, what we do have in mind is to take a look at a number of contracts that have been negotiated out of headquarters.

I would say before the committee that I am less than enamored with some of the things that are being contracted for out of headquarters.

I think that there are legitimate functions that could be contracted for from organizations such as NTCA or the National Congress of American Indians. However, given your direct inquiry, we believe that we have a responsibility to look at that contract and to pursue the specific points that have been made. Once that is completed we would comply and submit that to the committee.

Chairman ABOUREZK. With regard to Public Law 93-638, there have been discussions with the Indian Committee staff about a different manner of proceedings. You talked a bit about this. Hardly anyone is very happy with the operation of the Indian Self-Determination Act.

It was designed as one of the major tools to transfer power from the Bureau to the Indian tribes. It is not working that way. One of the things that has happened is that the Bureau is building up its personnel. It is increasing its personnel rather than decreasing it under Public Law 93-638. They are using Public Law 93-638 as an excuse for the increase. They are claiming that they have to have additional people for training and additional moneys for the same thing.

Have you given any thought to any sort of a direct grant situation to change Public Law 93-638 to provide somehow that the bureaucracy itself can be decreased and that the transfer of power to the tribes can be made along that sort of line?

Mr. GERARD. Senator Abourezk, my initial view of Public Law 93-638, when I was a staffer on the committee and had an opportunity to work on the legislation, was that the present system would be sort of an interim step. In other words, it would be the authority that would open the door for tribes to begin assuming control.

The ultimate goal that I envisioned was a grant authority. I am willing, as the nominee, to entertain that kind of proposition. I would want to have an opportunity to confer again with your staff and discuss specific legislation on it.

The other thing we might think about in that regard would be to amend that act and to enable some tribes who want to go the grant route to use that procedure. There may be still others who would feel more comfortable contracting.

Senator Melcher made the point that all tribes are not the same. I have to agree with that. We do have tribes who view the act as outright termination, notwithstanding a disclaimer within the legislation itself.

Chairman ABOUREZK. I just want to ask one other question. There is a vote on right now. It is 11:43. By the time we got back here it would be 12 noon. What I would suggest is that we reconvene at 2:15 this afternoon.

Senator BARTLETT. Mr. Chairman?

Chairman ABOUREZK. Senator Bartlett?

Senator BARTLETT. I checked on the vote too, but on the question of reconvening, of course, this was not scheduled. I have a committee meeting scheduled on which I am ranking member of the subcommittee. Reconvening at 1:30 would probably be better for me. I do have a question I would like to ask. When are we apt to vote on the confirmation?

Chairman ABOUREZK. As soon as the hearings are completed.

Senator BARTLETT. Are the hearings going to be completed expeditiously?

Chairman ABOUREZK. I assume so, unless you have some reason to hold it up.

Senator BARTLETT. It is in the interest of the committee and in my interest that it be done expeditiously. That is a matter of opinion and I think that it is important to questions raised. Perhaps later on we can discuss this.

Chairman ABOUREZK. May I ask the Senator from Oklahoma what he means by all that?

Senator BARTLETT. I just mean that I think we should proceed ahead expeditiously. If we do, I think that will be fine.

Chairman ABOUREZK. Is there evidence which is obvious to the Senator from Oklahoma that the hearings are not proceeding expeditiously?

Senator BARTLETT. I think the hearings were not scheduled expeditiously. As the chairman knows, I had other thoughts on the scheduling of hearings so that it would be handled before the recess.

Chairman ABOUREZK. I might respond to that by saying that, for example, when I suggested that we come back in at 2:15 the distinguished Senator from Oklahoma said he had another committee meeting that he had to go to and could not attend this one. I wonder if perhaps he might have thought that might have been the case so far as scheduling these hearings at all.

In fact, after the nomination was forwarded to this committee by the Senate, I personally wanted a short period of time in which to prepare the hearings. In my view these are extremely important hearings. I scheduled the hearings at the first possible date that I had open.

Senator BARTLETT. My point in mentioning that I had a conflict was to raise the issue that I could not be here this afternoon, and presumably you were going to schedule the meeting. When will the next meeting be scheduled?

Chairman ABOUREZK. It is already scheduled. It will be Monday morning.

Senator BARTLETT. What time?

Chairman ABOUREZK. Ten o'clock.

Senator MELCHER. It is assumed, Mr. Chairman, that the hearings will not be completed this afternoon.

Chairman ABOUREZK. We cannot reconvene this afternoon.

Mr. GERARD. With regard to the reorganization plan which you discussed you indicated that you accept the general outline of that reorganization and you want to make sure the details will work before you implement them. I do not disagree with that. I think that is fair.

I think you well know that in the past any effort at reorganization of the Bureau of Indian Affairs which would have resulted in the diminution of power for the area directors has resulted in the area directors using a great many different means in which to enlist tribal opposition to that particular reorganization. They do it, as you said, by means of reward and punishment using Federal money to maintain their own political position.

One witness before this committee early this year testified that the area directors, by and large, engaged in a thing called "survival management." That is, not survival of the Indian people, but survival of the area directors. I could not think of a more accurate way to say it if I tried for 10 years. I think that is extremely accurate.

The proposed reorganization plan suggests that the area offices should be abolished, and that would therefore abolish the area directors. Already there has been furious politicking of the Indian community by the area directors to try to undercut and destroy this particular reorganization plan.

There has been a suggestion that the best way to handle that politicking is for the Assistant Secretary, the minute he has the authority, to sign an immediate order announcing that the area offices will be abolished at a future date—whenever the timing can be phased in properly.

In this way there is no longer any argument about what might happen. Everyone knows what will happen.

Do you have any plan or any intention of doing that in an effort to put a stop to the politicking that is going on by the area directors?

Mr. GERARD. Senator Abourezk, I have no immediate plan to sign such an order if I am confirmed and sworn in as the Assistant Secretary. I believe that the shortcomings from the previous reorganizations have been basically eliminated, however, by the kind of commitment that you have on the record from the Under Secretary as well as the Secretary of the Department that the reorganization would proceed along those lines.

I might offer a suggestion here. If we were to announce in advance that all 12 of those offices were going to be immediately closed we might generate other kinds of political pressure that would be beyond our control. What I am speaking of here very candidly is the fact that some cities and localities where those offices are located might

object to their closure and impose other kinds of pressures on the committee as well as the administration to keep them open.

In discussing this very point with your staff awhile back one of the ideas that I tossed out that might be a means of addressing this would be that rather than to eliminate the 12 area offices we could leave them in place. The fundamental idea here and goal is to change their character and their function so that they are not an obstruction in the delivery or assumption of control of services on the part of the tribes.

Where we would have continued flexibility, then, would be in the establishment of the service center concept. One could then think about putting them in different kinds of geographical locations, because they are going to be of service to whatever is left of the middle level management.

Chairman ABOUREZK. What I am talking about more specifically is the line authority given to the area directors which they have at the present time. That is all-important—whether they are going to maintain that line authority or not. Or whether they know that it will end, and, therefore, end all of the other bad stuff that goes on around the line authority.

Mr. GERARD. Are you suggesting that the line authority be withdrawn immediately as well?

Chairman ABOUREZK. I do not know of another way to do it.

Mr. GERARD. Senator, that is one of the final outcomes, as I see it, of the reorganization that is contemplated through the management study as well as some internal documents that I have been reviewing within the Department.

I would be greatly bothered by immediately withdrawing that kind of authority. I do not believe that we are in a position to predict the outcome—whether or not those local agencies, 80 or so agencies would be in a position to assume that kind of added responsibility. I hope that my remarks are not being construed as being in defense of the area offices or the incumbent area directors.

It just seems to me that that would be pulling something out of context in the reorganization that is contemplated more as a process rather than a piecemeal kind of fashion. I think there are other ways of dealing with that issue: With the periodic reports that we would submit to this committee; and the strength and force of the leadership of the Department as well. I think that all figures in here.

I would be greatly bothered by having to withdraw that authority immediately.

Chairman ABOUREZK. I want to explore that a bit further, but we are going to have to recess now until Monday morning.

Mr. GERARD. Surely.

Chairman ABOUREZK. I wish we could come back this afternoon, but according to the new rules of the Senate we cannot do so because the Senate will be in session.

Therefore, the committee will be in recess until 10 o'clock Monday morning.

I want to explore that particular point in greater detail.

Mr. GERARD. Very good.

Chairman ABOUREZK. The committee will now recess.

[Whereupon, at 11:55 a.m., the committee stood in recess to meet Monday, September 12, 1977.]

NOMINATION OF THE ASSISTANT SECRETARY OF THE INTERIOR FOR INDIAN AFFAIRS

MONDAY, SEPTEMBER 12, 1977

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
Washington, D.C.

The committee met, pursuant to recess, at 10:02 a.m., in room 6202, Dirksen Senate Office Building, Senator James Abourezk (chairman of the committee) presiding.

Present: Senators Abourezk and Bartlett.

Staff present: Ernest Stevens, staff director; Alan Parker, chief counsel; Karl Funke, counsel; Kathryn Harris Tijerina, counsel; and Michael Cox, minority counsel.

Chairman ABOUREZK. The hearings will come to order.

When we broke off on Friday we were discussing the beginnings of a reorganization plan. I wonder, Mr. Gerard, if you might advise this committee what your concept of a reorganization of the Bureau might be, and also the time frame.

STATEMENT OF FORREST J. GERARD, NOMINEE FOR ASSISTANT SECRETARY OF INTERIOR FOR INDIAN AFFAIRS

Mr. GERARD. Basically, Mr. Chairman, my concept of a reorganization is one in which we endeavored to decentralize as much of the program delivery and decisionmaking, not only from headquarters to the area, but right to the reservation level itself. I think that is the basic thrust of the management study—to get the delivery of programs and decisionmaking at the lowest possible point in the system, which would be the reservation level of course.

Chairman ABOUREZK. What do you anticipate for the area offices in that kind of a reorganization? You said that the decentralization ought to go from headquarters to the areas and also to the reservation level.

Mr. GERARD. My view of the area offices is that their current functions and performances have to be changed drastically, as I view them. They are basically an administrative type of organization today. With the concept of self-determination now being institutionalized it seems to me that training and technical assistance and consultation and contracting ought to be some of their main functions as opposed to straight line administration.

Chairman ABOUREZK. Before we go on I would like to recognize Senator Bartlett.

Senator BARTLETT. Thank you, Mr. Chairman.

I have a telegram from Emil Notti, chairman of the board, and Byron I. Mallott, president of Alaska Federation of Natives, Inc. I would ask that it become a part of the record.

Chairman ABOUREZK. Without objection.

[The telegram referred to follows.]



western union

Telegram

NFB037 WAC036(0305)(2-000418A253)PD 09/10/77 0302

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PMS HONORABLE JAMES ABOUREZK. CHAIRMAN

U S SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

5313 DIRKSEN SENATE OFFICE BUILDING

WASHDC 20510

THE ALASKA FEDERATION OF NATIVES, INC., A STATEWIDE ALASKA CORPORATION REPRESENTING ALASKAS NATIVE PEOPLE SUPPORTS THE NOMINATION OF FORREST GERARD AS ASSISTANT SECRETARY FOR INDIAN AFFAIRS. THE AFN BOARD OF DIRECTORS IN A SPECIAL MEETING AUGUST 31, 1977, ADOPTED A RESOLUTION AUTHORIZING SUCH SUPPORT. AFN URGES PROMPT COMMITTEE ACTION AND SPEEDY SENATE CONFIRMATION OF THIS OUTSTANDING NATIVE AMERICAN. THE POSITION OF ASSISTANT SECRETARY HAS BEEN VACANT DURING THE CRITICAL FORMATIVE MONTHS OF THE CARTER ADMINISTRATION, AND THE AMERICAN INDIANS INVOLVEMENT IN POLICY MAKING IMPORTANT TO THEIR FUTURE HAS BEEN SORELY DIMINISHED AS A RESULT. MR GERARD COMES WITH IMPECCABLE CREDENTIALS, AND IT IS OUR HOPE THAT WHILE THE COMMITTEE IS ASSURED THAT ASSISTANT SECRETARY DESIGNATE GERARD IS SENSITIVE AND RESPONSIVE TO TRADITIONAL, CURRENT, AND FUTURE INDIAN CONCERNS HIS CONFIRMATION NOT BE DELAYED.

THE ALASKA FEDERATION OF NATIVES, INC., AND ITS MEMBER INSTITUTIONS ARE SATISFIED THAT MR. GERARD WILL BE SENSITIVE AND RESPONSIVE TO THE RAPIDLY CHANGING NEEDS OF THE MANY AMERICAN INDIAN PUBLICS HE MUST SERVE. WE BELIEVE MR GERARD TO BE OBJECTIVE, FAIR, AND REASONABLE WHILE AT THE SAME TIME BEING A PERSUASIVE AND STRONG ADVOCATE FOR AMERICAN INDIANS AND THE KIND OF ADMINISTRATOR CAPABLE TO MAKING DECISIVE CHANGES IN THE FEDERAL BUREAUCRACY HE WILL ADMINISTER IF CHANGES ARE PERCEIVED AS NECESSARY.

THE ALASKA FEDERATION OF NATIVES RESPECTFULLY REQUESTS THAT THIS STATEMENT BE INCLUDED IN THE RECORD OF MR. GERARDS CONFIRMATION HEARING.

EMIL NOTTI, CHAIRMAN OF THE BOARD
BYRON I. MALLOTT, PRESIDENT
ALASKA FEDERATION OF NATIVES, INC.
550 WEST 8TH AVENUE
ANCHORAGE ALASKA 99501

Senator BARTLETT. Mr. Chairman, I would like to say that I hope there will be a vote on the nomination at today's meeting. I have a conflict with a natural gas meeting. I have to go to that in 1 minute. I will, however, be available to come back if there is a vote, so I would like to be advised if it does come to a vote.

Chairman ABOUREZK. I understand. It certainly is a pleasure to have you here. I do not know where you can do the most damage—in natural gas or here. [Laughter.]

Senator BARTLETT. I think it is about equal.

Thank you very much, Mr. Chairman.

Chairman ABOUREZK. I have to apologize, Mr. Gerard. I did not hear the last part of your response because I was listening to Senator Bartlett when he first came in.

Mr. GERARD. In terms of the area offices, Senator Abourezk, my view would be that their current functions must be altered drastically. With the concept of self-determination now being institutionalized, or having been institutionalized through Public Law 93-638, it seems to me that increasingly they must be providing training, technical assistance, contracting, consultation, and so on to the tribes as opposed to straight-line administration over programs and other functions.

Also, I am personally committed to the concept that is set forth in the management study. There should be some kind of a service center set up where a lot of the management and administrative functions could be grouped together.

Basically, I support the concept that the area offices must be altered drastically.

Chairman ABOUREZK. Can you tell the committee what your understanding is of the area offices' line authority at this time under the existing organization?

Mr. GERARD. My understanding is that about 90 percent of the authorities that have been delegated to the Commissioner from the Secretary now resides with the area offices.

Chairman ABOUREZK. That is in budgeting and personnel?

Mr. GERARD. That is in budgeting, procurement, personnel, and matters such as that; yes, sir.

Chairman ABOUREZK. What authority would you strip from the area directors in such a reorganization?

Mr. GERARD. I think it would be extremely difficult to think in terms of every agency, because I believe there are 80 or 82 separate agency offices carrying out some of those centralized functions.

It seems to me that we ought to think about continued consolidation of some of those services. My view is that it could best be carried to the regional service centers. I do not think we are going to get a personnel officer, for example, at every agency level. I think it would be extremely difficult to think of that. I do not know that you could justify procurement officers at every agency level. It would seem to me that there would be some economy in trying to perform some of these things through a consolidated operation.

Chairman ABOUREZK. My question recurs. Which of the line authority items, specifically with regard to personnel and budgeting, would you strip from the area directors in the area offices?

Mr. GERARD. I would like to see the budget basically formulated right at the reservation level in cooperation with the tribes, based on the kind of needs that they have put together.

Chairman ABOUREZK. Does that mean, then, that you do favor stripping budget authority from the area directors?

Mr. GERARD. That is correct. The budget would then flow into headquarters and thence to Congress.

Chairman ABOUREZK. You would not leave any options, so far as budgeting is concerned, with the area directors or the area offices. Is that correct?

Mr. GERARD. That is correct.

Chairman ABOUREZK. What about personnel hiring? I think the management study contemplates that personnel be centralized in the central office, or some central location under the direction of the central office, with the actual hiring being done on the agency level. That would short circuit or directly go around the power of the area directors and offices to hire.

Mr. GERARD. I have no problem with that other than this. I want to reflect back to a point that the Under Secretary made during his testimony before your committee on July 29.

I guess I, too, am bothered by the remoteness that that might establish between that centralized function and the field itself. Again, I have no problem with the basic authority resting at the area level.

Chairman ABOUREZK. In other words, you would leave that with the area director?

Mr. GERARD. I am sorry. I meant to say the reservation level.

Chairman ABOUREZK. Therefore, your answer to that question is that you do intend to strip the area director of that particular hiring authority in personnel?

Mr. GERARD. With the qualification that I think we are going to have to take a very hard look at the distance between Washington and many of those local service centers. We are talking about 3,000 miles in some instances, and further if you look at Alaska.

Chairman ABOUREZK. What problems do you foresee in that?

Mr. GERARD. Communication.

Chairman ABOUREZK. In what respect, specifically?

Mr. GERARD. Just the sheer distances in trying to clarify guidelines and policies and so on.

Chairman ABOUREZK. If the personnel records were kept in a central location and there was, of course, oversight by the central office on hiring practices, what is the problem with the distance if the agency level could show the need for hiring any kind of personnel?

Mr. GERARD. Presumably, that would eliminate that factor.

Chairman ABOUREZK. Would that, then, eliminate the qualification that you have?

Mr. GERARD. Not altogether. I guess there are so many details and logistical problems that I would certainly want the opportunity to be able to work with the reorganization task force on this kind of an issue.

Chairman ABOUREZK. What does that mean, then? Does it mean that you do not know yet whether you would accomplish that part of the reorganization?

Mr. GERARD. No; I would commit here today that we would remove the personnel function as one of the main items out of the area setup. My qualification is that I would want to make certain that we do not create new kinds of problems in terms of the proximity of headquarters to the field. I think my main concern would be communication. That is a basic problem right now.

Chairman ABOUREZK. As I understand it, you have made an unqualified commitment today to remove the hiring power from the area directors.

Mr. GERARD. Yes.

Chairman ABOUREZK. What kind of a timetable do you contemplate for those two specific portions of the reorganization—personnel and budget reorganization?

Mr. GERARD. The timetable, as indicated by the Under Secretary on July 29, is the one that I would stand on. If I am confirmed and sworn into office, I will then begin expeditiously to organize a task force which will handle the reorganization.

I think the Under Secretary also outlined that he would want to appoint a special assistant to his staff, preferably someone from the private sector with expertise in management and organization who would serve as a full-time staff assistant on this matter.

We have no specific timetable worked out in detail, but that would obviously be one of the first chores that that task force would have to undertake once it is organized.

Chairman ABOUREZK. I do not think it is fair to ask for a specific date, but do you think it could be done within 1 year?

Mr. GERARD. The total reorganization?

Chairman ABOUREZK. Yes.

Mr. GERARD. For purposes of this committee, I would commit that we would make every effort to try to undertake that reorganization within 1 year. There are a number of variables that I am unprepared to talk about today. It may take longer and it may take less time—I am not certain. However, I would certainly commit that we would make every effort to complete that within a period of 1 year.

Chairman ABOUREZK. A year in this circumstance is an awfully long time. That is why I used that as an example.

It would seem to me personally that such a reorganization could be accomplished probably within half of that time. Can you think of any reasons why it could not be done within a calendar year?

