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August 2, 1974

Dear Mr. Gallegos:

Brad Patterson of my staff spoke to you the other day about Floyd McKissick's request on behalf of Soul City. Arthur Reid is familiar with it over in OEO.

I wanted you to know that in the White House and in HUD we all think highly of the Soul City enterprise, and HUD of course, among quite a few other agencies, has made major and concrete commitments to back up Floyd's new undertaking.

If OEO can see its way clear to handle this request for \$85,000 for the next six months, if it has merit when judged by itself, and if Soul City's needs for the short term are as clear as Floyd describes them, I would endorse your doing whatever is possible.

In HUD, Al Trevino of the New Communities Administration would be one to touch base with for an independent evaluation.

Sincerely,

Leonard Garment  
Assistant to the President

Mr. Bert Gallegos  
Acting Director  
Office of Economic Opportunity  
1200 19th Street  
Washington, D. C.



bcc: Al Trevino (with a copy of incoming correspondence)

THE WHITE HOUSE

WASHINGTON

August 5, 1974

Dear Ron,

I appreciate having your letter of July 22 as a follow-up to our luncheon.

A quick analysis of some of the attachments shows that the principal decline in UL contracts came from the Department of Labor and, of course, that was attributable to the new Comprehensive Employment and Training Act which moved federally funded manpower programs from the posture of national contracts nationally awarded to one of local contracts awarded at local decision.

My office has been in touch with each of the project officers mentioned on your list of "National Urban League Resource Projects" and what we have been told is related in the attached paper. (If you have a different view of the facts, I certainly want to hear it.)

Some of these projects, and what is happening to them, are a normal part of the process of granting or contracting, and of reviewing and improving performance under those grants or contracts. Some of the others, however, indicate some possible management looseness in the past, and allegedly an overly large slice for overhead in New York. I know you and Vernon will push your associates to correct any deficiencies, and I urge you to keep in close touch with the federal project officers in order to identify weak spots as the contract goes along, rather than wait until refunding time draws close.

I think we both realize that local League affiliates will have to aggressively identify manpower and other opportunities which are opening up on their respective local scenes, since the whole approach of national contracting is being changed. If local contracts with UL affiliates are added to these national projects, what do the totals show?



Again, I am not vouching for the views in the attachment, but passing on what was reported to Brad. I would urge you, Ron, to let me know where your own view of the picture is different.

In any event, there are some other matters that I would like to discuss with you, so please give me a call.

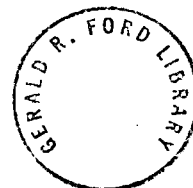
Sincerely,



Leonard Garment  
Assistant to the President

Attachment

Mr. Ronald H. Brown  
Director, Washington Bureau  
National Urban League, Inc.  
425 Thirteenth Street, N. W.  
Suite 515  
Washington, D. C. 20004





## STATUS OF COMMENTS ON URBAN LEAGUE PROJECTS

- |                                       |  |
|---------------------------------------|--|
| 1. Manpower Development and Training  | No special problems; likely to be refunded.  |
| 2. Labor Education Advancement        | No special problems; likely to be refunded.  |
| 3. Business Development               | Expected to be funded through the respective OMBE regional offices with contracts dated to begin August 1, 1974. In addition to the "regionalization" thrust, a national contract is not favored because of OMBE concern about the NUL headquarters capabilities, i.e. re managing this project, communicating with affiliates, and preparing budget and performance data on what the affiliates were doing.   |
| 4. New Careers for Women              | Reportedly another organization was funded.  |
| 5. Student Intern                     | <p>The NUL proposal was rejected because it was not submitted by the required deadline (November 1) and because it did not include an eligible "developing institution" as part of its package. NUL should resubmit its application in a timely manner this year.</p> <p>There was a second grant in this area: \$70,000 to the UL for cooperating with Alabama A and M to place faculty members in federal agencies for training. NUL wanted to double the grant amount to \$140,000 but this was disproportionate in terms of Alabama A and M's <u>own</u> priorities.</p> |
| 6. Drug Abuse Training and Employment | The UL has submitted this proposal four times, according to the HEW officer, and each time HEW staff have worked with the UL to try to improve it and make it more acceptable. This year's proposal has been rejected by both the Review Group and the National Advisory Council on the grounds  |

6. Drug Abuse Training and  
Employment (continued)

that (a) a precise staffing pattern was not specified, (b) no resumes of prospective staff were submitted, (c) the training design was inadequate, (d) the criteria for admission of trainees were not spelled out, (e) the evaluation design was vague, methods for obtaining evaluations not adduced, (f) the costs were high, the budget lacking in justification, the overhead heavy. HEW has actually given the UL a model of just how this proposal should be re-done, and HEW is open and willing to consider a new proposal when submitted in accordance with the model and the letters sent to the UL.

7. Road Builders Service

Money in this program goes to the States. Sometimes the States pass some of it back to the Federal government, requesting the Federal government to negotiate contracts on the States' behalf, but it is done only at the State request. There is no "national contract" other than the specific ones which individual States request. In this case, the work has been completed in 3 States; work remains to be done in one more. States can make their own individual, direct arrangements with the Urban League or with local League affiliates.

8. Enrichment of Community  
Health/HEW/PHS

This was a three year, one-shot contract and UL was so informed; the current extensions are to close it out. Experience has been spotty; overhead to the National UL office was quite large: 22.8% the first year, 44.7% the 2nd and 3rd years; even some of the remaining funds were spent on staff in New York. Commitments were occasionally changed so that work was done in cities meeting NUL's priorities rather than the government's. Now cities and counties have their own out-reach programs, and it is considered sounder to have them hire their own, local out-reach workers--

8. Enrichment of Community  
Health/HEW/PHS (continued)

and fire them for poor performance-- rather than operate through remote New York/Washington arrangements. Not likely to be refunded.

9. Pre-School Dental

This was a national contract with services delivered at Columbia, S. C. and Westchester County, N.Y. But as of June 30, 1974, the special project authority for these contracts expired. Now the program is on a formula basis and only States are the grantor. NUL performed satisfactorily and has been advised which State officials to apply to.

10. Work Evaluation on HEW/SRS

The purpose of this project is to develop a model of how local UL affiliates can help local and States agencies, providing services to the handicapped link those services to the needs of the black community. UL has done well in this effort and a model is being developed from experience in several localities. When the project is finished in October and the model complete, that will end the R&D phase; the next step would be for individual UL affiliates to take the model and, in effect, sell their services to local and State agencies at local levels. Funding is federal funding but via State and local agencies. HEW is pleased to see the growing numbers of black clients who, in fact, are being reached in the service programs affected.

11. Advocacy in Support of  
Minority Aged

Begun as a two-year R&D project (in Columbia, S. C., Chicago and California) now in an extension in its third year for purpose of close-out, wrap-up of research, and evaluation. After some initial on-site organizational problems, UL did a satisfactory job, so much so that in Columbia, S. C. the local UL affiliate has already received a contract of this same kind from the State Agency on Aging. And

11. Advocacy in Support of  
Minority Aged (continued)

this will be the picture nationally from now on: local operational programs will have to convince local and State and area agencies on Aging that what this R&D project showed is worth continuing.

12. Law Enforcement  
Minority Manpower

A two-year grant. Audit from first year turned up \$100,000 in questionable or unallowable expenditures, but no criminal charges. National UL instructed to straighten out its procedures so that (a) the existing unallowables are refunded, and (b) the problem won't occur again. NUL has sent in some assurances and these are now being reviewed carefully by senior LEAA people so that they are satisfied they meet the requirements. Refunding will be held up until this review is complete. No programmatic problems; decision soon.

13. Early Childhood Program  
for Exceptional Children

This program has gone on for two years and has been refunded for a third year at the reduced level indicated on the UL's list (\$158,000 instead of \$332,000). This is a demonstration program to show how money can be leveraged out of other community resources so that the program itself can be self-supporting; requires excellent relationships with school boards, State Departments of Education, other local funding sources. UL changed its Project Directors often; allegedly did not get enough results for the money expended. Overhead to UL headquarters was high--\$200,000 out of one year's \$332,000 grant. Therefore, HEW has insisted that all of the refunded program (\$158,000) go directly to children in the service area and if the UL can show good management, concentrated focus and results, there could be more money next year.



14. Family Planning/HEW/PHS

This was a project to provide concentrated technical assistance to three areas, Albany, NY; Albany, Georgia; and Miami, Fla. The first contract was very loosely written, according to the HEW officer currently in charge, and while the UL performed legally under that contract, the new contract is written very tightly and specified performance and results are mandated. UL is going to be pressed hard to produce what the new contract calls for. Previously the UL's project managers were rotated; overhead to the national UL office was 44.7%.



