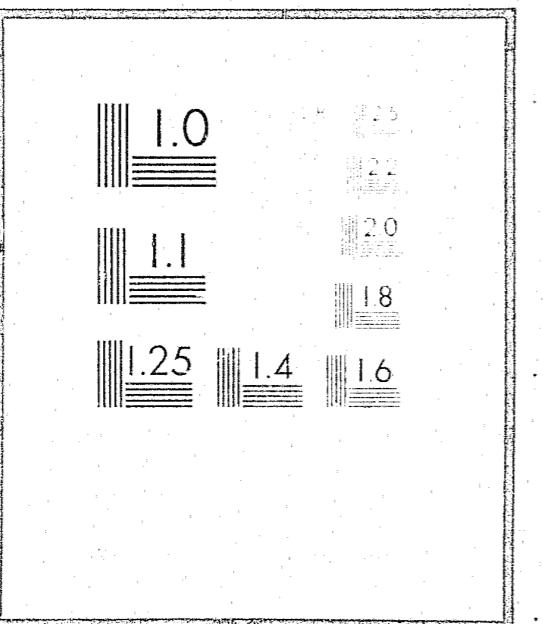


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NEBRASKA INDIAN TRIBES  
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"NEBRASKA INDIAN TRIBES  
AND  
CRIMINAL JUSTICE PROBLEMS,  
1973-1974"

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34902

"THE UTMOST GOOD FAITH shall always be observed towards the Indians; their land and property shall never be taken from them without their consent; and in their property, rights and liberty, they shall never be invaded or disturbed, unless in justified and lawful wars authorized by Congress; but laws founded in justice and humanity shall from time to time be made, for preventing wrongs being done to them, and for preserving peace and friendship with them.<sup>1</sup>

---An Ordinance for the Government of the Territory of the United States north-west of the river Ohio, 1789.



<sup>1</sup>From Preface, Deloria, Vine Jr., Of Utmost Good Faith, Bantam Books, New York, 1972.

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Chapter 1

History of Omaha Tribe of Nebraska

<sup>2</sup>According to Lewis and Clark, in 1804, the Omaha were situated on the south shore of the Missouri opposite Sioux City, Iowa. Shortly before this, they had been afflicted with smallpox and this moved them to the above location. They were also at war with the Sioux. In 1855, they relocated in what is now Dakota County, Nebraska.

Through treaties of July 15, 1830; October 15, 1836; and March 16, 1854, they ceded all lands west of the Missouri and south of a line running west of where the Iowa River leaves the bluffs. They retained their lands north of this line for a reservation. On March 6, 1865, they sold by treaty part of their land to the United States for the Winnebago. In 1882, due to the efforts of Miss Alice C. Fletcher, land of severalty and prospective citizenship were granted to them.

The dwellings of the Omaha were chiefly earth lodges or more rarely bark or mat or skin tents. The earth lodges were primarily used during the summer when the people were not hunting. The bark lodges, usually elliptical in form, occasionally had two fireplaces and two smokeholes. The skin tent was used when the people were traveling or hunting. Pottery were made by the Omaha before 1850, but the art has been forgotten. Their mortars were made by burning a hollow in a knot or piece of wood and spoons were made of horn, wood, or pottery.

Until 1880, the governmental system was composed of principle chiefs, usually selected from the Nangashefu subtribe, and subordinate chiefs. Their religion according to Dorsey, (3rd Report of the Bureau of American Thonology) was associated with the practice

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<sup>2</sup>Excerpt from the "Handbook of American Indians", Bulletin 30, Bureau of American Ethnology, 1910.

of medicine, mythology, war customs, and their gentile system. The population of the Omaha since their recovery from the great loss by smallpox in 1802 when they were reduced to about 300 has greatly increased. In 1804, according to Lewis (Statistical View 16, 1807) they numbered 600 including 150 warriors. In 1829, they were estimated at 1,900 and in 1843, at 1,600, both of which were probably excessive. Schoolcraft estimates 1,349 in 1851, and Burroughs, 1,218 in 1857, and the same number is given by the census of 1880. In 1906, the population of the tribe was 1,228.

As originally established the Omaha Reservation consisted of about 30,000 acres of tribal land. The information on the following table enumerates the various acts which diminished the total reservation area and tribal land base. For example, lands to the Winnebago Tribe, allotments of lands to individuals in severalty, etc.

Legislation and Treaties Affecting the Omaha Tribe<sup>3</sup>

<u>Treaty or Act</u>	<u>Content</u>
July 15, 1830 (7 Stat. 328)	First provision for an Omaha Reservation.
October 15, 1836 (7 Stat. 524)	U.S. released from above treaty.
March 16, 1865 (10 Stat. 1043)	Ceded lands for \$840,000 over forty year period except approved Reservation on Iowa River.
March 6, 1865 (17 Stat. 391, C436)	Omaha land ceded for use of Winnebago. Payment of \$50,000. First official mention of Omaha Reservation.
June 10, 1872 (17 Stat. 391, C436)	Sale of 50,000 acres. Land not sold; act superseded by Act of August 7, 1882.
June 22, 1874 (18 Stat. 170, C389)	Funds for purchase of more Omaha land for Winnebago. Secretary to use funds for Omaha.
August 7, 1882 Amended August 2, 1886; May 15, 1888; August 19, 1890; and August 11, 1894.	Sale of part of Reservation. Funds put in U.S. Treasury to Omaha credit. The 5% interest to be used for their benefit under the Secretary's direction. Allotments for 1/16 to 1/4 of a section in place of allotments of Treaty of March 6, 1865, above. Patents on unallotted lands issued in trust for 25 years and then lands to be paid in full. After allotments, the remaining land was to be patented to the Tribe except allotments in severalty were to be made on such lands to children born during the trust period.
March 3, 1885 (23 Stat. 370, C341)	Sale of additional lands.

<sup>3</sup>Publication from Bureau of Indian Affairs, Winnebago Agency, "The Omaha Indian Reservation", Winnebago, Nebraska, May 1971.

May 15, 1888  
(25 Stat. 150, C255)

Payment of the last seven annuities under the Treaty of March 16, 1854, per capita and in two installments of \$35,000.

March 3, 1893  
(27 Stat. 630-631, C209)

Allotments to Indian women and any child born since allotments of Act of August 7, 1882. Increased allotment from 1/16 to 1/8 of a section.

August 27, 1894  
(28 Stat. 507-508, C346)

Patent to the Presbyterian Board of Home Missions to certain lands on the Reservation.

May 27, 1902  
(32 Stat. 267, C888)

Authorized Secretary to make per capita payment to the Omaha out of \$100,000 of the principal due their credit in the Treasury.

April 21, 1904  
(33 Stat. 201, C1402)  
(34 Stat. 356, C3504)  
Amended June 21, 1906

Secretary to make per capita payments of all funds to the credit of the Omahas except enough to yield sufficient income to support schools, etc. Shares of minors and incompetents were to be held in the U.S. Treasury or paid to parents or guardians.

February 18, 1909  
(35 Stat. 628-629, C145)

Secretary to pay drainage assessments on tribal lands of Omaha Indians. Retain part of per capita payments for this. Issue patents in fee simple to Omaha for allotted lands in drainage districts.

May 6, 1910  
(36 Stat. 348, C202)

Taxation of lands of members of the Omaha Tribe held under trust patents of allotments issued prior to 1885.

June 22, 1910

Omaha Indians able to submit claims to the Court of Claims under the Treaty of March 16, 1854.

February 9, 1925  
(36 Stat. 580-581, C313)  
(43 Stat. 820, C169)

Appropriation of \$374,065 interest of principal sums found due the Omaha under the Treaty of 1854 by decision of the Court of Claims. Amount to be distributed pro rata to members of the Tribe.

May 11, 1912  
Amended and superseded  
by Act of January 7,  
1925.

Secretary to sell surplus lands on  
the Omaha reservation, to deposit  
the proceeds in the U.S. Treasury  
at 5% interest, to divide the pro-  
ceeds pro rata among the children  
who had not received allotments.  
Provisions not to become offered  
as long as an agency and a school  
were maintained on the Reservation.

May 18, 1916  
(39 Stat. 142, C125, 12)

Assessments on allotments of certain  
Omaha Indians in Wakefield Drainage  
District, Nebraska. Secretary to  
pay same and be reimbursed from the  
rentals of allotments.

December 30, 1916  
Stevens Act  
(39 Stat. 865, C10)

Allotments of the Omaha and Winnebago  
Indians in Nebraska held under trust  
patents issued in 1885 or later on  
which 25 year trust periods had ex-  
pired or had been extended subject  
to state taxation. Secretary was  
to pay the taxes out of the funds  
under his control for those unable  
to pay.

Executive Order 3111  
July 10, 1919

Extended trust period of allotments  
for 10 years with 37 specified excep-  
tions.

Executive Orders 4145,  
January 28, 1925; 4548,  
December 4, 1926; 5148,  
July 3, 1929; and 5253,  
December 31, 1929.

Extended trust periods for 10 years  
each, since Reservationists are sub-  
ject to the benefits of the Howard-  
Wheeler Act, and trust period was  
extended indefinitely.

As of June 30, 1970, the Omaha Reservation consisted of 10,097.23 acres of tribal land and 17,316.24 acres of allotted land. Three hundred acres of the tribal land are reserved for the needs of the Bureau of Indian Affairs. There are no federally-owned lands administered by the Bureau of Indian Affairs. The Omaha Reservation is located in the southern half of Thurston County (26,505.79 acres) with a few sections in adjacent Burt County (1,032.79 acres) and Cuming (163.54 acres) County. It is an area about 11 miles north to south and 22 miles east to west, all within the First Congressional District. Generally the lands of the Omaha Reservation are found in the rolling to steep hill areas above the flood plain of the Missouri River, but a sizable portion of the tribal land is also in the river bottom area. Approximately 5,612 acres of the Reservation, both allotted and tribal, are timbered with about 8,600,029 board feet of merchantable American Elm and Cottonwood. Timber sales of small tracts are being made with the exception of a 700-acre tribal park, a 20-acre housing project, and a 40-acre cemetery. The remaining 21,130 acres are classified as agriculture land which is subdivided into grazing land, about 1,250 acres, scattered in small tracts and crop land, about 19,888 acres. None of the agriculture land is under irrigation. Of the agriculture land, 1,979 acres are utilized by Indians and 19,159 acres by non-Indians. Nearly three-fourths of the Reservation can best be described as hill lands. Most of the steeper slopes are being farmed beyond their capability and are highly eroded. Greater return could be obtained from these lands if they were devoted to hardwood timber production. More gentle slopes which are now being intensively farmed should be planted to

grass and utilized for grazing purposes. The bottom lands offer excellent potential for increased returns from the development of irrigation which would permit the production of specialty crops such as onions, sugar beets, corn, grain, and sorghum or soybeans. Selected use of both hill and bottom land might also be profitable to a comprehensive program of livestock feeding to utilize locally-grown crops.

Two of the largest livestock marketing centers in the nation are located within 70 miles of the Omaha Reservation. Grant application for study on livestock finishing has been submitted to the Economic Development Administration. Of the 315 allotments on the Omaha Reservation still in trust status, nearly 79 percent, 251 are presently in heirship status. Their number if increasing daily and the number of heirs per tract is rising. The following statistics by number of owners indicates the problem: Single owner, 79 tracts; 2-10 owners, 156 tracts; over 10 owners, 82 tracts. Total of 315 tracts.

The Reservation is served by two U.S. Highways, US77 which passes through the mideastern portion of the Reservation and US73E which passes through the eastern portion, both running north to south. The western portion of the Reservation is served by State Highway 9. There are approximately 257 miles of section line roads on the Reservation, both gravel and earth surface. The Bureau of Indian Affairs maintains 30.4 miles of these roads and the remaining roads are maintained by either counties or townships. The Chicago-Burlington and Quincy R.R. secondary line parallels US77 through the Reservation. Commercial air service is available at the Sioux City Iowa Municipal Airport which is located 30 miles north of the Reservation.

As of March 1971, approximately 1,101 Indians resided on or near the Reservation. This represents 245 families with an average of 4.5 persons per family. The Winnebago Agency records indicate that the Reservation population has remained the same for the past twenty to thirty years. There is a continual movement from the Reservation but these people are replaced by others returning due to unemployment and poor living conditions in the city. The membership roll of the Omaha Tribe was prepared in accordance with the Act of December 14, 1961 (75 Stat. 508). This Act provides membership criteria different from the criteria set forth in the tribe's constitution and by-laws. (In 1954, amendment to the constitution.) For example: Article II, Membership of the constitution states in Section I: Membership of the Omaha Tribe of Nebraska shall consist of (a) all persons of Indian blood whose names appear or are entitled to appear on the official census roll in the Omaha Tribe of Nebraska as of April 1, 1934, with the supplement thereto of January 1, 1935, and all children who were born prior to the date. Amendment I was approved and if his mother or father was a member of the Omaha Tribe of Nebraska and all children possessing at least one-half degree of Omaha Indian blood who are born after the date Amendment I was approved and whose father is a member of the tribe or is living would be entitled to membership. Section II: the Tribal Council shall have the power to enact ordinances subject to review by the Secretary of the Interior governing future membership including the adoption and loss of membership. Section III: Nothing contained in these articles shall be construed to deprive any Omaha Indian of any vested property rights.

Income of the members of the Omaha Tribe is substantially below that needed to maintain their families. The 1970 average income was \$2,420 with an average per capita income of \$537. Welfare income to needy families boosts these figures. The Omahas accepted the Indian Reorganization Act and the constitution and by-laws of the Omaha Tribe of Nebraska were ratified on February 15, 1936. Approval to the constitution and by-laws was given on March 30, 1936. Constitutional membership provisions were amended on July 9, 1954. Corporate charter was ratified on August 22, 1936. The governing body of the tribe is the Tribal Council which is composed of seven representatives elected at large from the resident members of the Tribe for three-year terms. Once elected, the Council elects from its own membership the necessary officers. These procedures work satisfactorily. Tribal Council also exercises all corporate powers under the charter.

CHAPTER 2

HISTORY OF SANTEE SIOUX TRIBE  
OF NEBRASKA

<sup>4</sup>The original Reservation for the Santee Sioux was to be in their homeland of Minnesota. However, on February 27, 1866, a Presidential Executive Order provided them with a Reservation in Nebraska by reserving from sale four townships (81,518.65 acres). Subsequent Executive Orders of July 20, 1866; November 16, 1867; August 31, 1869; and December 31, 1873, caused total acreage and other changes. Eight hundred fifty-three allotments amounting to 72,467.63 acres were made by 1885, returning all unallotted lands to public domain (about 42,168 acres). Indian ownership has decreased steadily since. As of June 30, 1970, 5,786 acres of Indian owned land remains of which 3,599 acres are tribal land and 2,187 acres are allotted. There is no federally-owned land on the Reservation administered by the Bureau of Indian Affairs. The Santee Sioux Reservation is located in the northeastern portion of Nebraska, in north central Knox County.