Mr. GERARD. I think a lot of it just gets into delays in bureaucracy—getting people together. There is going to have to be an awful lot of rewriting of functional statements and guidelines once this thing is put into place.

The additional commitment I would give is that once we are able to get our task force together and work out a proposed timetable, we would be more than willing to come before your committee either formally or informally with the staff and discuss that timetable and see if there is room to tighten up in some areas.

Chairman ABOUREZK. For example, if you did put your task force together, how long would it take you to come back with a timetable for consultation with the committees?

Mr. GERARD. I would think we ought to be able to give you a timetable within a matter of 2 or 3 weeks.

Chairman ABOUREZK. You talked Friday about an audit of the entire Bureau of Indian Affairs. What would you propose to do with such an audit once completed?

Mr. GERARD. Generally speaking, we would view that as a management tool. If some of the allegations which have been advanced to your committee as well as to the Bureau prove to be valid, then we would have to take expeditious administrative action to overcome those problems.

Chairman ABOUREZK. Before we leave that area, I would like to summarize and ask you whether or not I understand your intentions correctly.

You are committed to reorganization of the Bureau of Indian Affairs with, as quickly as possible, removal of line authority on budget and personnel from the area directors and the area offices. Is that correct?

Mr. GERARD. That is correct, Senator, so long as the committee and the administration understand that in using the management study, I think implicitly and explicitly in that report is the idea that this is a process. We would want to undertake that full reorganization as a process rather than to begin pulling some things out of context and putting them in place before they were ready.

In answer to your question I would say, yes; we would view that as one of the end products. The redelegation of authority, for example, would be one of the end products that we all envision by using that process.

Chairman ABOUREZK. Do you believe the Self-Determination Act, Public Law 93-638, needs radical change because of the complaints that have been coming in about its operation?

Mr. GERARD. I have not had an opportunity to really study in detail a number of the complaints, but if the ones that I have heard are correct, I think there are possibly some deficiencies in the act. I am wondering also, though, how much of it stems from attitudes on the part of employees, procedural hangups, and things such as that.

My own view of the rules and regulations is that they are consistent with the statute.

Chairman ABOUREZK. The complaints that I have heard from various tribes are that the contracting money, by and large, is not being used for contracting. It is, by and large, being wasted on additional personnel hiring by the Bureau.

Mr. GERARD. I have heard the same complaint, sir.

Chairman ABOUREZK. The personnel levels are building up rather than cutting down as a result of Public Law 93-638.

Mr. GERARD. May I say another word with respect to that?

Chairman ABOUREZK. Yes.

Mr. GERARD. I believe that one of the matters we may have overlooked, at least at the staff level, when we were working on the legislation, was the need for different kind of employees in the Bureau once Public Law 93-638 actually became law.

For example, I am told that in several of the areas they are very limited in contract specialists. They do not have people with a specialty in that area. The whole act is predicated on a streamlined contracting procedure. It seems like we have almost defeated the purpose of it.

Chairman ABOUREZK. Would you support or oppose a change in Public Law 93-638 which would allow for direct grants to the tribes rather than contracting authority in the Bureau to supervise all of the contracting that is going on? In other words, there are certain areas where we could provide direct grants to the tribes so that they could handle it themselves. Would you support that concept?

Mr. GERARD. What I would like to be able to support, Senator, is an amendment which would authorize grant authority and yet leave the contracting in place. It is possible that there may be tribes who would not want to operate under a strict grant, but would still prefer to use the contracting authority.

Chairman ABOUREZK. Well then, would you support the choice of the tribes in that regard?

Mr. GERARD. Absolutely; it ought to be optional.

Chairman ABOUREZK. On the question of Indian sovereignty: I have read some of the interviews that you have given to various press people. As I understand your position—and it ought to go on record rather than just being a newspaper source—you support the concept of sovereignty as, for example, set out in the American Indian Policy Review Commission report.

Mr. GERARD. I have not read the report in detail, Senator Abourezk, but I support the proposition that tribes do have inherent sovereignty. They have the right to govern and to establish their own rules and regulations and administer them locally.

As I understand the state of the law, that sovereignty exists and is qualified only to the extent that it has been altered by treaties or acts of Congress.

Yes; I would like to be on record that I believe in and support tribal sovereignty.

Chairman ABOUREZK. Along the lines of that definition just given?

Mr. GERARD. Yes, sir.

Chairman ABOUREZK. Right along with that is the question of jurisdiction on reservations. In order to enforce that sovereignty that the tribes have under the law: Do you believe that the Federal Government concurrently ought to retain the jurisdiction that they have over Indian reservations rather than State governments?

Mr. GERARD. Are you referring to Public Law 83-280, Senator?

Chairman ABOUREZK. Yes; it deals with that. I am not, however, referring to that specifically. I am referring to, say, for example, the move made in South Dakota to take away Federal and tribal jurisdiction over reservation lands and put it under State jurisdiction. Would you oppose that move or would you support that move? That is probably the best way to ask the question.

Mr. GERARD. Senator, as the advocate for the Indians within the Department of the Interior I would strenuously oppose such a move.

Chairman ABOUREZK. What about the question of—first getting into Indian sovereignty and Indian territory—Indian tribal jurisdiction over non-Indians living within the boundaries of the reservation?

Mr. GERARD. I guess that can be viewed as perhaps one of the most controversial areas in the field today. My understanding of the situation is that the matter is going to be considered by the Supreme Court in the fall session in two cases. I think they both occurred on the Suquamish Reservation in the State of Washington—the *Oliphant* and the *Belgarde* cases.

My position in that regard would be that if the Court rules that the tribes, do, in fact, possess jurisdiction over non-Indians residing within the exterior boundaries of the reservation, as the public official in charge of Indian affairs, I would undertake every effort to make certain that adequate funds and resources were available to permit the tribes to implement that jurisdiction.

Chairman ABOUREZK. Do you support or oppose the concept of tribal jurisdiction over non-Indians?

Mr. GERARD. Personally, I believe that the tribes possess the inherent power for such jurisdiction. As a practical and legal matter, it appears to me that the question is going to have to be resolved through these court cases.

Chairman ABOUREZK. Whether or not it is, what is your personal view in that matter?

Mr. GERARD. My personal view is that I would support the tribal jurisdiction.

Chairman ABOUREZK. Over non-Indians?

Mr. GERARD. Over non-Indians; yes, sir.

May I add one other word to that, sir?

Chairman ABOUREZK. Yes.

Mr. GERARD. In terms of the opposition that stems from the non-Indian community over such a question, one of the points that I believe is missed in their arguments is the fact that the 1968 Civil Rights Act, as I understand it, applies to both Indians and non-Indians within the exterior boundaries of the reservation. That, in itself, gives the non-Indians due process and equal protection. The 1968 act did bring to tribal governments a good many of the constitutional provisions that all citizens enjoy.

I think that in this highly emotional argument that point seems to be lost on many occasions.

Chairman ABOUREZK. With regard to natural resources that become of tremendous value which are located on Indian lands—I want to refer specifically to the contracts signed between the Northern Cheyenne Tribe and some energy companies a few years ago—those contracts were approved by the Bureau of Indian Affairs.

Since that time the tribe has made efforts to try to rescind them, because they felt that advantage was taken of them at the time. I am sure you are familiar with that.

Did you, by any chance, represent any of the tribes while you were in civilian life?

Mr. GERARD. No, sir; I did not represent the Northern Cheyennes.

Chairman ABOUREZK. Are you familiar with these contracts?

Mr. GERARD. Generally, yes, sir.

Chairman ABOUREZK. If confirmed, what would your position be on assisting the tribes in rescinding those contracts?

Mr. GERARD. First of all, I would want to seek advice from legal counsel to determine whether or not there were any irregularities or whether we violated our own rules and regulations in negotiating those original contracts. If there were any such irregularities or violations I would certainly want to support their cancellation.

Chairman ABOUREZK. Even if there were no particular violations found. I am told that the contracts—both there and down in the Four Corners area of the Navajo Tribe—at the time they were signed provided literally pennies per ton of coal or whatever to the Indian tribes, while other landowners, who were selling their coal, were getting dollars for the same kind of coal.

On the grounds of just an unconscionable agreement, if you could find no other technical means to cancel the contracts, would you support the cancellation of the contracts? Would you support the cancellation of the contracts on the ground that they were unconscionable if you, indeed, found that they were unconscionable?

Mr. GERARD. If that were the case, Senator, I would undertake every effort to either renegotiate them or to cancel them.

Chairman ABOUREZK. I have to say that the Interior Solicitor—the new one, Mr. Krulitz—has done an outstanding job since he has taken office. He has done an outstanding job of doing what he can to protect Indian water rights. Specifically, he has been supporting new legislation in the Southwest with which I think you are probably familiar.

Mr. GERARD. Yes.

Chairman ABOUREZK. It would do something to stop the erosion into Indian water rights which has taken place over the past years.

My question to you is: Do you intend to do whatever is in your power—and that would include, I guess, statements and whatever else you can do—to support the idea that Indian water rights ought to be retained for the Indians if they have them under the law?

Mr. GERARD. I would do everything within my power. I carry your view of the current Solicitor. He has been very supportive of Indian water rights.

Chairman ABOUREZK. With regard to legal opinions that come from the Indian Affairs Division of the Solicitor's office: Would you support or oppose publication of those opinions in all cases, no matter who signs them?

Mr. GERARD. I believe the policy in the past, Senator Abourezk, has been to publish only the opinions designated as "M" opinions. As the Assistant Secretary for Indian Affairs I would support the publication of all opinions, regardless of whether they were signed by the Solicitor or an Associate Solicitor.

I am not so sure that I would win on that argument, but I would like to see them a matter of public record; yes, sir.

Chairman ABOUREZK. With regard to the question of the Bureau of Indian Affairs responsibility to Congress: When you were working on the staff of the Indian Affairs Subcommittee we worked together in an effort to try to pass some sort of an authorization or statute that would require the Bureau of Indian Affairs to come before the committees of Congress to authorize it annually or semiannually.

The area directors at that time—while we talked about it—had gone out and politicked very furiously against that concept and con-

vinced a number of the tribes, through whatever means, that that was not in their best interest. In fact, they had called it termination, et cetera, et cetera.

Until such time as that kind of legislation could be enacted with the support of the tribes: Do you support or oppose an annual report from the Bureau of Indian Affairs to be submitted to the committees of Congress—to this committee and also the Interior Committee over in the House—that would break down the operations of the Bureau as far as actual money going to the tribes, actual expenses on a tribe-by-tribe basis, and other sort of detailed pieces of accounting that would allow the Congress to see what has been done, what the progress has been, and what is intended for the future?

Mr. GERARD. I would not only support such a report, Senator, but I would welcome the opportunity to make that kind of presentation to the committees of Congress. I think it should be an open Bureau.

Chairman ABOUREZK. To go along with that, what I am contemplating is introducing legislation to require such a report each year not only from the Bureau, but also from other agencies of the administration which deal with Indian affairs. Therefore, for example, the Secretary of HEW would be required to submit his part of the report to the Secretary of Interior which would then be given to you, and then made a part of the overall administration report.

Would you have opposition to that kind of a program or would you support it?

Mr. GERARD. I would be wholeheartedly in support of it, but I would make a prediction that you would have greater success in getting a report from the Bureau of Indian Affairs—perhaps from the Indian Health Service also—than some of the largest agencies. I think that is where you will encounter the difficulties.

Chairman ABOUREZK. If we put it into law, though, we might have better luck.

Mr. GERARD. It would have to be a legislative mandate. Only in this fashion, Senator Abourezk, are we going to be able to begin getting at some of the coordination problems that we are all interested in.

Chairman ABOUREZK. Would that kind of a reporting system assist in coordination of all of the agencies?

Mr. GERARD. I believe it would, because it would for the first time begin shedding some light on the sources of financial resources: The nature of them, the amounts, and so on and so forth. We need that kind of management information before we can undertake any coherent plan.

Chairman ABOUREZK. I would like to come back now to reorganization. I believe the report of the American Indian Policy Review Commission talked about replacing area offices with technical service centers. The report said fewer locations, which is fine with me, personally.

Would you contemplate setting up a model area service center somewhere in the country just to see how it might work? I am talking about a service center that would provide technical assistance to a multiracial region in engineering, accounting, economics, resource development, and other areas of technical assistance that the tribes in that area might require. This would be a model program to see how it would work.

Mr. GERARD. In other words, the model—if I understand your question correctly—would give us some feel or demonstration of what the regional service centers would ultimately turn into. Is that correct?

Chairman ABOUREZK. That is correct.

Mr. GERARD. Basically, I have no problem with that approach. It is one that I would like to be fully in command of, at least in the office, before I would make that firm a commitment.

Chairman ABOUREZK. I want to ask now about the possibility of the establishment of an Indian career service rather than maintaining BIA employees in the civil service. What is your opinion, or what are your views on establishing a separate Indian career service where Indian preference can be implemented as well as other practices consistent with the BIA stewardship over the Indian tribes?

Mr. GERARD. The argument has been made that the 1934 Indian Reorganization Act mandates the establishment of a career service. I have asked counsel to take a look at that question. While they have not provided me with a formal legal opinion, they interpret the statute the other way—that it does not, in itself, mandate a separate service.

I would like to respond to your question in this fashion: First, I do not think that I want to get in the position where we are arguing between the lawyers whether or not it does or does not. I think what those two answers prove to me is that the lawyers tend to disagree occasionally.

Second, what I would be more concerned with is to make certain that we are implementing Indian preference properly. I think the priceless opportunity that we have is through the reorganization process. Rather than trying to decide now whether a 40-year-old recommendation is still relevant would be to address that question at the time we are going through this reorganization process.

If that process points out the need for a separate kind of service, I would certainly be fully in support of it. If we could continue to meet Indian preference under the current system, then I would want to follow that direction.

The important thing here is to make certain that we are implementing Indian preference fully and properly to the benefit of Indian people.

Chairman ABOUREZK. Secretary Andrus has testified on more than one occasion that with regard to the establishment of a separate agency for Indian affairs, and removing BIA from Interior and pulling all of the other Indians desks into that particular separate agency—for example, Indian Health Service, Indian Education, Indian Housing, and so on—Secretary Andrus has said that if the Indian tribes wanted that he would support it.

With the publication of the report of the American Indian Policy Review Commission, that recommendation was made. As you know, the report was not only a result of the work by various tribes and Indian staff members, it was also circulated widely throughout all the tribes in the country for comment. That particular concept received overwhelming support, which satisfies the requirement by Secretary Andrus.

Do you support the creation of a separate Department of Indian Affairs?

Mr. GERARD. I would stand on Secretary Andrus' proposition that if the tribes do, in fact, support the separate agency concept I certainly would not want to be the public official standing in the way of that desire. I would do everything possible to help them achieve it.

Chairman ABOUREZK. How would you determine whether or not the tribes support it?

Mr. GERARD. I would like to have the opportunity to review those responses. I have not had the privilege of doing so.

Chairman ABOUREZK. In other words, would you ask them anew or would you stand on what they said in the report itself?

Mr. GERARD. Senator, I believe that this question is of such far-reaching importance to the Indian community and to the Government as well that we would need some kind of a consultation process with the tribes, or through the national organizations, to try and measure the degree of support that is either behind that proposition or against it.

I think the furthest that the National Congress of American Indians went in their convention a year ago was to recommend that greater detail be set up on the pros and cons of the question before they would take a firm position.

Chairman ABOUREZK. What specifically would you undertake as a consultation program with the tribes. Could you be more specific?

Mr. GERARD. There are several ways one might approach that. We have two national organizations—the National Tribal Chairman's Association and the National Congress of American Indians. There are a number of regional organizations. The individual tribes, themselves, would all have to be queried.

I would hope that the NCAI convention, to be held the week of the 19th in Dallas, would bring this question up as one of the major questions to consider.

Chairman ABOUREZK. Have you had a chance yet to consider the question of land consolidation by tribes?

Mr. GERARD. I really have not, Senator Abourezk.

Chairman ABOUREZK. You have not?

Mr. GERARD. No, sir.

Chairman ABOUREZK. Have you had a chance to consider the problems of the divided heirship situation that goes on with regard to trust allotments?

Mr. GERARD. Both professionally and personally, Senator. I have an undivided interest in a 40-acre allotment. I receive the grand total—

Chairman ABOUREZK. What kind of an undivided interest?

Mr. GERARD. I receive a grand total of \$2.38 each year. [Laughter.]

Chairman ABOUREZK. What would a fraction of that be?

Mr. GERARD. I do not know; there must be 40 or 50 of us.

Chairman ABOUREZK. One-fortieth or one-fiftieth?

Mr. GERARD. Something in that neighborhood.

Chairman ABOUREZK. Well then, you have just stated the problem. [Laughter.]

Mr. GERARD. I am fully aware of that.

Chairman ABOUREZK. Can you state the solution? [Laughter.]

Mr. GERARD. A number of years ago the old Indian Affairs Subcommittee under Interior and Insular Affairs tried a broad, sweeping bill that ran into a great deal of difficulty.

Subsequently, individual tribes have come in for authority to deal with the heirship problem. I would want to give this a high priority, because in my travels around the country—particularly in the Midwest and the Northwest—tribal leaders have repeatedly pointed out—and it is no secret to you or the staff—that so long as the land is in an heirship status it cannot be used for the benefit of the tribes or the individuals.

I would hope that together we could begin working out some kind of a legislative proposal to deal with that issue. I have no general or specific solution today, other than a willingness to give a commitment to give it some priority in my administration if confirmed.

Chairman ABOUREZK. With the advent of new litigation concerning land claims of primarily the east coast, because of the 1799 incident, there has been a great deal of controversy over what the Government should do vis-a-vis the Indian tribes and what they should not do.

President Carter appointed Judge Gunter of Georgia specifically to look at the Maine case and to try to mediate a solution. It turned out that Judge Gunter was not a mediator, but either a judge or an advocate. I am not sure how he finally came out of that. It sounded more like advocacy to me when he said that the Maine tribes should either accept the amount he set out or they could forget about it.

President Carter has not publicly forwarded that recommendation of Judge Gunter's to the Congress for a solution. Whatever his reasons were for not forwarding it, he said in any event that it was a just and fair solution at the time that it was announced. He did not, however, go beyond that.

My personal belief is that had President Carter forwarded that solution to Congress it would have been a violation of his trust responsibility to the tribes as President. The administration as a whole does have a trust responsibility. Secretary Andrus the other day re-enunciated that and reaffirmed that concept.

Do you agree with that concept, as we discussed it the other day, or do you disagree with it?

Mr. GERARD. I agree with the Secretary's concept; yes, sir.

Chairman ABOUREZK. Do you believe that if President Carter recommends something that goes against the wishes of the tribes—as for example in the Maine case—he would be in violation of his trust responsibility?

Mr. GERARD. I am not so sure that I am prepared legally to make that kind of a definitive answer to the point, Senator Abourezk. I would certainly want to be able to review it in light of what we consider those responsibilities to be and in light of the specific case at hand.

Chairman ABOUREZK. Let me just follow up on that.

Do you intend to press to the limit of your ability and authority the trustee stewardship you have as Assistant Secretary to the Indian people if you are confirmed?

Mr. GERARD. I have made that commitment to the Indian people before a number of forums. I view that as my first priority; yes, sir.

Chairman ABOUREZK. And you renew the commitment here for the record?

Mr. GERARD. I would like to renew it for the record today.

Chairman ABOUREZK. So far as lands, water, and natural resources, are concerned, and other trust responsibilities you might have for the tribes and Indian people?

Mr. GERARD. In all of its ramifications; yes, sir.