**August 28, 1974**

**MEMORANDUM FOR:**

**KENT FRIZZELL, Solicitor, Department  
of the Interior**

**FROM:**

**BRADLEY H. PATTERSON, Jr.**

**SUBJECT:**

**Executive Order for Presidential  
chartering of the Indian Fisheries  
Commission**

**I am enclosing a copy of Hank Adams' correspondence in regard to a proposed draft for an Executive Order for Presidential chartering of the Indian Fisheries Commission for your consideration and comment.**

**Is Presidential action appropriate for this situation or should it be an Act of Congress or if neither, what would be an appropriate way to give the right kind of recognition to the new Commission?**

**cc: Wallace Johnson, Justice  
George Dysart, Interior**

**Central Files**



August 30, 1974

MEMORANDUM FOR:

ROBERT SCHONING, Director of  
National Marine Fisheries,  
Department of Commerce

SUBJECT:

Consultation with Indian fishing  
community by the International  
Pacific Salmon Commission

Following up our telephone conversation of yesterday and our meeting of last July 11, I am writing to express the active interest we have in making sure that a full and open consultative process is opened up promptly between the U.S. Members of the International Pacific Salmon Fisheries Commission and the Indian fisheries community, especially in the geographic area covered by Judge Boldt's decision in United States v Washington.

A formal way to do this would be to add an Indian member to the Commission's Advisory Committee. But if that takes time, or requires international agreement, I believe that an equally effective and certainly more expeditious step would be for the three U.S. Commissioners to take the initiative and call a meeting of themselves with the principal members of the newly formed Indian Fisheries Commission.

I would not presume to say what the agenda would be or specifically what kind of proposed 1974 or 1975 regulations should be discussed in such a meeting; I am sure the Commissioners have many points for discussion on their minds, certainly the Indians do.

But of several things I am certain: the United States Government does have a clear responsibility to consult with responsible Indian leadership on any matter affecting them; the Indian tribes in the U.S. v Washington area have acted responsibly by establishing the Fisheries Commission, so there is a group of experienced and representative Indian leaders to consult with; the United States



Government, further, has a responsibility affirmatively to protect Indian trust rights, in this case as Judge Boldt has set them forth. That duty rests on the shoulders of all officers with a federal responsibility, including the three U.S. Commissioners.

Personally I believe that the responsibilities we have under the Salmon Fisheries Convention and those we have under our trust role to Indian people are compatible. It will be up to the skill and good will of the Commissioners, their staff, and the Indian representatives to work out together proposals which can then be persuasively presented to the Canadian Commissioners. The only way to do this is to begin the Commissioners-Indian dialogue promptly and to continue it regularly, with appropriate local and Washington staff attending to be of help. I would hope that the first such meeting could be held this month; perhaps you personally should attend to help make sure it gets off on the right foot.

Through the Advisory Committee and in other ways, the Commissioners have long had a dialogue going with non-Indian fisheries representatives. In the spirit of the Boldt decision, it is time to begin the Indian consultative process as well.

Please let me know when this process starts.

Bradley H. Patterson, Jr.

cc: Stewart Blow, Department of State  
Kent Frizzell, Department of the Interior

bcc: George Dysart  
Harry Sachse

Central Files



September 4, 1974

Dear Mr. Eve:

Thank you for sending the President a copy of your letter of August 29 to Governor Wilson. We have been following news reports of the events in Western New York, although are under the impression that the matters are under either tribal or State, but not Federal jurisdiction.

I shall send your letter to the Commissioner of Indian Affairs, Morris Thompson, so that he will know of your concern.

Sincerely yours,

Bradley H. Patterson, Jr.

Mr. Arthur O. Eve  
143rd District  
Erie County  
1301 Fillmore Avenue  
Buffalo, New York 14211

bcc: Morris Thompson (BIA)

Central Files



September 6, 1974

Dear Mac:

I understand you and your colleagues at the Ford Foundation are now considering the application from the Native American Rights Fund for increased support. In that connection I thought it might be useful for you to have an indication of the value we attach to the NARF's efforts.

The NARF has helped make a watershed difference in recent American Indian history. Its careful work laid the ground for the landmark U.S. v Washington case in which the long, sorry story of abrogation of Indian fishing rights in the Pacific Northwest was reversed and rewritten. The Fund also was a central mover in the legislative drafting which accomplished the Menominee Restoration.

These are only two examples of the value of an institution such as the NARF, and are a testimony to the high professional competence of its staff and its legal work.

The quiet, solid, programmatic performance of independent institutions such as NARF will be even more important in the future. I am confident that continued support of this organization by the Ford Foundation would be welcomed by all who have a genuine interest in and concern for Indian affairs.

Sincerely,

Leonard Garment  
Assistant to the President

Mr. McGeorge Bundy  
President  
The Ford Foundation  
New York, New York

bcc: John Echohawk  
Reid Chambers

*Central Files*



September 6, 1974

Dear Mr. Begay:

The President has asked me to thank you for your letter of August 29 and for your good wishes. He certainly intends to be as forthcoming and progressive as was the previous Administration in working for interests of the Indian people, not as welfare, as you say, but as obligation and opportunity.

We shall continue to depend on the skills and resources of the United Southwestern Tribes, Inc, and their constituent members to help us identify the priority issues which need attention.

I am particularly interested in your having raised the matter of the Bicentennial. May I make this suggestion: that you and your USET colleagues get in touch directly and promptly with Mr. Wayne Chattin, a Blackfoot Indian who has recently joined the staff of the American Revolution Bicentennial Administration and is located in Denver with the specific responsibility of working with Indian groups and leaders on plans for the Bicentennial. Mr. Chattin's telephone number is (303) 234-4291 and I very much hope you can get in contact soon.

Cordially,

Bradley H. Patterson, Jr.

Mr. Eugene A. Begay  
Executive Director  
United Southeastern Tribes, Inc.  
1970 Main St. Wood Building  
Sarasota, Florida 33577

bcc: Morris Thompson (with incoming)  
Central Files



**September 6, 1974**

**Dear Mr. Poolaw:**

**The President has asked me to thank you for your letter of August 24 and for your good wishes from Oklahoma.**

**You can be sure that neither the President nor any of his associates are going to forget Indian people or their needs; we will certainly continue and improve upon the new directions set and progress made by the Nixon Administration beginning with the historic Message of July 8, 1970.**

**I would be interested in learning more about the American Indian Defense, Inc. and the programs and priorities in which it has special interest.**

**Sincerely yours,**

**Bradley H. Patterson, Jr.**

**Mr. Kent F. Poolaw, President  
American Indian Defense  
Box 15  
Anadarko, Oklahoma 73005**

**bcc: Central Files**



September 6, 1974

MEMORANDUM FOR:

STEVE KURZMAN

Assistant Secretary, Legislation  
Health, Education and Welfare

SUBJECT:

Social Services Legislation and  
Federally Recognized Indian Tribes

Following up my telephone call of today, I would appreciate the opportunity to sit down with you, Bill Morrill, Jim Dwight, Stan Thomas and others there, plus Ted Krenske of the Bureau of Indian Affairs to explore whether, in the pending legislation concerning new social services programs, we should not include authorization for federally recognized Indian tribes to be direct sponsors or recipients, rather than have these new programs filter to tribes via States and counties. (We should probably exclude AFDC here, since those State-tribal relationships seem to be working satisfactorily.)

As you know, in the recent years, following the thrust of the July 8, 1970 Message, the Administration has moved in one case after another to espouse the idea that federally recognized Indian tribes should at least be eligible to be prime sponsors or direct recipients of important federal programs which benefit Indians. Beginning with the signing of the General Revenue-Sharing Act and more recently with the new CETA measure, community development, surplus government property and the Intergovernmental Personnel Act, we are making sure that such legislation has written into it at least the authority for the elected tribal governments of federally recognized tribes, as responsible governmental units in their own right, to step in and take over such programs directly, rather than compete or stand hat in hand at State capitals. This revised position of ours is greatly strengthened by the practically unanimous conviction on the part of Indian leaders themselves that they prefer this route, and that they consider themselves responsible governmental units not in any way subordinate to State officers, plans or planning boards. Of course all of BIA, plus HEW's own ONAP function according to this principle, and I know that the Administration on Aging is considering including this kind of new provision in its reauthorization legislation coming up.

Could we have a session sometime soon among the people mentioned to explore this further?

Bradley H. Patterson, Jr.

cc: Commissioner Thompson  
Ted Krenske



September 6, 1974

MEMORANDUM FOR:

JOHN WHITAKER

SUBJECT:

AIM Trial -- Contingency  
Planning

It is at least a possibility that the AIM trial in St. Paul may result in an acquittal. One needs little imagination to figure out the kind of statements which will come out of Banks, Means and their sympathizers if that happens.

My suggestion: that you and Morrie do some contingency thinking about the kind of statement, if any, which the federal government should make on the acquittal contingency. What will responsible Indian people expect us to say? I think that Messrs. Hushen (White House) and Havel (Justice's new Press Officer) as well as Len and me will be interested to know what you come up with.

Bradley H. Patterson

cc: Mr. Thompson  
Mr. Hushen  
Mr. Havel



**September 9, 1974**

**Dear Cap:**

One of the most effective, because professional, organizations in the country rendering service to Indian people is the Native American Rights Fund of Boulder, Colorado. I have come across numerous examples of their work and have found the caliber of their staff to be first-rate.

NARF is now, I am told, negotiating with Mr. Blue Spruce of your Office of Native American Programs, for a grant. On the merits alone, I wanted you to know I consider the Fund as an outstanding candidate for assistance from the Federal Executive Branch and hope that you and ONAP will give NARF's application sympathetic consideration.