The original Reservation covered an area 16 miles north to south by 12 miles east to west. Climate is relatively mild with an average yearly temperature of 47.1 degrees. The average yearly precipitation is 23.5 inches with 56 percent of the yearly precipitation occurring in the months May through August. A frost-free growing season lasts for about 155 days.

State Highway 12 passes through the center of the Reservation from east to west. Other Reservation roads are county or township roads totalling approximately 182 miles, and are either gravel or

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<sup>4</sup>From a publication from Bureau of Indian Affairs, Winnebago Agency, "The Santee Sioux Indian Reservation", Winnebago, Nebraska, June, 1971.

earth surface. The Bureau of Indian Affairs maintains .8 miles of road which serves an Indian cemetery near the village of Santee. State Highway 84 parallels the south edge of the Reservation. Railroad services are available in Niobrara and Verdigre, Nebraska, located four miles west of the Reservation and Bloomfield, Nebraska, located four miles east of the Reservation. The nearest commercial airport is Yankton, South Dakota, a distance of 30 miles. The Santee Sioux Reservation consists of rolling to steep hills above the Missouri River. Most of the Reservation land is being used to its highest and best capability which is grazing and dry land farming. One small tract of land is being irrigated and a few others have irrigation potential. Of the 3,599 acres of tribal land, 2,084 acres (58%) are used for grazing and 1,515 acres (42%) for crop land. All tribal land is used exclusively by Indians. Of the 2,187 acres of allotted land, 63 percent is used for grazing and 37 percent for crop land. The Indians are using only 14 percent of the allotted land; the remainder is leased and used by non-Indians. Income from leased lands is as follows: Tribal land, 1,241 acres, \$2,242; Allotments, 1,690 acres, \$6,050.

The Santee Sioux Tribe of Nebraska is organized and functions under the constitution and by-laws approved April 3, 1936, pursuant to the Indian Reorganization Act of June 18, 1934. (48 Stat. 984) The Tribal Council consists of a chairman, vice-chairman, secretary-treasurer, and twelve members. The officers are elected by the Council membership for a one-year term.

The major resource of the tribe is its land; however, the tribe does not have a land purchase program and therefore, there has been no increase in land resources in the past twenty years. Land now held in tribal ownership was acquired for the tribe after acceptance by the tribe of the Indian Reorganization Act. The Tribal Council has established and followed a policy of leasing the tribal land to Santee Sioux members only. There are 29 allotments on the Reservation still in trust status and of these 27 (93%) are presently in heirship status. The following statistics by number of owners gives some indication of the problem: 2-10 owners, 14 tracts; over 10 owners, 13 tracts; 27 tracts heirship status; single ownership, 2 tracts--total of 29 tracts. The continuing fractionization of ownership of trust and allotments makes it almost impossible for the owners to negotiate or agree on any leasing arrangements. The resulting increased fractionated ownership also decreases the returns to the individual owners.

In July of 1967, the Santee Sioux Tribal Council began updating their membership roll, and made a request for all eligible members to make application for enrollment. At present, 2,096 applications have been received. These applications indicate that 244 Indians reside on the Reservation, 132 male and 112 female. Eighty-nine people are under 12 years of age. The average age of the remaining 155 persons is 39 years. Fifty-six families reside on the Reservation averaging 4.3 person per family. The tribe has not kept any accurate population records or membership records for a number of years; however, the trend is a gradual decline of the Reservation population.

The Santee's primary source of income is agriculture or agribusiness. Most of the people reside on small farms and earn additional income from part-time employment with larger farm operators. Only eight families of the fifty-six on the Reservation obtained 100 percent of their income from self-employment. Income of the members of the Tribe is substantially below that needed to properly maintain their families and therefore most of the Indian people obtain their livelihood through a combination of welfare assistance and part-time employment.

In 1970, the average earned income per Indian family was \$1,250. The average total income per family which included both earned and unearned (old age assistance, aid to the blind, aid to families with dependent children, general assistance, pensions) was slightly over \$3,500. About 80 percent of the Indian families have incomes of less than \$3,000 per year from all sources.

**CHAPTER 3**

**HISTORY OF WINNEBAGO TRIBE  
OF NEBRASKA**

<sup>5</sup>In 1634, the Winnebago first became known to the Whites.

The Frenchman Nicollet came upon them near Green Bay in Wisconsin. They were located among the Sauk, the Foxes, and the Menominee, all central Algonquian tribes. They were also in touch with the Iowa, the Oto, and the Missouri. These four tribes show marked similarities in their cultures and their languages.

The Winnebago also have some cultural characteristics (art and material) in common with the central Algonquians. These two influences (the Iowa, the Oto, and the Missouri and the central Algonquians) are intermingled in the Winnebago. To fully understand the Winnebago, one needs to be aware of these influences.

Marquette's Journal located a Winnebago village near the north end of Lake Winnebago in 1681. At one time they were almost totally destroyed by the Illinois but the captive Winnebago were freed to form a new tribe. Jeffreys in 1761 located them near the head of Green Bay and Carver, 1778, placed one of their villages at the east end of Lake Winnebago. By 1806 according to Pike they were situated on the Wisconsin, the Rock and Fox Rivers and on Green Bay in seven villages.

By 1832, they had ceded their land south of the Wisconsin and Fox Rivers for a reservation west of the Mississippi above the Upper Iowa. This was accomplished through the Treaty of Prairie du Chien and another treaty in 1832.

By 1836, smallpox had reduced their number by one-fourth. They were moved to the Territory of Iowa in 1840, where they

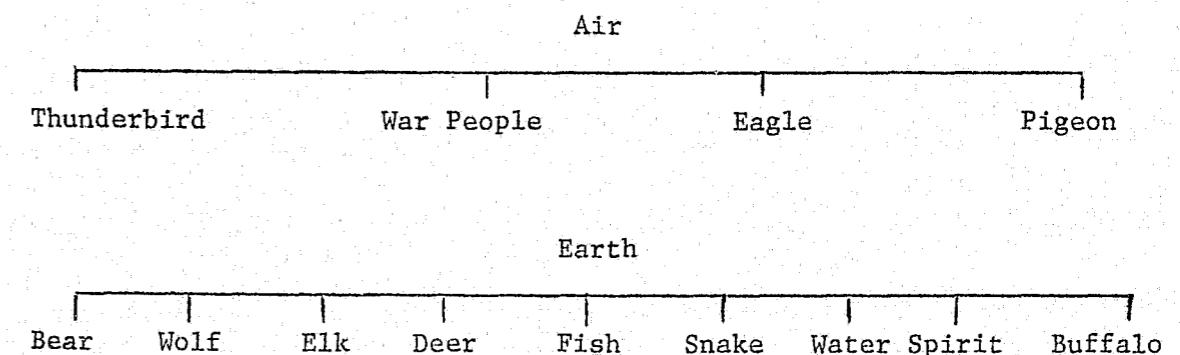
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<sup>5</sup>Excerpt from the "Handbook of American Indians", Bulletin 30, Bureau of American Ethnology, 1910.

settled in bands after ceding their land east of the Mississippi. By 1848, they had ceded their new reservations and had been moved to Long Prairie Reservation bounded by the Crow Wing, the Watab, the Mississippi and the Wall Prairie Rivers. Around this time they numbered 2,521 members in 21 bands.

Disease killed many and force had to be employed to retain them on the Reservation. By 1853, they were relocated at Crow River and in 1856, they were moved to Blue Earth, Minnesota. The Sioux War of 1862 brought a halt to their start in civilization and because of the people of Minnesota's demands, they were sent to Crow Creek Reservation, South Dakota. Because of their suffering there, they fled from troops to the Omaha Reservation, losing 800 of the 2,000 members. Their new Reservation was on the Omaha lands in Northeast Nebraska where they have remained and have had land allocated to them in severalty.

Two divisions (the Upper or Air and the Lower or Earth) make up the Winnebago social organization. The Upper (air) division consists of four clans and the Lower (earth) eight clans.



The leading clans of the divisions (phratries) are the Thunderbird and the Bear, both of which have definite functions.

The Thunderbird Lodge is the Peace Lodge. The chief of the tribe presides over it and disputes are settled in it. It offers protection from murder or execution, as long as the offender remains within it.

The Bear Clan Lodge (War or Disciplinary Lodge) was the execution site for prisoners or tribal offenders. The Bear Clan also had the right of soldier killing and were the rear and front guards of the hunting camp.

Each of the twelve clans had their own customs relating to naming feasts, deaths, etc. Members of the separate clans were not allowed to be buried with members of the other clans in their divisions.

The Mankani or Medicine Dance and the Wagigo or Winter Feast are the most important Winnebago ceremonies. The former takes place only in summer and the latter in the winter.

A secret society comprised of both men and women who have paid monetary dues perform the medicine dance. New members generally replace deceased relatives. The members, consisting of five ceremonial bands, occupy the east, the north, the south, the west, and the southeast sections of the log tent built for the ceremony. Positions of honor are flexible and vary according to invitation. Several sections of the ceremony are secret but the general ceremony is public. The purposes of the Medicine Dance Society are the prolongation of life and the instillation of virtues. The shooting ceremony epitomized the instillation of virtue with a simulated shooting of a new member with a shell containing an otter skin bag. There are similarities between

this ceremony, the Algonquian Midewiwin, the Dakota Mystery Dance, and the Omaha Pebble Ceremony. Basically, however, the Winnebago ritual and myths are distinctly different. The Winter Feast is the only truly Winnebago Clan ceremony. The purpose of the Winter Feast seems to be the desire to increase war powers by calling upon their supernatural deities.

The best known of other ceremonies is the Buffalo Dance. The Buffalo Dance is held in the spring to call the buffalo herds. Most of the Winnebago religious beliefs are nearly the same as those of the Dakota, Ponca, and the central Algonquian tribes. The figure known as Nanua (Earthmaker) corresponds to the Gitchi Manito of the central Algonquian tribes. The mythology consists of large cycles relating to the five personages who the Earthmaker sent out to free the world from giants and evil spirits. They are the trickster, the bladder, the turtle, he-who-wears-heads-as-earrings, and the hair. Although there are evidences of central Algonquian influence, the Winnebago mythology shows a much more intimate relationship with that of the other Siouan tribes.

As originally established, the Winnebago Reservation consisted of 112,823.46 acres.<sup>6</sup> Allotments were established on the Reservation under two acts of Congress: The Act of February 21, 1863 (12 Stat. 1658), and the Act of February 8, 1887 (24 Stat. 1388). The Indian ownership has steadily decreased since the date of these allotments. Today tribal allotted lands are highly interspersed with non-Indian

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<sup>6</sup>Publication from Bureau of Indian Affairs, Winnebago Agency, "The Winnebago Indian Reservation", Winnebago, Nebraska, May, 1971.

ownership. At the present time, there remains 28,059.14 acres of Indian-owned land of which 2,889.34 acres are tribal and 25,169.80 acres are allotted. 415.8 acres of tribal land have been reserved for the needs of the Bureau of Indian Affairs. There are 14.25 acres of federally-owned land administered by the Bureau of Indian Affairs. An act of December 30, 1916, known as the Stevens Act made allotments of Omaha and Winnebago Indians in Nebraska held under trust patents issued in 1885 or later, on which 25-year trust periods had expired or had been extended, subject to state taxation. The Secretary was to pay the taxes out of funds under his control for those unable to pay. (39 Stat. 6865, C10).

The Winnebago Reservation is located in the northern half of Thurston County (27,331 acres) with a small section in adjoining Dixon County (742.43 acres) all in northeastern Nebraska. It is an area about 8 miles north to south and 25 miles east to west, all within the First Congressional District. The Reservation lies within the Sixth Principle Meridian with a relatively mild climate and an average temperature in July of 75.6 degrees and in January of 19.2 degrees. The average precipitation ranges from .68 inches in January to 4.09 in June. The average annual growing season is 160 days and the greatest flow of tourists occurs between June 1 and September 1. Generally lands in the Winnebago Reservation are found in the rolling to steep hill areas of the flood plain of the Missouri River. A sizable portion of the tribal land, however, is located in the river bottom. Approximately 6,128 acres of Reservation land, both allotted and tribal, is timber (an allowable cut of about 747,000 board feet annually). There is considerable

amount of timber marketing activity at the present time. The remaining 21,945.43 acres of Indian land is classified as agricultural. This agricultural land is subdivided into grazing (12 percent in scattered tracts) and crop land (66 percent dry land farming). None of the agricultural land is under irrigation and only a small portion of the trust land is being used by the Indians -- 9 percent of the farmland, 3 percent of the grazing land and 100 percent of the timber land. In addition, 31 percent of the tribal farmland and 18 percent of tribal grazing land is being used by Indian residents. Nearly three-fourths of the Reservation is hill land. Most of the steeper slopes are being farmed beyond their capability and are highly eroded. A greater return could be attained from these lands if used for hardwood timber production. The more gentle slopes which are now being farmed would provide a higher return if planted to grasses and used for grazing purposes. The bottom lands offer an excellent potential for increased returns through the development of irrigation which would permit the production of special vegetable crops and others such as corn, grain, sorghum, and soybeans. Selected use of the land as a comprehensive livestock feeding program would be profitable, since this would utilize locally grown crops. The Winnebago Reservation is located close to Omaha, Nebraska, and Sioux City, Iowa, two of the largest livestock marketing centers in the nation. Of the 445 allotments on the Winnebago Reservation still in trust status, nearly 92 percent (408) are presently in heirship status and the number is increasing. The following statistics by number of owners gives some indication of the problem:

Single owners, 7 percent; 2-10 owners, 31 percent; over 10 owners, 61 percent.

The Reservation is served by two U.S. Highways, US77 which goes through the mideastern portion and US73E which passes through the eastern portion, both going north and south. The western portion of the Reservation is served by state highways. There are approximately 257 miles of section roads on the Reservation which have gravel and earth surfaces. The Bureau of Indian Affairs maintains 30.4 miles of these roads and the rest are maintained by counties or townships. The Chicago-Burlington and Quincy R.R. secondary mainline parallels US77. Commercial air service is available at the Sioux City Iowa Municipal Airport which is located 30 miles north of the Reservation.

The latest official membership roll of the Winnebago Tribe was made in 1934. This was not kept current and accurate in manner and therefore, in August of 1964, the Tribal Council began updating the roll. As of February 1, 1971, there are 1,928 applications for enrollment in the Winnebago Tribe. 632 Indians reside on the Reservation; these represent 211 Indian families averaging 3 persons per family with an average age of 25.5 years. The range in ages is from infants to 96 years and includes 326 females and 306 males. Further, 245 Winnebago members reside near the Reservation in neighboring towns. These represent 135 families with an average age of 26 years. The Winnebago Agency representatives indicate that the Reservation population has remained about the same for the past 20 to 30 years. There is a continual move from the Reservation, but these are replaced by others who are returning

due to unemployment and poor living conditions in the cities. The income of the members of the Winnebago Tribe is substantially below the national average, and is less than what is needed to properly support their families. The majority of the Reservation families earn their income from temporary or seasonal employment in the adjoining towns or from part-time work in agriculture. Approximately 68.5 percent of the families are assisted by some type of welfare program. The median family income of the Reservation Indian is approximately \$3,031 annually. The Winnebago Tribe of Nebraska accepted the provisions of the Indian Reorganization Act and the constitution and by-laws of the Winnebago Tribe of Nebraska were ratified on February 29, 1936. Approval of constitution and by-laws was given on April 3, 1936, by the Secretary of the Interior.