Chairman ABOUREZK. We have a number of questions that some of the tribes have asked us to ask at this hearing. Some of them are extremely long. What I would like to do is to give them to you and you can respond to them in writing.

Mr. GERARD. I would be happy to do so and will send the responses just as quickly as possible.

Chairman ABOUREZK. Just from looking at it, I think you are capable of doing it in a week. The committee would like your responses back in a week.

Mr. GERARD. We will make every effort.

Chairman ABOUREZK. You have been working part time in the Bureau. Do you know if any assistance has been given to the Passamaquoddy or Penobscot tribes in Maine? Have they been given any Federal assistance? They are not recognized tribes, but they have requested assistance. Are you familiar with that?

Mr. GERARD. I know that there have been several meetings on that question, Senator, but I do not know the specific answer.

I do recall, however, that both the House and the Senate Appropriations Committees did add funds to the Bureau's budget for that purpose. There is no question in my mind that they are federally recognized. I would commit to make those services available to them just as quickly as possible.

Chairman ABOUREZK. Do you know whether the Office of Management and Budget has directed the Bureau of Indian Affairs to coordinate Indian activities in Maine with the State of Maine?

Mr. GERARD. I am not familiar with any directive.

Chairman ABOUREZK. The questions that you do not know the responses to here will just be added to the list of questions to be answered in writing.

Mr. GERARD. All right; I will try and clarify that.

Chairman ABOUREZK. Counsel has a couple of questions to ask of you.

Mr. GERARD. Fine.

Mr. PARKER. Mr. Gerard, I would like to return to the question of consultation with the Indian tribes, and specifically consultation on the matter of an independent agency.

The committee feels that the tribal support for that concept is already on the record. However, I understand that you, newly assuming office, would naturally prefer to engage in consultation firsthand with the tribal leadership. I wonder if you would support a process of joint consultation?

On the question of an independent agency there are only a limited number of alternatives. We could sit down with your staff and identify those alternatives and agree upon a process of requesting tribal views in response to the range of alternatives, with a response date certain.

At any given time this committee and your staff would have formally consulted with all of the Indian tribes in the country regarding this very significant question.

One of the alternatives, of course, would be no support for the proposal.

Mr. GERARD. Generally, I have no problems with that approach. I would like to point out again for the record here that the Secretary, the Under Secretary, and I have given the committee a firm commitment that we are going to give high priority to the reorganization of the Bureau.

The Senator again today pressed for a timetable, and was given assurance that that will get underway. I would not want to move on the question you brought up until we feel that we are comfortable in having gotten our act together, or our plan, so to speak, for the reorganization.

Mr. PARKER. Then you do not feel that both initiatives could be taken simultaneously?

Mr. GERARD. I would not want to undertake it simultaneously. In the short period of time that I have served as a consultant to the Secretary on Indian matters, my assessment is that if confirmed I am going to have to be operating on several fronts in that Bureau. I would like to take some of these important questions in sequence.

I think it is a question, though, that we ought to try to address in the first 6 months, say, of my tenure as the Assistant Secretary.

Mr. PARKER. Thank you.

Mr. FUNKE. Mr. Gerard, in regard to the Indian career service, section 12 of the Indian Reorganization Act establishes the Indian preference law and it also states that Indians appointed through the Indian career service will be appointed without regard to the civil service laws. As you know, the Indian Reorganization Act was primarily drafted by the Department of Interior, by John Collier and Felix Cohen.

They stated that the law did intend for the career service to be developed and that the separate service appointments table which was being used was not the method which they wanted to use in training Indians and to get Indians under the Indian career service.

I was just wondering if you would like to respond to that and tell us what plan you might have for investigating the possibility of an Indian career service at this time.

Mr. GERARD. Mr. Funke, I have no specific plan other than the point I tried to make just a few minutes ago. I would prefer to address that question during the reorganization of the Bureau.

Mr. FUNKE. With regard to the current Bureau of Indian Affairs budget process: As you know the band analysis is on the incremental budget theory. What plans do you have for a comprehensive needs assessment in terms of social needs, economic development needs, natural resource needs of those tribes, and developing a comprehensive tribal budget system which would move up through the Department of Interior, into OMB, and into the committees of Congress, based on actual needs rather than the inequitable incremental theory?

Mr. GERARD. I think that until such time as there is a bonafide planning process staffed with persons who understand planning and who

understand the need to wed a planning process to budget process, that whether or not I have any personal plans right now, we are never going to see that kind of production.

If I may take another moment, I think the only agency I am aware of in the Indian field today that has done any kind of credible work in planning is the Indian Health Service. Admittedly, they are working with a single function—health. It has many ramifications. They started the planning process a number of years ago that is set up on a 5-year cycle. The last year then becomes the first year of the budget submission.

That is not the case in the Bureau today. At least, that is my analysis in the brief review that I have been able to make of the budget process.

The band analysis was a sincere effort on the part of the Bureau people to try to have greater input into the budget process. I do not think it goes far enough. I think we have got to do better.

Chairman ABOUREZK. The band analysis, in fact, only accounts for a very small proportion of the tribe's total budget going toward the tribes. Isn't that correct?

Mr. GERARD. I think it is somewhere in the neighborhood of at least 50 percent today, Senator Abourezk.

Chairman ABOUREZK. Of the entire budget?

Mr. GERARD. Of the entire budget. I would be happy to give you a breakdown on that for the record.

Chairman ABOUREZK. I would like to see it. I had some breakdowns that have shown that it is really a very small part of it. What appears to be some sort of a great Indian input gimmick turns out to be a gimmick pure and simple. The tribes do not really get much of a chance to state what they do need for operations during the year under the band analysis.

That is why I questioned you a little bit at length on the budgeting system insofar as the area directors are concerned, and as far as allowing the tribes to have a great voice in what their budgets will be within budgetary restrictions in government, of course.

You introduced George Goodwin. Have you picked any other staff people that you intend to hire?

Mr. GERARD. I have not made the final selections, Senator Abourezk, but during my interview process—and I am certain that other candidates set forth the same terms and conditions—I made it clear to the Secretary that if I were to be the choice I would want the right to select some of my own staff people and to put my own team together.

Chairman ABOUREZK. You have not done so yet?

Mr. GERARD. No, sir.

Chairman ABOUREZK. Regarding the reorganization task force: Do you plan to bring anybody onto that task force who has had something to do with the management study itself?

Mr. GERARD. My preference would be to follow the Under Secretary's suggestion that we would seek an independent person from the private sector with a strong background in management organization and with no ideological ties to the Indian community.

Chairman ABOUREZK. Or to the bureaucracy.

Mr. GERARD. Or to the bureaucracy. I would buy that as well.

Chairman ABOUREZK. We have exhausted all of our questions except for the written ones.

Before we go on to the next witness, I just want to say that I have sat through a number of confirmation hearings for Commissioners of the Bureau of Indian Affairs. You have sat right up here at the same time at a number of those. Probably more than I have over the years.

Each time, each of those Commissioners—as nominees—promised great things for the Indian community. Each time they have gone back to business as usual.

I would hope with the new direction reportedly promised by the Secretary of Interior, the entire administration, and in fact the commitments you yourself have made not only here today, but in public in other places, that you intend not to conduct business as usual. I hope that you mean that and that you will do your utmost to show the Indian people who have, I think, been psychologically repressed for so long that even the faintest glimmer of hope will do something for them psychologically. I would hope that you would not conduct business as usual, but that you would show the Indian community that there are going to be some drastic changes made that would restore their lives to somewhere near normal.

Mr. GERARD. May I make a final statement, sir?

Chairman ABOUREZK. Yes.

Mr. GERARD. I can only reecho what you have just stated. I would like to say in conclusion that we do have the climate both within the Department, I believe, and with some of the work that your own American Indian Policy Review Commission has set forth for the record. I refer specifically again to the management study. There are internal documents within the Department that I have been reviewing which parallel very closely, I might add, many of the findings of that management study and really point in the same direction for reorganization.

I have made a commitment to the committee and to the Indian community. I will endeavor to do the best possible job to create the kind of change that I think the Indian people have asked for for too many years.

Chairman ABOUREZK. Mr. Gerard, that is all we have at this time in the way of questions. Of course, you are subject to recall during this confirmation process, and you are committed to coming to the committee at a later time after the confirmation.

I want to thank you very much for your appearance and for your testimony.

Mr. GERARD. Thank you. I will plan to remain throughout the balance of this hearing.

[Subsequent to the hearing, the following material was received from the Department of the Interior:]



IN REPLY REFER TO:

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
WASHINGTON, D.C. 20242

SEP 23 1977

Honorable James Abourezk
Chairman, Select Committee
on Indian Affairs
U.S. Senate
Washington, D.C. 20510

Dear Senator Abourezk:

The following letter is in response to questions asked by the Committee during the confirmation hearings of Mr. Forrest Gerard to be Assistant Secretary for Indian Affairs held on September 9 and 12, 1977 in Washington, D.C. Additional questions asked by the Committee in writing will be answered in the very near future.

Secretary Cecil Andrus was asked in page 20 for the hearings held on September 9, 1977 to furnish for the record the procedure used in the selection of Mr. Gerard to be nominated for the position of Assistant Secretary. Secretary Andrus's reply is enclosed.

Mr. Gerard was asked on September 12, 1977, page 30 of the hearings, to furnish for the record answers to the following questions concerning the Passamaquoddy and Penobscot Tribes.

1. The Maine Tribes are in need of immediate assistance through the Bureau; on December 23, 1975, Court decision concerning the Passamaquoddy and Penobscot was decided in their favor. What assistance to date have they received?

The Court decision of December 23, 1975 did not say that the Passamaquoddy and Penobscot Tribes were eligible for all Bureau of Indian Affairs services but did say that the Secretary had a trust relationship with the Passamaquoddy Tribe with respect to protection of lands covered by the Nonintercourse Act. The Solicitor's Office examined this limited ruling, and in a July 8, 1976 memorandum advised that the Secretary had the authority to make BIA services available to the two

tribes and that certain trust services would be required. To provide these services a supplemental appropriation for FY 1977 and a Budget Amendment for FY 1978 was requested to provide those services required by law and other services within reasonable funding levels. Since no funds were appropriated for FY 1977, no services have been provided.

2. What barriers exist causing the apparent hands off attitude of the Bureau toward these Tribes?

We are not aware of any "hands off" attitude. Since May of 1976 when the Commissioner of Indian Affairs determined that the programs of the Bureau would be made available to the Passamaquoddy Tribes there has been continuing dialogue, contact and planning with the State and the Tribes.

Planning and preparations of the FY 1977 Supplemental and FY 1978 Budget Amendment were processes that consumed much time and since OMB did not allow funds for FY 1977 momentum naturally subsided. However, planning with the Tribes for FY 1978 commencing October 1 continues.

3. Will the Bureau request the total service for these Tribes in FY 1978 and in FY 1979?

The request of the Bureau and the Department for funds to provide services to these Tribes in FY 1978 is outlined in the answer to question 4.

As a result of funds being appropriated for these Tribes in FY 1978 funds will be requested in the Bureau's budget to continue these services in FY 1979 and in succeeding years.

4. Why did not the Bureau submit appropriations requests for adequate services? (for Maine Indians in FY 1977, 1978 and 1979?).

The original request (March 1977) of the Bureau and the Department to OMB for services to the Passamaquoddy and Penobscot Tribes was as follows:

Supplemental FY 1977	\$1,579,000
Budget Amend FY 1978	\$4,507,000
FY 1979	None

Page 3 - Honorable James Abourezk

The original OMB allowance was as follows:

FY 1977	\$ 234,000
FY 1978	\$ 916,000
FY 1979	Not applicable

The Bureau and the Department appealed the items deleted and/or reduced by OMB and requested the restoration of funds in their entirety.

The final allowance from OMB that went to Congress in May 1977 eliminated the previous allowance for FY 1977 but retained the \$961,000 for FY 1978. The Congress appropriated \$870,000 to provide services to these tribes in FY 1978.

5. We have information that OMB has directed the Bureau to coordinate Indian activities with State? For what purpose?

OMB has directed the Bureau not to obligate any funds until it has met with State and Tribal officials to coordinate and plan the specific uses of these funds. The State of Maine continues to appropriate funds for services to these tribes and it would only be logical to coordinate these activities to ensure no duplication of funding.

6. If any state discriminates against the Indians within that state, because of their lawful land claims or for any other reasons, what policy would you pursue to rectify the situation and protect their rights as the trustee?

In the event of incidents leading to apparent discrimination of Indians, regardless of any reason or any source, our policy is to immediately refer the matter to the Indian Division of Civil Rights in the Department of Justice.

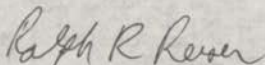
Mr. Gerard was asked on September 12, 1977 on page 34 for a breakdown of the Bureau of Indian Affairs budget, banded and unbanded, and the percentage that was banded in 1978.

In the Fiscal Year 1978, Federal funds in the amount of \$862.3 million was appropriated to the Bureau of Indian Affairs. Of this amount, \$412.2 million was banded. This figure amounts to 47.8% of the Federal funds appropriated to the Bureau of Indian Affairs. A breakdown by activity is as follows:

Page 4 - Honorable James Abourezk

<u>ACTIVITY</u>	<u>BANDED</u>	<u>UNBANDED</u>	<u>TOTAL</u>
3100 (Education)	161,422.2	79,552.4	240,994.6
3200 (Indian Services)	69,940.3	97,844.3	167,814.6
3300 (Economic Development & Manpower Programs)	47,052.0	25,501.2	72,553.2
3400 (Natural Resources Development)	28,185.2	31,060.6	59,245.8
3500 (Trust Responsibilities)	19,692.3	11,488.8	31,181.1
3600 (General Management & Facilities Operation)	86,105.8	24,583.9	110,689.7
<hr/> TOTAL: Operations of Indian Programs	<hr/> 412,447.8	<hr/> 270,031.2	<hr/> 682,479.0
250 (Road Construction)	-	72,254.0	72,254.0
1000, 1100, 1200 (Irrigation, Facility Construction & MA & I)	-	61,936.0	61,936.0
Trust, Claims, etc. funds and receipts	-	435,630.0	435,630.0
<hr/> TOTAL: Bureau of Indian Affairs	<hr/> -	<hr/> -	<hr/> 1,252,299.0

Sincerely,



Ralph R. Reeser
Director, Congressional and
Legislative Affairs

Enclosure

SEP 15 1977

The following information supplements my testimony of September 9, 1977 before the Select Committee on Indian Affairs, United States Senate, confirmation of Forrest Gerard to be Assistant Secretary for Indian Affairs.

In February, I asked over 250 Indian tribes for their recommendations to be Assistant Secretary for Indian Affairs. Through this process, recommendations were received for 44 possible candidates for the position. Mr. Tonasket received 37 recommendations from Indian tribes; Forrest Gerard received 14. Through a review of the qualifications of all 44 of these individuals, seven candidates were selected for further consideration who were interviewed by the Under Secretary and myself. Two names were sent to the White House as being acceptable. My recommendation was for Forrest Gerard to be selected and the President agreed. As I stated previously, Mr. Gerard has the unqualified support of President Carter and myself.

Leslie D. Andrews



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

SEP 28 1977

Honorable James Abourezk
Chairman, Select Committee on
Indian Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This letter is in response to written questions presented to me by the Committee during my confirmation hearings on September 9, and 12, 1977. This material completes the information requested by the Committee during those hearings.

Enclosed as Exhibit A are questions and answers concerning Bureau Structure (Bureau of Indian Affairs) and Tribal Affairs.

Enclosed as Exhibit B are responses prepared in answer to questions prepared for the Committee by Dr. Irving Handlin concerning Services for Handicapped Indian Youth.

Sincerely yours,

Assistant Secretary for
Indian Affairs

Enclosures



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

SEP 28 1977

Honorable James Abouresk
Chairman, Select Committee on
Indian Affairs
United States Senate
Washington, D.C. 20510

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Enclosed as Exhibit B are responses prepared in answer to questions prepared for the Committee by Dr. Irving Hamlin concerning Services for Handicapped Indian Youth.

Sincerely yours,

/s/ Forrest J. Gerard

Assistant Secretary for
Indian Affairs

Enclosures

EXHIBIT A

BUREAU STRUCTURE

1. DO YOU FORSEE ANY DECLINE IN THE STRUCTURE OF THE BUREAU AND/OR THE NUMBER OF PEOPLE INVOLVED? IS NOT THE STRUCTURE A HANDICAP TO FULL INDIAN TRIBAL SELF-DETERMINATION?

a. The basic BIA organizational structure has not been determined at this time, however with the increase in Tribal participation in Self-Determination, I would anticipate the Bureau to have a diminishing role as we decentralize the program delivery.

2. WHAT PROGRAMS OF THE BUREAU ARE UNDER JOINT FUNDING SIMPLIFICATION? WHY CANNOT ALL PROGRAMS OF THE BUREAU BE PUT TOGETHER WITH OTHER FEDERAL AGENCIES FOR MAXIMUM TRIBAL BENEFIT?

a. Grants made to tribal organizations under the Indian Self-Determination and Education Assistance Act, P.L. 93-638, have been included under the Joint Funding Simplification Act. From an examination of the Joint Funding Simplification Act and its implementing guidelines it appears that the Act was intended to cover grant programs rather than those implemented through contracts. Notwithstanding this the Bureau's Phoenix Area Office is currently analyzing the Joint Funding Simplification Act, its implementing guidelines and the Bureau's contracting process to determine if it is feasible to include "P.L. 93-638" contracts under the Joint Funding Simplification Act.

3. WHAT HAPPENS TO THE HIGH-COST, LOW-OUTPUT EFFORTS IN BUREAU PERSONNEL MANAGEMENT SYSTEMS? HOW MANY THOUSANDS OF MAN-HOURS WERE PUT INTO PERSONNEL TRAINING SESSIONS ON EVALUATION, COMMUNICATIONS, MANAGEMENT BY OBJECTIVES, ETC.? HOW IS ANY OF IT BEING USED? WHY WASN'T IT USED IN THE PLACEMENT EVALUATION OF PEOPLE IN RECENT REORGANIZATIONS, AS IN ALBUQUERQUE?

a. The Bureau has just completed the first phase of its communications workshops designated by the Code, HR-12-, which is a part of the Management Action Plan to improve Personnel Management in the Bureau. These communications workshops were conducted during the first half of FY 1977 in all areas and the Central Office. A total of 352 man-hours were expended during each workshop for a total of 4,224 man-hours.

The purpose for the Communications Workshop was to improve communications between Bureau managers and personnel specialists. The end result of this type of orientation is to assure a smooth functioning organization able to carry out the mission and objectives of management.

4. WHAT IS THE POLICY OF THE BUREAU TOWARD NON-INDIAN EMPLOYEES? ARE THEY TO BE SYSTEMATICALLY DISCOURAGED FROM PROMOTION? ARE THEY TO BE THE TARGET OF CRIPPLING RIF PROCEDURES, FACED WITH INDIAN PREFERENCE IN REPROMOTION AND SELECTION RIGHTS? ARE THERE TO BE WRITTEN REPORTS TO AFFECTED RIF EMPLOYEES PERIODICALLY TO LET THEM KNOW FOR WHICH POSITIONS THEY WERE CONSIDERED AND WHY THEY WERE NOT SELECTED?

a. Employees, whether Indian or non-Indian, are not and will not be discouraged from competing for promotion. Selections will continue to be made of the best qualified employee available while staying within the legal requirements of Indian Preference. There are many very dedicated and capable non-Indian employees in the Bureau and it would be a dis-service to both to ostracize the non-Indian employee.

5. WHAT WILL REPLACE AREA OFFICES AS THE MIDDLE LAYER OF THE PRESENT THREE LAYERED LINE ORGANIZATION?

a. There could possibly be Regional Service Centers with management and administrative functions grouped together.