**Sincerely,**

**Leonard Garment  
Assistant to the President**

**Honorable Casper W. Weinberger  
Secretary  
Health, Education and Welfare  
Washington, D. C.**

**Central Files**



September 10, 1974

Dear Ms. Sally Longo:

Your request for the NCIO newsletter has been received in this office.

I imagine you are not aware that the National Council on Indian Opportunity has recently been dissolved, soon to be replaced by a new, similar body. Until such time as a new body is formed, I am receiving the NCIO correspondence.

Sincerely,

Bradley H. Patterson, Jr.

Ms. Sally Longo  
Alternate High School  
589 Washington Blvd.  
Stamford, Connecticut 06902

Central Files





September 11, 1974

Dear Mr. Layton:

The President has asked me to thank you and Ms. Marshall for your letter of August 28 concerning the wish of the Steilacoom Tribe for federal recognition.

This is a matter which will take some careful review and legal analysis within the Department of the Interior, so I am forwarding your request directly to the Commissioner of Indian Affairs, the Honorable Morris Thompson. After he has studied your request I know you will hear from him directly.

Sincerely yours,

Bradley H. Patterson, Jr.

Mr. Lewis Layton, Chairman  
Steilacoom Tribe of Indians  
13013 224th Street  
Graham, Washington 98338

bcc: Morris Thompson (entire file to him for further response)  
Central Files



September 13, 1974

Dear Ms. Timson:

Your letter of September 7, 1974, requesting several types of material concerning the problems and culture of our Native Americans, has been received in this office.

I imagine you are not aware that the National Council on Indian Opportunity has recently been dissolved, soon to be replaced by a new, similar body. Until such time, I am receiving the NCIO correspondence.

I have taken the liberty of forwarding your letter directly to the Commissioner of Indian Affairs, the Honorable Morris Thompson. I am sure that the material you requested will be sent as soon as possible.

Sincerely,

Bradley H. Patterson, Jr.

Ms. Helen Timson  
Wayland Junior High School  
201 Main Street  
Wayland, Massachusetts 01778

cc: Honorable Morris Thompson



September 16, 1974

Dear Mr. Waters:

Thank you for your letter of September 12th and the attachments.

Since this seems to me to be primarily a matter of the Civil Service laws and regulations, as you mention, I have forwarded copies of the materials you sent to Mr. Kator.

Sincerely yours,

Bradley H. Patterson, Jr.

Mr. Richard Waters  
1425 Fourth Street S.W. #A 7  
Washington, D.C. 20024



September 16, 1974

Dear Mr. Kelp:

I am responding to your September 4th letter to Bob Robertson of the NCIO.

The NCIO, being a Cabinet Committee which never met as such, went out of business on June 30.

But the line responsibility for the kind of questions you and Mrs. Villa have raised is clearly the Bureau of Indian Affairs and they are still very much in business.

I am therefore forwarding your letter to the Office of BIA Commissioner Morris Thompson, himself an Indian, and I know you will get a direct answer shortly. If you don't, let me know.

Sincerely yours,

Bradley H. Patterson, Jr.

Mr. Larry Kelp  
Action Line  
Oakland Tribune  
401 Thirteenth Street  
Box 509  
Oakland, California 94604

bcc: Karen Ducheneaux

6



September 16, 1974

Dear Irv:

Mr. Richard Waters, a former employee of the Civil Rights Commission, has brought these papers to my attention.

Your name is mentioned here, and I forward them to you for whatever action may be appropriate.

Sincerely,

Bradley H. Patterson, Jr.

Mr. Irving Kator  
U.S. Civil Service Commission  
Washington, D. C.

cc: Mr. Louis Nunez, Deputy Staff Director

Central Files



September 16, 1974

MEMORANDUM FOR:

MORRIS THOMPSON  
KENT FRIZZELL ✓ OK  
WALLACE JOHNSON NO OK  
J. STANLEY POTTINGER ✓ OK

SUBJECT:

Tribal Sovereignty

The President recently received the attached correspondence.

It raises a general policy question of which we are all roughly aware but for which, as far as I can discover, none of us has done any specific work in exploring the range of possible answers. Neither Courts nor Congress have declared themselves on this matter, although the Senate's passage of S 268 (not followed in the House) did address it.

Recognizing that this issue is certain to be a matter of more and more attention in the months ahead, I think we have an obligation to examine it and get some of our own ideas together preparatory to discussions we should have with Indian leaders themselves.

I would like to invite each of you, in person or through a representative, to begin this exploration with me and propose the first of perhaps several informal meetings for Thursday, September 19 at 2:30 p.m. I intend to put together an option paper on this subject and particularly would like, on Thursday, to get your advice on the questions and sub-issues which the paper should include. Please bring with you any administrative and/or legal references which bear specifically on the issue raised in the attached papers.

Bradley H. Patterson, Jr.



Central Files

September 18, 1974

MEMORANDUM FOR:

COMMISSIONER MORRIS THOMPSON

SUBJECT:

Response To Kootenai Nation Letter  
Of September 11, 1974

Confirming our conversation of last night, you will be in touch with Mr. Briscoe and prepare and sign a response to the Kootenai Nation letter (the original incoming, which I received only yesterday, is attached). It will be a response which recites the positive things which are happening (e.g. re S. 634, the Church land exchange, etc.) which deals with as many of their questions as is possible, and which designates an appropriate BIA official as a contact point for the Kootenais to talk with. It will also be in telegraphic form to reach Bonner's Ferry before Friday night.

*Thursday night.  
12:00 midnight*

Bradley H. Patterson, Jr.

cc: Frank Zarb  
John Carlson  
Dennis Ickes



September 18, 1974

Dear Mr. Moss:

The President has asked me to thank you for your letter of August 30 concerning the uniform testing guidelines which are being developed for application by businesses and by federal and local governments.

I want to emphasize what you have stated, namely that these guidelines are only proposals and that they are still under development and consideration by the EEOCC. They will have to meet Supreme Court standards as set forth in the Griggs case but as of now they are still subject to comment and further discussion. Letters and viewpoints such as yours are most helpful in this process and I shall see to it that your letter is circulated to Deputy Attorney General Silberman and the others who are now working on this question.

Sincerely,

Leonard Garment  
Assistant to the President

Mr. Wade L. Moss  
Personnel Director  
City and County of Montgomery  
City Hall  
Montgomery, Alabama 36102

bcc: Dave Rose, DOJ, CRD (for inclusion in comment letters circulated)

Central Files





September 19, 1974

Dear Mr. White Eagle:

This is in response to your letters to President Ford of August 23, and September 6, 1974 giving the Standing Rock Sioux Tribal Council's views concerning certain statements, made by South Dakota public officials.

The Department of Justice, which shares responsibility with the Department of the Interior for law enforcement on South Dakota Indian reservations in matters affecting the welfare of Indians and non-Indians, is following activities and events on the reservations. The Department of Justice believes that under current conditions and circumstances the existing law enforcement agencies on the reservations have the capability of handling the present law enforcement problems. The Department will continue to be sensitive to the law enforcement needs on South Dakota Indian reservations and act appropriately to new situations which may threaten the lives and property of reservation residents where the situation is beyond the capability of the reservation's available law enforcement agencies.

I am enclosing for your information a copy of my letter to Governor Kneip.

Sincerely,

Bradley H. Patterson, Jr.

Mr. Melvin White Eagle  
Chairman  
Standing Rock Sioux Tribal Council  
Ft. Yates, North Dakota 58538



CF

cc: Lakes  
Zarb  
Thompson

cc Dick LaCourse

September 19, 1974

Dear Governor Kneip:

This is to keep you abreast of the Federal Government's activities in South Dakota as to the law enforcement problems relating to jurisdiction on Indian reservations, and in further response to your August 22 telegram.

On August 19, 1974, R. Dennis Ickes, Director of the Department of Justice's Office of Indian Rights arrived in South Dakota and in conjunction with the South Dakota United States Attorney's Office and the Bureau of Indian Affairs evaluated the law enforcement and jurisdictional problems arising from recent Eighth Circuit and State Supreme Court decisions. On August 21, 1974, the United States Attorney and Mr. Ickes met with representatives from South Dakota Attorney General Kermit Sande's Office concerning the problem. Together, Mr. Sande, Mr. Clayton and Mr. Ickes arranged for a meeting in Sisseton of federal, State, and tribal officials who are responsible for law enforcement on the Lake Traverse Reservation. That meeting of approximately 40 law enforcement officials resulted in a better understanding of each governmental unit's jurisdictional responsibilities and limitations.

In addition, a Memorandum of Understanding has been submitted by the United States Attorney and Mr. Ickes to state and tribal officials, as well as to your office. This Memorandum, if agreed to by the proposed signators, would clarify to law enforcement officials and prosecutors the current jurisdictional status of the Lake Traverse Reservation during this period of time when jurisdictional authority is under review by the U.S. Supreme Court. The Memorandum also seeks the pledge of mutual cooperation from the signators.

The Department of Justice and the Department of the Interior are continuing to watch the situation closely and will take appropriate action if new circumstances arise where the capability of the reservation's available law enforcement agencies is exceeded.

Sincerely,

Bradley H. Patterson, Jr.