A corporate charter was ratified on August 15, 1936. The Council is composed of nine members who are elected at large by secret ballot. The elected members then select their own officers from their membership of three. The treasurer is appointed either from within the Council or from the membership of the tribe. These procedures were established and the constitutional amendment ratified February 25, 1963, and are presently working very well. The membership of the Tribal Council works very closely with the Bureau of Indian Affairs and other governmental agencies. The Tribal Council is progressive in its thinking and despite its limited financial income is making very good progress in management capabilities.

**CHAPTER 4**

**METHODOLOGY UTILIZED  
AND  
PROBLEMS INCURRED**

In order to measure actual crime rates on the three Reservations, County Sheriffs from Thurston and Knox Counties of Nebraska and local police departments<sup>7</sup> were contacted, and attempts were made to gain access to existing arrest records.<sup>8</sup> In Thurston County, the County Sheriff would allow only the Project Coordinator access to his records. Upon initial contact with the Thurston County Sheriff's Office, the Sheriff was optimistic and overtly very cooperative. However, as soon as a data collector was hired for this project and was ready to begin work gathering arrest data from the county records, the Thurston County Sheriff states that: "I thought you over at Northeast Tech were going to do this. I don't want \_\_\_\_\_ working in my office." When the Project Director inquired why he would not allow this employee to work there the Sheriff stated ". . . for personal reasons." He refused to elaborate any further. He did, however, indicate that the Project Coordinator could work with the data to obtain a random sample of the records for this study.

In Winnebago, the Police Chief allowed the project full access to all records. However, they were incomplete and had to be completed through the Thurston County Sheriff's Office.

The Nebraska Commission on Law Enforcement and Criminal Justice was contacted regarding these data acquisition problems. However, the then stated policy of the Commission was to "not get involved

<sup>7</sup> Winnebago, Santee, Omaha.

<sup>8</sup> Free Flow of Information Act, "Revised Statutes of Nebraska", 1943, 20-144 et seq; Public Meeting Laws, "Revised Statutes of Nebraska", 1943, 84-1401 et seq. and Laws 1972, LB 1332, see 5,6.

in county politics". Also, through the Commission, the Attorney General's Office was contacted for an opinion on access to these public records. His office stated that the release of public police arrests was left up to the "discretion" of the County Sheriff. (This is a surprising opinion in the light of Nebraska law on free access to public records, above noted.)

The Omaha Tribal Council also denied this project all access to police records in the Bureau of Indian Affairs contracted tribal police department. The Council expressed the fear that the "Feds, etc." would receive copies of certain individual's police records and that this might at some time be used against them. Even though they were assured that this would not occur, they continued to deny the project access to the records. Subsequently, a representative of the Regional Law Enforcement Assistance Administration Office in Kansas City visited with the Omaha Tribal Council on the problem. However, apparently due to the politics involved and the history of the Omaha Tribe and their reported antagonism and hostility towards federal and state agencies, the representative from LEAA and the Council subsequently allowed the project limited access to tribal records. However, the Omaha's would allow only the Project Coordinator to collect numbers of people arrested in each category again limiting the scope of this study.

Because we were not allowed to know who the individual defendants were, we could not conduct any interviews with the Omaha's regarding police and criminal justice problems. However, random interviews were conducted with various tribal members concerning their personal opinions on police and criminal justice problems. In general, when

the data collector did begin to collect records on such problems from the Omaha police department, the records were found to be inadequate and much of them were found to be of little real value when compared to the Bureau of Indian Affairs records that were turned in for Uniform Crime Reporting.<sup>9</sup>

In Knox County the Santee Reservation had virtually no records from their now defunct local police department. Further, the County Sheriff denied this Project all access to police records saying that: "adult and juvenile arrest records were mixed together and thus we would have to use court records only". The usage of only court records eliminated one essential step (arrests) and source of data. Usage of court records alone did not allow the project to ascertain whether the person is Indian or White, and hence, limited their value to the project.

The methodology employed by this study was to help to ascertain criminal justice system problems affecting the three (3) tribes in Nebraska as follows, first: to look at criminal records of Indians (which we were unable to do on as large a scale as we would have liked for reasons stated above). Thus, much of the data collected has been in reverse of the intended methodology to collect data from the police records, and then from those ascertain the major problem areas. Secondly, the author intended to contact the state, local, tribal and federal criminal justice agencies which were established in the area to attempt to evaluate those programs existing to remedy existing problems in criminal justice on and

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<sup>9</sup> See "Uniform Crime Reports", Winnebago Agency, 1973.

near the Reservations affecting the Indians of Nebraska. Third, interviews were to be conducted by the author in a sampling of the general Indian population and governing bodies of these Indian communities. However, because of the above mentioned problems encountered with the collection of data, the author was able only personally to conduct approximately 200 informal interviews with members of the Indian communities in an attempt to identify criminal justice problem areas on and near the Reservations.

A major question asked in these interviews was: "What do you feel are the major problems in your community?" The major problems were identified by the Indian respondents in the following order and by priority as: 1. "alcoholism", 2. "juvenile delinquency", and 3. "law enforcement". "Alcoholism" was considered the most severe problem. Most respondents indicated that there is not a single area of community life on the Reservations that is not affected by alcoholism, including the criminal justice system. Statistically the author found that approximately 98 percent of all reported crime committed on the Reservation was committed while the actor was under the influence of alcohol. This statistic is probably off, as it is probably closer to 100 percent alcohol related.

## **CHAPTER 5**

### **ALCOHOL ABUSE**

"If it be the design of Providence to extirpate these savages in order to make room for the cultivators of the earth, it seems not improbable that rum may be the appointed means."<sup>10</sup>

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<sup>10</sup> Time, November 13, 1972. Quoting Benjamin Franklin on the fate of the American Indians.

The most identifiable symptom of gross psycho-social problems today in these three Nebraska Indian societies is the overwhelming occurrence of alcohol abuse. This abuse reportedly occurs in all age groups and affects the general prevailing psycho-social atmosphere of the Indian communities and surrounding area as a whole. The abuse of alcohol by the individual Indian in these communities is apparently reinforced by their peer culture as it is apparently socially-approved behavior on the Reservations. This is in direct contrast to the reported general population norms of this country. Theoretically speaking, when the anticipated rewards for engaging in socially-approved behavior are relatively low, this results in disappointment and frustration within the individual which then leads to the selection of alternate courses of action that may not be so highly approved (such as drunkenness), and thus provides substitute rewards for that individual such as temporarily escaping from the realities of his life in general and from the resulting frustration of these realities. Unfortunately, it appears that too often with the tribes under study, as with other low-income minority groups, an individual can participate without feeling the frustration of failure. At times their use of alcohol appears to be almost suicidal in nature. Thus, alcohol abuse is apparently normative behavior within these highly mobile societies under study, and as such alarming!

One can hardly observe an area of the community life on these Reservations without seeing the effects of alcohol abuse. Within the educational system children reportedly begin drinking as early as ten years of age, which incidentally is also approximately the

time they start "dropping out" of the school system (at least psychologically). Within Reservation homes the incidence of child neglect is reportedly very high. The author found that the incidence of alcohol-related crime is recorded at 96.8 percent, but that a more accurate survey would indicate it is probably closer to 100 percent. Under these conditions, it is obviously difficult to maintain employment because of such abusive use of alcohol. Potential employers are reportedly thus hesitant to hire Indian workers because of their previous experiences with them and their alcohol problems.

**CHAPTER 6**

**CRIMINAL JUSTICE SYSTEMS**

Before discussing the specific Criminal Justice systems in operation today on and near the three Reservations in Northeast Nebraska, it may be informative to note the historical context of the present system nationally.

The first authority for Indian police was established in 1878 through instructions from the Commissioner of Indian Affairs to: "all Indian agents to organize police forces whenever possible."<sup>11</sup> Then in 1883, the Secretary of Interior, reportedly because the Commissioner of Indian Affairs failed to make provision for tribal punishment of offenders, authorized the Court of Indian Offenses<sup>12</sup> for which the Indian agents usually served as judges without pay.<sup>13</sup>

The Court of Indian Offenses apparently came about because of the opinion of Secretary of the Interior A. M. Teller, who:

"wished to eradicate certain of the heathenish dances; such as the sundance, scalp dance, etc., as well as to attack the institution of polygamy, the power of medicine men and other Indian customs."<sup>14</sup>

The cases these courts heard and decided upon were apparently not unlike the typical cases heard today: "Drunkenness was the most frequent type of case heard; family relations next."<sup>15</sup>

In re Crow Dog (109 U.S. 556, 1883) the Supreme Court decided that any prosecution must be adjudicated within the judicial system

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<sup>11</sup>Washburn, Wilcomb E., Red Man's Land - White Man's Law, Charles Scribner's Sons, New York, 1971, p. 169.

<sup>12</sup>Ibid, p. 169.

<sup>13</sup>Ibid, p. 169.

<sup>14</sup>Ibid, pp. 169-170.

<sup>15</sup>Ibid, p. 170.

of the Tribe.<sup>16</sup> In reaction to this decision the United States Congress passed the Indian Appropriation Act of 1885<sup>17</sup> whereby the federal government was given criminal jurisdiction over the seven (7) major offenses of murder, manslaughter, rape, assault with intent to kill, arson, burglary, and larceny in Indian country. By 1956 this had been raised to 11 crimes.<sup>18</sup>

"The Seven Major Crimes Act of 1885 did not abrogate existing treaties but it illustrated the persistent congressional attempt to eliminate by legislation the legal distinctions between the Indians and the non-Indian population of the United States."<sup>19</sup>

The following Acts also served to further change the Indian criminal justice system:

Davies Act of 1887: "reduced the importance of the Courts by allotting land individually to Indians and placing Indians receiving such allotments under civil and criminal jurisdiction of the state or territory where they resided."<sup>20</sup>

Curtis Act of 1898: "specifically dissolved the courts and police of the Five Civilized Tribes and placed the Indians under the jurisdiction of the Federal Courts."<sup>21</sup>

In 1924, Congress enacted legislation providing citizenship to all Indians.<sup>22</sup>

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<sup>16</sup>Ibid, p. 170.

<sup>17</sup>23 Stat. 385, 1883.

<sup>18</sup>Washburn, op cit. p. 171.

<sup>19</sup>Ibid, p. 171.

<sup>20</sup>Ibid, p. 171.

<sup>21</sup>Ibid, p. 171.

<sup>22</sup>Steiner, Stan, The New Indians, Dell Publishing Co., Inc., New York, 1968, p. 321.

Then in 1934, the Indian Reorganization Act or the Wheeler-Howard Act allowed tribes to incorporate as tribal governments and operate as at least quasi-sovereigns.<sup>23</sup>

In 1953, Public Law 280 provided a means to transfer civil and criminal Indian jurisdiction to six named states.<sup>24</sup>

1968 Indian Civil Right Act brought provisions similar to the United States Constitution Bill of Rights to the individual Indian as against tribal government, among other things.<sup>25</sup>

The problems of law enforcement and the criminal justice system are verbalized over and over by the three Tribal Councils, the State of Nebraska, and the Federal government.<sup>26</sup> The State of Nebraska apparently feels that the problems in the areas of law enforcement and criminal justice are insurmountable since most of the problems stem from alcoholism and poverty, and do not fit into "crime specific programming".<sup>27</sup> Reportedly, Tribal Councils see the need for law enforcement only on a crisis intervention basis, and they apparently do not see the need for effective constant and consistent law enforcement.

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<sup>23</sup>48 Stat. 984, 25 U. S. C. 461 et seq.

<sup>24</sup>Public Law 280 (67 Stat. 588) 83rd Congress, 1st Session, August 15, 1953.

<sup>25</sup>April 11, 1968, P.L. 90-284, Title II, Sec. 201, 82 Stat. 77, 78, 79, 80. But see, Deloria, Vine Jr., Of Utmost Good Faith, Bantam Books, New York, 1972, pp. 341-342. See Appendix Exhibit for the text of the full act.

<sup>26</sup>See "Uniform Crime Reports", 1973, and records of Tribal Council.

<sup>27</sup>See Nebraska Commission on Law Enforcement and Criminal Justice Comprehensive Plan--1974-1975, The Nebraska Plan calls for crime specific programming, meaning programs will be funded if they can show a direct decrease in crime rate on the area being programmed. For example: being able to demonstrate that an alcoholism program stressing community education is going to lower all Part II crimes.

Obviously, law enforcement agencies serving the Reservations must be able to function and maintain order without regard to "kinship". Since the majority of the population of the area is interrelated, this creates a serious problem for the police officer in the performance of his duties. For example: if he is called out on a disturbing the peace call, and one of the participants is a relative (no matter how distant) and he has to arrest the individual, the officer may face ostracism and criticism from his family and other members of the Indian community. Also, reportedly tribal leaders feel they are above the criminal justice system (a condition which apparently is not limited to the leaders of the Indian peoples).

The federal government, perhaps because of past experiences in funding of Indian related law enforcement projects, has reportedly learned that its money is not spent in the most "appropriate manner" by law enforcement agencies serving these tribes. For example, when the State of Nebraska and the Law Enforcement Assistance Administration (LEAA) give money to an Indian tribe, the funding agency often fails to be very specific in the grant and spell out, piece by piece, and part by part, exactly what they expect of the tribe and how the tribe is to do it. Tribal Councils apparently have not enough administrative ability to cope with such "open end" federal and state funding. Hence, the tribes apparently do not see the need for providing receipts, etc., and to otherwise fully account for all of such funds, and their expenditures, etc. Thus, when the end of the grant period comes and the tribe has reportedly "screwed it up again", the State

and LEAA come back and say that there is no reason for them to fund the tribe in the future, since the tribe could not handle the original funding. This problem could at least be somewhat alleviated by giving more forethought and specific guidelines to any such grants, making sure that the desired behavior is specifically indicated to the Tribal Council and the law enforcement agencies involved, including required tribal record keeping, etc.