6. IF THERE IS TO BE A TWO LAYERED ORGANIZATION, HOW DO YOU PROPOSE TO BE EFFECTIVE IN SUPERVISING AGENCY SUPERINTENDENTS, SERVICE CENTER SUPERVISORS, WASHINGTON OFFICE DIRECTORS, INDEPENDENT OFFICES LIKE IRRIGATION PROJECTS, OFF RESERVATION SCHOOLS, ETC.? IS THIS NOT AN UNWORKABLE SPAN OF CONTROL?

a. Again this would be worked out after evaluating the Reorganization Task Force's recommendation on decentralizing the middle level offices.

7. WHAT WILL BE THE ROLE OF SERVICE CENTERS? HOW MANY EMPLOYEES WILL BE REQUIRED? WHAT KINDS OF SKILLS WILL BE REQUIRED AT THESE CENTERS?

a. This would be based again upon the recommendation of the task force. Presumably it would require providing technical assistance in accounting, economic resources development and such other assistance as the Tribes would desire.

8. WHERE WILL SERVICE CENTERS BE LOCATED?

a. Presumably service centers would be located where they could be most responsive.

9. HOW WILL THEY BE STAFFED?...BY REASSIGNMENT OF CURRENT EMPLOYEES? BY RIF? BY NEW HIRES?

a. Again this would depend on the recommendations made by the reorganization task force team as to location, and type of services to be delivered.

10. WHAT WILL BE THE EFFECT ON THE MORALE OF BUREAU EMPLOYEES OF THE CREATION OF SERVICE CENTERS AND THE ELIMINATION OF AREA OFFICES? MORALE IS ALREADY AT AN ALL TIME LOW.

11. WILL THE MESCALERO CASE DECISION APPLY IN RIFS, SO THAT INDIAN PREFERENCE DOES NOT APPLY IN RIF SITUATIONS?

12. WHAT HAS THE CIVIL SERVICE COMMISSION DETERMINED IN CASES LIKE THIS... DOES INDIAN PREFERENCE APPLY OR NOT?

13. IF INDIAN PREFERENCE DOES NOT APPLY IN RIF, WHAT WILL BE THE EFFECT OF THIS REORGANIZATION OF THE RECENTLY APPOINTED INDIAN AREA DIRECTORS, ASSISTANT AREA DIRECTORS, AREA BRANCH CHIEFS AND SUPERINTENDENTS?

a. The Under Secretary and I have committed the Bureau to a task force study to determine the best course of action for improving our delivery of services to the Indian people. This will in all probability lead to some type of reorganization of the Bureau. In most cases, major reorganizations in any organization will tend to affect the morale of the employees involved. However, implementing any reorganization that develops will be accomplished with the least disruption possible to our employees. A reorganization in Federal Government usually leads to implementation of RIF procedures. The Mescalero case decision and specific provisions for RIF procedures in the Bureau are being reexamined in view of the more recent court decisions affecting Indian preference. Until such time as a RIF is implemented it is not possible to determine the affect on any employee, Indian or non-Indian.

14. WHAT WILL THIS DO TO INDIAN TRIBES' IDEAS OF SELF-DETERMINATION?

a. We do not anticipate any change in our consultative relationship with all tribes as it relates to our selection process for employees in certain key positions.

15. WHAT WILL BE THE ECONOMIC IMPACT OF THE MASS MOVEMENT OF EMPLOYEES?

a. The economic impact of mass movement of employees who transfer between stations will increase the BIA budget for moving and temporary duty per diem incidental to the transfer.

If the BIA payroll at a location is reduced, the local economy will lost the money spent locally. This impact will be slight in cities where the BIA is a small part of the total economy, but it could be significant if a big reduction occurs in a village where the BIA is a major employer.

16. WHAT LONG RANGE IMPACT WILL THESE CHANGES HAVE ON THE BUREAU'S ROLE, ON ITS SIZE, ON ITS EXISTENCE AND ON ITS EFFECTIVENESS?

a. My goal is to strengthen the role of the Federal Government as trustee for Indian rights and resources while being more responsive to tribal and individual needs. To this end we will make organizational changes. The role will not be changed but strengthened. In instituting these changes we will be looking to increase the operational role of tribes, if they so choose, and there should be a corresponding reduction in the size of the Bureau's employment. We believe that it will prove more effective if tribes can make the decisions on level and method of program operations.

17. THE ALBUQUERQUE AREA OFFICE HAS JUST GONE THROUGH A REORGANIZATION THAT HAS BUREAU EMPLOYEES IN LIMBO. MANY PROGRAMS AND SERVICES ARE SUFFERING. THE NEW AREA DIRECTOR (APPOINTED JUST LAST YEAR UNDER THE PREVIOUS ADMINISTRATION) HAS NOW RESIGNED TO PURSUE A Ph.D. WHAT

OPPORTUNITIES ARE THERE NOW FOR APPOINTING OR DETAILING A QUALIFIED PERSON INTO THAT POSITION FOR THE PURPOSE OF EFFECTING REGIONALIZATION AND THE ESTABLISHMENT OF INDIAN SERVICE CENTERS? THE BUREAU HAS A QUALIFIED PERSON WHO IS PRESENTLY SERVING AS SOUTHWEST REGIONAL COORDINATOR OUT OF ALBUQUERQUE, WHO IS CAPABLE OF INITIATING AND CARRYING OUT THIS TRANSFORMATION. WHAT WILL YOUR AGENCY DO TO CAPITALIZE ON THIS OPPORTUNITY TO BEGIN IMMEDIATELY YOUR COMMITMENT TO IMPLEMENT REGIONALIZATION?

a. As mentioned above, there will be a task force assigned to study the Bureau organization and make recommendations for any changes necessary. It would be premature at this time to start a fragmented reorganization without benefit of the results of this study.

TRIBAL AFFAIRS

1. WHAT SYSTEMATIC EFFORTS HAS THE BUREAU MADE OR WILL MAKE FOR ENCOURAGEMENT OF TOTAL TRIBAL PLANNING, COVERING ALL NEEDS AND ALL RESOURCES, NOT JUST THOSE OF THE BUREAU?

a. The Bureau supports tribal comprehensive planning efforts. A BIA planning support group, headquartered in Billings is available as are P.L. 93-638 grants for tribal planning in the areas of tribal government capacity building.

2. ARE YOU AWARE OF THE ZUNI PLAN "TOWARD ZUNI, 1985?" (A COPY BEING SENT TO YOUR OFFICE UNDER SEPARATE COVER)

3. DO YOU SEE ANY VALUE IN THIS PLAN AS A COMPREHENSIVE COMMUNITY DEVELOPMENT PROGRAM, PROVIDING AN EXPRESSION OF COMMUNITY NEEDS, CLEAR LINES OF COOPERATION BETWEEN SERVICE AGENCIES, DEFINED CAREER OPPORTUNITIES FOR INDIAN YOUTH, AND INTEGRATED DIRECTION TO ALL RELEVANT PEOPLE AND INSTITUTIONS?

4. DO YOU SEE ANY VALUE IN PROMOTING THIS PLAN AS AN EXAMPLE OR MODEL FOR ENCOURAGING OTHER TRIBAL GROUPS TO ORGANIZE THEIR THOUGHTS AND PLANS?

a. We are not aware at this time of the Zuni plan. We will review it for comment upon receiving a copy of the plan.

5. UNDER CURRENT 638 PHILOSOPHY, THERE IS GREAT CONTRACT DETAIL REQUIRED OF TRIBES TO FULFILL PROGRAM REQUIREMENTS OF THE PUBLIC MONEY THEY USE. WHAT PROGRAM AGREEMENTS WILL THE BUREAU BE REQUIRED TO MAKE WITH THE TRIBES IN FULFILLING THEIR SERVICE RESPONSIBILITIES FOR USE OF THESE SAME PUBLIC MONIES?

a. The question is unclear. However, an interpretation is made of the question that:

Since Tribes must account for monies under P.L. 93-638 Contracts, how will the Bureau of Indian Affairs account for program monies not contracted or for uncontractable functions?

Financial Management Status reports are available on request to the tribes on request. These computer printouts are quite voluminous and sent to the Agency level.

The BIA has no plans to enter into written agreement with tribes as suggested in the question.

6. WHAT SYSTEMATIC EVALUATION PROCEDURES WILL LOCAL INDIAN TRIBES HAVE IN REVIEWING BUREAU PROGRAMS AT ALL LEVELS OF OPERATIONS?

a. Congress appropriated \$1,000,000 for the development and testing of alternative methods for tribes to evaluate BIA and other federal programs. The evaluation and testing format is currently being developed and will be available for use in 1978.

7. EVERY YEAR EACH BUREAU PROGRAM MUST SUBMIT AN ANNUAL REPORT OF OPERATIONS. WHICH BUREAU ACTIVITIES HAVE MADE PROVISION FOR TRIBAL REVIEW AND ENDORSEMENT OF THESE REPORTS? WHY CAN'T ALL PROGRAMS BE MADE TO PROVIDE FOR SUCH REVIEW AND ENDORSEMENT?

a. Under the Band Analysis system, each tribe has an opportunity to annually review and/or change budget and program items.

8. WHAT PARAMETERS WILL BE AVAILABLE FOR TRIBES TO USE IN EVALUATING AND SUPPORTING THE QUALITY OF BUREAU PERSONNEL SERVICES, THE EMPATHY AND THE EFFECTIVENESS OF FOLLOW-THROUGH OF INDIAN AND NON-INDIAN EMPLOYEES?

a. Under P.L. 93-638, tribes are entitled to review and analyze BIA and other federal programs. Certainly in reviewing the programs, tribes would want to look at the quality of services performed by BIA personnel both Indian and non-Indian.

EXHIBIT B

SERVICES FOR HANDICAPPED INDIAN YOUTH:
 RESPONSES TO QUESTIONS PREPARED BY DR. IRVING HANDLIN
 DATED AUGUST 15, 1977

1. What is the total number of Indian students now attending elementary and secondary schools in this country, both on and off-reservations.

201,571 in the age group of 5-18 (FY 76) (Includes only Indians served by the BIA)

2. What percentages of these students are in public, private, parochial and Bureau schools?

72% Public Schools
 23% Bureau Schools
 5% Other Schools

3. What is the total elementary and secondary school population, on and off the reservation in Bureau boarding schools and in bordertown dormitories?

29,255 (plus an additional 16,354 in day schools) (FY 76)

4. How many of these Bureau students are handicapped, according to definitions and guidelines issued by HEW in June, 1977?

Since these became available only in June, 1977, BIA students have not been assessed by those standards. However, the FY 77 BIA Annual Program Plan for Education of the Handicapped (which is applicable for the 1977-78 school year) outlines procedures for assessing students according to these guidelines. This information should be available by the end of the current school year.

5. Have you, in fact, completed a national comprehensive identification survey of enrolled Indian children who are handicapped, as required by law?

This is taking place during the 1977-78 school year. It is expected to be completed by May, 1978.

6. How many Indian children who are handicapped are not now enrolled in Bureau or other schools, both on and off the reservations?

This data is not available. It is anticipated that such information will result from the comprehensive handicapped child-find effort which will take place during the 1977-78 school year.

7. Have you completed a national comprehensive identification and assessment of handicapped Indian children on and off reservations, as required by law?

This is taking place during the 1977-78 school year. The policy and procedures are contained in the FY 77 BIA Annual Program Plan for Education of the Handicapped, which is applicable for the 1977-78 school year.

8. Does the Bureau have personnel in its boarding schools and dormitories and in its area and agency offices qualified to identify and assess the handicaps of Indian children?

Only in limited numbers. It is anticipated that the area and agency offices will need to contract for student assessment services in addition to the adding of qualified personnel during the 1977-78 school year.

9. How many specially trained personnel are now working in Bureau boarding schools and in bordertown dormitories, and in area and agency offices?

No Bureau-wide survey has been made of this data. The information is not presently available. However, each area office has a person designated as the area's special education coordinator. In addition, the Navajo Area, for example, has a special education coordinator at each of its agency offices.

10. How were these personnel prepared for competency in the identification and assessment of handicapped Indian children?

A Bureau-wide special education workshop was held in August, 1977, with training in assessment conducted by personnel from the Bureau of Education for the Handicapped. Representation from each area, agency, and school was invited. More thorough training of personnel is planned for the 1977-78 school year, as outlined in the FY 78 BIA Annual Program Plan for Education of the Handicapped.

11. If each school and reservation area is not now staffed with personnel qualified to identify a handicapped Indian child, and qualified to assess the nature and severity of that handicap, how can you prepare a national needs assessment?

More staff will need to be added. In addition, contracting for assessment services will supplement the limited staff where needed.

12. (for example, among the Navajos, there is considerable deafness or partially impaired hearing due to unrepaired otitis media; there is considerable blindness and limited vision because of trachoma; there is much crippling because of the high incidence of accidents.)

What percentage of total Bureau elementary and secondary school population is handicapped? Does that percentage vary significantly from tribe to tribe? Are there certain types of handicaps with a higher percentage in some tribal groups?

Exact data on this will not be known until the assessment phase is completed at the end of the 1977-78 school year.

13. How do you propose to seek out, identify and assess Indian children not now in school?

This will be a joint effort during the 1977-78 school year with personnel from Education, Social Services, Indian Health Services, and other agencies. Each area education office is preparing a plan for a comprehensive child-find and assessment effort during the current school year. It is anticipated that much of the actual assessment will be on a contract basis due to insufficient qualified personnel within the BIA.

14. (there are two generally approved lists of kinds of handicaps...they follow:

deaf, hard of hearing, blind, partially sighted, crippled or orthopedically handicapped, special health problems, educable mentally handicapped, trainable mentally handicapped, emotionally disturbed, socially maladjusted, slow learner, aphasia/communication disorders, culturally/educationally disadvantaged, specific learning disabilities....

behavioral disorders, communication disorders, hearing impairment learning disabled, mentally handicapped, multiple disabled, physically impaired, visually impaired...)

From data now available to you, how many handicapped Indian children are ... (use one of the lists above)?

Such data as this will not be available until the current child-find and assessment phase is completed.

15. How does the incidence of such handicaps compare with the general population?

This information will not be available until the current child-find and assessment phase has been completed. Isolated studies of the past few years indicate a generally higher incidence of handicapping conditions among Indian children enrolled in Federal schools than among the general population.

16. (defined as those in addition to, supplemental with, or different from those provided in the regular school program by systematic modification and adaptation of instructional techniques, materials, equipment and personnel)

Of the total number of handicapped Indian children enrolled and not enrolled in school on and off reservations, how many are now receiving the required full range of special education services?

No comprehensive study of this nature has been made. The information is not presently available.

17. (these requirements come from the committee on conference between the House and Senate in determining FY 78 appropriations for the Bureau) (6/23/77)

You have been required by Congress to submit a report by December, 1977 on all unmet special education needs for handicapped Indian youth. What is the status of that report? What procedures are you now employing to complete a documented report by the end of the year?

The current child-find and assessment effort will provide vital information for this report. However, that phase will not be complete by the December date. That report will undoubtedly have to acknowledge the lack of such complete information and will, therefore, use best available information. Area offices have been submitting data which estimates their special education needs. This will be incorporated into the overall report.

18. (similarly from the same conference committee)

(the Senate committee made a point of indicating that the Bureau has been seriously remiss in providing special education services to handicapped and retarded Indian children)

You have also been required by Congress to have a comprehensive national plan for providing an adequate educational program for the physically handicapped, the emotionally disturbed and the learning disabled. What is the status of that plan? On what data is it being based?

The FY 77 and FY 78 Annual Program Plans for Education of the Handicapped (submitted to USOE under Part B, Education of the Handicapped Act, as Amended by P.L. 94-142) constitute a plan for special education services in the BIA. The plan provides for the collection of data for future programming for the handicapped. The plan includes a full-service goal of special education and related services for the handicapped.

19. If you have not completed a full needs assessment of handicapped Indian children, including the identification, screening and diagnosis of all children on and off reservations, how can you possibly develop and implement a plan for meeting these needs?

The plan includes the needs assessment and will be revised as needed, based on information from the needs assessment.

20. (last year there were approximately eleven programs in eleven schools in the Bureau dealing with special education...almost none involved full services, but portions, such as the evaluation of pupils and training of teachers at Chuska, a reading lab at Shiprock, a resource center at Greasewood, a segregated center at Pierre, two special education teachers at Stewart)

What programs does the Bureau now have in operation nationally to:

- a. provide screening and diagnosis of handicapped Indian children?
- b. develop appropriate curricula for these children?
- c. develop instructional materials and techniques to support these programs?
- d. provide appropriate physical facilities and alter those in need of change?
- e. inform, work with and involve the parents of handicapped Indian children?
- f. train teachers and counselors for special education program?
- g. identify and involve those children not now in school in such programs?
- h. provide all handicapped children with the full resources and services of their community, as HEW guidelines mandate, so they can experience the normalizing influences of the community?

Special education has been carried out by the areas, agencies, and schools, with policy and funding-advocacy from the Central Office (national) level. (For example, during the 1976-77 school year, the Albuquerque Area had special education projects at eight schools, and provided some special education services on an agency-wide basis.)

The area education offices are preparing plans to provide the services as outlined above in compliance with P.L. 94-142 and with Section 504 of P.L. 93-112. The FY 77 and FY 78 Annual Program Plans for Education of the Handicapped give direction to the areas in carrying out these functions.

21. What numbers and percentages of Indian children now identified and diagnosed as handicapped are now involved in such programs?

Due to a lack of uniformity in identification and diagnostic procedures in the past, exact information is not available at present. Although an October 1, 1976, "Child Count" survey revealed that some 7,000 handicapped Indian children were receiving some type of special education and related services in BIA schools, it is expected that more valid figures will be available by the end of the 1977-78 school year.

22. Since it is obvious that the Bureau has not provided special education services except on a limited basis, how will the required increased services to handicapped Indian children be provided?

\$2 million in school operations funds have been designated for special education use for Fiscal Year 1978. Additionally, it is anticipated that \$5.5 million will be available from funds to be provided by the Bureau of Education for the Handicapped during FY 78. Furthermore, additional school operations funds for special education are anticipated for FY 79.

23. What controls and evaluations procedures have you established to insure that all handicapped Indian children will be located, assessed and then placed in appropriate programs?

The FY 77 and FY 78 Annual Program Plans specify that areas are to carry out these provisions. The area offices are to monitor agency and school activities in this activity. Three additional qualified special educators are to be hired at the Central Office administer and monitor the area programs. Additionally, staff members from the Bureau of education for the Handicapped have pledged that they will monitor and evaluate BIA activities in these areas during the 1977-78 school year.

24. How will passage of the early retirement bill for non-Indian employees affect the Bureau's special education programs, which now rely heavily on non-Indian administrators and specialists?

No information has been collected on this. Discussions have taken place between Bureau personnel and personnel at the Bureau of Education for the Handicapped about seeking funds for training Indians to fill special education positions in the BIA.

25. With no Bureau education physical facilities, including classrooms, athletic facilities, dormitories or housing specifically designed to accommodate handicapped Indian children and employees, with many of these facilities deficient in safety requirements, what are your plans for bringing these facilities to standards required by HEW?

The Division of School Facilities is presently making a survey of needs in regard to facilities and the handicapped. Representatives of area facilities engineering sections were invited to the August Bureau-wide meeting on Education of the Handicapped which was held in Reno, Nevada. Their participation indicated awareness of the requirements and a commitment to fulfilling the requirements.

26. Are you aware of the requirement and the acute need to actively involve the parents of handicapped Indian children in the development and the implementation of special education programs?