Governor Richard F. Kneip  
State Capitol  
Pierre, South Dakota

CF

cc: Ickes  
Zarb  
Thompson

bcc: Dick LaCourse



September 19, 1974

MEMORANDUM FOR:

ATTENDEES

SUBJECT:

September 18, 1974, Meeting on  
Northwest Fisheries and Indian  
Trust Rights

1. Allocation of the Fish and Wildlife Service's Extra \$690,000

Assistant Secretary Reed notified the meeting that these funds would be split up among the Service, the Indians and the State of Washington and denied an allegation that all those funds would be allocated to the State alone. He confirmed that the USFWS Regional Director had been instructed to consult with State and Indian leaders about the allocation and invited Mr. Kinley, on behalf of the Indian Fisheries Commission, to let him know, after the coming tripartite meeting, what the IFC's recommendations would be concerning the final allocation.

2. BIA Support for Indian Fisheries Management

Mr. McDonald agreed to arrange for a meeting this week between the Indian Fisheries representatives and the appropriate BIA budget officers to discuss the allocation of the additional BIA funds which the Congress has approved, and also to review the question of FY 1976 recommendations.

3. Membership of the Advisory Committee to the International Pacific Salmon Fisheries Commission

State will check to ascertain what the procedures are for getting an additional member added to the U.S. section of the Advisory Committee, i. e. an Indian representative.



#### **4. The 1975 Fishing Season**

Mr. Kinley assured the meeting that he and his colleagues have drafted and will present, at the meeting with the U.S. Commissioners on September 28, specific proposed Commission regulations for the 1975 season. He described them as meeting what seemed to be the agreed objective: providing general flexibility for the responsible authorities on the U.S. side staying in conformity with the International Convention, to go ahead and make internal U.S. arrangements which will, in turn, enable compliance with the Boldt decision. Mr. Kinley agreed to circulate copies of his proposed regulations to the principal attendees at the meeting.

#### **5. The Anadromous Fish Act**

In answer to an inquiry, the NOAA representative indicated that the Act does permit direct grants to federally recognized Indian groups providing that the latter's proposals meet the statutory program requirements. A review will be made of this eligibility and any proposals submitted, especially for FY 1976. Mr. Patterson confirmed that it was government policy to have federally recognized tribal governments be direct recipients of domestic assistance programs, and not force such tribal governments to receive this federal assistance through State governments. This is evidenced in a number of recent or pending legislative actions.

#### **6. List of Questions**

At the conclusion of the meeting, the Indian representatives made available a list of questions which had been prepared earlier but not circulated; it was agreed that they would be circulated, attached here, for the attention of the attendees.

**Bradley H. Patterson, Jr.**

LIST OF ATTENDEES  
September 18, 1974  
Northwest Fisheries and Indian Trust  
Rights

<u>NAME</u>	<u>AGENCY</u>	<u>PHONE</u>
Brad Patterson	W. H.	456-2657
Nat Reed	Interior	343-4416
Lee Talbot	CEQ	382-1254
Guy R. McMinds	NWIFC	(206) 276-4471
Donald Dworsky	OMB	395-4993
Ted Perry	FWS	343-4767
Mike Spear	FWS	343-4767
Michele Metrisko	Interior	343-4344
F. L. Kinley	NWIFC	(206) 276-4471
Edward S. Lazowska	Justice	739-2736
Bruce C. Raskhow	Justice	739-2779
John H. Dunnigan	NOAA	(206) 442-4140
James W. Brennan	NOAA	967-3043
Hubert A. Becker	Solicitor's Office	343-9331
Sam St. Arnold	BIA	343-9468
Don McDonald	BIA	343-5704
Howard Borgstrom	OMB	395-4993
William L. Sullivan, Jr.	State	632-2335



Al Burt	State	632-1727
Marshall M. Cutsforth	BIA	258-2651
Charles Peterson	NWIFC	645-2411 (206)
Hank Adams	NWIFC	(206) 486-1793
Al Powers	OMB	395-4993

# SOVEREIGNTY OF INDIAN TRIBAL GOVERNMENTS

## Discussion Questions



I. What does the history of Indian law up to now tell us is the (present) status of Indian Tribal Government sovereignty over non-Indians living on fee patent land within the exterior boundaries of a federally-recognized Indian reservation -- and over their property, water, and other rights? -- i.e. in the absence of any new statute?

--What inherent sovereignty is there, if any? (in the Cohen sense, in quote 4)

--Is it correct to assume that the General Allotment Act was an act of Congress which in effect gave the "citizens of Georgia" the "right to enter" the affected Indian Reservations and thus met the standard of Worcester v Georgia while vastly shrinking the tribal authority described in the first part of the first sentence quoted in # 5?

--Does the last paragraph of Buster v Wright (quoted in # 8) still have force and effect for tribes dealing with non-Indian fee patent property within their Reservation Boundaries? Does Hamilton v US (quote 9)?

Or

--Would it be true to say that the General Allotment Act itself "destroyed or limited" the sovereign powers of tribal governments (to use the Buster v Wright language) and/or created "vested rights of persons now occupying Reservation lands" as referred to in the 1934 Solicitor's Opinion (quote 10)?

-- Does the legislative history of the General Allotment Act reveal any statement of Congressional intent as to limiting Indian tribal sovereignty over the lands which were (a) allotted to Indians or (b) to come under non-Indian fee patent ownership? What was it? If so, was this intent erased or changed by the IRA in 1934?

--Are or are not zoning, hunting, fishing and water rights throughout Indian reservations matters "of federal concern" as that phrase is used in Cohen (quote 11, paras 3,4,5)?

--Conversely, does State action asserting jurisdiction over zoning, water rights, etc on non-Indian fee patent land



within Indian Reservations constitute an infringement ~~22~~ "on the right of reservation Indians to make their own laws and be ruled by them" as this criterion is used in Williams v Lee (quote 12)?

In other words, what do we conclude about the authority, under present law, of tribal governments to extend their jurisdiction to non-Indians and their fee patent property? Does this authority exist or doesn't it?



II. Should we, ~~XXXX~~ in effect, abandon the effort to assert that under some mixture of past principles, theories and Court decisions, Indian tribal governments have powers over non-Indian fee lands within Reservations, and simply posit that this issue will have to be a Congressional determination? If so, what position should this Administration recommend that Congress take?

--Is it correct that any jurisdiction the Congress would give to tribal governments over fee lands would be governed by the requirements of due process (the Fifth Amendment, as invoked by the Indian Civil Rights Act)?

--If so, what would due process require if, as one would assume, the non-Indian landowners could never vote in tribal elections or hold tribal office? In other words, would the conferring of ~~any~~ such jurisdiction (under those conditions) automatically negate due process?

--If so, where does that leave us:

- i - Change the Indian Civil Rights Act to excise the application of the Fifth Amendment?



- ii - Require Indian tribes to permit non-Indian property-owners to vote and hold office? (Not likely).
- iii - Get going with an eminent domain program to ~~EMPHASIZ~~ reverse the General Allotment Act and buy out non-Indian landowners? (Expensive...)
- iv-- By statute, change the boundaries of Indian reservations to be defined as only the limits of trust lands? (Checkerboarding...)
- v. Leave things as they are except perhaps with a sense of the Congress resolution that all Tribes and affected Counties should use the Umatilla model?



# GOVERNMENTAL POWERS AND INDIAN SOVEREIGNTY

## Legal and Administrative References



### 1. Articles of Confederation

The United States, in Congress assembled, was given "the sole and exclusive right of regulating the trade and managing all the affairs with the Indians, not members of any of the States: provided, that the legislative power of any state within its own limits be not infringed or violated."

### 2. U.S. Constitution

The Congress shall have Power To ~~XXXXXX~~...regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes; " (Article I, Section 8)

No person shall...be deprived of life, liberty or property, without due process of law;" (Amendment V)

### 3. Comment from an Informed BIA Source

Let us remember that the difference between Indians and non-Indians in this question of tribal sovereignty is not at all a racial one. Suppose that the white "discoverers" of America had found white primitive peoples here (as for instance the Romans did in northern and western Europe). Just as the Romans did, the new colonizers would have opposed and suppressed the white primitive aboriginal peoples as they did in fact suppress "Indian" nations. For the purposes of this question, then, the Indian tribes are ~~XXX~~ unique not because of their race, but because of their aboriginality: they had prior political institutions, and the conquering whites imposed their own, later, ones. The question of how these two sets of institutions will relate to one another now and in the future is still a political/legal one, not a racial one.

### 4. Cohen's Statement on the Scope of Tribal Self-Government

Perhaps the most basic principle of all Indian law, supported by a host of decisions hereinafter analyzed, is the principle that those powers which are lawfully vested in an Indian tribe are not, in general, delegated powers granted by express acts of Congress, but rather inherent powers of a limited sovereignty which has never been extinguished. Each Indian tribe begins its relationship with the Federal Government as a sovereign power, recognized as such in treaty and legislation. The powers of sovereignty have been limited from time to time by special treaties and laws designed to take from the Indian tribes control of matters which, in the judgment of Congress, these tribes could no longer ~~XXXXXX~~ be safely permitted to handle. The statutes of Congress, then, must be examined to determine the limitations of tribal sovereignty rather than to determine its sources or its positive content. What is not expressly limited remains within the domain of ~~XXXXXX~~ tribal sovereignty." (Cohen, Chapter 7, page 122)

## 5. Supreme Court Doctrine, 1832

"The Cherokee nation, then, is a distinct community, occupying its own territory, with boundaries accurately described, in which the laws of Georgia can have no force, and which the citizens of Georgia have no right to enter, but with the assent of the Cherokees themselves, or in conformity with treaties, and with the acts of Congress. The whole intercourse between the United States and this nation, is, by our constitution and laws, vested in the government of the United States. The act of the state of Georgia, under which the plaintiff in error was prosecuted, is, consequently, void and the judgment a nullity." (Worcester v Georgia, 6 $\frac{1}{2}$  Pet 515 (1832).