There is apparently a lack of intergovernmental cooperation between the tribes, the federal government, state government, and local governments. Often it is difficult to decide whose jurisdiction certain criminal behavior falls under.<sup>28</sup> The area law enforcement agencies, for the most part, apparently operate independently of each other, i.e., Tribal, Municipal, County, State and Federal. The one instance of them so operating is that of the now defunct State of Nebraska special deputy sheriff's program through the Nebraska Highway Patrol which was funded for Thurston County. The contention of the County Sheriff when interviewed was that he did not feel that he had the authority to ask these special deputy sheriffs to intervene or do anything. However, from interviewing a number of the special deputies, the author found that many times they were handling law enforcement problems in Winnebago that the Winnebago police were not handling because the Indian people tended to call the special deputy sheriffs rather than call

<sup>28</sup> See Bubak and Greaves Study--"Police Protection for the Santee Sioux Tribe of Nebraska--Whose Responsibility?", February, 1974, and State v. Goham, 187 N.W. 2d 305, and State v. Tyndall, 187 N.W. 2d 298, and Omaha Tribe v. Village of Walthill, 460 F. 2d 1327, 8th Cir. 1972.

the Winnebago police. The Nebraska Highway Patrol and the special deputy sheriffs are sometimes apparently a more desirable element of law enforcement to the Indian people than the Thurston County Sheriff's Department. The reported history of the County Sheriff's Department with the Indian people has not always been good.

With the "bounty law",<sup>29</sup> which was in existence in Nebraska until a recent legislative session, the County Sheriff's Office received so much money per Indian prisoner in the county jail, because of having to "feed" such Indians. Thus, many Indians felt a disproportionate number of Indians were being arrested and detained solely so that the County Sheriff could receive such additional revenue thereby. There may have been some obvious justification for this law in the past, although this writer could not now find it nor was it reported to her by anyone in law enforcement in the area under study during the course of this project.

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<sup>29</sup> Revised Statutes of Nebraska, 1970, 23-362, Amended 1961, C91; 1967, C123; 1963, p. 444, 1969 (LB491), 1974 (LB131). In Section 2 provides: "Such county shall have submitted to the director a voucher bearing the certificate of the county clerk showing for the fiscal year for which the claim for state funds is made the cost to the county of feeding Indian prisoners and that such prisoners are carried on the Tribal rolls as Indian. No claim shall be allowed by such directory except for the amount that the cost to the county for such fiscal year for feeding Indian prisoners exceeds nine thousand dollars." Thus, the county would receive payment of costs required for feeding Indian prisoners in excess of \$9,000 per year. It is overly apparent that abuses could readily occur with this system and would be difficult to substantiate. Reportedly the County Sheriff's wife cooked the meals for the prisoners precluding the need to pay salary for a cook and also, allegedly, fed their family the meals being paid for by the county and state for prisoners. Also, allegedly, Indian people were held for longer sentences and arrested more often in order to gain additional revenue for the county. This situation created much hostility between the Indian community and the County Sheriff's Office and became such a constant source of friction that the State Legislature rescinded the law.

There is some justification for the statements that: "often times the County Sheriff is left with little alternative as to where to place Indians who have been in contact with the law and have been arrested for some type of criminal behavior", and, "When you arrest a drunk or you find a drunk passed out on an Indian Reservation, we have no place to take them except to jail", and, "We cannot take the man to his home because possibly there are other drunks there and he is not going to get the care he needs". There are apparently no correction agencies that are being used presently for referral services because they are reportedly not adequately funded to operate on the required large scale for these Indian communities.

The jurisdictional question is one that remains to be decided by the State of Nebraska and the federal government,<sup>30</sup> of the tribes, especially the Omaha Tribe. Obviously such a clarification is necessary to determine responsibility in administering criminal justice to the Nebraska Indians.

Often times, it was reported that the Indian people will more likely look to the federal government for assistance with their problems and are thus more likely to go to a federal agency for help. Thus, the reported behavior of the Indians calling upon state special deputies from the Highway Patrol for help may have been a part of this syndrome of identification, since the special

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<sup>30</sup> See in Appendix: (These are legal cases involving the criminal jurisdiction question in Nebraska.) (a) State v. Goham (187 Neb 35, 187 N.W. 2d 305) (b) State v. Tyndall (187 Neb 48, 187 N.W. 2d 298) and (c) Omaha Tribe v. Village of Walthill (460 F. 2d 1327; 8th Cir. 1972). Also see special section herein on "Public Law 280."

deputy sheriffs were perceived as a larger and broader agency than a local County Sheriff's Office or the Winnebago police.

On the Omaha Reservation there are tribal police contracted for by the Bureau of Indian Affairs. They apparently operate as efficiently as possible for an understaffed and underfunded police department with many people to please, i.e., Tribal Council, Bureau of Indian Affairs, community, etc., (not the least being the "people" they are to serve and protect).

The Santee's law enforcement problem reportedly began prior to August of 1973. They had a "police officer and a half" who were operating under the grandfather clause of state legislation providing for special constables. In August of 1973, the Santee Tribal Council reportedly decided to fire the then present police officer for misconduct. When this was accomplished, the Council was subsequently informed by the Knox County Attorney that the Santee's could no longer hire a police officer because the provision in the state law for special constables had been rescinded in recent legislation.<sup>31</sup> Thus, from August until approximately March, 1974, the Santee Tribe was without law enforcement except from the Knox County Sheriff's Department which is located approximately 25 miles from the Santee Reservation at the town of Center, Nebraska. There is no local police department at Santee. Consequently, in order to have a police department under state law, the tribe was forced to incorporate as a village under Nebraska law, and then they were able, under a LEAA discretionary grant, to hire two tribal policemen.

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<sup>31</sup>Revised Statutes of Nebraska, 1972, Laws 1032, 82nd Legislature, 2nd Session.

In Winnebago, the area is incorporated as a city under Nebraska law and thus they have their own police force, which is presently in a state of transition. Once again the officers are tribal members and reportedly have difficulty enforcing law in the area because of "kinship". There is no detainment area in Winnebago so anyone who is arrested either has to be released or taken to the Thurston County Sheriff's Office and the County Jail in Pender, Nebraska, which is approximately 20 miles away from Winnebago.

Northeast Nebraska Technical Community College at Norfolk, Nebraska, has a law enforcement training program. Perhaps it would be feasible to extend this program to the Community College Satellite Program operating on the Winnebago, Santee, and Omaha Reservations. This would give the Tribal Councils the opportunity to employ local people who have been educated in law enforcement in the existing criminal justice systems which serve the Reservations.

This author recommends that Northeast Nebraska Technical Community College provide such training for future police officers for the tribes, and also in general community education in the area of criminal justice. The College has the program and the personnel available for such a program on the Reservation.

**CHAPTER 7**

**JURISDICTIONAL PROBLEMS OF  
CRIMINAL JUSTICE FOR THE  
INDIANS IN NEBRASKA**

**CONTINUED**

**1 OF 3**

Historically, before the advent of the white man, the now Nebraska Tribes of the Santee, Omaha and Winnebago Indians were sovereign nations, each unilaterally dispensing its own form of criminal justice. Each tribe made its own criminal laws and each enforced them. A subsequent apparent erosion of such tribal sovereignty has since occurred, with varied results, with the implementation of the United States Constitution, treaties between the tribes and federal government, and various federal statutes, and federal and state judicial decisions and actions.

The current problem in Nebraska seems to deal with the question of "jurisdiction", or otherwise put, "who has the power to do what in law enforcement, courts and corrections, with the Indian people, and under what authority".

Generally speaking, it appears as to the Omaha Tribe, the federal government has jurisdiction over "major" criminal offenses, while the tribe under Tribal Ordinance or Title 25 of the Code of Federal Regulations, exercises jurisdiction over lesser offenses which may be called "misdemeanors". Each "sovereign" reportedly enforces the laws in its respective area of responsibility. A court battle has ensued, and is still pending as to whether or not the State of Nebraska has criminal jurisdiction of offenses committed by Indians on the Omaha Reservation because of an "attempted" exercise of retrocession by the State under 25 U.S.C.S. 1323 (April 11, 1968, PL 90-284, Title IV, 403 (a) 82 Stat. 79). Presently the United States and the State of Nebraska each feel that they have exclusive criminal jurisdiction over the Omaha Reservation. The Omaha Tribe is exercising jurisdiction over "minor" offenses. The

role and policy of the federal government is unclear. The federal statute under which the retrocession question arises is as follows:

25 U.S.C.S., 1323. Retrocession of jurisdiction by state "(a) The United States is authorized to accept a retrocession by any State of all or any measure of the criminal or civil jurisdiction, or both, acquired by such State pursuant to the provisions of Section 1162 of Title 18 of the United States Code, Section 1360 of Title 28 of the United States Code, or Section 7 of the Act of August 15, 1953 (67 Stat. 588) 18 USCS, 1162 and notes; 28 USCS, 1360 and notes, as it was in effect prior to its repeal April 11, 1968, by Subsection (b) of this section." (Apr. 11, 1968, P.L. 90-284, Title IV, 403 (a), 82 Stat. 79.)

A recent study entitled "Justice and the American Indian", Volume I: "The Impact of Public Law 280 upon the Administration of Justice on Indian Reservations", published by the National American Indian Court Judges Association, Inc., 1974, presents the Nebraska jurisdictional situation as follows:

"Nebraska"

"One of the six named states. The State has complete criminal and civil jurisdiction. (over Indians)

"There is an exception to this statement, but it will take a decision by the United States Supreme Court to resolve its existence. The controversy arises out of the claim by both the state and federal government to exclusive jurisdiction over the Omaha Tribe. This has led to a breakdown of law enforcement, as neither party is confident of their position.

"The difficulty stems from the attempt by Nebraska to retrocede jurisdiction pursuant to the 1968 Act as to two tribes. The federal government accepted the retrocession only as to the Omaha Tribe.<sup>25</sup> (Executive Order 11435, Nov. 21, 1968; 33 F.R. 17339). The state then decided to withdraw its offer. In the cases of *State v. Goham*,<sup>26</sup> (187 Neb 35, 187 N.W. 2d 305) and *State v. Tyndall*,<sup>27</sup> (187 Neb 48, 187 N.W. 2d 298) the state courts held that Nebraska could withdraw its offer as it was an all-or-nothing proposition. A contrary result was reached in Federal District Court in the case of *Omaha Tribe v. Village of Walthill*.<sup>28</sup>

(460 F. 2d 1327; 8th Cir. 1972). At present a petition seeking certiorari is pending.

"It seems likely the Supreme Court will follow the federal court decision. Such a result would be consistent with the language of the retrocession provision.<sup>29</sup> (25 U.S.C. Sec. 1323 (a) The statute clearly allows the federal government to accept any measure of jurisdiction, and this is precisely what the Secretary has done."

The assumption of criminal jurisdiction by the State of Nebraska over the Santee, Omaha and Winnebago tribes is apparently originally based upon "Public Law 280" (67 Stat. 588, 83rd Congress, First Session, August 15, 1953), which reads as follows:

"To confer jurisdiction on the States of California, Minnesota, Nebraska, Oregon, and Wisconsin, with respect to criminal offenses and civil causes of action committed or arising on Indian reservations within such States, and for other purposes.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That Chapter 53 of Title 18, United States Code, is hereby amended by inserting at the end of the chapter analysis preceding Section 1151 of such title the following new item: '1162. State jurisdiction over offenses committed by or against Indians in the Indian country.'

"(a) Each of the States listed in the following table shall have jurisdiction over offenses committed by or against Indians in the areas of Indian country listed opposite the name of the State to the same extent that such State has jurisdiction over offenses committed elsewhere within the State and the criminal laws of such State shall have the same force and effect within such Indian country as they have elsewhere within the State:

State of	Indian Country Affected
California . . . .	All Indian country within the State
Minnesota . . . .	All Indian country within the State except the Red Lake Reservation
Nebraska . . . .	All Indian country within the State
Oregon . . . .	All Indian country within the State except the Warm Springs Reservation
Wisconsin . . . .	All Indian country within the State except the Menominee Reservation

"(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band or community that is held in trust by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute or with respect to hunting, trapping, or fishing or the control, licensing or regulation thereof.

"(c) The provisions of Sections 1152 and 1153 of this chapter shall not be applicable within the areas of Indian country listed in subsection (a) of this section.

"Sec. 3. Chapter 85 of Title 28, United States Code, is hereby amended by inserting at the end of the chapter analysis preceding Section 1331 of such title the following new item: '1360. State civil jurisdiction in actions to which Indians are parties.'

"Sec. 4. Title 28, United States Code, is hereby amended by inserting in Chapter 85 thereof immediately after Section 1359 a new section, to be designated as Section 1360, as follows: '1360. State civil jurisdiction in actions to which Indians are parties.'

"(a) Each of the States listed in the following table shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country listed opposite the name of the State to the same extent that such state has jurisdiction over other civil causes of action, and those civil laws of such State that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State:

State of	Indian Country Affected
California . . . .	All Indian country within the State
Minnesota . . . .	All Indian country within the State except Red Lake Reservation
Nebraska . . . .	All Indian country within the State
Oregon . . . .	All Indian country within the State except the Warm Springs Reservation
Wisconsin . . . .	All Indian country within the State except the Menominee Reservation

American Indian Court Judges Association, Inc. is referred to for further study of the national impact of the law. Grave questions as to tribal remedies arise thereunder when a tribe affected feels that a state is not meeting its responsibilities in the criminal justice field to tribal members, as is definitely the case as the author has found it in Northeast Nebraska. Here a "montage" exists consisting of numerous elements of law enforcement, courts and corrections, agencies emanating from at least seven different governmental bodies and subdivisions in the area including: the Santee, Omaha and Winnebago Tribes, city and town municipal governments, three county governments, the State of Nebraska and the United States of America. The greatest problems and questions deal with the "quality" of criminal justice dispensed to the individual Indian under this intricate web of "separate sovereigns". For a study of the problem and its effect upon the Santee Tribe, see the study of Bubak and Greaves in the Appendix entitled "Police Protection for the Santee Sioux Tribe of Nebraska--Whose Responsibility".

The recommendations of the Bubak and Greaves study are herein incorporated and recommended to help to remedy these jurisdictional problems now existing under Public Law 280, et al. The author further endorses a critical study and evaluation of the concept of "self-determination for Indians", which is now the overt policy of the Bureau of Indian Affairs, as a part of the overall solution in Nebraska.

**CHAPTER 8**

**JUVENILE DELINQUENCY  
AND  
EDUCATION**

A meeting was held on September 3, 1973, in Winnebago to discuss the problem of "juvenile delinquency" in detail. Attending were representatives from the Bureau of Indian Affairs, Public Health Service, Nebraska State Welfare, Reservation Programs Officer, education specialist, and county officials. Pointed out especially at this meeting was: "The most serious deaths on the Reservation can usually be traced to alcohol." It was suggested that the following areas be taught in the schools and to adult education classes: "the problems of drinking, how to drink, sex, how to protect oneself, needs as a human being and other areas along this line". It was pointed out "that all too often it happens that the mothers of the young unwed mothers are the ones who end up caring and raising the baby after birth." "The kids realize too late that marriage and having children isn't all that they think it to be and wish that they had enjoyed themselves instead of tying themselves down too soon." It is the contention of the general assemblage that: "Their kids be reached before they are having trouble in the community and their environment." It was also pointed out that the present school system had no organized activities for the youth, and the kids were complaining about this. The assemblage felt that this opinion was handed down from the parents. It was suggested that those present ask the children what their needs were, what they wanted to do, and what they thought would be the best solution to their problems. It was also pointed out that "programs seemed always to be geared towards curative methods rather than the preventative." "Due to this approach, by the time their needs reach us, it is very nearly a crisis." "All too many times, the programs are to pacify the

kids, to keep them off the streets and out of the way." "Perhaps educating them would be better for them as well as for the parents." "Programs fail by not reaching those who need them the most." Also pointed out was the problem of "parental failure," which comes about through a lack of security at home and/or gambling and alcoholism.

