MEMORANDUM CONCERNING JURISDICTION OVER INDIANS AND INDIAN RESERVATIONS IN THE STATE OF WASHINGTON

The following memorandum has been prepared primarily for the benefit of state legislators and other interested parties concerned with proposed legislation under which the State of Washington would assume jurisdiction over all Indians in this state. It is not intended as a complete discussion of all problems concerning jurisdiction of Indians or of all arguments for and against the proposed legislation.

I.

History of the law

Prior to 1957, the State of Washington had no jurisdiction over Indians and Indian reservations within the state. At the time Washington became a state the Federal Government reserved to itself and to the Indians jurisdiction over Indians and Indian reservations. This reservation of jurisdiction by the Federal Government was expressly recognized by the State of Washington in its constitution.

However, notwithstanding this lack of jurisdiction, over the years most Indians came under state jurisdiction, not by reason of any change in the law, but through an apparent willingness to submit to it. For many, many years, Indians have been tried in Superior Courts for felonies, their juveniles have been brought within the protection of the juvenile authorities, Indians have sued and been sued in state courts, Indian estates have been probated, Indian divorces granted and Indians have been consistently prosecuted in justice and municipal courts on the reservations. In 1956, however, the Supreme Court of this state decided the Joe Andy case and held that the state had no jurisdiction over Mr. Andy for the crime of burglary committed on the Yakima Indian Reservation. Since that time, numerous decisions have followed relating to juveniles, civil jurisdiction and municipal court jurisdiction, which has made clear what should have been obvious all along, that the state has no jurisdiction over Indians for any purpose within the boundaries of their reservations, including incorporated cities and towns.

In 1953, Congress enacted Public Law 280 permitting the states to assume jurisdiction over Indians. Under this law, no qualifications were placed upon the states' rights to assume such jurisdiction. In 1957, the legislature took action pursuant to this law, and provided that jurisdiction would be assumed over individual Indian tribes at their request. It was further provided that as to

the Yakimas, Spokanes and Colvilles, any petition by the governing body of these three tribes would have to be confirmed by a two-thirds majority of the voting members of the tribe. Up to the present time, it is understood that nine of the twenty-one tribes in this state have come under state jurisdiction at their own request. Of the remaining twelve tribes, only the Yakimas, Colvilles and Spokanes are of sufficient numbers to create any significant problem.

II.

Problems of divided jurisdiction

The following discussion highlights some, but certainly not all of the problems that our present system of divided jurisdiction presents.

A. Criminal jurisdiction.

Although the Federal court has jurisdiction to prosecute for felonies which constitute one of the ten major crimes, and the Tribal Courts have codes covering most other offenses, there are still many problems which result from our present situtation of divided jurisdiction. First of all as to felonies, enforcement generally falls upon personnel of the Federal Bureau of Investigation, who are too few in number to adequately handle such problems as is the United States Attorney's office. Furthermore, because of differences in the Federal statutes, there are many felonies defined under our state laws which cannot be made applicable to the Indians. These same problems exist with reference to offenses over which the Tribal Courts have jurisdiction. For instance, the Yakima Tribal code does not adopt the state Financial Responsibility Law, although it has adopted most of the state vehicle code.

B. Civil jurisdiction.

The State of Washington is presently powerless to extend the services of its courts to any of its citizens dealing with Indians for enforcement of private rights, because of lack of jurisdiction over Indians. The results of this in many cases has been the creation of bad feelings between Indians and non-Indians. In business the non-Indians in many cases feel compelled to decline to carry on normal business transactions for fear that they will be unable to enforce contract rights through court proceedings. In many cases, this means, for example, the denial of credit to Indians soley because of their status as Indians, which leaves them with the feeling that they are being discriminated against.

The Indians themselves suffer because of a lack of access to state courts for the purposes of probating property which is non-trust property. Presently there is no way to probate non-trust property of an Indian because the state lacks jurisdiction, and because the Tribal codes make no provision for probate procedures.

In the field of domestic relations we find case after case of potential difficulty by reason of the fact of one party to the marriage being an Indian and the other being a non-Indian. The state court has no jurisdiction over the Indian and the tribal court has no jurisdiction over the non-Indian. An effective order in a divorce action relating to the divorce itself, custody of the children, support, alimony, disposition of property, is out of the question in such a case.