Yes, this need is clearly expressed in the final regulations under P.L. 94-142, dated August 23, 1977. The Bureau is complying with this requirement. Parents of handicapped children presently serve on the BIA Advisory Council for Exceptional Indian Children.

27. (Indian parents have historically been reluctant to seek services for their handicapped Indian children...much of the entire program effort must be directed toward building understanding and awareness on the part of these parents of what is possible today)

How will your programs and activities bring a new awareness and understanding to the parents of handicapped Indian children?

The active handicapped child-find effort which will be undertaken during the 1977-78 school year will help bring awareness and understanding to these parents. Also, there is a requirement that an Individual Education Program be prepared for each handicapped child. The parent is a required member of the committee which prepares the Individual Education Program.

28. (there may be almost 60,000 now attending boarding schools or living in bordertown dormitories...perhaps 15 to 20% are handicapped...plus all those not now enrolled in school)

In a day and age when no group of American citizens except Indian parents are required to give up their children at the age of six in order to provide them with an education, how do you reconcile the requirement to work with handicapped Indian children together with their families, with a twelve year separation of these children from their families?

How do these children, as required by HEW, enter the mainstreams of society through the normalizing influence of their own community, if you take them away from their homes? It is traumatic and destructive of educational opportunity that you now take non-handicapped children from their parents. How much more serious will be the effect of removing handicapped Indian children from their homes to facilities not designed for their needs, to learn from teachers not prepared to understand, to relate to or to work with them, completely isolated from their families.

Every effort will be made to serve the handicapped in their own communities or as close to their homes as possible, consistent with the wishes of the parents and services required.

29. How do you plan to reconcile this most serious conflict? What programs are you prepared to recommend to prevent the destruction of parental-child association?

The requirement that a parent is to serve as a member of the committee which prepares the Individual Education Program should help assure that the parent's concerns are included in this planning. Furthermore, the parents of handicapped Indian children serving on the BIA Advisory Council on Exceptional Indian Children are expected to give direction toward correcting any problem which may exist in this area. Qualified special educators are also aware of the importance of the parent-child relationship.

30. The House committee has officially reported that your reports (6/77) to them are so late and of such poor quality that they have little value. What reason does this committee have to believe that your identification, needs analysis and plans for special education will be different?

The potential availability of some \$7 million for education of the handicapped during the 1977-78 school year should give the needed impetus to carrying out the requirements of the special education legislation. However, until the reorganization of the Office of Indian Education Programs has been implemented, there is no assurance that the heavy workload of the office can be greatly facilitated in any significant manner.

31. Will the Bureau accomplish its special education programs internally or by contracting with Indian tribes and organizations, or both? If you plan to accomplish the entire program internally, what evidence can you now present to demonstrate your capability and progress toward carrying this out?

The Bureau does not plan to accomplish the entire special education program internally. Permanent employee position ceilings make such an endeavor difficult, if not impossible. Contracting for services is a logical alternative.

32. (there is substantial precedent and authority for HEW and BIA to contract with Indian tribes and organizations)

Since contracting of Bureau services to Indian tribes and organizations is a major part of the self-determination act, will you try to get tribes and Indian organizations to take over the planning and delivery of such services?

The special education program, or any aspect of it, will be available for contracting with Indian tribes and organizations in accordance with existing legislation. Tribal interest and leadership is invited and welcomed. Such leadership has already been in evidence in some instances, such as at the Laguna Pueblo.

33. (less than 3% of the Bureau's education budget, or 6.25 million was spent on vocational education in 1976, and two-thirds of this amount was spent for its two post-secondary institutions, Haskell and Southwestern Indian Polytechnic Institute) (there are three special programs available to Bureau high schools for vocational education, largely not utilized, although up to 12 million was available for Navajo alone last year...Title IV, Part A of the Indian Education Act; Title I of the Elementary and Secondary Education Act; Johnson O'Malley Supplemental Fund)

How many handicapped Indian children will benefit from vocational education funds in FY 78? What amount of dollars is involved?

Are you aware that the Bureau has never received funds through the Federal Vocational Education Act? Why not?

The Bureau was excluded from Federal Vocational Education legislation in the past. However, Indians are eligible to receive vocation education funds in FY 78 to be administered by the U. S. Office of Education in accordance with a joint Memorandum of Understanding with the BIA. It is not known at present how many children and youth this will serve. The Bureau will continue the vocational education programs at Haskell and the Southwestern Indian Polytechnic Institute.

34. Do you plan to initiate an expansion of vocational services for the handicapped Indian youth not now receiving such services? In what way will you develop and carry out these plans?

It is anticipated that as the Bureau begins to serve those handicapped children and youth who are identified and assessed during the current school year, there will be an expansion of vocation services. The required Individual Education Plan will be the method by which the parents and professionals will determine the type of education program needed by the handicapped individual.

35. (HEW guidelines rule against the continuation of segregated centers for the handicapped where they are isolated from the non-handicapped and from the mainstreams of the community)

Have you researched and developed the methodology and programs necessary for linking parents of handicapped Indian children and the children themselves with the full range of government and community resources available to these children, and in a manner consistent with the non-discrimination requirements of HEW?

This is and will continue to be a role of the qualified professional personnel working in special education at the area, agency, and school levels.

36. Are you aware that an Indian organization from New Mexico submitted a proposal to the Bureau on April 4, 1977, in response from a commitment from the Director of Indian Education Programs to fund this project to plan, develop and implement a pilot demonstration program to link identification and diagnosis of handicapped Indian children with an intensive parental awareness program, utilizing the full range of those government services available with the resources of the community, as required by HEW? This program, proposed by Anasazi, Inc., is to be implemented on the grounds of Southwestern Indian Polytechnic Institute in Albuquerque, a Bureau vocational facility now almost half-vacant. The program is in full accord both with the requirements of HEW relative to the handicapped and with the needs of Indian children and their parents.

The Director, Office of Indian Education Programs, does not recall any commitment to fund this project proposal, which was not even written at the time of the conversation in question. His recollection is that the idea had merit and a proposal would receive consideration. Responses to Mr. Handlin's inquiries have been sent. It is planned that the proposal will be reconsidered, along with the overall special education needs, during Fiscal Year 1978.

37. Are you aware that after making this commitment, and after repeated reiterations of this commitment from the Bureau, that the Bureau has failed to fund this program which is clearly in the best interest of your organization, and which can provide a model for programs throughout the country? It has received the full support of the all-Indian Board of Regents at SIPI, of the entire Albuquerque community through a committee headed by Mayor Harry Kinney, of the Undersecretary of the Interior James Joseph and his assistant, Wallace Green, of Congressman Yates and the members of Senator Abourezk's committee, of Governor Jerry Apodaca in New Mexico...and yet the Bureau has failed to respond? We would like to know your intentions regarding this program?

The Office of Indian Education Programs is in the process of recruiting and staffing for three special education positions at the Central Office level as part of the FY Annual Program Plan for utilization of Title VI-B funds from the U.S. Office of Education. This specialized staff will administer the Title VI-B program and will consider the Anasazi proposal along with other proposals under the guidance given by the BIA Advisory Panel on Exceptional Indian Children and with the requirements of legislation concerning the use of the funds. No commitment for funding the proposal can be given at this time.

38. What amount of funds did you expend for all purposes for special education in FY 77; what funds will you spend in FY 78? Will a pilot program managed by Anasazi, Inc. be a part of that funding? And at what level?

A survey of area offices revealed that a total of \$4,250,055 was spent on special education in the BIA during FY 77, excluding that spent by Social Services. It is anticipated that \$7.05 million will be utilized for FY 78. There is no commitment at this time to a pilot program by Anasazi, Inc. Any proposal by Anasazi will be considered along with other proposals in view of legislative requirements and the Bureau's FY 77 and FY 78 Annual Program Plans for Education of the Handicapped

Chairman ABOUREZK. We will take a 5-minute recess and then return with the other witnesses.

[Recess taken.]

Chairman ABOUREZK. The committee will come to order.

We have a panel of witnesses that I would like to ask to come forward: Earl Old Person, chairman of the Blackfeet Tribe; Mel Tonasket, president of the National Congress of American Indians; Joe De La Cruz, president of the National Tribal Chairman's Association; and Bruce Townsend, chairman of the NTCA Legislative Committee.

Will you all come forward?

Earl, do you want to lead off?

STATEMENT OF EARL OLD PERSON, CHAIRMAN, BLACKFEET TRIBE

Mr. OLD PERSON. Mr. Chairman, I have a brief statement.

First of all, I do want to express my appreciation in being given the opportunity to be here on behalf of the very important matter under discussion in this committee.

As you know, for many years the Indian people have been confronted with many problems of great concern. My fellow American Indian people, I think, will agree that each administration that came aboard was looking for something new to take place.

I think we can go as far back as our ancestors who began to have dealings with the so-called Anglos or the non-Indians in various ways. Each time there was a great disappointment. Each time there was hope. The hope that they had was brought down.

I believe that as the Indian people become more organized, they are beginning to come into the picture in determining things for themselves—the things that they have hoped for for the Indian people as well as the reservations that they occupy.

There have been many things confronting the Indians. The main thing that confronted them then and now is the land that they occupy. They hope to develop it to the point that they would realize that something is being done about the concerns they have and the hopes that they have.

It is awfully difficult to find the appropriate words to fit this occasion. At this time in history, the Indian people are in desperate need of a strong and able leader. Each day brings new and well-planned attacks. The honor of our court system and its doctrine of fair decisions is being shuffled aside for the more popular goals of expediency and money. What has taken us decades to build is threatened by the stroke of a pen.

I believe that when we had people in charge of our leadership, as far as Indian affairs is concerned, for many years we were led by non-Indians. It seems to me that sometimes when they were leading the Indian people, there was power given to the Indians for their use. However, when you really look into those kinds of administration, you see that the hopes of the Indians were not being met. It was detrimental to them.

A few years ago the Indians had the opportunity to have Indian leadership in some key positions. Again, however, I want to say that

we have been aware that in many areas the Indians who were put into these key positions were powerless. As was stated here before, their hopes were very high regarding how they were going to administer the Indian affairs. Somewhere along the line, though, they were being held down so that they could not accomplish the things they had hoped for. They did not accomplish what the Indian people had hoped would be established for the benefit of the Indian people throughout this country.

Now I see that the Indian people have an opportunity for a higher position. Perhaps it is a position that will be able to do something for the Indian people throughout this country. We have great concern about how this will be administered and who is going to administer this position.

Mr. Forrest Gerard is the person in question at this time. He is a member of the Blackfeet Tribe of the Blackfeet Reservation. I believe in his confirmation. After he is confirmed and takes the lead and takes the reins, I believe this position is something he will work for, because of the concern of the Indian people, the concern of Congress, and the concern of everyone else concerned with this new position which has been created.

This is going to give him something of a leadway into the kind of things he would like to do and administer them accordingly. I believe that Mr. Gerard can do it. I am not here speaking only because he is a member of the Blackfeet Tribe, but because he is the man who has been named for this position. He has been nominated for this position.

I speak on behalf of the Blackfeet people of the Blackfeet Reservation. They want to express through me their confidence in this man—Mr. Gerard. They are aware of his leadership throughout the years. Since he left the reservation, he has worked locally, regionally, and nationally.

I would like to point one thing out. The Blackfeet people have never, to my knowledge, in any position that they have held, tried to take advantage of their position. Likewise, I have never seen Mr. Gerard, in any of his positions, to take advantage by looking specifically to the Blackfeet people.

I am here because I know that Mr. Gerard is a man that is needed. We need to assure ourselves what kind of a man is going to take the lead. Mr. Gerard has held many positions throughout this country. He has worked within the Nation's Capital. I believe that he has been aware of the many problems that are confronted by Congress, by the Indian people, and by everyone concerned with Indian government for the Indian people.

I am sure that Mr. Gerard is going to look for new areas and the kind of a structure that the Indian people may well depend upon. The Indians need an input into the structure that will bring the results that they have longed for for many, many years.

I do hope that this brief statement made by me as chairman of the tribal council will express our ideas. I have had the opportunity of leading the Indian people as a president of the National Congress and on other Indian committees that I have served on. I have seen and become aware of the many frustrations that Indian leaders have gone

through in their search to find the kind of leadership and the kind of administration that will work for them and fulfill their hopes. I hope that this leadership will become evident in this nomination which was made.

I ask on behalf of the Blackfeet people as well as the Indian people throughout this Nation that a speedy confirmation is made so that we can get underway with the kind of things we will be working on for the next 4 years. Therefore, I ask the committee for a speedy confirmation of Mr. Forrest Gerard as our Assistant Secretary for Indian Affairs.

Thank you.

Chairman ABOUREZK. Thank you, Mr. Old Person.

Do you and your tribe favor a separate Indian agency that is out of the Department of Interior?

Mr. OLD PERSON. When the Blackfeet people became aware of the new position of Assistant Secretary for Indian Affairs we felt that this was an area which, as I have stated, is somewhat different from what we had been working under with the Commissioner of Indian Affairs.

I feel that this new position—the office of Assistant Secretary for Indian Affairs—is one that we can try out. We can find out what kind of an agency it is going to be. We will find out if it is the kind of agency that is going to serve the Indian people.

Chairman ABOUREZK. My question is whether or not you favor a separate Indian agency outside of the Department of Interior.

Mr. OLD PERSON. I do not think that we should be completely separate from the Department of Interior.

Chairman ABOUREZK. So you are against a separate agency?

Mr. OLD PERSON. I feel that to a certain extent that we should work within the Department of Interior.

Chairman ABOUREZK. That you should be within the Department of Interior—is that what you said?

Mr. OLD PERSON. Yes.

Chairman ABOUREZK. Thank you very much.

Who is next on the panel?

Mr. Mel Tonasket, president of the National Congress of American Indians is accompanied by Chuck Trimble, who is the executive director of the NCAI.

STATEMENT OF MEL TONASKET, PRESIDENT, NATIONAL CONGRESS OF AMERICAN INDIANS; ACCOMPANIED BY CHARLES E. TRIMBLE, EXECUTIVE DIRECTOR, NATIONAL CONGRESS OF AMERICAN INDIANS

Mr. TONASKET. Thank you, Mr. Chairman. If I might, I will also speak as chairman of the Colville Confederated Tribes. I was asked by the tribal council before I left home to make this a joint statement.

I am very happy to be here today to talk at the confirmation of Forrest Gerard for Assistant Secretary of Interior for Indian Affairs.

The National Congress of American Indians, as well as the Colville Confederated Tribes, has worked very well with Mr. Forrest Gerard. When he was a staff member of the Interior Committee I know that our

tribe and Chuck and the staff of the National Congress of American Indians worked very closely with Forrest on a good number of bills.

We think that Forrest will do a good job as the Assistant Secretary for Indian Affairs. I think I can give you proof of the feelings of the National Congress of American Indians. In 1976, at the annual NCAI congressional awards, Mr. Forrest Gerard received an award recognizing his work in Indian affairs.

I can assure Mr. Gerard, this committee, and the administration, that if Forrest is confirmed—and we hope that he is—that NCAI will work with him. We are fairly confident that the tribes will support him and also work with him to see that the best interests of the tribes are served.

If we have any concern at all—by myself and the organization which I represent—it is not concern about Forrest Gerard. It is mostly aimed at the Department of the Interior and the administration. If you look at the past history of the administration—specifically the Interior Department, the Department of Justice, and the Office of Management and Budget—you can see that they have kind of run roughshod over the past Commissioners of Indian Affairs.

It is our feeling that we need a true advocate and a total trustee to fight for the rights of the tribes—to take the positions that the tribes want taken and not to be ordered around and backdoored and short-changed by outside departments.

We feel that the conflict of interest situation which has been very predominant in the Department of Interior comes to light in the water rights issue. It comes to light in energy resources. It comes to light in land issues where there are difficulties between the Bureau of Land Management and Indian reservations or military bases and Indian reservations. It has even reached the point where the Federal Government is working in concert with the States to take Indian land and take Indian water.

I know very well how difficult it has been for a Commissioner of Indian Affairs to try to fight for those Indian waters and those Indian lands when the Justice Department and the Solicitor's office, the Deputy Secretary, and when the Office of Management and Budget can write a memorandum and tell the boss at the Bureau of Indian Affairs what to do and which positions to take whether he agrees with it or not. That scares me.

I think that no matter who is President of the United States or who would be the Secretary of Interior, that fear still is deep within me. I have not seen much difference between any of the administrations.

I think that one of the things that confirms my concern about the administration is the administration's unwillingness to deal with a policy on Indian affairs. Carter has made it very clear, and so has his staff in the White House, that there is no Indian policy in this administration as of yet.

It is difficult for me to see how they can run the Department of Interior or how an Assistant Secretary for Indian Affairs will know where he is going to operate if there is no national policy.

Also, I think that the issue that President De La Cruz of the National Tribal Chairman's Association and myself were involved in

when President Carter issued orders for a national water policy is an example. The tribes were left out of that situation. We were only involved in an 11th hour jump where we had to come into Washington and ask what was going on and try to curb the activities there. The administration never gave the nominee an opportunity to participate in the development of the Indian water policy.

At that point, I am happy to say, Mr. Gerard did meet with Mr. De La Cruz and myself. He took the same positions that we took. He went into the meetings with us and argued with us on behalf of the tribes throughout the country.

I think that there are a number of other issues that concern me as a chairman and as a president of the national organization about the Administration and what these attitudes are going to do to Forrest Gerard if he is confirmed. One of the issues, besides the ones that I have mentioned, is the disbelief of the administration's proposed settlement of the land claims in Maine by the Passamaquoddy and the Penobscot tribes there. Again, there was not even any consultation with the principal tribes involved before the development of that proposed settlement.

I think the fact that the tribes were left out kind of leaves a feeling that the Assistant Secretary, no matter who he might be, might be left out of those major issues that are pending before Indian country.

I, too, would ask for a speedy confirmation for Forrest Gerard. The National Congress of American Indians is having their convention, which we hope will be the largest in our history. We would like to provide for him an opportunity to articulate his intentions as the new Assistant Secretary for Indian Affairs.

I don't want to get into President De La Cruz's talk, but I think that with the actions that are going on around the country—I am going to get into his talk. You should hide your papers, Joe.

With the actions that are going on around the country, I think it is very critical that we get somebody to head the Bureau of Indian Affairs as soon as possible. It is in a state of limbo, as it has been for a number of months.

Chairman ABOUTREZK. Mel, we are moving much more rapidly than the administration did.

Mr. TONASKET. I have to agree with that, too. I was in limbo for a number of months myself.

We are anxious to get to work. We feel that today is a good day for us. We have the National Tribal Chairman's Association sitting side by side with the National Congress of American Indians. We have the regional Indian organizations being more prepared and involved now. I think that with all of this feeling of working together in the Indian organizations we will provide a great deal of support for Forrest and for the renewing of the Bureau of Indian Affairs, and hopefully renewing a bunch of individuals who work in the Bureau of Indian Affairs.

With that, I would like to invite any questions that you might have.

Chairman ABOUTREZK. How do you feel about a separate Indian agency outside of the Department of Interior to avoid the conflicts that are inherent in the present system?

Mr. TONASKET. I am for it.

Chairman ABOUREZK. How do you think a majority of the tribes in this country feel about that concept?

Mr. TONASKET. Very briefly, I had an opportunity, as you well know, to be on one of the task forces of the American Indian Policy Review Commission. I took the responsibility of trust responsibilities. I traveled quite extensively to many, many Indian reservations. I particularly went to those that were in isolated areas such as Nevada and southern California, where the Bureau has provided hardly any services at all.

I participated in hearings throughout the country, also. One of the questions that was aimed at the tribes was the question that you asked me. I have to tell you that there was not one tribe that we asked that was not in favor of that. I am sure there are other tribes that differ in their opinion, but of the ones that I met personally, 100 percent were for a new agency.