The early ages of the child, including prenatal, have perhaps the most lasting effect on the person. Remedial programs should work with young mothers, mothers-to-be, and fathers to help them understand what's about to happen to them, their responsibilities and the results of their actions. There is needed some type of programming which would include prenatal and postnatal education of the parents which will improve parental attitudes towards their children.

Problems described by this assemblage at a meeting in December, 1973, follow the same lines of problems identified by this project through the use of interviews and data collected. Although there have been many good programs in the past, they usually lasted only an average of two to three months, and at that time they were discontinued, reportedly for lack of community and tribal support and interest.

Juveniles, after many experiences with this type of short-term programming, naturally become very hesitant about participating in any of the new programs that come to the Reservation, and are actually sometimes hostile toward them. Perhaps it would not be unusual for many of us to have the same problem and to feel the same way, given a similar past history. Also, for the most part, it appears that when Indian juveniles are taken into courts in this area of Nebraska

for a criminal offense, the court, in an apparent attempt to keep them out of reform schools and on the Reservation, puts them on "court probation". The reported result of court probation is that they have no formal supervision, and no punitive measures are taken. Thus, "bad" behavior is often thereby reinforced in the juvenile and he feels that he can "get away with it" perhaps again.

It is the author's recommendation that the Nebraska court "probation system" be reformed. When a juvenile is placed on "court probation" there should be a referral agency to place the child on probation and supervise him. It is recommended that each tribe have its own correction program made up of at least two trained professionals (MSW's preferably) and the bulk of the correctional staffing should include trained paraprofessionals (preferably tribal members). The juveniles should report to their "probation officer" at least once a week. Also they should be assigned to community improvement (clean-up, etc.) programs (unpaid) and/or restitution work, along with other appropriate remedial programs. Furthermore, contact should be kept with the school system on their attendance and progress (if there is a problem in this area, tutors should be made available). Also the referral agency should be aware of any family problems and referral made to and by the appropriate agency. Lastly and perhaps most importantly, the court should set down in writing the conditions of the probation, for example: curfew time, work time, desired behavior in school, home, etc. These conditions must be understood mutually and agreed upon mutually by the juvenile, the court, the "probation officer", and the family involved to more adequately insure their success.

Among the perceived reasons for high juvenile delinquency rates among the Indian youth in Northeast Nebraska are: (1) the apparent lack of a viable cultural base to identify with; (2) the apparent lack of "program" continuity within the community; (3) the constant movement of the population between urban and rural areas; (4) the absence of acceptable models for "good" behavior; and (5) the absence of rewards for appropriate socially approved "good" behavior. Thus, in communities with few organized activities or other recreational pursuits for the youth to occupy their time outside of school, with school systems that do not provide them with adequate tools to earn a living after the completion of their education and which in fact, push them out and reinforce the attitude of failure, it is surprising that they have not "dropped out" physically and joined the growing ranks of juvenile delinquents long before they reach secondary school level.

There is a need in these Indian communities for comprehensive programming geared to the total educational environment that starts with the child before birth. That means starting with prenatal care of the mother, the attitude of the father and the rest of the family. It is suggested that children who are taught from birth that they will be successes usually are, if they are given the confidence and the tools to work with.

Cooperation between Tribal Councils, Nebraska county officers, and state officials is extremely important in all areas, but especially in the area of juvenile delinquency and adult criminal justice problems, economic development, education, and planning among others. There is hardly an area where intergovernmental cooperation is not needed.

The Nebraska county court system provides for associate judges.

There has never been an Indian appointed to such a position. This author sees no reason why especially in the light of the Indian population in Thurston County that this fact should not be brought to the attention of the voters and remedied. Additionally, it is the author's recommendation that an associate judge be appointed to Thurston and Knox County Courts who is a Native American. It is submitted that these persons could deal more effectively with the Indian criminal justice problems. Hopefully, they would bring an understanding of available problems and programs, and the referral systems on the Reservation that the present courts are reportedly either not aware of or are not fully utilizing at the present time.

A few of the more obvious juvenile delinquency programs available to the local school systems and Tribal governments are: 13.575

-- Educational Research and Development sponsored by the National Institute of Education, Department of Health, Education and Welfare.<sup>32</sup> The objective of this grant area is to improve education so that every person is provided with an equal opportunity to receive an education of high quality through helping solve or to alleviate the problems of achievement of justice of American education, advancing the practice of education as an art and science profession, strengthening the scientific and technological foundation of education and building an effective educational research and developmental system. The uses of the grant are that the grant will be awarded to support

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<sup>32</sup>Catalog of Domestic Assistance, Department of Health, Education and Welfare, National Institute of Education, 13.575, Educational Research and Development.

the conduct of educational research and the collection and dissemination of the findings of educational research. This program could be used by the tribal government and local school systems to develop a whole new educational environment on the Reservations, to evaluate new programs in progress and to make any needed changes. The needs for different types of educational environment have been indicated and this program could possibly provide it for the Indian children. The program could create culturally attuned education systems for the tribes in Northeast Nebraska.

Also available to the tribes is the "Follow Through Program" (13.433) funded by the Office of Education, Department of Health, Education and Welfare.<sup>33</sup> The program objectives are to sustain and augment in primary grades the gains that children from low income families make in Headstart and other quality preschool programs. "Follow Through" provides special programs of instruction as well as health, nutrition, and other education related services which will aid in the continued development of children to their full potential. Active participation of parents is stressed. It may be used for project activities not included in the services provided by the school system; such activities include specialized and remedial teachers, teacher aides, and materials, physical and mental health services, social services, staff and programs, nutritional improvement and parent activities. The length of the grant

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<sup>33</sup>Catalog of Domestic Assistance, Department of Health, Education and Welfare, Office of Education, 13.433, Educational Research and Development.

is one year subject to renewal and the range of the grant awards  
are \$50,807 to \$1,732,422.

**CHAPTER 9**

**ECONOMIC DEVELOPMENT**

Historically, the beginnings of what Oscar Lewis described as the "culture of poverty"<sup>34</sup> was initiated in 1871 by the United States Congress with its Indian reservation policy,<sup>35</sup> the apparent purpose of which was to destroy Indian cultures and to assimilate Indians into the dominant American culture.

"the Committee on Indian Affairs to the Commission on Organization of the Executive Branch of the Government recognized that assimilation has failed if shedding the old culture takes the joy out of life, produces a feeling of inferiority and destroys the drive and purpose of the Indian."<sup>36</sup>

"Americans of good will and generous nature have for many generations wanted to help Indians to become civilized, to assimilate, to get into the mainstream of American life, to stop being Indians and to become more like us."<sup>37</sup>

"These well wishers (Americans) suppressed native languages and took children away from home for cultural and academic training in white-style schools. They relocated young Indians from impoverished reservation communities to a new life--frequently less

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<sup>34</sup>Lewis, Oscar, Children of Sanchez, Random House, New York, 1961. "Most commonly it (culture of poverty) develops when a stratified social or economic system is breaking down or is being replaced by another, as in the case of transition from feudalism to capitalism or during the industrial revolution." p. xxv.

<sup>35</sup>"... hereafter no Indian nation or tribe within . . . the United States shall be acknowledged or recognized as an independent nation, tribe, or power with whom the United States may contract by treaty; but no obligation of any treaty lawfully made and ratified with any such Indian nation or tribe prior to March 3, 1871, shall be hereby invalidated or impaired. . ." (Act of March 3, 1871, 16 Stat. 544, 25 U.S.C.A. 71).

<sup>36</sup>Brophy, William A. and Aberle, Sophie D., et al, Report of the Commission on the Rights, Liberties, and Responsibilities of the American Indian, The Indian, America's Unfinished Business, University of Oklahoma Press, Norman, 1966, pp. 10, 11.

<sup>37</sup>Uncommon Controversy, Fishing Rights of the Muckleshoot, Puxallup & Nisqually Indians. A report prepared for the American Friends Service Committee, University of Washington Press, Seattle, 1970, p. xxi.

desirable or even intolerable in the crowded, inhospitable cities where many Indians felt completely alienated."<sup>38</sup>

However, rather than a total assimilation, the end result was to create a situation of poverty combined with an attempt to culturally reeducate Indian children in White culture; in short, a general failure on all points, as can be seen today.

The quality of education in the isolated federal Indian schools apparently did not afford the students the opportunity nor the motivation to learn skills appropriate for pulling themselves out of the poverty situation on the reservation, without having to reject and leave their ancestral heritage. At the same time, the U.S. government instituted federal aid programs to Reservations which sometimes tended to eliminate virtually any motivation for self-determination.<sup>39</sup>

Native Americans were wards of the federal government until 1924 when they were granted American citizenship.<sup>40</sup> The guardianship phase has not passed yet and like any new underdeveloped third-world country today, the tribal governmental structure has been left to govern without many of the necessary tools and experience,

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<sup>38</sup>Ibid, p. xxii.

<sup>39</sup>80 Congress, 1 Session, House of Representatives Hearings on Appropriations for 1966, Part I, p. 728. "The Johnson-O'Malley Act of April 16, 1934 (48 Stat. 596) authorized contracts for the direct operation of its own Indian schools and also for payments contributed to thirteen states, four school districts and one hospital for the Indians' public instruction. The act contemplates that the Secretary of the Interior will fix minimum educational standards no lower than the highest maintained by each respective state, an important requirement permitting the Federal government to set up and then to enforce standards in public schools using such money."

<sup>40</sup>43 Stat. 244, U.S.C. 398.

during this time of transition. Since Indians were and are still, to varying degrees, wards of the United States, their governmental system did not have the opportunity to gain the political experience which would enable them to employ an efficient and culturally attuned governmental apparatus in the present context of a changing America. The apparent result has been the creation of Indian communities with tribal governments who have apparently tremendous expertise in securing federal funds without sufficient knowledge of the management and efficient use of grant monies. Furthermore, Indian monies from the Bureau of Indian Affairs programs have reportedly always been competitive and inadequate. For example: How can an Indian Health Service run on \$60,000?<sup>41</sup> This is for one year and includes the health facility (of which there is none) for approximately 1,500 Indian people.<sup>42</sup> Also, how far does \$90,000<sup>43</sup> of economic development loans for businesses and development companies for three (3) communities with a combined Indian population of approximately 3,000 people go towards developing an area which has no industry? What type of alcoholism halfway house can operate on \$15,000<sup>44</sup> per year from the State of Nebraska? What type of technical

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<sup>41</sup>Received from Winnebago Bureau of Indian Affairs Office Budget for Nebraska Tribes. This amount to be received by Omaha Tribe for FY74.

<sup>42</sup>"Bureau of Indian Affairs Report of Labor Force Statistics", Winnebago Agency, 1973.

<sup>43</sup>Funded to Intertribal Development Corp. FY74 from Department of Commerce-Economic Development Administration under Program 11.301.

<sup>44</sup>From Nebraska Department of Institutions--additional monies gained through private donations.

skills can be learned in a community funded for Manpower and Training Programs for \$33,000?<sup>45</sup> What are the financial responsibilities of the Bureau of Indian Affairs and the State of Nebraska to these deprived areas? Whose responsibility is it to see that programming meets the needs of the people in the community at large?<sup>46</sup>

The poverty sub-culture is reinforced by the development of a welfare state on the reservation today. Bureau of Indian Affairs money is used to barely maintain the Indian people at their present status of low income. Present training programs do not provide them with the necessary training or skills to prepare them to enter the employment markets.

Included in economic development is the great need for planning. A basic and comprehensive economic development study should start immediately! At this time tribal planning is being done on a crisis intervention approach and is usually very fragmented, and hence, not as effective as it could be under more ideal circumstances. Thus, this lack of comprehensive planning and program development has resulted in pouring a large amount of dollars per year into the Reservations without seeing many viable results that have helped to alleviate the problems of the Indian communities. Piecemeal and overlap programming has obviously failed to eliminate or even temporarily alleviate major problems facing these Indians.

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<sup>45</sup>From Bureau of Indian Affairs FY74 Budget appropriations for Winnebago Tribe with approximate population of 660.

<sup>46</sup>See Public Law 280, passed by Congress August 15, 1953, (H.R. 1063); Also National American Indian Court Judges Association, Justice and the American Indian, Vol. 1, "The Impact of Public Law 280 upon the Administration of Justice on Indian Reservations."

Trained planners should be hired. Among the types of economic development that can be applied for by these planners are Indian Industrial and Tourism Development and On-the-Job Training Program.<sup>47</sup> Through the Bureau of Indian Affairs, these programs can be used as an aid in the establishment of industrial plants and commercial and tourism enterprises in areas on or near reservations. These programs could be used to establish tribally or privately owned businesses and to develop tourism, while paying half of the salaries of Indian employees. The estimated budget for the Indian Industrial and Tourism Development and On-the-Job Training Program for fiscal year 1974, in Nebraska, is \$2,138,000. By providing up to half of the trainee's salary this program could offset some of the initial overhead in the establishment of businesses in these areas of Nebraska.

Additionally, there is an Indian Tribal Affairs Management Program<sup>48</sup> through the Bureau of Indian Affairs, which would provide full-time managerial training for tribal members. This program could readily be used to provide a manager for many businesses that could be located, privately or tribally on the Reservation. Also, this training program could be tied in with Northeast Nebraska Technical Community College's vocationally oriented programs. For example: presently a past tribal chairman of Santee is undergoing training for a managerial position with an industry which is going

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<sup>47</sup>Department of Interior, Bureau of Indian Affairs, Program 15.177, 1973, Catalog of Federal Domestic Assistance, Executive Office of the President, Office of Management and Budget, p. 339.

<sup>48</sup>Bureau of Indian Affairs, Department of Interior, Program No. 15.134, "Indian Tribal Affairs Management Program". Catalog of Federal Domestic Assistance, Executive Office of the President, Office of Management & Budget, p. 348, 349.

to be established very soon in Santee. Through the Tribal Affairs Management Program a tribe can receive up to \$25,000 a year for participating in the management training portion of the program.