## 6. BIA Doctrine, 1886

"The great objection that is urged by the Indians to dissolving their tribal relations, allotting their lands, and merging their political form of government into an organized Territory of the United States, arises out of their excessive attachment to Indian tradition and nationality. I have great respect for those sentiments. They are patriotic and noble impulses and principles. But is it not asking too much of the American people to permit a political paradox to exist within their midst -- nay, more, to ask and demand that the people of this country shall forever burden themselves with the responsibility and expense of maintaining and extending over these Indians its military arm, simply to gratify this sentimentality about a separate nationality? ...

"It is alleged that Congress has no power, in view of the treaties with these Indians, to do away with their present form of government and institute in its stead a Territorial government similar to those now existing in the eight organized Territories. While I greatly prefer that these people should voluntarily change their form of government, yet it is perfectly plain to my mind that the treaties never contemplated the un-American and absurd idea of a separate nationality in our midst, with power as they may choose to organize a government of their own, or not to organize any government nor allow one to be organized, for the one proposition contains the other. These Indians have no right to obstruct civilization and commerce and set up an exclusive claim to self-government, establishing a government within a government, and then expect and claim that the United States shall protect them from all harm, while insisting that it shall not be the ultimate judge as to what is best to be done for them in a political point of view. I repeat, to maintain any such view is to acknowledge a foreign sovereignty, with the right of eminent domain, upon American soil -- a theory utterly repugnant to the spirit and genius of our laws, and wholly unwarranted by the Constitution of the United States." (Annual Report of the Commissioner of Indian Affairs 1886, quoted in Price's Law and the American Indian $\frac{1}{2}$ , pages 679-80)

## 7. Congressional Power over Treaties, 1903 (The Lone-Wolf Doctrine)

"In view of the legislative power possessed by Congress over treaties with the Indians and Indian tribal property, we may not specially consider the contentions pressed upon our notice that the signing by the Indians of the agreement of October 6, 1892, was obtained by fraudulent misrepresentations and concealment, that the requisite three fourths of adult male Indians had not signed, as required by the twelfth article of the treaty of 1867, and that the treaty as signed had been amended by Congress without submitting such amendments to the action of the Indians, since all these matters, in any event, were solely within the domain of the legislative authority and its action is conclusive upon the courts...



"In effect the action of Congress now complained of was but an exercise of such power .... We must presume that Congress acted in perfect good faith in the dealings with the Indians of which complaint is made, and that the legislative branch of the government exercised its best judgment in the premises. In any event, as Congress possessed full power in the matter, the judiciary cannot question or inquire into the motives which prompted the enactment of this legislation." (Lone Wolf v Hitchcock, 187 US 553 (1903) as quoted from Price, p. 428).

#### 8. Doctrine on a Tribe's Taxing Power over Non-Indians Doing Business within Reservation Boundaries - 1906

"The authority of the Creek Nation to prescribe the terms upon which noncitizens may transact business within its borders did not have its origin in act of Congress, treaty, or agreement of the United States. It was one of the inherent and essential attributes of its original sovereignty. It was a natural right of that people, indispensable to its autonomy as a distinct tribe or nation, and it must remain an attribute of its government until by the agreement of the nation itself, or by the superior power of the republic it is taken from it. Neither the authority nor the power of the United States to license its citizens for trade in the Creek Nation, with or without the consent of that tribe, is in issue in this case, because the complainants have no such licenses. The plenary power and lawful authority of the government of the United States by license, by treaty or by act of Congress to take from the Creek Nation every vestige of its original or acquired governmental authority and power may be admitted, and for the purposes of this decision are here conceded. The fact remains, ~~NEVERTHELESS~~, nevertheless, that every original attribute of the government of the Creek Nation still exists intact which has not been ~~WHOLELY~~ destroyed or limited by act of Congress or by the contracts of the Creek tribe itself.... its authority to fix the terms upon which noncitizens might conduct business within its territorial boundaries guaranteed by the treaties of 1832, 1856 and 1866, and sustained by repeated decisions of the courts and opinions of the Attorneys General of the United States, remained undisturbed ...

"It is said that the sale of these lots and the incorporation of cities and towns upon the sites in which the lots are found authorized by act of Congress to collect taxes for municipal purposes segregated the town sites and the lots sold from the territory of the Creek Nation, and deprived it of governmental ~~POWER~~ jurisdiction over this property and over its occupants. But the jurisdiction to govern the inhabitants of a country is not conditioned or limited by the title to the land which they occupy in it, or by the existence of municipalities therein endowed with power to collect taxes for city purposes and to enact and enforce municipal ordinances. Neither the United States, nor a state, nor any other sovereignty loses the power to govern the people within its borders by the existence of towns and cities therein endowed with the usual powers of municipalities, nor by the ownership nor occupancy of the land within its territorial jurisdiction by citizens or foreigners." (Buster v Wright 82 S.W. 855, 1904, as quoted in Cohen, Page 142 .

#### 9. Doctrine on Property of Licensed Traders - 1907

"In the case of James H. Hamilton v US, it appeared that land, buildings, and personal property owned by the claimant, a licensed trader, within the Chickasaw Reservation, had been confiscated by an act of the Chickasaw legislature. The plaintiff brought suit to recover damages on the theory that such confiscation ~~CONSTITUTED~~ constituted an Indian depredation." The Court of Claims dismissed the suit, declaring:

'The claimant by applying for and accepting a license to trade with the Chickasaw Indians, and subsequently acquiring property within the limits of their reservation, subjected the same to the jurisdiction of their laws.'" (42 Ct. Claims 287 (1907), quoted in Cohen, page 145.



Cohen sums up: "It clearly appears, from the foregoing cases, that the powers of an Indian tribe are not limited to such powers as it may exercise in its capacity as a landowner. In its capacity as a sovereign, and in the exercise of local self-government, it may exercise powers similar to those exercised by any state or nation in regulating the use and disposition of private property, save insofar as it is restricted by specific statutes of Congress." (p. 145)

#### 10. Interior Solicitor's Opinion, 1934

"Over tribal lands, the tribe has the rights of a landowner as well as the rights of a local government, dominion as well as sovereignty. But over all the lands of the reservation, whether owned by the tribe, by members thereof, or by outsiders, the tribe has the sovereign power of determining the conditions upon which persons shall be permitted to enter its domain, to reside therein, and to do business, provided only such determination is consistent with applicable federal law and does not infringe any vested rights of persons now occupying reservation lands under lawful authority." ~~XXXX~~ (55 ID 14, October 25, 1934)

#### 11. Cohen's Viewpoint, 1940

"The right of self-government is not something granted to the Indians by any act of Congress. It is rather an inherent and original right of the Indian tribes, recognized by courts and legislators, a right of which the Indian tribes never have been deprived." (24 Minn. L. Rev. 145). Price goes on to comment: "Without 'inherent sovereignty', tribal governments may be limited to the powers granted by federal or state governments or rising from control of land. With inherent sovereignty, at least in certain areas, tribal actions are lawful unless their validity is limited by the United States Constitution or federal statutes." (p 676)

Cohen sums up: "...state jurisdiction in any matters affecting Indians can be upheld only if one of two conditions is met: either that Congress has expressly delegated back to the state, or recognized in the state, some power of government respecting Indians; or that a question involving Indians involves non-Indians to a degree which calls into play the jurisdiction of a state government." (page 117)

"If, where the subject matter is of federal concern, a non-Indian is subject to federal, rather than state jurisdiction, even for acts occurring outside of an Indian reservation, a fortiori he is subject to federal jurisdiction for acts of federal concern committed within an Indian reservation. Indeed, there is a very broad realm of conduct in which non-Indians on an Indian reservation are subject to federal rather than state power." (p 120).

"The mere fact that the locus of an event is on an Indian reservation does not prevent the exercise of state jurisdiction where the parties involved are not Indians and the subject matter of the transaction is not of federal concern." (Cohen, page 121)



The foregoing sections may be summarized in two propositions:

- (1) In matters involving only Indians on an Indian reservation, the state has no jurisdiction in the absence of specific legislation by Congress.
- (2) In all other cases, the state has jurisdiction unless there is involved a subject matter of special federal concern.

## 12. The "Infringement" Test - 1958 - Supreme Court

"Justice Black pointed out that since Worcester, two government's interests in ~~XX~~ Indian affairs had been acknowledged: the tribal governments' interest in matters involving Indians on the reservation, and the federal government's concern for Indian-non-Indian interactions.