Chairman ABOUREZK. How many tribes have you talked to personally in that regard? How many tribal leaders?

Mr. TONASKET. There were about six in southern California, four in the deserts in Nevada—we held a hearing in Yakima, which most of the Northwest tribes attended. There are over 20 tribes in the State of Washington.

Chairman ABOUREZK. What about the action of the National Congress of American Indians itself? Has there been any expression of support for moving the Bureau of Indian Affairs out of Interior and making it a separate agency?

Mr. TONASKET. Yes; I believe we have a resolution to that effect. That is why I brought our executive director. He can answer that more specifically.

Chairman ABOUREZK. Chuck, can you state what that is?

Mr. TRIMBLE. Mr. Chairman, in my experience there has been significant support for it. In digging up information for the American Indian Policy Review Commission we found in our files that as far back as 1968 the Chairman of the Mescalero Apache Tribe, who was then president of the National Congress of American Indians, Wendell Chino, called for that in his inaugural speech as the president of NCAI.

Last year in the 33d annual convention for the National Congress of American Indians, which was held in Salt Lake City last October, a resolution was passed which specifically addressed the recommendations of the American Indian Policy Review Commission for an independent agency.

At that time general support was expressed for it. However, the tribes cautioned further study. They recommended that NCAI itself look into the feasibility of a number of options, one being that the Department of Indian Affairs be formed, taking the responsibility of all the other agencies in the Government serving Indians—those inside and outside the Department of Interior—and placing them in one agency within the Interior Department.

Another option was that it be formed under the White House, at a level perhaps such as the TVA or the Veterans Administration.

Chairman ABOUREZK. Totally separate?

Mr. TRIMBLE. Yes; right. Then there were other options. I think that what this points out is that there is always caution on the part of

tribal leaders for fear that separation from the Interior Department will cause the Department to become a full-time adversary, whereas now they are at least part-time advocates.

Chairman ABOUREZK. They are also part-time adversaries, right?

Mr. TRIMBLE. That was the same caution that I think caused the demise of the Trust Council Authority, so I think while those things stand there is significant support for an independent agency.

Mr. TONASKET. Mr. Chairman, if I might add something, the recommendation of the NCAI was for an independent agency with its own Secretary or whatever the title might be. What most people ignore is that we proposed that it be investigated and that it be done in an orderly manner. It is not something that you proclaim be done and then tomorrow you don't have a Bureau of Indian Affairs, you have a whole new Department of Indian Affairs.

That is what the tribes were also saying out there. They want to be involved in the development of that.

Chairman ABOUREZK. My indications are that an overwhelming majority of the tribes support the separate agency concept. The question arises, then, how should it be done, rather than whether it should be done. How and when?

Mr. TONASKET. I am not smart enough to say how it should be done, or it probably would have been in our task force report. However, I just think that the bulk of the responsibility has to be with the administration to lead the way on it, but I think that they have to have involvement with the tribes and with the national organizations to make sure that they do not make a repeat or a copy of what already exists.

I think that if the tribes were told, "You have to do it," it might take away some of the strength of any change that might be recommended to the Congress or to the President. I think that it has to be a joint effort.

Mr. OLD PERSON. Mr. Abourezk, I just want to clarify myself. I guess I sort of misunderstood your question concerning a separate agency. I was trying to answer it in a different way. I was trying to say that I did not want to relieve the Interior Department of any responsibility that they have for the Indian people.

However, as far as the separate Indian agency, conducting and setting up new ways for the Indian people, the Indian people that I have talked to feel the same way I do. There should be power given to that individual to make those decisions and be able to be considered as an agency for the Indian people so that there will be no conflict that will come in from the many areas that I referred to.

We are told one thing, and then somebody higher up says that we cannot do that. "Something else needs to be done," or "This is the best way out."

I think this has to be stopped. They talk about self-determination for Indian people. I think we are beginning. We have been determining for ourselves, but our determinations have never been carried out.

I just wanted to clarify this and back it up by the Indian tribes that Mel referred to.

Chairman ABOUREZK. I can understand your concern about the responsibilities on the part of the Interior, even though there is a

separate agency. Theoretically, it will still be one of the trustees, since all of the administration is a trustee for the Indian people.

I understand what Chuck Trimble said as well. They may not act that way all the time. Nevertheless, they would be legally forced to act that way if necessary.

I think the tribes have indicated their preference for a separate agency, which would advocate in favor of the Indian people. As I understand it, Mr. Old Person, that is a concept that you would support as well. Your answer is; yes?

Mr. OLD PERSON. Yes.

Chairman ABOUREZK. Mr. Tonasket and Mr. Trimble, before we pass on to the next witness I just want to say that the leadership that both of you have shown in the past as leaders of the National Congress and of the Indian community has been exceptional. It has been very good. It has had a great deal to do with the fact that the Indian people in this country are finally getting their act together after decades of division and internal squabbling.

I, personally, as one interested in Indian affairs, very much appreciate what you have done and the positions that you have taken. I think you are to be complimented by everybody who is interested in Indian affairs.

I want to thank you very much.

Mr. TONASKET. Thank you.

Mr. TRIMBLE. Thank you very much.

Chairman ABOUREZK. Joe De La Cruz?

STATEMENT OF JOE DE LA CRUZ, PRESIDENT, NATIONAL TRIBAL CHAIRMAN'S ASSOCIATION

Mr. DE LA CRUZ. Senator Abourezk, again it is a pleasure to come before this committee. In all of the spokes of the wheels of this whole democracy, this is one of the few areas that you can find that we have a strong spokesperson who is in favor of the Indian people.

I want to talk about some of the things that happen throughout this Nation today because of the self-determination era and because Indians are getting their acts together through self-determination.

The National Council of State Governments, the National Attorney General's Association, and the National Governors Conference in 1974 and this year did some studies that were parallel to our own American Indian Policy Review Commission. The conclusions of their reports are almost parallel and identical as far as Indian rights go.

Because of the Indian rights and because of the Indian ownership of natural resources in this country and the waterways, we are probably approaching one of the most critical areas of Indian affairs. It is so critical that where we can find friends or have influences on any friends that we may have within the Government it is going to be very important to our survival, as one-half of 1 percent of the 200 million people in the United States.

I have known Mr. Forrest Gerard for almost 12 years. I have worked with him at the tribal level when he was with the Indian Health Service and throughout his career here in Washington. My own personal feeling is that today we need the type of man that he is.

He is articulate and has a cool head in some of the developments that are happening in Indian affairs.

In reviewing newspaper clippings that are compiled by several agencies regarding Indian self-determination and Indian rights, I find that looking through these newspaper clippings the general press takes the position that if it is not openly hostile, it falls quite short of supporting the Indian position. More importantly, the press has not systematically examined the Indian claims in the same way that it has covered the opposition.

We suspect that this may be partly due to racism and partly due to the media's predisposition to support and protect the economic and political status quo when it is threatened by radical change.

Chairman ABOUREZK. Joe, you must be aware that that is one of the major accusations against the media.

Mr. DE LA CRUZ. I recognize that.

Chairman ABOUREZK. They are there to protect the establishment, and any threat to the status quo establishment will immediately come under attack by a major part of the media.

Mr. DE LA CRUZ. As a small minority population in the Pacific Northwest, because of the gulf fishing case and because of the water rights situations, I think probably some of the most crucial Indian rights things are developing in the Pacific Northwest right now. We are feeling the brunt of that.

Because of that status quo we are seeing it within our State legislature, within our town governments, and with our congressional delegation.

That is one of the reasons that I am glad to be sitting at this table with these gentleman, and that Indian country is together, and that we are here to hold confirmations.

Our position is that of part of the spokes of the wheel within the democracy of this country. We have an Indian person who has had the experience of the establishment back here, and who knows the Indian people, to help us put together our machinery to be able to get the support we need not only within this administration, but out on the local levels. We need to develop a position with the Carter administration which we do not have.

Reviewing the resolutions of the National Tribal Chairman's Association for the past five annual conventions, the Indian position has priorities on the legislation parallel to the things that have been developed by the American Indian Policy Review Commission.

As far as the question that you have been asking the other gentlemen, there is a resolution supporting the view that there be a separate Indian division within some part of the administration of the U.S. Government.

I think that the Indian position is that they want a separate division. As for myself, in reviewing the past appropriations of Interior, I would raise a question about the way Interior administers trust territories and appropriates the money. I think they have treated them much better than they have the American Indians where there is a treaty responsibility and a definite trust relationship with the U.S. Government.

Without knowing what the policy of this administration is, and if I remember right it is a Democratic administration, the National Democratic Platform did adopt the six provisions presented to them by the National Tribal Chairman's Association. One of those was to stand behind the Indian treaty rights and the Federal court decisions that are the law of the land.

I am very nervous, just as Mr. Mel Tonasket is. We have not as yet been able to sit down with people in the administration and find out what their Indian policy is going to be.

Although I realize that the Indian tribes' resolutions are in support of a separate division of Indian affairs, and that that is what the tribe wants, I think that we should be working on a plan of action as to how we should get there.

We should definitely know where the administration is going to be, and also other branches of Government that we deal with.

Another area that we pushed strongly for was a separate division in the Justice Department. With all of the court cases that are creating a backlog across the country, I am wondering if we put a separate division in the Justice Department—they might be only too happy to give it to us, and then shove it off over in a corner somewhere.

There have been too many years when Indian people were maneuvered and manipulated. As we sit here together, I think that we are going to be together because we recognize how critical the situation is that has developed as a result of the energy resources. Again, energy was one of the top priorities of the Democratic platform and of this administration.

The Senate Indian Affairs Committee's records show that 50 percent of the remaining energy resources, one-third of the uranium, and a good percentage of other natural resources belong to the American Indian people. It makes one very nervous that there has not been a relationship where we have been able to sit down with people and discuss how these resources should be developed and plan for the development of those resources.

I cannot add anything more to my peers as far as what Indian people are against in the United States today. I definitely stand by and support them in hopes that we will have an expedient confirmation of Mr. Gerard.

If there are some questions that are missed by this committee, if he is confirmed maybe the National Congress of American Indians will put him on the spot in Dallas next week.

Thank you.

Chairman ABOUREZK. Joe, thank you very much for your testimony. I might add that I think the new direction that your organization—NTCA—is taking, is very hopeful for the Indian people. I always thought in the past that the National Tribal Chairman's Association was nothing but a group of in-house tamed Indians sponsored by the administration to stir up trouble whenever they might need trouble stirred up.

I think that that has come to an end with your particular administration. I have great hopes for your personal abilities for leadership. Your leadership is outstanding. We look forward, as I am sure the Indian community does, to great things.

Mr. DE LA CRUZ. Thank you.

Senator, Bruce Townsend, chairman of the Delaware Tribe, will be giving a technical statement that was developed from the resolutions and position papers of the National Tribal Chairman's Association throughout the last 4 or 5 years.

Bruce?

STATEMENT OF BRUCE M. TOWNSEND, CHAIRMAN, LEGISLATIVE COMMITTEE, NATIONAL TRIBAL CHAIRMAN'S ASSOCIATION

Mr. TOWNSEND. Thank you, President De La Cruz.

Mr. Chairman and members of the committee, I am Bruce Miller Townsend, chairman of the Delaware Tribe of Indians which, incidentally, is the first tribe to have entered into a treaty with the United States of America—the Treaty of 1778.

I am also a member of the board of directors of the National Tribal Chairman's Association. I have come before you today to voice the strong support of NTCA for confirmation of Forrest Gerard as Assistant Secretary of the Interior.

It is certainly my feeling, and I know the feeling of many of my fellow chairmen, and in fact the vast majority of them, that these are extraordinarily exciting and challenging times for the American Indian and the Alaska Native people. It is an era literally bursting with the potential for real progress, but the age also forewarns of the possibility of dramatic shifts in the course of recent history.

The times demand greatness of our tribal leaders and, certainly, we of the National Tribal Chairman's Association believe it is our right to expect no less from the highest Federal officer specifically charged with our trust relationship.

The times impose upon both the Assistant Secretary and the tribal leadership the burden of performing our responsibilities with the highest skill, the highest vision, and the greatest of mutual respect. A little old-fashioned friendship and good will added to the equation would not hurt, I might add.

My purpose this morning is to talk more about the nature of the position for which Mr. Gerard has been nominated than to laud him personally, although parenthetically I can say that I have known Mr. Gerard over a number of years in which the Delaware tribe has fought great and crucial legal battles and legislative battles. He has been most receptive to our plea and our cause in his former position with the Senate staff. I was very much heartened to hear him come before the board of directors of the National Tribal Chairman's Association less than a month ago and answer forcefully, candidly, with all fairness, and completely certain questions that the board had of him.

Perhaps, in essence, it was a little bit of a warmup to the confirmation hearings which he is now going through. We came away feeling that our preconceived ideas about Forrest were certainly well placed and were not in error at all. We can certainly support his nomination wholeheartedly.

Let me say that the relationship between the United States and the Indian tribes is a political one—government to government. The In-

dian tribes existed prior to the existence of this great Nation of ours. It derives from a long history of European recognition of our sovereignty and our inherent title to our national territory, of relations to war and peace, and of treatymaking.

The U.S. Constitution, as we all know, in the commerce clause, discusses the relationship of the American Indian nations.

It is manifest today in the congressional commitment to securing self-determination for Indian people. The Indian Reorganization Act and the Indian Self-Determination Act embody a policy of assuring the Indian his future as an Indian through the development of strong, viable tribal governments.

As citizens, Indians as individuals already possess the freedoms necessary to pursue personal self-determination. However, as the cornerstone of Federal Indian policy, self-determination means that Indian tribes must be regarded as permanent, distinct political communities for as long as they choose to maintain their tribal relations.

Legally, the tribes are subject to the power of the Constitution. Morally, we possess certain inalienable rights, including the right to consent and not to consent to actions affecting us according to communal will. The political nature of our relationship with the Federal Government must be made visible and understood by all who are concerned for it, and it must be defended against all encroachment whether from within or from outside the Government.

The political nature of the relationship implies the necessity of Federal respect for elected tribal leadership. The day is past when Federal intervention in the daily internal political life of the tribe is either necessary, appropriate, or welcome.

I might say, parenthetically, that prior administrations have had this difficulty. Whom do Federal officials listen to? Do they listen to the people who elect them, who have the tenacity and perhaps the commitment? I interpret it to be the latter. Or should the Federal people listen to dissident renegade groups. This is all part of the question, and it is one which must be addressed. We hope that they would listen to a majority of the elected people. Otherwise, chaos would reign.

We do not suggest in any of the foregoing, however, the diminishment of the Federal trust responsibility. The United States is the trustee for Indian tribes and their resources. This is a fact of law and policy. Both law and policy require that the trust responsibility be performed according to the most exacting Federal standards. Such standards do not remain fixed in time.

The Supreme Court discussed those in the *Seminole* case as needing the highest responsibility and trust and meeting the most exacting fiduciary standards.

Thus the trust relationship must expand in some areas, particularly in the matter of protection of Indian land and natural resources, while it may decrease with the declining need of the tribes in matters of political and administrative regulation.

In the coming months and years we view as critical the Assistant Secretary's aggressive attention to the protection of Indian natural resources—particularly water rights and mineral rights. Erosion of the land base must also stop. Indian tribes will not survive, I feel certain, unless there is substantial, self-sustaining economic development on the reservation itself.

This, in turn, is impossible without the preservation of our water and the intelligent long-range development of both renewable and nonrenewable resources. This will require tremendous expertise on the part of the Bureau of Indian Affairs and other agencies as well as a good measure of political fortitude and savvy.

Chairman ABOUREZK. Excuse me, Mr. Townsend.

Mr. TOWNSEND. Yes, sir.

Chairman ABOUREZK. It is not the practice of the committee to allow the reading of long statements. We would prefer that you would just state your ideas ad lib, more or less, because the prepared statements will be printed in full in the record.

Mr. TOWNSEND. I will continue to do as you, Mr. Chairman, have asked.

You have asked prior witnesses about questions relative to a separate agency. With respect to the question of the Federal agency, we might ask what is really meant by that?

Indians oftentimes are conservative people. They have committed themselves and seen the Government commit themselves, only to come away disappointed time and time again. Therefore, there has been an erosion occurring oftentimes between the credibility of the Federal Government under the trust relationship with the high and exacting responsibility that the Supreme Court says we must all try to follow.

This can and does appear to be something that has caused this erosion and this lack of decorum and the lack of good feeling. For this reason, any separate agency must come with a great deal of skepticism. Are we, as President De La Cruz said, going to be funneled into one agency shunted over in a corner and forgotten about without any advocate? We need an advocate who is strong at a cabinet level of the U.S. executive department.

Is that agency going to have adequate legal staff? What is going to be the amount of weight that that agency is going to have in the event he is caught in between, with the Interior Department seeking to protect natural resources and other aspects of the Government's responsibility?

It goes back to the legal premise, we would respectfully submit. Indian tribes are not just another minority group. I say this with all due respect. I am not trying to put down any other ethnic or other group at this point at all.

I refer to the high responsibility of the Federal Government as a trustee. As a trustee, I need not lecture this committee about it. I am just saying for the record that there is a relationship that the Indian people have been told about. We have been promised. We have been led to believe that it really exists, only to find ourselves in conflict with other segments of the Government. Thus, there is a classic conflict of interest between Indian advocates in the Federal Government and a perhaps lesser legal, but more powerful political, strength of a special group.

The Indian has found himself coming up second best too often.

In connection with this, Mr. Chairman, I would respectfully submit that the Indian is in favor of a separate agency provided that there is no diminution in what we enjoy now. We would hope that it would, in fact, give us greater strength, a greater voice, and more power. I do not like to use the word "power." Nobody does.

At any rate, it would give the Indian tribes the proper and balanced amount of power that they deserve under this trust responsibility in addition to the regular duties owed by the Government to citizens of these United States.

Thus, Mr. Chairman, you did not ask me that question, but I thought I would extend it prior to that.

I certainly consider it an honor to have been asked to come and discuss these matters on behalf of the National Tribal Chairman's Association. I hope that the stature of our organization rises in the perspective of you, Mr. Chairman.

We are elected. We do try to do our very best in every way that we can to discharge the trust, the confidence, and the delegated authority that the people of the body politic have placed in us.

Thank you, sir, for the chance to come before your committee.

Chairman ABOUREZK. Thank you, Mr. Townsend, for an excellent statement.

I would like to thank all of the witnesses.

I want to announce that this committee will meet at 10 a.m. tomorrow morning for the purpose of voting on the confirmation of Mr. Gerard, and also a couple of other items on the agenda.

The hearing is adjourned and the committee is in recess until 10 a.m. tomorrow morning.

[Whereupon, at 12:07 p.m., the hearing was adjourned and the committee stood in recess to meet Tuesday, September 13, 1977.]

[The following material was received for inclusion in the record:]

LAC COURTE OREILLES,
TRIBAL GOVERNING BOARD,
PRIDE OF THE OJIBWA,
Hayward, Wis., August 30, 1977.

MS. KATHERINE H. TIJERINA,
Senate Select Committee on Indian Affairs, U.S. Senate, Dirksen Senate Office Building, Washington, D.C.

MR. CHAIRMAN: I am writing in support of the appointment and confirmation of Mr. Gerard as Assistant Secretary of the Interior for Indian Affairs.
Thanking you much. I am

RICK BAKER, *President,*
Great Lakes Inter-Tribal Council, Inc.

NASHVILLE, TENN., September 9, 1977.

HON. JAMES ABOUREZK.