C. Juvenile problems.

This is probably the area of greatest concern because at the present time, absolutely nothing effective is being done in the way of juvenile care and enforcement. Juvenile offenders can presently be handled only in Federal District Court under the Federal Juvenile Act, and there is an understandable lack of interest on the part of the Federal Bureau of Investigation and the District Attorney in tackling this problem concerning which they have no training or experience. Since there are no juvenile probation officers in the area of most reservations, juvenile probation is unheard of and the nearest federal juvenile institution is several hundred miles away. The only proven method of care for juvenile offenders is the probationary program and personal contact carried on by trained juvenile officers. As a consequence of all of this, there are juvenile offenders who are yet at large and not under supervision, who, for example, by their own admission have stolen as many as 21 automobiles.

The other benefits of our state juvenile code such as care and protection of dependent children are completely denied to Indian children.

D. Municipal court jurisdiction.

Next to juvenile problems, this area is a matter of perhaps the greatest concern. The lack of jurisdiction in municipal courts does not mean that the cities and towns on the reservation have no need for law enforcement. Their problem is equal to or greater than that of any other community. However, the cities and towns are now being deprived of needed revenue from fines and bail forfeitures with which to help defray the costs of law enforcement. Estimates of the loss to the cities and towns on the Yakima Indian Reservation range from 50 percent to 75 percent of their total income from bail forfeitures and fines. Approximately 80 percent of all arrests made in the three cities on the Yakima Indian Reservation are Indians.

The municipalities are further faced with a very serious problem because of the lack of any way to enforce any regulatory ordinances. Many of the traffic control ordinances of the cities are unenforcible as are the health, fire and building codes.

III.

Objections to state jurisdiction

The Tribal Council of the Yakima Indian Tribe has made the following observations with reference to the proposed legislation:

A. Under the present law there is no lag in law enforcement.

As pointed out, there are many areas where there is a lag in law enforcement, both as to criminal and civil law. As to criminal jurisdiction there are many areas where there are no effective laws applicable to the Indians. Many municipal ordinances will be unenforcible against the Indians. There is a general lack of sufficient personnel to enforce the criminal laws, and the lack of criminal jurisdiction in the municipalities results in a severe financial loss to these municipalities. As for the area of civil law, also as pointed out above, there are many situtations in which both Indians and non-Indians are being effectively deprived of their right to enforce their private rights.

B. The cost of law enforcement will be a burden to the County.

The answer to this contention is very simple, there will be absolutely no change in the cost to the county. As pointed out above, the county law enforcement officers had for many years been enforcing laws on the Indian reservations. It has been only the last four years they have not been exercising jurisdiction. The loss of jurisdiction did not then relieve the county of the necessity of providing coverage by its law enforcement officers on the reservations, and it will not be increased by returning to the situation which had existed prior to the last four years. In addition, the County Commissioners of the principal counties affected by the present jurisdictional problem have indicated that even if there were an increased cost, they would be even more than willing to assume it in order to re-establish good law enforcement.

C. There is a language barrier. Again it should be pointed out that this language barrier apparently caused no particular concern to the Indians over a period of many years, and it seems quite remarkable that it should now have become a real problem.

D. The passage of the proposed legislation would constitute a breach of trust by the State of Washington with the Indians and would constitute a taking of sovereignty. The State of Washington has never had a treaty with any Indians in this state. No promises have ever been made by the State to them, and it is, therefore, impossible to break any promises. The Government of the United States has made its treaty with the Indians and has now said that the State may assume jurisdiction. Apparently the United States Government does not feel that this

constitutes a breach of faith. As for taking away the Indian sovereignty, the State of Washington is powerless to do this. The United States Government is the only government that could accomplish this. There is nothing contained in Public Law 280, which authorizes the state to assume jurisdiction, which deprives the Tribal Courts of their jurisdiction. Neither is there anything contained in the language of any proposed legislation which purports to accomplish this. If Indian tribes wish to continue to operate their courts there would seem to be no objection to a system of concurrent jurisdiction or to adding language to the proposed legislation which would expressly recognize the concurrent jurisdiction of Tribal Courts over Indians.

IV.

Conclusion

The basic purpose of the proposed legislation is to avoid taking a step backward in the relations of the State to its Indian residents by formally legalizing what had been the practice for many years prior to 1956. Recognition must be given to the citizens of this state who reside on or near Indian reservations and to the fact that they are entitled to the full protection of the laws of this state, and that such protection cannot be adequately afforded them where some of the citizens are not subject to the jurisdiction of the state. The immediacy can be illustrated by the fact, for eample, that the Indians on the Yakima Indian Reservation, constitute less than ten per cent of the total population. Our Indian citizens must be made amenable to the laws of this state and by the same token they are entitled to the protection of those laws. This can be brought about only by the passage of the proposed legislation.