"Prior to Williams, these two interests were protected from state intrusion by the general rule that states could not act in Indian affairs without explicit Congressional authorization. Williams reformulated the rule as: 'Absent governing Acts of Congress, the question has always been whether the state action infringed on the right of reservation Indians to make their own laws and be ruled by them.' Implicit in this new 'infringement test' was the assumption that there were some Indian matters in which the states could assert their power without prior Federal permission. Thus the Court no longer recognized total federal preemption of Indian affairs, and to the extent states could now act in areas formerly reserved to the tribes, Indian autonomy was restricted. But there was a contradictory implication in Williams' emphasis on tribal self-government and federal authority over it. By emphasizing Indian power and prerogatives Justice Black suggested the existence of Indian interests distinct from the federal interest in Indian regulation -- interests which potentially merited defense against subordination to conflicting interests of either the state or federal governments. Unfortunately the boundaries between the competing interests recognized in Williams were left unclarified by the Court's opinion. (Price, pp 197-98). (Williams v Lee is 358 US 217, 1958).

## 13. Interior Solicitor's Views -- 1967

"Although it cannot be said that, for purposes of jurisdiction, the Indian reservation is wholly without territorial significance (because the special and exclusive jurisdictions over certain subject matters involving Indians which have been assigned to the Federal and tribal governments are frequently coterminous with the Indian reservation or country), the touchstone of jurisdiction in cases involving Indians is ultimately neither personal status nor the situs of activity. It is, rather, the subject matters

"The shibboleth that a state categorically is without jurisdiction over Indians on Indian reservations does not survive analysis. The hoary authorities customarily cited to support it, products of an era in which Indian tribes were truly regarded and treated as foreign nations, have little relevance in the seventh decade of the 20th Century.

"There is no generic bar to a state's exercising jurisdiction over Indians on reservations. There are, however, broad classes of matters ~~XXXX~~ which have been subjected by Federal law to exclusive Federal or tribal cognizance. Internal government~~XX~~ and the relations of members inter se are examples of classes of matters over which jurisdiction

has been left by the Federal Government largely in the tribes. The test of the propriety of state actions which approaches these areas is whether it interferes with powers reserved to the tribes." (74 ID 397, 1967)

#### 14. William Schaab Viewpoint - 1968

"Chief among the outdated court-created doctrines is the theory that tribal self-government is exercised on the basis of a primordial right ~~instead~~ of congressional enactments. That doctrine of "residual sovereignty" was given wide currency by Felix Cohen as "the most basic principle of all Indian law." The doctrine has come to permeate the judicial view of Indian tribes, particularly in those cases where the courts have refused to intervene in disputes involving Indians. Although the factual basis for the doctrine was originally sound, history has changed the facts and the doctrine should now be discarded. Judicial power should be withheld from cases involving Indian tribes or individual Indians only because intervention would violate a federal statute or some clearly defined ~~XXXXX~~ congressional policy. To withhold judicial remedies only because Indian tribes at the beginning of the 19th Century were treated as separate "nations" is to refuse justice without reason.

"The courts should replace the doctrine of residual sovereignty with a new doctrine based on Congress' present policies, beginning with the Indian Reorganization Act of 1934... Those policies require that the courts and the protections of the Federal Constitution be available to non-Indians who enter into commercial relations with Indian tribes. The Indian Reorganization Act was not intended to recognize or confirm self-government by the Indian tribes on the basis of a primordial right. Congress realized that the Act was necessary because Indian government had "disintegrated" under prior federal policies and the Indians needed an expression of Congress' confidence in their ability to govern themselves. In the Act Congress sought to create a new system of tribal government. Upon acceptance of the Act, the tribe could exercise limited rights of self-government under a tribal constitution approved by the Secretary and obtain "the devices of modern business organization" by receiving from the Secretary a tribal corporate charter. Those charters became the foundation of its government; primordial rights were thereby extinguished." (8 Nat. Resources Journal 303, 1968), quoted in Price, pp 635-6).

#### 15. President Nixon's Indian Message - 1970

"This, then, must be goal of any new national policy toward the Indian people: to strengthen the Indian's sense of autonomy without threatening his sense of community. We must assure the Indian that he can ~~assume~~ control of his own life without being separated involuntarily from the ~~XXXXX~~ tribal group. And we must make it clear that Indians can become independent of federal control without being cut off from Federal concern and federal support." (July 8, 1970).

#### 16. Opinion of the Attorney General of the State of Washington - 1970

"...no county in this State would have authority to encumber by means of a zoning ordinance tribal or allotted lands on an Indian reservation even though the tribe was one which had petitioned for complete state civil and criminal jurisdiction under the 1957 act and state jurisdiction had been assumed. However, the decision in that case does not preclude a county from enacting a valid zoning ordinance which covers the entire county including fee patent lands within the exterior boundaries of an Indian reservation.

"The only question which remains to be explored is whether fee patent land within the exterior boundaries of an Indian reservation comes within the scope of the term 'Indian country' and thus, somehow, gives the tribal council or the tribe itself some sort of inherent authority which would enable it to retain the jurisdiction to zone all of the land within the reservation including fee patent lands. We have been unable to find any legal authority ~~whz~~ to support such a theory, which was to some ~~exknt~~ extent relied upon in a recent legal opinion on the subject by the prosecuting attorney of Gray's Harbor county." ...

"Accordingly it is our conclusion that a county has authority to enact a zoning ordinance to govern 'fee patent land' located within the exterior boundaries of an Indian reservation." (AGO 1970 Nol 11, June 4, 1970).

#### 17. NW Area Regional Solicitor's Views - 1971

"In response to your first question, we do not know of any authority which holds that an Indian tribe or the Secretary of the Interior has authority to regulate the use of non-trust property within the boundaries of an Indian reservation. Conversely, we are not aware of any authority holding that an Indian tribe does not have such authority. We are aware that Indian tribes have requested the Secretary of the Interior for the approval of regulations restricting the use of fee land within reservation boundaries so as to be compatible with tribal comprehensive zoning regulations. However, the Secretary has refused to approve such regulations as they affect fee land. He has suggested the tribe coordinate its zoning with that of the county or municipality to achieve comprehensive zoning for all lands within the reservation.

"We have been attempting to give this matter serious study as it is a common problem to all reservations in the Northwest. Tribes are encouraged to conduct land use studies and to control land use within the reservation, but it is of little value unless the fee land can be controlled as well." ~~XXXXXXXXXXXX~~ (Memorandum dated December 14, 1971)

#### 18. NW Area Regional Solicitor's Statement - 1972

"We are faced with several possible alternatives:

1. The counties have exclusive authority to regulate the use of all lands on a reservation, trust as well as fee.
2. The tribal councils and the Secretary of the Interior have exclusive authority to regulate the use of all lands on a reservation, fee as well as trust.
3. The tribal councils and the Secretary have exclusive jurisdiction to regulate the use of trust lands and the county has exclusive jurisdiction over fee lands, each without regard to the other.
4. The tribal councils and the Secretary should enter into cooperative agreements to provide for the regulation of all lands on a reservation based upon one plan.

Based upon legal precedent, we know that the county does not have the authority set forth in alternative No. 1. (See 25 UFR 1.4). From experience we know that alternative 3 is not workable. This leaves Nos. 2 and 4. We also have the question of what ~~hazards~~ effect, if any, the acceptance of PL 280 has upon these alternatives."

(Memorandum of March 31, 1972).



19. Monroe Price's Own Comments and Questions - 1973

"Assuming the reservation exerts governmental controls over a non-Indian (or integrated) subdivision located on trust land: will the tribe be permitted to exclude non-Indians from exercising the franchise? And what occurs when there is a non-Indian majority living on the reservation because of the construction of relatively dense subdivisions? Political change aside, can the tribe establish criteria for the distribution of its resources which discriminate between members and non-members? Will it be permitted so to zone and arrange the reservation that portions of it remain free from non-Indian intrusion and settlement?

"Although tribes have purported to continue to exert control over non-Indian residential subdivisions located on reservations, their sustained power to do so is doubtful. The Supreme Court has recognized the power of the states to enact laws concerning certain activity by non-Indians on Indian reservations, especially in criminal cases. The extent of that power is subject to some debate -- whether, for example, it exists in the absence of federal legislation to the contrary, or whether it must be specifically granted by federal legislation, whether it interferes with tribal autonomy and what constitutes such interference. But the power has been growing, and, unless checked, will continue to grow. Indeed, non-Indians, living in subdivisions created on Indian reservations will demand either modification of tribal governance, a degree of autonomy, or subjection to state and county rules and enforcement rights. Inevitably, the non-Indian subdivision will be integrated into the state into which it is located." (Price, p 606).

20. Tulalip Zoning Ordinance -- Comments by the Regional Solicitor - 1973

Ordinance Number 35 was passed June 2, 1973. "...said Tribe does hereby assert jurisdiction over the use of all lands located and lying within the boundaries of the Tulalip Indian Reservation...as created by the Treaty with the Duwamish and Allied Tribes of January 22, 1955..."

Superintendent commented in a letter to the tribal chairman of June 20, 1973: "In a discussion with the Office of the Regional Solicitor, it was brought to my attention that a Tribe's zoning authority on non-Trust lands has never been clearly established. He further felt that this authority could only be determined through court decisions over a period of time. The Solicitor ~~though~~ further felt that the Secretary did not have any power that would relate to non-Indian lands. Therefore, approval or disapproval action in respect to these lands would not have any force or effect in relation to zoning questions."