DEAR SENATOR ABOUREZK: At its Board meeting on September 8th the United Southeastern Tribes passed a resolution supporting the nomination of Forrest Gerard as Assistant Secretary of Indian Affairs. Mr. Gerard is eminently qualified for this position. We urge quick confirmation in order for him to address the urgent issues facing the American Indian. Mr. Gerard is not only sensitive to those needs but also understands the integrity of the trust relationship between the federally recognized tribes and the United States.

United Southeastern Tribes was established in 1969 and has as its members the following tribes: Choctaw, Cherokee, Mohawk, Coushatta, Seneca, Seminole, Miccosukee, Chitimacha.

RONALD L. COURNOYER,
Executive Director,
United Southeastern Tribes, Inc.

OLYMPIA, WASH.

Senator JAMES ABOUREZK.

Select Committee on Indian Affairs.

The Northwest Indian Fisheries Commission believes immediate Senate action of confirmation of Forrest Gerard as Assistant Secretary of Indian Affairs is absolutely essential for serving and protecting rights and interest of Indian people. Further undue delay will harm and injure these vital rights and interests. Commission representatives will be in Washington, D.C. on behalf of their tribes September 12 and 13 and request an opportunity to present our views on the importance of this nomination before your committee.

BILL FRANK, Jr.,

Chairman, Northwest Indian Fisheries Commission.

AL-IND-ESK-A,

Seattle, Wash., September 6, 1977.

Senator JAMES ABOUREZK,

Chairman, Select Committee on Indian Affairs, Dirksen Senate Office Building, Washington, D.C.

DEAR SENATOR ABOUREZK: The upcoming confirmation hearings for Forrest Gerard, chaired by yourself, will have wide range impact on Indian affairs for the years to come, a fact of which I am sure you are well aware.

Mr. Gerard's record in Indian policy and affairs is outstanding. He brings to the Department of Interior the knowledge and leadership that has been needed for so long. To detract from these assets, in my opinion, can only serve to reduce his potential effectiveness. I would therefore ask for a smooth hearing in an effort to facilitate an orderly transition.

Sincerely,

GREGORY W. FRAZIER,

*Executive Director.**SEATTLE, WASH., September 7, 1977.*

HON. JAMES ABOUREZK,

Chairman, Senate Select Committee on Indian Affairs, Washington, D.C.

Arctic Slope Regional Corporation, representing 4,000 Eskimo shareholders of Arctic Slope Region, strongly endorses appointment of Forrest Gerard as Assistant Secretary of Interior. Mister Gerard has long familiarity with and sensitivity to Indian and Eskimo affairs. He brings excellent qualifications to new post. We urge earliest possible confirmation of Mister Gerard.

EDWARD E. HOPSON,

*President, Arctic Slope Regional Corp.,**Barrow, Alaska.*

PUEBLO OF LAGUNA,

Laguna, New Mex., September 12, 1977.

Hon. JAMES ABOUREZK,

Chairman, Senate Select Committee on Indian Affairs, New Senate Building, Washington, D.C.

DEAR SENATOR ABOUREZK: Enclosed, for inclusion in the hearing record, is testimony which the Pueblo of Laguna would have given orally in support of the nomination of Forrest J. Gerard for Assistant Secretary of the Interior for Indian Affairs.

Your favorable consideration of Mr. Gerard's nomination will be most appreciated.

Sincerely yours,

ROLAND E. JOHNSON, *Governor.*

STATEMENT OF ROLAND JOHNSON BEFORE THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS IN SUPPORT OF THE NOMINATION OF FORREST J. GERARD FOR ASSISTANT SECRETARY OF THE INTERIOR FOR INDIAN AFFAIRS

My name is Roland Johnson, and I am the Governor of the Laguna Pueblo. I am here today to offer my enthusiastic support for the nomination of Forrest J. Gerard to be Assistant Secretary of the Interior for Indian Affairs.

Mr. Gerard unquestionably would bring invaluable experience and qualifications to the office of Assistant Secretary of the Interior for Indian Affairs. His professional career has encompassed extensive service in both the executive and legislative branches of the federal government. Specifically, he worked for several years in the Indian Health Service and the Office of Indian Affairs of the Department of Health, Education, and Welfare.

Furthermore, Mr. Gerard made numerous distinguished contributions in the area of Indian affairs during his tenure as Professional Staff Member for Indian Affairs of the Senate Committee on Interior and Insular Affairs. While he served in the foregoing capacity, he played a major role in developing and effecting the passage of many important pieces of Indian legislation, including the Indian Education Act of 1972, the Indian Financing Act of 1974 and the Indian Self-Determination and Education Assistance Act of 1975. Thus, Mr. Gerard not only possesses an extremely varied employment background that is directly relevant to the position for which he has been nominated in the Department of the Interior, but, more important, he also has demonstrated in each job he has held a remarkable capacity for getting things done.

In closing, let me emphasize that Forrest Gerard possesses the two attributes which, in my opinion, the Assistant Secretary of the Interior for Indian Affairs must have. First, Mr. Gerard has a broad experience in government which will enable him to know precisely how the federal bureaucratic process, which undoubtedly has tremendous impact on Indians and Indian tribes, works in the area of Indian affairs. Second, despite his lengthy government service, Mr. Gerard has succeeded as few others have in not becoming just another federal bureaucrat. To the contrary, he has demonstrated again and again a remarkable ability—even in the face of bureaucratic opposition—to remain sympathetic and responsive to the needs and interests of Indian people.

I respectfully urge that the Senate Select Committee on Indian Affairs confirm at the earliest possible date the nomination of Forrest Gerard as the Assistant Secretary of the Interior for Indian Affairs.

SENATE SELECT COMMITTEE ON INDIAN AFFAIRS,
Senate Office Building
Washington, D.C.

The Nisqually Indian community strongly supports the confirmation of Forrest Gerard as Assistant Secretary of Interior for Indian Affairs and urge immediate action by the Senate in confirming this nomination. Action on this nomination should be delayed no longer. Mr. Gerard's proven abilities will serve the interests of the Indian communities across the Nation.

GEORGEANA KAUTZ,
Chairperson, The Nisqually Indian Tribe.

THE PUEBLO OF ZUNI,
ZUNI TRIBAL COUNCIL,
Zuni, N. Mex., August 31, 1977.

MS. KATHERINE H. TIJERINA,
Senate Select Committee on Indian Affairs, Dirksen Senate Office Building,
Washington, D.C.

DEAR MS. TIJERINA: The Zuni Tribal Council endorses its full support of Mr. Forrest Gerard. His track record in Indian Affairs indicates that he has the qualifications for the post of Assistant Secretary of the Interior for Indian Affairs.

So, therefore, the Zuni Tribal Council of the Pueblo of Zuni, Zuni, New Mexico hereby urges the Chairman and the Committee to confirm Mr. Forrest Gerard to fill the position of the Assistant Secretary of the Interior for Indian Affairs.

Sincerely yours,

EDISON LASELUTE,
Governor, Pueblo of Zuni.

TESTIMONY OF DELFIN J. LOVATO, CHAIRMAN, ALL INDIAN PUEBLO COUNCIL,
BEFORE THE SELECT COMMITTEE ON INDIAN AFFAIRS

Thank you, Mr. Chairman and members of the Committee for giving me this opportunity to present testimony at the confirmation hearings of Mr. Forrest Gerard for the position of Assistant Secretary of the Interior for Indian Affairs, Department of the Interior.

My name is Delfin J. Lovato. I am Chairman of the All Indian Pueblo Council representing the nineteen (19) Pueblo reservations of New Mexico who have a combined population of approximately 40 thousand. We come here authorized by the Governors of the nineteen Pueblos to express our unequivocal and heartfelt support for the confirmation of Mr. Forrest Gerard for the position of Assistant Secretary of the Interior for Indian Affairs. There is no doubt in our minds that Mr. Gerard has the qualifications and capabilities to fulfill to the highest limits possible the responsibilities and obligations of this important position, and perhaps more important, the personal and professional commitment to carry out and fulfill the responsibilities and obligations that the Federal Government has to the Indian people of this country. After careful deliberation and review of all qualified candidates and after having considered the issues confronting our people, the legislative and other prioritized needs of the Indian community, and the ever-increasing efforts to undermine and begrudge the special Federal-Indian trust relationship we could not reach any other conclusion but to support Mr. Gerard. To go on any further as to Mr. Gerard's qualifications and experience for this important position would be repetitious.

Mr. Chairman, permit us to make one additional point which we feel is relevant to the matter before this Committee. The Pueblo people have long considered you a friend and perhaps the strongest advocate for Indian rights and justice, and as such, we request Mr. Gerard be confirmed expeditiously. You are no doubt aware of the adverse effects that the Indian community has had to bear because of the delay in getting a nomination for this position. We have personally witnessed a continued deterioration of Indian Affairs within the Department of Interior throughout this period. It is of little consequence whether the administration or the Department of Interior was responsible for the delay in the nomination of Mr. Gerard, however, we strongly feel that we have been the victims of this unnecessary delay and we urge you and the members of this Committee for an expeditious confirmation of Mr. Forrest Gerard as the Assistant Secretary for the Interior for Indian Affairs.

I will be happy to answer any questions the Committee may have.

AMERICAN ASSOCIATION OF COLLEGES
OF OSTEOPATHIC MEDICINE,
Washington, D.C., September 13, 1977.

HON. JAMES ABOUREZK,
*Chairman, Select Committee on Indian Affairs, Dirksen Senate Office Building,
Washington, D.C.*

DEAR SENATOR ABOUREZK: On behalf of the American Association of Colleges of Osteopathic Medicine, we strongly endorse Mr. Forrest Gerard to be Assistant Secretary of the Interior for Indian Affairs.

Mr. Gerard has contributed significantly and has worked untiringly to provide the proper recognition of the Native American population by his service in the Senate. This Association and the profession of which it is part are grateful to have had the privilege of working with him, especially in the development of the Indian Health Care Improvement Act.

We therefore hope he is confirmed without delay.

Sincerely,

ANTHONY J. MCNEVIN,
Executive Director.

DULUTH, MINN., September 7, 1977.

Senator JAMES ABOUREZK,
Chairman, Senate Select Committee.

Minnesota Chippewa Tribe requests that the following resolution be made part of the record in hearings on September 9, 12-13, before the Senate Select Commit-

tee, regarding the Presidential appointment of Mr. Forrest Gerard as Assistant Secretary of the Interior for Indian Affairs:

Whereas, Forrest Gerard, a member of the Blackfeet Tribe of Montana, has been nominated by President Carter for the position of Assistant Secretary of the Interior for Indian Affairs, and whereas, Forrest Gerard's appointment is the first of its kind in the history of the American Indian, and whereas, the appointment lifts Indian affairs to a new level as a secretariat, and whereas, the position will enhance Indian self-determination, as idealized by the Indian tribes, and whereas, Forrest Gerard is eminently well qualified to fill such position, bringing to it a vast and varied experience in areas of health, Indian Affairs, and in congressional liaison, and whereas, the work of the new Assistant Secretary of the Interior for Indian Affairs will be supported by the appointment of the Minnesota Chippewa Tribe's former Executive Director, George Vincent Goodwin, Jr., a member of the White Earth Band of Chippewa, as Deputy Assistant Secretary of the Interior for Indian Affairs, made by Secretary of the Interior Cecil J. Andrus, and whereas, the work of the new Assistant Secretary of the Interior for Indian Affairs will be similarly supported by the appointment of Thomas Fredericks, a member of the Mandan-Hidatsa, as Associate Solicitor for Indian Affairs in the Department of the Interior, made by Secretary of Interior Andrus, and whereas, the Minnesota Chippewa Tribe sees this triumvirate as comprising a new team, signaling a new day, in which Indian affairs increasingly will be for the Indian people, by the Indian people, and of the Indian people; now, therefore, be it resolved that the Minnesota Chippewa Tribe heartily endorses the Presidential appointment of Forrest Gerard to the position of Assistant Secretary of the Interior for Indian Affairs and the Secretarial appointment of George V. Goodwin, Jr., and Thomas Fredericks, to Deputy Assistant Secretary of the Interior for Indian Affairs and Associate Solicitor for Indian Affairs in the Department of the Interior, respectively.

We do hereby certify that the foregoing resolution was duly presented and acted upon by a vote of eight for zero against at a special meeting of the Minnesota Chippewa Tribal Executive Committee, a quorum being present, held on September 7, 1977, at Duluth Minnesota.

ARTHUR GAHBOW, *President,*

DANIEL MORRISON, Sr.,

Secretary, The Minnesota Chippewa Tribe.

The Official Resolution with signatures is being mailed today.

FREDERICK McDOUGALL,

Executive Director, The Minnesota Chippewa Tribe.

RESOLUTION 3-78

Whereas, Forrest Gerard, a member of the Blackfeet Tribe of Montana, has been nominated by President Carter for the position of Assistant Secretary of the Interior for Indian Affairs, and

Whereas, Forrest Gerard's appointment is the first of its kind in the history of the American Indian, and

Whereas, the appointment lifts Indian Affairs to a new level as a Secretariat, and

Whereas, the position will enhance Indian self-determination, as idealized by the Indian Tribes, and

Whereas, Forrest Gerard is eminently well qualified to fill such position, bringing to it a vast and varied experience in areas of health, Indian Affairs, and in Congressional liaison, and

Whereas, the work of the new Assistant Secretary of the Interior for Indian Affairs will be supported by the appointment of the Minnesota Chippewa Tribe's former Executive Director, George Vincent Goodwin, Jr., a member of the White Earth Band of Chippewa, as Deputy Assistant Secretary of the Interior for Indian Affairs, made by Secretary of the Interior Cecil J. Andrus, and

Whereas, the work of the new Assistant Secretary of the Interior for Indian Affairs will be similarly supported by the appointment of Thomas Fredericks, a member of the Mandan-Hidatsa, as Associate Solicitor for Indian Affairs in the Department of the Interior, made by Secretary of Interior Andrus, and

Whereas, the Minnesota Chippewa Tribe sees this triumvirate as comprising

a new team, signaling a new day, in which Indian Affairs will increasingly be for the Indian people, by the Indian people, and of the Indian people;

Now, therefore be it *Resolved*, That, the Minnesota Chippewa Tribe heartily endorses the presidential appointment of Forrest Gerard to the position of Assistant Secretary of Interior for Indian Affairs and the secretarial appointment of George V. Goodwin, Jr., and Thomas Fredericks, to Deputy Assistant Secretary of the Interior for Indian Affairs and Associate Solicitor for Indian Affairs in the Department of the Interior, respectively.

We do hereby certify that the foregoing resolution was duly presented and enacted upon by a vote of 8 for, 0 against at a special meeting of the Minnesota Chippewa Tribal Executive Committee, a quorum being present, held on September 7-8, 1977, at Duluth, Minnesota.

ARTHUR GAHBOW, *President*,
DANIEL MORRISON, Sr.,
Secretary, The Minnesota Chippewa Tribe.

NATIONAL INDIAN ACTIVITIES ASSOCIATION,
September 9, 1977.

Senator JAMES ABOUREZK,
U.S. Senate,
Washington, D.C.

DEAR SENATOR ABOUREZK: The National Indian Activities Association, a sports and recreation program representing some 10,000 Indian participants in local and national programs, has actively gone on record as supporting Mr. Forrest Gerard's appointment as Assistant Secretary for Indian Affairs.

NIAA urges you and your fellow committee members to act as expeditiously as possible toward Mr. Gerard's confirmation so that the Indian business of the Department of the Interior may proceed and advance.

Sincerely,

ELIZABETH MORRIS,
Acting Executive Director.

THE COMMONWEALTH OF MASSACHUSETTS,
EXECUTIVE DEPARTMENT,
Boston, September 2, 1977.

HON. JAMES ABOUREZK,
U.S. Senate, Dirksen Senate Office Building,
Washington, D.C.

DEAR SENATOR ABOUREZK: I appreciate your taking the time to talk to me about Forrest Gerard. I am happy to hear that his chances are good. This letter is pursuant to your request asking that I send you confirmation of the Commonwealth of Massachusetts, support for Mr. Gerard for the position of Assistant Secretary of the Interior for Indian Affairs.

As I told you on the phone, not only is Mr. Gerard acceptable to the Commonwealth of Massachusetts, but it appears to me that he is the most qualified candidate available for the position.

Thank you for your consideration and for your courtesy.

Sincerely,

THOMAS P. O'NEILL III,
Lieutenant Governor.

THE PAPAGO TRIBE OF ARIZONA,
Sells, Ariz., September 7, 1977.

HON. JAMES ABOUREZK,
Chairman, Senate Select Committee on Indian Affairs, Dirksen Senate Office Building, Washington, D.C.

DEAR SENATOR ABOUREZK: In the past the leaders of this Tribe have had numerous opportunities to work with Mr. Forrest Gerard on Papago problems, and have found him to be exceptionally perceptive, innovative, and efficient. It is our opinion that he would be an outstanding Secretary of the Bureau of Indian Affairs and would provide the type of leadership needed to accomplish the ulti-

mate purpose of the Bureau in its relationship with the Indian people of this country.

The Bureau of Indian Affairs has been without a permanent head for too long. Its direction and progress has been seriously impeded due to the lack of proper leadership. The Papago Tribe has felt the adverse effects of the lack of direction of the Bureau. The Papago Tribe urgently requests that this matter be remedied immediately by the Committee's approval of Mr. Forrest Gerard's appointment to the position of Assistant Secretary of the Bureau of Indian Affairs.

Very truly yours,

CECIL WILLIAMS, *Chairman,*
MAX NORRIS, *Vice Chairman.*

ALEUTIAN/PRIIBILOF ISLANDS ASSOCIATION, INC.,
Anchorage, Alaska, August 18, 1977.

Hon. Senator JAMES ABOUREZK,
Chairman, Senate Committee on Indian Affairs, 5331 Dirksen Senate Office Building, Washington, D.C.

DEAR SENATOR ABOUREZK: It is my understanding that the confirmation hearings regarding the appointment of Mr. Forrest Gerard as Assistant Secretary of Interior for Indian Affairs will be held in Washington, D.C. on September 12, 1977.

On behalf of the Aleutian/Pribilof Island Association, Inc. which represents the Aleuts in the Aleutian Chain area, I wish to go on record as strongly endorsing the confirmation of Mr. Gerard to this important post.

We believe that Mr. Gerard's education and background would allow him to make Indian Self Determination a reality. Therefore, we request that his confirmation be approved as soon as possible.

Sincerely,

PAT PLETNIKOFF,
Executive Director.

HARLEM, MONT., *September 7, 1977.*

Senator JAMES ABOUREZK.

The Fort Belknap Indian Community Council representing the Assiniboine Tribe and the Grosventre Tribe wholeheartedly and without prejudice endorse the nomination of Mr. Forrest Gerard as Assistant Secretary of the Interior.

The Fort Belknap Indian Community respectfully requests that the Senate Interior Committee quit dragging their feet on Mr. Gerard's confirmation.

Indian country has been without effective and viable leadership for too long already. Further delays on Mr. Gerard's confirmation because of political infighting within the Senate Interior Committee only harms those of us you purport to help. Mr. Gerard has repeatedly demonstrated his effectiveness and concern as those of us in elected leadership positions strive to regain control of our own destiny.

Because of implied reluctance to listen to the voice of the Indian people on the Senate Interior Committee's part in essence dragging their feet on this vital confirmation the Fort Belknap Indian Community must insist, no demand, that Mr. Forrest Gerard be confirmed without delay.

CHARLES JACK PLUMAGE,
Chairman, Fort Belknap Community Council.