Also available for use on the Reservations are economic development loans for businesses and development companies through Economic Development Administration, U.S. Department of Commerce.<sup>49</sup> These loans may be used for business development for up to 65 percent of the cost of fixed assets, but may be used for acquisition of fixed assets only. The other 35 percent of the cost comes from the participating tribe. That funding could include the plant, building machinery, equipment, including land preparation and building rehabilitation. Funds may be used for most kinds of new industry or commercial facilities or to expand ones already in existence, on a Reservation. Minority business enterprise loans are also available from the U.S. Department of Commerce.<sup>50</sup>

It has been suggested that perhaps the easiest way to maintain a stable population base in a given area is to establish industry in a community, or to develop existing agricultural or other natural resources indigenous to the area, including human resources. It stands to reason that when young people leave home and go to college to get an education, the few jobs that are available back on the reservation which are consistent with their degree of education are

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<sup>49</sup>Ibid, Program No. 11.301, p. 70B.

<sup>50</sup>Ibid, No. 11.800, p. 91. See this reference booklet for numerous available Federally funded programs for Indians and Tribes, and also, for State of Nebraska programs see "Guide of Nebraska State Services", Department of Economic Development, Lincoln, Nebraska.

few and far between and usually are already filled.<sup>51</sup> Therefore, it is obviously essential that new jobs and new job markets be provided for Indians in Northeast Nebraska. New jobs could help to keep the young people on the reservation, and also may bring them back to the reservation once they have finished their education. Other benefits to the tribe and its members are obvious.

Employment programming in the past has been inadequately funded and thus could not achieve its projected goals. The lack of an effective managerial staff for such a program on the reservation has obviously been a problem of long standing. Utilizing local colleges such as Northeast Nebraska Technical Community College to train tribal members in management, business, and vocational education will provide a more diversified employment base, and thus, could attract more industry to the Reservations, and also more fully develop existing employment potential, including tourist attractions on beautiful Lewis and Clark Lake, among others.

The present unemployment rates for the Indian communities in Northeast Nebraska are reportedly from 57 to 68 percent of the available male employables on the three Reservations.<sup>52</sup> The rates for employable females of the work population are an average 67 percent unemployed.<sup>53</sup> The reported employment efforts in the past,

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<sup>51</sup>Yankton Daily Press and Dakotan, July 29, 1974, p. 17. "Many of the people around here are not work-oriented. . . but it's not due to them being Indian, it's typical of poverty areas; and it's the same thing with a lot of them not being able to identify with the importance of education."

<sup>52</sup>An average of the three tribes taken from "Bureau of Indian Affairs Report of Labor Force Statistics", Winnebago Agency, 1973.

<sup>53</sup>Ibid.

through the services of the Bureau of Indian Affairs, has been to attempt to train and place Indian workers from these tribes in employment in Omaha, Lincoln, and other large cities outside the Reservations immediate geographic area. What has then happened in many of these instances is that employment in the areas of the individual's training specialty has been unavailable, and thus the individual is placed in an "alternate job" area. Because of lack of training for the "alternate job", he loses the job rather quickly. The resultant behavior of many of these individuals reportedly has been to consume excessive alcohol upon frequent occasions. The unemployed individual then finally returns to the Reservation where there is little opportunity for employment at all.

Such is not the apparent pattern with the neighboring white communities with a white culture in Nebraska. The majority of the whites in the area come from rural communities and are primarily engaged in agriculture. Those persons who do not want to fit into that pattern tend to leave the area to find employment elsewhere. Because their training and values are more consistent with the dominant culture of which they are members, and to which they subsequently remove themselves, they have relatively few problems fitting into the urban patterns of life and being gainfully employed. However, such is not the prevalent experience pattern with the Indian people of this area.

One of the agencies readily available for the three tribes for planning and economic development would be the Intertribal Development Corporation. It is funded by and for the tribes to provide tribal planners aid in establishing industry, social agencies, etc. on the Reservation.

It has been suggested that the State of Nebraska has failed to provide adequate economic development assistance for the Indian Tribes which is available by state law to all communities in Nebraska.<sup>54</sup> Pertinent legislation includes: The Community Development Law,<sup>55</sup> Education Loan Act for Viet Nam Veterans,<sup>56</sup> Industrial Development Corporation,<sup>57</sup> Local Option Revenue Act,<sup>58</sup> State Indian Commission,<sup>59</sup> State Office of Planning and Development.<sup>60</sup> Also, there are numerous federal programs<sup>61</sup> through the Bureau of Indian Affairs and other agencies of the federal government which have already been mentioned herein. The Nebraska laws and federal statutes substantiate the right of the Indians of Nebraska to these existing services and there is no apparent reason a Tribe cannot apply for and receive assistance thereunder, especially in the light of Nebraska's further

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<sup>54</sup>Community Development Law, Revised Statutes, 1943, 18-2101 et seq.

<sup>55</sup>Ibid.

<sup>56</sup>Laws 1974, L.B. 490.

<sup>57</sup>Revised Statutes of Nebraska, 1943, 21-2301 et seq.

<sup>58</sup>Revised Statutes of Nebraska, 1943, 77-27, 142 et seq.

<sup>59</sup>Revised Statutes of Nebraska, 1943, 81-1219.

<sup>60</sup>Revised Statutes of Nebraska, 1943, 84-131 et seq.

<sup>61</sup>Update of 1973 Catalog of Federal Domestic Assistance, Economic Development Administration, Department of Commerce, Program 11.301, Economic development loans for businesses and development companies, p. 70B & C; 1973 Catalog of Federal Domestic Assistance, Department of Interior, Bureau of Indian Affairs, Program 15.117, Indian Industrial and Tourism Development and On-the-Job Training, p. 339; 1973 Catalog of Federal Domestic Assistance, Bureau of Indian Affairs, Department of Interior, Program 15.134, Indian Tribal Affairs Management (Tribal Affairs Management Program), p. 348.

responsibilities to the tribes under "Public Law 280" (67 Stat. 588,  
83rd Congress, 1st Session, August 15, 1953).

## **CHAPTER 10**

### **SUMMARY AND RECOMMENDATIONS**

All of the below listed recommendations are directly related to the quality of the administration of criminal justice to the individual members of the Santee, Omaha and Winnebago Indian Tribes located in northeastern Nebraska. These recommendations attempt to encompass a context containing numerous social problems, within which context each of the components of the criminal justice system must operate and function to ultimately dispense justice--the very reason for their existence. Consequently, the serious reader, to whom this author strongly encourages a visit to the tribes included in this study, will immediately recognize the direct impact of the herein listed observed reservation criminal justice problems and the reasoning behind the below listed recommendations as they would affect the police, courts and corrections agencies of the area.

- (1) It is essential to provide efficient, effective, adequately staffed and funded police departments to the Nebraska tribes. Without these any tourist or economic enterprise will be seriously jeopardized. Also in conjunction with the establishment of the police departments the following recommendations are made:
  - a) Representation on the county courts in the position of associate judges in Knox and Thurston Counties.
  - b) Representation on the Nebraska Commission on Law Enforcement and Criminal Justice and on the Regional Planning Commissions.
  - c) Development of community based corrections in both adult and juvenile corrections.
  - d) Establishment of alcohol rehabilitation programs providing alternatives to incarcerations of alcohol abusers.
  - e) A referral system outside of the criminal justice system should be developed in order to provide law enforcement officers an agency to which to refer potential offenders.

(2) It is also recommended that more intergovernmental and intergovernmental agency cooperation be instituted immediately (including tribe, federal, state, county). Inclusive in this recommendation the following are suggested in order to achieve this goal:

- a) The development of strong municipal governments (Santee and Winnebago).
- b) Active participation in county and state government in order to be aware of and included in comprehensive plans.
- c) The cooperation of Indian organizations and the tribes for the purpose of creating lobbies and pressure groups for Indian rights in the State of Nebraska in the areas of community economic development, social services, law enforcement, courts, juvenile delinquency, education, probation and community based corrections, etc.

Progress in most areas of Indian affairs in Nebraska has been stifled because of the lack of governmental cooperation. The responsibilities of federal, state, county and tribal agencies must be defined: The tribes must make a strong effort to become more fully aware and involved in agency responsibility.<sup>62</sup>

(3) Emphasis should be put on continued development of economic stability with special importance placed upon tribal

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<sup>62</sup>See: "The Communication Gap", in Deloria, Vine Jr., We Talk, You Listen, A Delta Book--Dell Publishing Co., New York, 1972, pp. 19-32. For an interesting commentary upon the operation of Federal Agencies and American Indians, see: Deloria, Vine Jr., Custer Died For Your Sins - An Indian Manifesto, Avon Books, New York, 1971, pp. 128-147; and also: "The Barriers To Change", in Cahrn, Edgar S. (Editor), Our Brother's Keeper: The Indian In White America, A New Community Press Book--World Publishing Co., New York, 1970, pp. 141-145.

ownership in order to channel profits into further economic and community development.<sup>63</sup>

(4) Concurrent with economic development, this author recommends the development of parks and recreational areas within the confines of the reservations. The possibility of developing game preserves, with tribally owned and operated hunting areas (with fee charges within the context of Nebraska law for Winnebago and Santee and within the context of federal regulations on the Omaha Reservation) and camping grounds is very feasible.

(5) It is strongly recommended that the Indian community become "involved" actively with reservation programs, encourage active political participation at tribal, state and federal levels, and develop more Indian leadership.<sup>64</sup>

(6) It is further recommended that court action for protection for Indians and tribes in light of Public Law 280 be continued in order that the tribe receive equal services within the State of

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<sup>63</sup>See: "The Factory Without a Time Clock", in Steiner, Stan, The New Indians, A Delta Book--Dell Publishing Co., Inc., New York, pp. 124-135. See: "Postscript--Where Do We Go From Here?", in Cahn, Edgar S. (Editor), Our Brother's Keeper: The Indian In White America, a New Community Press Book--World Publishing Co., New York, 1970, pp. 187-193. Also see: "The New Organization", in Deloria, Vine Jr., We Talk, You Listen, A Delta Book--Dell Publishing Co., Inc., New York, 1972, pp. 153-168.

<sup>64</sup>On the problem of Indian leadership see: Deloria, Vine Jr., Custer Died For Your Sins--An Indian Manifesto, Avon Books, New York, 1971, pp. 196-221; and also: "So You Want to Be a Leader", in Steiner, Stan, The New Indians, A Delta Book, Dell Publishing Co., Inc., New York, pp. 307-311, and also: "Which Are You?: Five Types of Young Indians", pp. 305-307. Also see: "The Indian of the Future", in Washburn, Wilcomb E., Red Man's Land--White Man's Law, Charles Scribner's Sons, New York, 1971, pp. 237, 240.

Nebraska, and also to clarify jurisdictional law enforcement questions relating to law enforcement and also civil law.<sup>65</sup>

(7) It is also critically important that alcohol abuse programs be established forthwith on each reservation. These should include community education, halfway houses, in-patient rehabilitation programs, detoxification facilities, vocational education, and counseling services.<sup>66</sup>

(8) This author strongly suggests the development of adequate health facilities on each reservation! These should include dental care, prenatal care and education as to the causes of birth defects.

(9) It is essential that the educational institutions be drastically improved to provide equal opportunity for the Indian people on and off the reservation.<sup>67</sup>

(10) Intertribal cooperation is essential for comprehensive planning and development on a broad spectrum on matters of mutual concern.

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<sup>65</sup> See remedies proposed in Justice and the American Indian, Vol. I: "The Impact of Public Law 280 upon the Administration of Justice on Indian Reservations", National American Indian Court Judges Association, Inc., 1974, pp. 52-57. For an interesting commentary upon the use of the "law" in Indian affairs see: "Law as the Solvent", in Fey, Harold E. and McNickle, D'Arcy, Indians & Other Americans--Two Ways of Life Meet, Perennial Library, Harper & Row, New York, 1970, pp. 167-179.

<sup>66</sup> See: "Social Life", in Washburn, Wilcomb E., Red Man's Land--White Man's Law, Charles Scribner's Sons, New York, 1971, pp. 234-237, on "drunkenness".

<sup>67</sup> See: "Powwow of the Young Intellectuals", in Steiner, Stan, The New Indians, A Delta Book--Dell Publishing Co., Inc., New York, pp. 28-38.

- (11) Each tribe should hire professionals in law and economists to help with tribal problems in general and economic development in particular.
- (12) This author recommends hiring a public relations firm to improve the image of the tribes to the surrounding areas, in the state and in the nation.
- (13) It is recommended that there be further development of indigenous natural resources including agriculture.
- (14) And finally, it is recommended that there be continuing research and study of Indian affairs in the State of Nebraska.

**APPENDIX**

PUBLIC LAW 280 (67 Stat. 588)

83rd Congress, 1st Session, August 15, 1953

AN ACT

To confer jurisdiction on the States of California, Minnesota, Nebraska, Oregon, and Wisconsin, with respect to criminal offenses and civil causes of action committed or arising on Indian reservations within such states, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That Chapter 53 of Title 18, United States Code, is hereby amended by inserting at the end of the chapter analysis preceding Section 1151 of such title the following new item:

"1162. State jurisdiction over offenses committed by or against Indians in the Indian country."

Sec. 2. Title 18, United States Code, is hereby amended by inserting in Chapter 53 thereof immediately after Section 1161 a new section, to be designated as Section 1162, as follows:

"Sec. 1162. State jurisdiction over offenses committed by or against Indians in the Indian country.

"(a) Each of the states listed in the following table shall have jurisdiction over offenses committed by or against Indians in the areas of Indian country listed opposite the name of the state to the same extent that such state has jurisdiction over offenses committed elsewhere within the state and the criminal laws of such state shall have the same force and effect within such Indian country as they have elsewhere within the state:

"State of	Indian Country Affected
California . . . . .	All Indian country within the State
Minnesota . . . . .	All Indian country within the State, except the Red Lak Reservation
Nebraska . . . . .	All Indian country within the State
Oregon . . . . .	All Indian country within the State, except the Warm Springs Reservation
Wisconsin . . . . .	All Indian country within the State, except the Menominee Reservation

"(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner

inconsistent with any federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing or regulation thereof.

"(c) The provisions of Sections 1152 and 1153 of this chapter shall not be applicable within the areas of Indian country listed in subsection (a) of this section."

Sec. 3. Chapter 85 of Title 28, United States Code, is hereby amended by inserting at the end of the chapter analysis preceding Section 1331 of such title the following new item:

"1360. State civil jurisdiction in action to which Indians are parties."

Sec. 4. Title 28, United States Code, is hereby amended by inserting in Chapter 85 thereof immediately after Section 1359 a new section, to be designated as Section 1360, as follows:

"Sec. 1360. State civil jurisdiction in actions to which Indians are parties.

"(a) Each of the states listed in the following table shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country listed opposite the name of the state to the same extent that such state has jurisdiction over other civil causes of action, and those civil laws of such state that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the state:

"State of	Indian Country Affected"
California . . . . .	All Indian country within the State
Minnesota . . . . .	All Indian country within the State, except the Red Lake Reservation
Nebraska . . . . .	All Indian country within the State
Oregon . . . . .	All Indian country within the State, except the Warm Springs Reservation
Wisconsin . . . . .	All Indian country within the State, except the Menominee Reservation

"(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall confer jurisdiction upon the state to

adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein.