21. 3X2X88 S 268 - 1973

Section 503(b) includes the following language: tribes would be authorized to:

"enact zoning ordinances or otherwise to regulate the use of the reservation and other tribal lands of such tribe, subject to the approval of the Secretary."

The Report on the bill states: "While existing law clearly appears to permit an Indian tribe, in its quasi-sovereign capacity and in the exercise of local self-government, to exercise powers similar to those exercised by any state or municipal corporation in regulating the use and disposition of private property within its jurisdiction, the Committee thought it desirable expressly to set forth within the act tribal zoning and other regulatory powers over reservation and other tribal

lands. Any concern that an Indian tribe might seek to adopt an unreasonable land use regulation is avoided by making zoning regulations subject to approval by the Secretary of the Interior."

## 22. KXX NW Regional Solicitor's Views -- 1973

"We believe that one of the most pressing problems confronting the various Indian tribes in our area, second only to the regulation of water, is the need for land use regulations.

"All reservations are surrounded by lands which are subject to zoning or land use planning by states, counties and cities, leaving reservation lands unregulated. As a result, reservations near heavily populated areas are finding an influx of non-Indians seeking to make use of unregulated lands. Efforts of tribes to bring this situation under control are met with the age-old trust-non-trust, dual jurisdiction dilemma ...

"Unless there is clarifying legislation in this field, there can be no meaningful land use planning on reservations, leaving them with the only unrestricted lands in the United States (assuming the National Land Use Policy Bill is passed without authorizing KXX tribes to zone all lands of a reservation.) There remains only the unsatisfactory procedure of counties zoning fee lands and the tribes, with secretarial approval, zoning trust lands. Even this does not solve the problem of zoning lands partially ~~has~~ in fee and partially in trust status." (Excerpts from a memorandum of November 27, 1973).

## 23. Oliphant v Schlie, January, 1974

"The Judge restricted his decision to the geographic area or territory known as Government Lot 3, which is held in trust for the Tribe, and specifically indicated that he was not determining whether or not the Suquamish Tribe or its Tribal Court could exercise jurisdiction over non-Indians on the unrestricted fee lands within the boundaries of the Port Madison Reservation." (Excerpt from Regional Solicitor memo of January 31, 1974)

## 24. Umatilla Zoning Ordinance, February 6, 1974

This "interim" ordinance was approved on February 6, 1974, signed by the three Commissioners of Umatilla County and by the Board of Trustees of the Confederated Tribes of the Umatilla Indian Reservation.

"Remedies on Trust Lands" section provides for the Board of Trustees to levy a fine of \$100 for each violation and sue for an injunction "in a court of competent jurisdiction."

"Remedies on Deeded Lands" section specifies that violations will be subject to any of three (cited) of the Oregon Revised Statutes.

lands. Any concern that an Indian tribe might seek to adopt an unreasonable land use regulation is avoided by making zoning regulations subject to approval by the Secretary of the Interior."

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"All reservations are surrounded by lands which are subject to zoning or land use planning by states, counties and cities, leaving reservation lands unregulated. As a result, reservations near heavily populated areas are finding an influx of non-Indians seeking to make use of unregulated lands. Efforts of tribes to bring this situation under control are met with the age-old trust-non-trust, dual jurisdiction dilemma ...

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24. Umatilla Zoning Ordinance, February 6, 1974

This "interim" ordinance was approved on February 6, 1974, signed by the three Commissioners of Umatilla County and by the Board of Trustees of the Confederated Tribes of the Umatilla Indian Reservation.

"Remedies on Trust Lands" section provides for the Board of Trustees to levy a fine of \$100 for each violation and sue for an injunction "in a court of competent jurisdiction."

"Remedies on Deeded Lands" section specifies that violations will be subject to any of three (cited) of the Oregon Revised Statutes.

25. Warm Springs Zoning Ordinance, January 22, 1974: Comments by NW Regional Solicitor

"As to the authority of the Warm Springs Tribes to enforce the ordinance against fee lands, we can only repeat what we have stated before--there is no legal precedent either supporting such authority or refuting it. We believe that the Tribes may have success in enforcement of the ordinance ~~XXXXXX~~ as against members of the Warm Springs Tribe who own fee lands, especially where the enforcement involves actions against the individuals rather than against the land. If it has been determined by the property authority of the Tribes that this ordinance is necessary for the health and welfare of its members, the control of its own members as to



their conduct within the Reservation -- even if the conduct involves the use of fee land -- could well come within the scope of tribal authority." ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~

"The most difficult question concerns the enforcement as to non-Indian fee owners, especially as to resident non-Indian fee owners. The latter group could seriously charge that the enforcement of the ordinance against them, without their participation in the legislative process of its adoption, has denied those who reside within the reservation of the equal protection of its laws. 25 USC 1302(8). In other words, the resident non-Indian would be subject to the restrictions placed upon the use of his land, although ~~2zzz~~ he had been excluded by the law of the tribes from participating in the enactment thereof."

"As we have urged on numerous occasions, we believe the answer must come through congressional authorization..."

(Excerpt from a memorandum dated March 19, 1974)

26. Confederated Salish and Kootenai Tribes v Namen (August, 1974)

Excerpts from the District Judge's Order and Memorandum Opinion:

"While the Flathead Reservation continues to exist, and the land within its original exterior boundaries is still Indian country, it would defy reality to hold that the entire Reservation presently exists for 'the exclusive use and benefit' of the Tribes." (p. 28)

"Where the United States holds title in trust for Indian tribes, federal common law and not Tribal law is applicable to a determination of the extent of a federal grant, despite the lack of any Congressional language to that effect." (p. 21).

27. Suquamish Law and Order Ordinance (recent but exact date unknown)

"The Tribal Court of the Suquamish Tribe shall have jurisdiction over all persons who enter the exterior boundaries of the Port Madison Reservation for whatever purpose;..."

"The territorial jurisdiction of the Tribal Court of the Port Madison Reservation shall embrace all land and property within the exterior original boundaries of the Port Madison Reservation."

(Excerpts)

28. Petition of Port Madison non-Suquamish Residents owning Fee Lands

"The present Suquamish Indian Tribal Government in Kitsap County, Washington, is claiming jurisdiction over the property and persons of all residents living within the original exterior boundaries of the Port Madison ~~XXXXXXXXXXXX~~ Indian Reservation. Therefore the undersigned persons who own property, or reside within these boundaries, petition the President and the Congress of the United States to uphold the validity of our patent or fee simple lands; and to be relieved of the claims of the present Suquamish Tribal Government that all residents in this area are under their jurisdiction and shall be governed by them without representation. These patent lands were originally purchased from Indian allotted lands, and there is nothing in the original abstracts that reserves the right of jurisdiction over the new owners, by the Suquamish Indians.

"We respect the Indian right to govern themselves, if that be their wish, but we also ask that our rights be protected by allowing us to maintain our status as citizens of ~~XXXXXXXXXXXXXXXXXXXX~~ Kitsap County, the State of Washington and the United States of America. No Tribal Government of the Suquamish, until the present one, has insisted on sovereignty rights over the non-Suquamish Indian population.

"Wherefore, in the interests of the peace and welfare of all citizens living in this area, do petition that the patent lands be deleted from the original boundaries of this reservation, and that this area be recognized for ~~what~~ what it presently is: approximately 2600 acres of allotted lands owned by individual Indians and lived on by 50 members of the Suquamish Indian Tribe; approximately 4700 acres of fee simple land lived on by 2928 non-Members of the Suquamish Tribe; and 36 acres of trinal lands, leased for 50 years to non-Indians. (February 7, 1974)



September 20, 1974

George:

Kindly prepare a response for my signature.

I think we should do a fairly positive defense and assertion of OEO/ONAP's authority to assist any disadvantaged people because they are economically disadvantaged (to use the OEO Act language) and many of them happen to be Indian. Using this authority, and spurred by the President's Message of 1970 (quote it) ONAP aids many Indian recipients both ~~and~~ off Federally recognized reservations and will continue to do so. BIA and HEW funds for Federally recognized Indian tribes themselves have gone from \_\_\_\_\_ in FY 1969 to \_\_\_\_\_ in FY 1975. That kind of tone. Do you agree?

Bradley H. Patterson, Jr.

George Blue Spruce  
ONAP/HEW



September 20, 1974

MEMORANDUM FOR:

WARREN RUSTAND

SUBJECT:

Presidential Schedule Proposals

In response to your good note of the 18th, the schedule proposal in which my office currently has most interest is the pending one you have for a Presidential meeting with national Indian leaders. I was away when Dave Parker's memo came in asking me to propose this, but in my absence Bill Casselman and Frank Zarb gave you a recommendation.

As soon as you set a date, I will be glad to supply talking points if you should wish, since I have had a five-year experience with these leaders and their problems. I can work up a briefing memorandum in close coordination with Bill, Frank, Norm Ross and with Commissioner Thompson. The best date for the Indian leaders would, I think, come between October 3 and 18.

Bradley H. Patterson, Jr.