RED LAKE BAND OF CHIPPEWA INDIANS, *Red Lake, Minn.*

RESOLUTION NO. 127-77

Whereas, President Carter on July 12, 1977, nominated Forrest J. Gerard, Blackfeet, for the post of Assistant Secretary of the Interior on Indian Affairs, and;

Whereas, Forrest Gerard is a member in good standing with his tribe and has maintained close connections with the Indians on his reservation, and;

Whereas, Forrest Gerard has demonstrated that he has a wealth of knowledge on many diversified components of Indian Affairs, and ;

Whereas, the Red Lake Tribal Council concurs with Forrest Gerard's philosophy on Indian Affairs which is the trust and strengthening of Indian Affairs to assure the protection of Indian land and other natural resources and his commitment to make the Bureau a more effective instrument in carrying out its trust responsibility.

Now, therefore, be it *Resolved*, That the Red Lake Tribal Council for the Red Lake Band of Chippewa Indians hereby strongly endorses and supports the nomination of Forrest Gerard and respectfully requests that the Select Committee on Indian Affairs quickly confirms his nomination.

Be it further *Resolved*, That copies of this resolution be sent to: President Carter, Vice President Mondale, and Senator James Abourezk, the Minnesota Congressional Delegation ; members of the Select Committee, the National Tribal Chairmen's Association ; the National Congress of American Indians ; the Minnesota Chippewa Tribe.

For : 10

Against : 0

We do hereby certify that the foregoing resolution was duly presented and enacted upon at the regular meeting of the Tribal Council held on Thursday, August 11, 1977, at the Red Lake Tribal Council Hall, Red Lake, Minnesota.

ROGER A. JOURDAIN, *Chairman*,
ROYCE GRAVES, Sr., *Secretary*.

ROUGH ROCK SCHOOL BOARD, INC.,
Chinle, Ariz., August 29, 1977.

HON. JAMES ABOUREZK,
Chairman, Indian Subcommittee,
Senate Office Building, Washington, D.C.

DEAR JAMES: I am writing this letter on behalf of the Rough Rock Demonstration School to strongly recommend Forest Gerard as Assistant Secretary for Indian Affairs. We feel Mr. Gerard brings to the position field experience, experience with Washington, as well as experience with other federal agencies.

It is extremely essential that a person such as Forrest be appointed who can view all Indian affairs with objectivity as well as compassion. The former Commissioner discredited the office of Commissioner by his gross political maneuverings and his total bias in favor of Alaska. The Navajos suffered greatly under that individual's term in office.

We need to have someone with Forrest Gerard's sensitivity and ability. We at Rough Rock have known him for longer than the life of the school.

We would appreciate it if you would vigorously support this outstanding individual.

Sincerely yours,

DR. ROBERT A. ROESSEL,
Assistant to the Director.

THE NAVAJO NATION,
Window Rock, Navajo Nation (Ariz.), September 6, 1977.

HON. JAMES ABOUREZK,
U.S. Senate, Dirksen Senate Office Building, Washington, D.C.

DEAR SENATOR ABOUREZK: Members of the Navajo Area Indian Health Board have asked me to write in their behalf for the purpose of endorsing President Carter's nomination of Forrest J. Gerard for the post of Assistant Secretary of the Interior for Indian Affairs.

We do not know Mr. Gerard personally, but his reputation for looking after the interests of the Indian people has spread throughout Navajo land. The Navajo people have also heard of his ability to work effectively with the Congress of the United States.

Mr. Gerard is a Blackfeet Indian with an excellent background and many years of experience in working with the Bureau of Indian Affairs, the Indians Health Service, and the Congress. As you may know, he spent five and one-half years as a professional staff member for Indian affairs with the Senate Commit-

tee on Interior and Insular Affairs. Because of his experience, we feel that he not only has a vast knowledge of the problems facing the Indian people, but he also has a better understanding of the functions of the Congress. Consequently, we feel that he would lend his support to the many legislative issues involving or affecting the Indian people.

As Chairman of the Navajo Area Indian Health Board, I speak for the entire membership when I respectfully ask you to consider Mr. Gerard for the position of Assistant Secretary of the Interior for Indian Affairs.

Sincerely yours,

Dr. ANNIE WAUNKA,
(For Elwood Saganey,
Chairman,
Navajo Area Indian Health Board).

TESTIMONY OF THE SMALL TRIBES ORGANIZATION OF WESTERN WASHINGTON BEFORE THE UNITED STATES SENATE SELECT COMMITTEE ON INDIAN AFFAIRS CONSIDERING THE NOMINATION OF FORREST GERARD AS ASSISTANT SECRETARY FOR INDIAN AFFAIRS IN THE DEPARTMENT OF INTERIOR

The nomination of an Assistant Secretary for Indian Affairs in many ways might be considered an unusual act for the United States Government. The reason for this is that at no time in the history of the United States has there been a person who occupied such a status in the Executive Branch. The nomination of Assistant Secretary is unusual in yet another way in that the new Democratic administration, having taken office on January 20, 1977, announced its intentions to permit tribal governments to play a direct role in the selection of a nominee for the post of Assistant Secretary for Indian Affairs. Again, it must be noted that never in the history of the United States, in its relationship with Indian tribes has such a commitment been made to tribal governments, allowing them to play a role in a major policy determination.

Those of us who live on the West Coast of this continent took seriously the intent of the new administration when tribal governments were advised that their opinions and views on the nomination would play the major role in determining the nominee. Indeed, before Secretary Cecil Andrus transmitted a letter to tribal governments requesting that they communicate their nominee, many tribes throughout the United States had already announced their views. This was done on the understanding gained in discussions with President Carter's transition team that tribal views would be an important part of Indian affairs policy determination for the administration. So, in December, 1976, many tribal governments transmitted letters, resolutions and/or telegrams to the new President advising him of their views regarding the potential nominee for the Assistant Secretary.

The National Congress of American Indians meeting in January, 1977 in Washington, D.C. expressed wide support for the selection of President Mel Tonasket to serve as the Assistant Secretary. Mr. Chairman, the National Congress of American Indians represents and has participation of some 123 tribal governments. That, Mr. Chairman, is over one third of all the tribal governments in the lower North America.

After receiving a letter from Secretary Andrus requesting tribal views on the nominee, tribal governments were advised that they had until April 11, 1977 to present their views, at which point it was understood nominations would be closed. On April 11, 1977, the Department of Interior reported that the overwhelming choice of tribal governments was Mel Tonasket. It only became apparent later that the Secretary with other members of the Carter administration and perhaps members of the Senate and House, had before April 11 made a determination that Mr. Forrest Gerard would be the administration's nominee. Indeed, it was still the belief of many that Mr. Andrus was acting in good faith with his original proposition to tribes when he sent Messrs. Tonasket and Gerard's names to the President for a White House selection. Today, this committee, a new committee in the Senate, is faced with considering the President's nominee for the Assistant Secretary post and that nominee is not a primary candidate supported by tribal governments throughout the United States.

After it was announced that the White House had selected Mr. Gerard as its nominee for the Assistant Secretary post, many tribal leaders and their governments came to the conclusion that the Carter administration had lied about its intent to respond to tribal government views regarding the nomination. Mr. Chairman, many tribal governments and their leaders believe that they had been duped by the Carter administration, but saw no alternative to accepting the White House determination. As the Chairman might know, there has been no public expression of opposition to Forrest Gerard, there has only been public support expressed for Mel Tonasket. To support one candidate over other candidates, is not to say you oppose anyone. It is therefore important to understand why tribal governments do not react with resounding opposition to Forrest Gerard as nominee, since many of them had chosen to express a positive intent rather than negative actions.

Since Forrest Gerard is the nominee, tribal governments must look to addressing issues rather than personalities. The issues are these, Mr. Chairman: Does the Carter administration intend to deal with Indians on the complex issues that Indians are faced with, as is the rest of the nation, with a policy of benign neglect? Does the Carter administration intend to issue rhetoric and platitudes instead of taking positive and deliberate action to institute a new Federal Indian Policy? The experience of the past eight months suggest that the Carter administration may be interested only in rhetoric and platitudes. Indians are interested in action.

We have recently become aware that the Carter administration, principally the Secretary of Interior and his Under-Secretary, Mr. James Joseph, are wary of the many proposals for change in the way Indian Affairs is administered by the Executive Branch. We have been advised that the Secretary of Interior is not interested in forcefully dealing with the required changes in B.I.A. "until he finds out what the Indians want".

In the 94th and 95th Congress the American Indian Policy Review Commission conducted a 2½ year study of U.S. Federal Indian Policy. During that 2½ year period, the views of tribal governments, Indian organizations and private Indian citizens were sought regarding the broad panorama of issues affecting the lives of Indians and non-Indian citizens. The conclusion of that report produced an incredible picture of confusion and disarray among United States policy makers concerned with Indian affairs during the last 200 years. The report laid before the Congress a succinct analysis of the problems in Federal Indian policy and produced for the first time in the U.S. history, a careful outline for a new Federal Indian policy. A corner stone to that future Federal Indian policy, as noted by the report, is the full recognition of tribal sovereignty and complete comprehension of the breadth of the U.S. trust responsibility. As fundamental concepts, the principles of sovereignty and trust responsibility serve as the basis for a proposal to separate the Bureau of Indian Affairs from the Department of Interior and the ultimate formation of an independent Indian Agency. Mr. Chairman, we submit that the Indian views are clear and should be well known. Indian nations and tribes throughout the United States have since 1961 formally expressed their view that the United States Government owes Indian tribes considerable obligations and one of those obligations is the creation of an unfettered agency of government with which tribal governments may deal.

In 1961, representatives of Indian nations and tribes gathered in Chicago to deliver their views regarding national Indian purpose. The more than 400 representatives noted that the then present U.S. administration of Indian Affairs was inadequate and contrary to the U.S. trust obligation to elevate the political status of tribes and preserve, protect and guarantee the rights and property of Indian tribes and the people they represent. These Indian representatives saw, as many non-Indians for years earlier had noted, that the location of the Bureau of Indian Affairs within the Department of Interior was conflictual, that U.S. interests were in conflict with the interests of tribes and that the location of this conflict was in the Department of Interior.

In 1974 the National Congress of American Indians unanimously adopted the "American Indian Declaration of Sovereignty." Contained in that declaration is this very important thought: that the United States should "establish a single, independent, Federal, governmental instrumentality with concurrence of the majority of the recognized aboriginal American Indian tribes and nations, in order to implement and guarantee the treaty responsibilities and trust obligations of the United States of America, under Article 6 of the Constitution of said nation."

The National Congress of American Indians Executive Council in January, 1977 unanimously adopted a transition proposal for initiating immediate changes in the Bureau of Indian Affairs. The intent of this proposal, which was transmitted to this committee and to the Carter administration, reflects the consensus of tribal governments and clearly indicates that tribal governments have attempted to thoughtfully outline the major changes that should be made in the Bureau of Indian Affairs during the first year of the Carter administration.

On January 12, 1977, a Chicago newspaper published an article wherein the President-elect announced his views regarding Indian affairs and the Bureau of Indian Affairs. According to the article, President Carter was prepared at that point to publicly announce his intention to carry out a systematic B.I.A. transition plan that is in fact the same plan adopted by the National Congress of American Indians. It is the case, therefore, Mr. Chairman, that the Congress has preliminarily announced its intentions regarding Indian affairs through the American Indian Policy Review Commission. The National Congress of American Indians, individual tribal governments and the National Tribal Chairman's Association have announced their views regarding the needed changes in the Bureau of Indian Affairs and Federal Indian policy, and at least as of January, 1977, President Carter has announced his determination to enter into a whole new phase of Federal Indian policy as reflected by his remarks reported in the Chicago newspaper. It appears that everyone agrees that changes should take place. It appears that everyone understands the need for dramatic and forceful development of new approaches to Indian affairs, but when it comes to settling on how to accomplish what everyone wants the tendency for the Department of the Interior is to step back and say "what do the Indians want?"

Mr. Chairman, it is not a question any longer of what Indians want or for that matter what anyone wants; the question that must be asked now is how will we do what everyone wants.

There seems to be a question in the Secretary of Interior's mind over the advisability of developing a plan for the institution of an independent Indian agency. It must be pointed out now and perhaps over and over again, the position of Indian country is clear, the position of Congress and the Executive Branch is clear. We must move forward.

The nomination of Forrest Gerard for the Assistant Secretary for Indian Affairs post is an important point at which understandings and agreements should be made. There is no point in confirming a nominee to the Assistant Secretary post if the nominee does not intend to begin the process of changing Federal Indian policy. It makes little sense to confirm a nominee if that nominee does not believe that Indians have already established their views on the major issues involved in Indian affairs.

Mr. Gerard has demonstrated his ability to function in Washington, D.C., as a result of his twelve years working with the Indian Health Service, the Bureau of Indian Affairs and the Interior and Insular Affairs Committee in the Senate. There remains a question of how he will work with the 368 tribal governments. As would be the case with any nominee being considered by this committee for confirmation, approval by the committee must be predicated on conditions. We would submit to this committee that the conditions for confirmation must extend to the following:

1. That the new Assistant Secretary shall immediately commence the implementation of the transition proposal regarding the Bureau of Indian Affairs as adopted by the National Congress of American Indians and as announced by the President of the United States.

2. The Assistant Secretary for Indian Affairs should immediately begin planning the development and institutionalization of an independent agency for Indian affairs.

3. The Assistant Secretary for Indian Affairs should call a national meeting with all tribal Chairmen to outline a proposed process for the implementation of the transition plan and the establishment of an independent Indian agency.

4. The Assistant Secretary, the Secretary of Interior and the President of the United States must commit themselves to carrying out the transition plan with all deliberate speed by answering questions put by this committee, publicly indicating their willingness to carry out the plan.

5. This committee must have the assurance of the Secretary of Interior that the Assistant Secretary for Indian Affairs will appear before this committee at two month intervals to report his progress toward meeting the goals set out by the transition plan and goals he has outlined for the development of an independent Indian agency.

6. The Assistant Secretary must be prepared to present to members of this committee a written report describing actions he has taken to facilitate tribal government participation in the transition process, providing an assessment of the effectiveness of procedures involving tribal government participation.

Mr. Chairman, there is no excuse for inaction by the Congress or the Executive Branch insofar as Indian affairs are concerned. Tribal governments have in the course of the past 40 years presented a consistent series of recommendations to the United States. There should no longer be any question of what the Indians want and need and require.

The American Indian Policy Review Commission placed its collective finger on the central issue facing the United States in its relations with Indian nations and tribes when it asked "is the American nation—now 200 years old and 100 full years beyond the error of the Little Big Horn—yet mature enough and secure enough to tolerate, even to encourage, within the larger culture, societies of Indian people who wish to maintain their unique tribal governments, cultures and religions?" The foundations for change have been built by the record of testimony before the Congress presented by Indians, by resolutions adopted by tribes and transmitted to the national government and by the testimony of tribal leadership and other Indians before the American Indian Policy Review Commission. The record reveals that Indians clearly understand the risks and consequences if a national government exercises a policy of benign neglect. Indians have recorded their views in a way that calls for dramatic change. The United States must risk to meet the challenge. It can begin to meet the challenge by committing itself and the nominee to fulfill the desperate needs of the Indian people through positive, deliberate and consistent actions. Thank you, Mr. Chairman.

OSAGE TRIBAL COUNCIL,
Pawhuska, Okla., September 12, 1977.

STATEMENT FOR INCLUSION IN THE RECORD OF THE CONFIRMATION HEARINGS CONCERNING THE NOMINATION OF MR. FORREST J. GERARD TO BE ASSISTANT SECRETARY OF THE INTERIOR FOR INDIAN AFFAIRS

My name is Sylvester J. Tinker, duly elected Principal Chief of the Osage Tribe of Indians of Oklahoma. This statement is being presented for and in behalf of the Osage Tribal Council, the duly elected governing body of the Osage Tribe of Indians of Oklahoma, which endorses and unanimously supports President Carter's nomination of Mr. Forrest J. Gerard for the post of Assistant Secretary of the Interior for Indian Affairs.

It is the consensus of the Osage Tribal Council that Mr. Gerard possesses the integrity, acumen, and knowledge of the problems of Indian people necessary to perform the duties and responsibilities of this position. His experience as a member of the professional staff for the Senate Subcommittee on Interior Affairs and his involvement in the development of various Acts of Congress relating to Indian Affairs, including the Indian Self-Determination and Education Assistance Act, the Indian Financing Act, and the Indian Health Care Improvement Act qualifies him for this important position.

It is respectfully requested that the nomination of Mr. Forrest J. Gerard be favorably recommended to the Senate so that the Bureau of Indian Affairs may have a director since this position has been vacant for almost a year resulting in deferred actions on many pending Indian matters of urgent importance.

Respectfully submitted,

SYLVESTER J. TINKER,
Principal Chief.

STATEMENT OF YAKIMA INDIAN NATION BEFORE UNITED STATES SENATE SELECT COMMITTEE ON INDIAN AFFAIRS ON THE CONFIRMATION OF ASSISTANT SECRETARY FOR INDIAN AFFAIRS

My name is William F. Yallup, Vice Chairman of the Yakima Tribal Council of the Yakima Indian Nation. The Yakima Indian Nation is pleased to present this statement in support of the nomination of Forrest J. Gerard to be the first

Assistant Secretary of the Interior for Indian Affairs. We wish to congratulate President Carter for this selection from among the fine candidates proposed for this office. While we know that the selection of one candidate over the many fine ones proposed was not easy, we totally support the final selection of Forrest J. Gerard.

We sincerely hope that this nomination is speedily approved by this Select Committee and the Senate so that the nominee can assume this position and give direction to the Bureau of Indian Affairs that has been without necessary direction for some ten months.

The Yakima Nation has known Mr. Gerard for some time and we think we know him well. We first came into contact with him when he worked as Tribal Relations Officer for the Division of Indian Health. We have been in contact with him ever since that time and have worked with him and have observed his service as a congressional fellow for Representative Uhlman and George McGovern, his service in the Bureau of Indian Affairs Legislative office and his service as Director of Office of Indian Progress in the Department of Health, Education, and Welfare.

All of the service was in the best interests of the Indian people as was his service as staff member for the Senate Committee on Interior and Insular Affairs. His service as a staffer for the Interior Committee, we believe, has shown to many of you on this committee that Forrest J. Gerard is a man of high integrity who is fair and honest in his dealings and dedicated to advancing the Indian position. This committee is well aware of the job that Mr. Gerard did in assisting the Senate in passing many important pieces of Indian legislation among which the Indian Self Determination Act, the Indian Finance Act, and the Indian Health Act are landmarks important enough to note here.

Mr. Gerard uniquely possesses among the personal assets that we have noted, an exceptional professional experience in Indian affairs. The importance of his qualities to fulfill this job cannot be underestimated. In elevating the Commissioner of Indian Affairs to an Assistant Secretary of Indian Affairs, Secretary Andrus is serving notice that the Department of the Interior is ready to fully assume its duties of trust responsibility to the Indian people. The job is a big one. This committee is well aware of the climate that enemies of Indian interests wish to create in Washington to retard the progress that the Indian people are making. We believe that Forrest Gerard as Assistant Secretary can be very helpful in not only assisting them in this program, but can assist this nation in keeping its promises to the Indian people.

We want to thank this committee for providing this Yakima Nation with the opportunity to say a few words on behalf of our honored and respected friend, Forrest J. Gerard.

EXECUTIVE SESSION

TUESDAY, SEPTEMBER 13, 1977

The Select Committee on Indian Affairs met in open session on September 13, 1977 at 10:15 a.m. in room 6202 of the Dirksen Senate Office Building to consider the nomination of Forrest J. Gerard, to be Assistant Secretary of the Interior.

Those present were Senator Abourezk, Chairman; Senator Hatfield, and Senator Melcher. Represented by proxy were: Senator Metzenbaum and Senator Bartlett.

Without objection, the nomination of Forrest J. Gerard, to be Assistant Secretary of the Interior, was unanimously ordered favorably reported to the Senate.