"(c) Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the state, be given full force and effect in the determination of civil causes of action pursuant to this section."

Sec. 5. Section 1 of the Act of October 5, 1949 (63 Stat. 705, ch. 604), is hereby repealed, but such repeal shall not affect any proceedings heretofore instituted under that section.

Sec. 6. Notwithstanding the provisions of any Enabling Act for the admission of a state, the consent of the United States is hereby given to the people of any state to amend, where necessary, their state constitution or existing statutes, as the case may be, to remove any legal impediment to the assumption of civil and criminal jurisdiction in accordance with the provisions of this Act: Provided, that the provisions of this Act shall not become effective with respect to such assumption of jurisdiction by any such state until the people thereof have appropriately amended their state constitution or statutes as the case may be.

Sec. 7. The consent of the United States is hereby given to any other state not having jurisdiction with respect to criminal offenses or civil causes of action, or with respect to both, as provided for in this Act, to assume jurisdiction at such time and in such manner as the people of the state shall, by affirmative legislative action, obligate and bind the state to assumption thereof.

## CONSTITUTIONAL RIGHTS OF INDIANS

### Sec. 1301. Definitions

For purposes of this title (25 USCS, Sec. 1301-1303), the term--

- (1) "Indian tribe" means any tribe, band, or other group of Indians subject to the jurisdiction of the United States and recognized as possessing powers of self-government;
- (2) "powers of self-government" means and includes all governmental powers possessed by an Indian tribe, executive, legislative, and judicial, and all offices, bodies, and tribunals by and through which they are executed, including courts of Indian offenses; and
- (3) "Indian court" means any Indian tribal court or court of Indian offense.

(April 11, 1968, P.L. 90-284, Title II, Sec. 201, 82 Stat. 77)

### Sec. 1302. Indian rights enumerated

No Indian tribe in exercising powers of self-government shall--

- (1) make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for a redress of grievances;
- (2) violate the right of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;
- (3) subject any person for the same offense to be twice put in jeopardy;
- (4) compel any person in any criminal case to be witness against himself;
- (5) take any private property for a public use without just compensation;
- (6) deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and at his own expense to have the assistance of counsel for his defense;
- (7) require excessive bail, impose excessive fines, inflict cruel and unusual punishments, and in no event impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of six months or a fine of \$500, or both;
- (8) deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;
- (9) pass any bill of attainder or ex post facto law; or

(10) deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six persons.

(April 11, 1968, P.L. 90-284, Title II, Sec. 202, 82 Stat. 77)

Sec. 1303. Habeas corpus

The privilege of the writ of habeas corpus shall be available to any person, in the court of the United States, to test the legality of his detention by order of an Indian tribe.

(April 11, 1968, P.L. 90-284, Title II, Sec. 203, 82 Stat. 77)

MODEL CODE GOVERNING COURTS OF INDIAN OFFENSES

Sec. 1311. Recommendations to Congress

The Secretary of the Interior is authorized and directed to recommend to the Congress, on or before July 1, 1968, a model code to govern the administration of justice by courts of Indian offenses on Indian reservations. Such code shall include provisions which will (1) assure that any individual being tried for an offense by a court of Indian offenses shall have the same rights, privileges, and immunities under the United States Constitution as would be guaranteed any citizen of the United States being tried in a Federal court for any similar offense, (2) assure that any individual being tried for an offense by a court of Indian offenses will be advised and made aware of his rights under the United States Constitution, and under any tribal constitution applicable to such individual, (3) establish proper qualifications for the office of judge of the court of Indian offenses, and (4) provide for the establishing of educational classes for the training of judges of courts of Indian offenses. In carrying out the provisions of this title (this section), the Secretary of the Interior shall consult with the Indians, Indian tribes, and interested agencies of the United States.

(April 11, 1968, P.L. 90-284, Title III, Sec. 301, 82 Stat. 78)

Sec. 1312. Appropriation

There is hereby authorized to be appropriated such sum as may be necessary to carry out the provisions of this title (25 USCS, Sec 1311).

(April 11, 1968, P.L. 90-284, Title III, Sec. 302, 82 Stat. 78)

JURISDICTION OVER CRIMINAL AND CIVIL ACTIONS

Sec. 1321. Assumption by state of criminal jurisdiction

(a) Consent of United States--Force and effect of criminal laws. The consent of the United States is hereby given to any state not having jurisdiction over criminal offenses committed by or against Indians in the areas of Indian country situated within such state to assume, with the consent of the Indian tribe occupying the

particular Indian country or part thereof which could be affected by such assumption, such measure of jurisdiction over any or all of such offenses committed within such Indian country or any part thereof as may be determined by such state to the same extent that such state has jurisdiction over any such offense committed elsewhere within the state, and the criminal laws of such state shall have the same force and effect within such Indian country or part thereof as they have elsewhere within that state.

(b) Alienation, encumbrance, taxation, and use of property--hunting, trapping, or fishing. Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or shall authorize regulation of the use of such property in a manner inconsistent with any federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof.

(April 11, 1968, P.L. 90-284, Title IV, Sec. 401, 82 Stat. 78)

Sec. 1322. Assumption by state of civil jurisdiction

(a) Consent of United States--force and effect of civil laws. The consent of the United States is hereby given to any state not having jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country situated within such state to assume, with the consent of the tribe occupying the particular Indian country or part thereof which would be affected by such assumption, such measure of jurisdiction over any or all such civil causes of action arising within such Indian country or any part thereof as may be determined by such state to the same extent that such state has jurisdiction over other civil causes of action, and those civil laws of such state that are of general application to private persons or private property shall have the same force and effect within such Indian country or part thereof as they have elsewhere within that state.

(b) Alienation, encumbrance, taxation, use, and probate of property. Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any federal treaty, agreement, or statute, or with any regulation made pursuant thereto; or shall confer jurisdiction upon the state to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein.

(c) Force and effect of tribal ordinances or customs. Any tribal ordinance or custom heretofore or hereafter adopted by an Indian

tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the state, be given full force and effect in the determination of civil causes of action pursuant to this section. (April 11, 1968, P.L. 90-284, Title IV, Sec. 402, 82 Stat. 79)

Sec. 1323. Retrocession of jurisdiction by state

(a) The United States is authorized to accept a retrocession by any state of all or any measure of the criminal jurisdiction, or both, acquired by such state pursuant to the provisions of Section 1162 of Title 18 of the United States Code, Section 1360 of Title 28 of the United States Code, or Section 7 of the Act of August 15, 1953 (67 Stat. 588) (18 USCS, Sec. 1162 and notes; 28 USCS, Sec. 1360 and notes), as it was in effect prior to its repeal (April 11, 1968) by subsection (b) of this section.

(April 11, 1968, P.L. 90-284, Title IV, Sec. 403 (a), 82 Stat. 79)

Sec. 1324. Consent to amend state laws

Notwithstanding the provisions of any enabling act for the admission of a state, the consent of the United States is hereby given to the people of any state to amend, where necessary, their state constitution or existing statutes, as the case may be, to remove any legal impediment to the assumption of civil or criminal jurisdiction in accordance with the provisions of this title. The provisions of this title (25 USCS, Sec. 1321-1326) shall not become effective with respect to such assumption of jurisdiction by any such state until the people thereof have appropriately amended their state constitution or statutes, as the case may be.

(April 11, 1968, P.L. 90-284, Title IV, Sec. 404, 82 Stat. 79)

Sec. 1325. Action not to abate

(a) No action or proceeding pending before any court or agency of the United States immediately prior to any cession of jurisdiction by the United States pursuant to this title (25 USCS, Sec. 1321-1326) shall abate by reason of that cession. For the purposes of any such action or proceeding, such cession shall take effect on the day following the date of final determination of such action or proceeding.

(b) No cession made by the United States under this title (25 USCS, Sec. 1321-1326) shall deprive any court of the United States of jurisdiction to hear, determine, render judgment, or impose sentence in any criminal action instituted against any person for any offense committed before the effective date of such cession, if the offense charged in such action was cognizable under any law of the United States at the time of the commission of such offense. For the purposes of any such criminal action, such cession shall take effect on the day following the date of final determination of such action.

(April 11, 1968, P.L. 90-284, Title IV, Sec. 405, 82 Stat. 80)

Sec. 1326. Special Election

State jurisdiction acquired pursuant to this title (25 USCS, Sec. 1321-1326) with respect to criminal offenses or civil causes of action, or with respect to both, shall be applicable in Indian country only where the enrolled Indians within the affected area of such Indian country accept such jurisdiction by a majority vote of the adult Indians voting at a special election held for that purpose. The Secretary of the Interior shall call such special election under such rules and regulations as he may prescribe, when requested to do so by the tribal council or other governing body, or by 20 per centum of such enrolled adults.

(April 11, 1968, P.L. 90-284, Title IV, Sec. 406, 82 Stat. 80)

Sec. 1331. Approval

Notwithstanding any other provision of law, if any application made by an Indian, Indian tribe, Indian council, or any band or group of Indians under any law requiring the approval of the Secretary of the Interior of the Commission of Indian Affairs of contracts or agreements relating to the employment of legal counsel (including the choice of counsel and the fixing of fees) by any such Indians, tribe, council, band, or group is neither granted nor denied within ninety days following the making of such application, such approval shall be deemed to have been granted.

(April 11, 1968, P.L. 90-284, Title IV, Sec. 601, 82 Stat. 80)

Sec. 1341. Authorization of Secretary of Interior

(a) Revision of document on "Indian Affairs, Laws and Treaties" and treatise on "Federal Indian Laws"--Compilation of official opinions--Printing and republication. In order that the constitutional rights of Indians might be fully protected, the Secretary of Interior is authorized and directed to--

- (1) have the document entitled "Indian Affairs, Laws and Treaties" (Senate Document Numbered 319, Volumes 1 and 2, Fifty-eighth Congress), revised and extended to include all treaties, laws, Executive orders, and regulations relating to Indian affairs in force on September 1, 1967, and to have such revised document printed at the Government Printing Office;
- (2) have revised and republished the treatise entitled "Federal Indian Law" and;
- (3) have prepared, to the extent determined by the Secretary of the Interior to be feasible, an accurate compilation of the official opinions, published and unpublished, of the Solicitor of the Department of the Interior relating to Indian affairs rendered by the Solicitor prior to September 1, 1967, and to have such compilation printed as a Government publication at the Government Printing Office.

(b) current services. With respect to the document entitled "Indian Affairs, Laws and Treaties" as revised and extended in accordance with paragraph (1) of subsection (1), and the compilation prepared in accordance with paragraph (3) of such subsection, the Secretary of the Interior shall take such action as may be necessary to keep such document and compilation current on an annual basis.

(c) Authorization of appropriations--Limitation. There is authorized to be appropriated for carrying out the provisions of this title (this section), with respect to the preparation but not including printing, such sum as may be necessary.

(April 11, 1968, P.L. 90-284, Title VII, Sec. 701, 82 Stat. '80)

"POLICE PROTECTION FOR THE SANTEE

SIOUX TRIBE OF NEBRASKA--

WHOSE RESPONSIBILITY?"

A Report of Consultations, together  
with Recommendations for  
Consideration of the Problem

by

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Vermillion, South Dakota

FOR AND AT THE REQUEST OF

THE INDIAN COMMUNITY ACTION PROGRAM  
INCORPORATED, YANKTON, SOUTH DAKOTA

and

THE SANTEE SIOUX TRIBE OF NEBRASKA

February  
1974

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"POLICE PROTECTION FOR THE SANTEE  
SIOUX TRIBE OF NEBRASKA--  
WHOSE RESPONSIBILITY?"

PREFACE AND INTRODUCTION

In January and February of 1974 the authors were contacted to study the problem of the lack of police protection for the Santee Sioux Tribe of Nebraska, by the Indian Community Action Program of Yankton, South Dakota. We were authorized to spend approximately 15 days, total, on defining the problem areas, interviewing affected parties, research, travel, analysis time and writing time. No empirical data were available to the writers. Readers should duly note then, the obvious limitations of this report, which seeks to ponder a situation which has been developing for years, and which appears to be in a critical stage since August 1973, when the Tribe was reportedly prohibited from policing its members. The following comments, discussions of problems, and considerations for solutions are based upon the reports and interviews of interested parties, legal research and are intended as a starting point from which all concerned can work together to solve mutual problems, through further meetings, research, and mutual cooperation.

THE APPARENT PROBLEM

It was reported to us that since about mid-August, 1973, the Santee Reservation<sup>1</sup> has been virtually without locally available police protection. This has been a significant problem to this community of 400 plus persons in Northeast Nebraska.<sup>2</sup> The problem seems to stem from confusion over the powers and responsibilities

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<sup>1</sup>See: a. "Constitution and Bylaws of the Santee Sioux Tribe of the Sioux Nation of the State of Nebraska," Approved April 3, 1936;

b. "Corporate Charter of the Santee Sioux Tribe of Nebraska," Ratified August 22, 1936;

c. "Santee Sioux Reservation, Comprehensive Plan, Preliminary Working Draft Report," Project No. Neb. P-90, prepared under Contract for the State Office of Planning and Programming under provisions of the Laws of the State of Nebraska; and

d. "Basic Development Plan for Knox County, Nebraska", Project No. Neb. P-83, prepared for the State Office of Planning and Programming under provisions of Nebraska Law.

e. Clark Wissler, Indians of the United States, New York: Doubleday, 1966, pp. 166 and 178.

<sup>2</sup>See: Newspaper article in Norfolk Daily News of October 20, 1973, from a release from Lincoln, Nebraska, by the Associated Press, stating: ". . . Lack of education, modern skills and a history of being considered drunks, criminals and savages had led many Indians to commit crimes . . ."

of the Tribe,<sup>3</sup> the State of Nebraska, Knox County, the Bureau of Indian Affairs of the Department of the Interior of the United States, and the Law Enforcement Assistance Administration<sup>4</sup> of the Department of Justice of the United States--all within the context of the assumption of criminal jurisdiction by the State of Nebraska over the Tribal members by virtue of Public Law 280 passed by the United States Congress on August 15, 1953 (H.R. 1063).

We were advised that the Tribe was prohibited by State officials from policing itself, that Law Enforcement Assistance Administration Funds had been cut off to the Tribe because there were questions of

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<sup>3</sup> See: a. P.L. 280, passed by Congress August 15, 1953 (H.R. 1063);

b. "Indian Law Symposium: State Jurisdiction over Indians in Indian Country," N.D. L Rev 48:729 Summer '72, for a general discussion;

c. "Rights of Tribal self-government and jurisdiction of Indian Affairs," Utah L Rev 1970, 291 Ap '70;

d. "Indians--reservations--federal jurisdiction ended only by express provision of Congress," Ariz. L Rev 5:131, Fall '63;

e. "Problems of State Jurisdiction over Indian Reservations," DePaul L Rev 13:74 Autumn-Winter '63;

f. "American Indian Law: A 'Symposium Law and Order' on Indian Reservations," Fed B J 20:211, Summer '60;

g. Felix Cohen, Handbook of Federal Indian Law, (1942) University of New Mexico Press, Albuquerque, pp. 116, 122, 268, 358, et al.

h. U.S. Dept. of Interior, Federal Indian Law, 1966, Assn. of American Indian Affairs, Sceana, New York, pp. 21, 215, 307, 309, 509, et al.