**September 20, 1974**

**Dear Mr. Johnson:**

**The President has asked me to thank you for your telegram of September 17. He appreciates your congratulations and support.**

**The President is planning to have a meeting with Indian leaders soon and will begin this process with the Presidents of the National Tribal Chairman's Association and of the National Congress of American Indians. My advice would be that if you have specific problems with the Alaska Native Claims Settlement Act you start by bringing them to the attention of Commissioner Thompson, himself of course from Alaska, and the officer in the best position to make an initial review with you of just what problems are and what are the options for action.**

**Sincerely yours,**

**Bradley H. Patterson, Jr.**

**Mr. Ralph A. Johnson  
President  
Cook Inlet Region  
Anchorage Alaska**

**bcc: Morris Thompson, BIA (with incoming telegram for file)**

**Central Files**





September 23, 1974

MEMORANDUM FOR:

GEORGE BLUE SPRUCE

SUBJECT:

Letter from Illinois State  
Representative Bruce Douglas

Instead of writing Mr. Douglas in response to his letter, I telephoned him. He was overseas, but returned and called me today and we had a long talk. He claims he represents perhaps 15,000 to 20,000 Chicago urban Indians. I explained why BIA keeps out of the urban Indian picture, how your office inherited the Presidential (July 8, 1970) instructions to OEO to lead the urban Indian effort, explained how the General Revenue Sharing, CETA, Housing and similar acts now include urban Indian groups as eligible and mentioned (as he know) that Indian Health <sup>had</sup> limited seed money for urban Indian projects. He asked if we would (a) put this in writing for him and (b) be willing to help get a meeting together in Chicago with him and with the appropriate regional people -- or have him come here if necessary.

Do you have such a broad information sheet on the eligibilities available for urban Indians, including CETA and housing etc? If not, would you at least give him some of the specific statutory citations and xerox the pages from the right statutes so he knows where to start? I would appreciate it if you would write him on the President's behalf (with a copy sent back to me) and mention my conversation with him.

Please also discuss the possibility of a meeting, either in Chicago or Washington.

Thank you,

Bradley H. Patterson, Jr.



September 23, 1974

MEMORANDUM FOR:

THE COMMISSIONER OF EDUCATION

SUBJECT:

Seneca Nation Letter re: Part A  
of Title IV of the Indian Education  
Act

I would appreciate it if you would respond to the attached letter on behalf of the President. (My understanding is that there is a study now under way to examine the possible overlaps in this area and that pending the outcome of that study no appropriations for Part A were requested. )

Kindly send me a copy of your response.

Bradley H. Patterson, Jr.



September 23, 1974

MEMORANDUM FOR:

MARY BROOKS  
DIRECTOR OF THE MINT

SUBJECT:

Nomination for the U.S. Assay  
Commission

I am enclosing here the application of Mr. Rudi Saenger for consideration for inclusion on the U.S. Assay Commission for 1975.

I have met Mr. Saenger and have talked with him; he particularly assures me that he is a numismatist as a hobby and not as a dealer.

It seems that his application is sound on its own merits and I forward it for appropriate consideration by you and your staff.

Bradley H. Patterson, Jr.

Honorable Mary Brooks  
Director of the Mint  
Department of the Treasury  
Washington, D.C. 20220



September 24, 1974

MEMORANDUM FOR:

DAVE WIMER

SUBJECT:

Candidate for the Legal Service  
Corporation Board of Directors

Len has suggested that I send along to you this letter and resume from David Getches of the Native American Rights Fund. NARF has been one of the most skillful and helpful private institutions in the country in supporting our whole new direction in Indian policy and in protecting Indian rights. Although himself not an Indian, David has been one of the principal leaders in NARF's efforts.

Both his letter and his resume say a great deal about him and his ideas and I hope that he can be given consideration, especially since Indian legal matters will be one of the concerns of the new Corporation.

Bradley H. Patterson, Jr.



September 24, 1974

MEMORANDUM FOR: MORRIS THOMPSON  
STAN POTTINGER  
JOHN CARLSON

SUBJECT: Telegram from  
Dennis Banks

Even though some of the statements here are easily rebutted and though the press will probably be given this telegram, I do not plan to have a response prepared unless I hear a contrary recommendation from one of you.

Bradley H. Patterson, Jr.

bcc: Leonard Garment  
Central ~~Police~~ Files



September 26, 1974

MEMORANDUM FOR:

MORRIS THOMPSON  
STAN POTTINGER  
JOHN CARLSON  
KENT FRIZZELL  
WALLACE JOHNSON  
FRANK ZARB  
BEN HOLMAN

SUBJECT:

Declaration of War from  
the Kootenais

The attached communication was received in my office at 3:30 p.m. today.

As some of you know, I had a long and, I would say, generally friendly talk with Ms. Trice Monday or Tuesday night of this week and tried very hard to persuade her to take up Commissioner Thompson's offer of a breakfast meeting with her and her colleagues in Spokane next Monday morning (he will be there anyway for another meeting). She seemed quite reluctant -- trying to get Morrie or me to come to Bonner's Ferry instead. So far, that is where things stand. Morrie and I both continue to be opposed to the idea of either his or my running out on the scene of every such threatened or actual confrontation.

Bradley H. Patterson, Jr.



CF

September 30, 1974

**MEETING WITH LEADERS OF THE  
AMERICAN INDIAN COMMUNITY**

Unscheduled  
(15 minutes)  
The Oval Office

**I. PURPOSE**

To reassure Indian people of your support for the philosophy and goals of self-determination.

**II. BACKGROUND, PARTICIPANTS AND PRESS PLAN**

**A. Background:**

1. Indian leaders first of all want reassurance that the policy of "self-determination without termination", set forth in a Special Message of 1970, is going to be continued and in fact strengthened in this Administration.
2. Indian leaders also would like to hear confirmation from you that they will continued to be consulted on matters which affect them -- a promise made in 1970 and adhered to somewhat imperfectly since.
3. Five specific issues on Indian minds which you are likely to hear about are:
  - a) Are we going to replace the defunct National Council on Indian Opportunity with a new Domestic Council or Cabinet Committee on Indian Affairs?



Secretary Morton  
Secretary Weinberger  
Morris Thompson, Commissioner of Indian Affairs  
Frank G. Zarb, Office of Management and Budget  
Bradley H. Patterson, Jr., White House Staff

C. Press Plan:

Press photo opportunity. Meeting to be announced.

III. TALKING POINTS

1. I welcome you here today to assure you of my intention of establishing lines of communication between my Administration and Indian people across the country. We will continue the policy of "self-determination" begun in 1970; and we will build on that policy and strengthen it in the future. The Indian legislative program proposed in 1970 stands, and I seek your own cooperation in persuading the Congress to move it.
2. I recognize the importance of consultation with the Indian Community before making major policy decisions. This process will continue under my Administration and all agencies have been instructed to carry on such a consultative mechanism.
3. If some of those five specific points are raised:

a) NCIO Replacement

Yes, we do plan to establish a Cabinet Committee or Domestic Council Committee on Indian Affairs, as an internal Executive Branch coordinating body, to ensure that the principal federal Departments handling Indian matters (Interior, HEW, Justice, Agriculture, Commerce, etc) work together and speak as one voice.





b) FY 1976 Budget

Although we all recognize the present economic constraints facing us, I will do everything in my power to ensure that budget changes do not impact the Indian people disproportionately.

c) White House/Executive Office Liaison Arrangements

I am still in the process of organizing the staff here, and do plan to have an office on the Domestic Council or White House Staff which concerns itself with Indian matters. In OMB, Mr. Zarb is the Assistant Director with oversight over Interior's Indian responsibilities.

d) Protection of Trust Rights

You do have my commitment that the Federal Executive Branch will continue to carry out its responsibilities to protect Indian trust lands and natural resources rights. We hope very much to see the bill creating an Indian Trust Counsel enacted, and would like your own help in pushing this legislation.

e) Recognition of Eastern Indians

Only the Congress can extend this recognition -- by legislation. If the history and circumstances of any of the Eastern Indian bands duplicates that of the Menominees, whom we did restore to Reservation status, I would like to know of it. I am skeptical of creating new Indian reservations at this point in our history.



- b) How will the FY 1976 budget stringencies affect Indian programs?
- c) What kind of Indian liaison arrangements, if any, do you plan to have in the White House/ Executive Office?
- d) Will we continue vigorously to discharge our trust responsibility for protecting Indian land, water and fishing rights?
- e) Ms. Attaquin and Mr. Strickland will want to know your views about extending federal recognition to the many small and mostly landless Eastern Indian bands which they represent.

Suggested answers are under "Talking Points".

At Tab A is a fact sheet summarizing the very solid accomplishments which have been realized for Indian people in the past 5 years.

At Tab B is a summary of the major pending legislation affecting Indians.



**B. Participants:**

Melford Tonasket, President of the National Congress of American Indians, and Charles Trimble, Executive Director of NCAI

Robert Lewis, President of the National Tribal Chairmans' Association (and Governor of Zuni Pueblo) and William Youpee, Executive Director of NTCA

Helen Attaquin, President of the Coalition of Eastern Native Americans, and W. J. Strickland, Executive Director of CENA

LaDonna Harris, President of Americans for Indian Opportunity (AIO)

Richard LaCourse, Director of the American Indian Press Association