<sup>4</sup>See: Omnibus Crime Control and Safe Streets Act of 1968, as amended (Federal).

whether or not it was a qualified recipient of these crime control funds because of its status under Public Law 280; that State Law Enforcement officials were not available when needed, being stationed miles away from the reservation, that a police car, which had been purchased recently with Law Enforcement Assistance Administration funds, was parked indefinitely and the Tribe was prohibited from using it by State officials, under threat of arrest; that no one really knew what the role of the Bureau of Indian Affairs was as Trustee in the whole matter, as their visibility was extremely low, etc., on and on, all resulting in the same thing--nothing successful being done about providing police protection for the Santee Tribe. The situation reportedly has been like this for seven (7) months, a "standoff," with no real solution in sight. To this date, no police are situated in or near the Village of Santee, Nebraska, the Tribal headquarters and home to about 400 persons.

MAJOR PROBLEM AREAS

What is the responsibility of the State of Nebraska under Public Law 280 in providing reasonable police services to the Tribe?<sup>5</sup>

What is the responsibility of the Bureau of Indian Affairs as Trustee over the welfare of the persons and property of its Indian wards in this situation?<sup>6</sup> Does Public Law 280 totally relieve the BIA of all responsibility for law and order on the Santee Reservation?<sup>7</sup>

If the quality of State provided police protection is seriously questioned as being inadequate, what recourse has the Tribe? What then becomes the Tribal Sovereignty, and the power to take care of its own problems?<sup>8</sup>

Must Tribal members, victims, etc. stand idly by and observe crime being committed, and do nothing under the present condition?

Will the \$20,000 in Federal Law Enforcement Assistance Administration funds<sup>9</sup> ever be released to help get a policeman or two, get the patrol car going and offer some solution to the problem?

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<sup>5</sup> See: Footnote 3-h, and 3-a on page 93.

<sup>6</sup> See: Footnote 3-g, on page 93, pp. 9-89, et al.

<sup>7</sup> See: Footnote 3-h, p. 509, on page 93.

<sup>8</sup> See: "The Indian Battle for Self-Determination," Vol. 58 Calif L.R. No. 2, p. 445.

<sup>9</sup> Omnibus Crime Control and Safe Streets Act of 1968, as Amended by P.L. 9-83, 93rd Congress, H.P. 8152, August 6, 1973.

Seven months is quite a long period within which to at least come up with a "stop-gap" measure, the authors would suggest. If not, when will a solution be found?

**CONTINUED**

**2 OF 3**

Seven months is quite a long period within which to at least come up with a "stop-gap" measure, the authors would suggest. If not, when will a solution be found?

SHORT TERM CONSIDERATIONS FOR SOLUTION--NOW

The Laws of the State of Nebraska should be researched and utilized in the area of "Citizen Arrest." Immediate relief will be found here as to felonies and petit larceny.<sup>10</sup> No longer will victims and observers have to stand by idly, under threat of criminal prosecution for making an arrest, and let an offender go free and unrestrained after he has committed a felony or petit larceny.

Further research should be conducted regarding BIA responsibility for offenses committed on the Reservation which are included in the Major Crimes Act<sup>11</sup> and also the Assimilative Crimes Statute,<sup>12</sup> both of the Federal Government. For it has been said that ". . . the criminal jurisdiction thus conferred (by PL 280) on the States is said to be exclusive except as against the United States . . . See Op. Sol. M. 36241, September 22, 1954. . ."<sup>13</sup> Hence, the BIA may have substantial law enforcement responsibilities to fulfill

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<sup>10</sup> See: Nebraska Laws 29-402, providing for: "arrest by person not an officer. Any person not an officer may, without a warrant, arrest any person, if petit larceny or a felony has been committed, and there is reasonable ground to believe the person arrested guilty of such offense, and may detain him until a legal warrant can be obtained."

<sup>11</sup> See: Major Crimes Act, as Amended, 18 U.S.C. 1153.

<sup>12</sup> See: Assimilative Crimes Statute, 18 U.S.C. 13, and also Williams v. U.S., 327 U.S. 711, 1946.

<sup>13</sup> See: Footnote 3-h, page 509.

in the area of police protection to the Santee Tribe, even in the light of Nebraska assumption of criminal jurisdiction under Public Law 280.

Under the Laws of Nebraska, provision is made for the appointment of a Deputy State Sheriff, under the Superintendent of the State Patrol.<sup>14</sup> Could this be done now, and funded with the restricted Law Enforcement Assistance Administration funds now being held back?

It was reported to the authors that an attempt has been made to incorporate the village of Santee as a public corporation under the Laws of the State of Nebraska, so that they could hire a city or village policeman. It was further reported that the petition for such procedure has been "lost." Study should be made to determine if this is in fact going to be a reasonable and viable solution to the Tribes problem of law and order. In such study, it is urged that resumption of Tribal Sovereignty similar to that taken at Macy, Nebraska, by the Omaha Tribe, over criminal matters with Tribal police and courts dispensing justice, be studied as a possible solution. Side effects of incorporation, as to civil matters, should also be carefully considered by the Tribe, before such incorporation attempt is completed.

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<sup>14</sup>See: Nebraska Laws 23-364.

LONG RANGE CONSIDERATIONS TO STUDY

If the burdens of providing reasonable police protection, etc., by the State of Nebraska to the Santee Tribe under PL 280 are too expensive or impossible under present conditions, study should be made of the proposition to have the State turn back all criminal jurisdiction to the United States of America and to the Santee Sioux Tribe. This can be done under the law, as is evidenced by the situation of the Omaha Tribe of Macy, Nebraska, and appropriate Federal Law.<sup>15</sup>

Further considerations should be made to determine the role of the Bureau of Indian Affairs for providing interim police services<sup>16</sup> after such a relinquishing of jurisdiction by the State, and until such time as the Santee Tribe is ready to assume all law and order functions along the lines of self-determination.<sup>17</sup>

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<sup>15</sup> See: Retrocession of jurisdiction by State, 25 U.S.C.A. 1323; and also Executive Order No. 11435, of November 21, 1968, 33 F.R. 17339, Designating the Secretary of the Interior to Accept Retrocession of Jurisdiction by State.

<sup>16</sup> See: Code of Federal Regulations, Title 25--Indians, latest revision, U.S. Govt. Printing Office, Washington, D.C.

<sup>17</sup> See: a. Brophy and Aberle, The Indian, America's Unfinished Business, Report of the Commission on the Rights, Liberties, and the Responsibilities of the American Indian, Norman, Oklahoma, University of Oklahoma Press, 1969, pp. 184 et al.

b. See footnote 8.

## CONCLUSION

Time is rapidly passing. The image of the law in the Santee area may not be improving, with the absence of police protection. What effect does this have upon victims, youth of the community, and all of the residents of the area, Indian and non-Indian, including the large number of persons owning summer houses on the outskirts of the village of Santee? What are the prospects for businesses, and other prospective employers of the Indian people, in the light of the lack of police protection for the area? What will this ultimately do to the welfare demands of the area, and the tax rolls?

Should the Santee Tribe attempt to police itself and administer justice to its people under Tribal Sovereignty, as it did in the days before the white man?<sup>21</sup> Answers are needed, to all of these questions, and soon. Further study is urged, immediately.

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<sup>21</sup>See: a. Washburn, Red Man's Land--White Man's Law, A Study of the Past and Present Status of the American Indian, New York, Charles Scribner's Sons, 1971, 280 pp.

b. Farber, et al., Indians, Law Enforcement and Local Government, University of South Dakota, Vermillion, South Dakota, Government Research Bureau Report #37, 1957.

STATE v. GOHAM  
Cite as 187 N.W. 2d 305

187 Neb. 35

STATE of Nebraska, Appellee,

v.

Wayne GOHAM, Appellant.

No. 37744.

Supreme Court of Nebraska

May 28, 1971

Defendant was convicted in the District Court of Thurston County, Marsh, J., of kidnapping and rape, and he appealed. The Supreme Court, Spencer, J., held, inter alia, that under federal statute providing for voluntary retrocession by states of jurisdiction previously granted to states with respect to offenses committed by or against Indians in certain areas of Indian country, where legislature made offer of retrocession with respect to Indian country within certain county, purported acceptance by the Secretary of Interior limited to one of the two Indian reservations within such county was without effect, and State retained criminal jurisdiction; but that, where statute prescribing punishment for kidnapping was amended by mitigating the punishment after commission of the alleged offense but before trial, the punishment was that provided by the amendatory act, and Supreme Court would reduce punishment from life imprisonment to imprisonment for 35 years.

Affirmed as modified.

McCown, J., concurred in the affirmance but not in the modification.

1. Criminal Law 121

No abuse of discretion was shown in denial of Indian defendant's motion for change of venue in trial for kidnapping and rape on ground of alleged "avalanche of anti-Indian publicity" in county where crime took place, where record did not reflect prejudice existing at time of trial, eight months after the offense, defendant passed the jury for cause, and no specific complaint of any nature was made as to bias or improper conduct on part of the jury or any individual juror.

2. Criminal Law 121,1150

Motion for change of venue in criminal case is addressed to the sound discretion of the trial court, and its ruling thereon will not be disturbed unless abuse of such discretion is disclosed.

3. Kidnapping 6

Where statute prescribing punishment for kidnapping was amended by mitigating the punishment after commission of the offense in question but before trial, the proper punishment was that provided by the amendatory act, where legislature had not specifically provided otherwise. R.S. Supp. 1969, Sec. 28-417.

4. Criminal Law 1183

Where statute prescribing punishment for kidnapping was amended by mitigating the punishment after commission of the instant offense but before trial, and after trial Supreme Court construed the amendment as applying in all cases which had not proceeded to final judgment, Supreme Court would exercise its statutory authority to reduce excessive sentences by reducing sentence from life imprisonment to imprisonment for term of 35 years. R.S. Supp. 1969, Sec. 28-417; R.R.S. 1943, Sec. 29-2308.

5. Criminal Law 29

Since purpose of kidnapping in every instance is to make it possible to commit some other crime and the penalties are intentionally more severe than for the other crimes which may be included, where victim was forceably removed from automobile and forceably taken to park approximately two miles away and raped, there was no error in submitting the kidnapping charge as well as the rape charge. R.S. Supp. 1969, Sec. 28-417.

6. Criminal Law 942(1)

Alleged evidence that accomplice who testified for state had made deal in consideration of his testimony was not basis for new trial on grounds of newly discovered evidence, since the evidence did not go to the question of the truth or falsity of the accomplice's testimony, but only to his motive, so that its only purpose would be to impeach or discredit the witness.

7. Criminal Law 641.13(1)

Defendant was not denied adequate representation by his retained counsel where alleged conduct of counsel was not such as to make the proceedings a farce and mockery of justice, shocking to the conscience of the court.

8. Indians 38(2)

Under statute providing for voluntary retrocession by states of jurisdiction granted to states prior statute with respect to offenses committed by or against Indians in certain Indian country and providing that the measure of jurisdiction to be retroceded was matter for state to determine, where legislature adopted offer of retrocession embracing Indian country within certain county, purported acceptance by the Secretary of Interior limited to one of two Indian reservations within such county was without effect, absent acceptance thereof by legislature; thus state retained criminal jurisdiction with respect to all such Indian country. 18 U.S.C.A., Sec. 1162; 25 U.S.C.A., Sec. 1323.

Syllabus by the Court

1. A motion for a change of venue in a criminal case is addressed to the sound discretion of the trial court, and its ruling thereon will not be disturbed unless an abuse of such discretion is disclosed.

2. Where a criminal statute is amended by mitigating the punishment after the commission of a prohibited act but before final judgment, the punishment is that provided by the amendatory act unless the Legislature has specifically provided otherwise.

3. The purpose of kidnapping in every instance is to make it possible to commit some other crime. Its very nature therefore embraces other crimes as well as that of kidnapping. The penalties of kidnapping are intentionally more severe than the other crimes which may be included because of the consequences which often result from its perpetration.

4. It is the rule that a new trial will not be granted on the grounds of newly discovered evidence when the only effect of the evidence is to impeach or discredit the witness.

5. A charge of inadequate representation can prevail only if it can be said that what was or was not done by the defendant's attorney for his client made the proceedings a farce and a mockery of justice, shocking to the conscience of the court.

6. The Secretary of the Interior having failed to accept the offer of retrocession embraced in Legislative Resolution 37, Eightieth Session of the Nebraska Legislature, 1969, before it was withdrawn by Legislative Resolution 16, Eighty-second Session of the Nebraska Legislature, 1971, 18 U.S.C.A., Section 1162 is still applicable in Nebraska.

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William G. Line, Kerrigan, Line & Martin, Fremont, Costello, Porter, Hill, Banks & Nelson, Rapid City, S. D., for appellant.

Clarence A. H. Meyer, Atty. Gen. Ralph H. Gillan, Asst. Atty. Gen., Lincoln, for appellee.

Heard before SPENCER, BOSLAUGH, SMITH, McCOWN, NEWTON and CLINTON, JJ.

SPENCER, Justice

Defendant Wayne Goham was convicted on an information charging kidnapping and rape, and sentenced to life imprisonment on the former and to a term of not less than 3 nor more than 20 years on the latter. We affirm the convictions but modify the sentence as set out hereafter.

An automobile in which the complaining witness and her companion were riding slid off the road when they tried to negotiate a slippery, rain-soaked county road in Thurston County. Another car, containing seven Indian occupants, came by and the occupants, for two dollars, helped them to get their car moving. The car was backed down the hill, but after a short descent its progress was stopped by the other car which had passed it and blocked the road. The occupants of that car then approached, opened the door on the driver's side, and pulled the companion of the complaining witness from the car, striking him two or three times. He fled to seek help at an adjoining farm house. Two of the occupants of the other car then forcibly pulled the complaining witness out of her car, dragged her to their own, and drove approximately 2 miles to Big Elk Park, which lies along the Missouri River on the eastern border of and in Thurston County, where she was taken out of that car and raped by each of the seven occupants.

William Cayou, who was one of the seven, testified for the State, identified the defendant as the driver and owner of the car, and as the second of the group to be with the complaining witness in the park. The defendant is a member of the Omaha Indian Tribe. The crimes were committed within the limits of the Omaha Indian Reservation, which is situated within Thurston County. The incident occurred on July 26, 1969. Defendant was tried and convicted in March 1970. On October 24, 1970, while an appeal from the conviction was pending in this court, the Secretary of the Interior published a notice in the Federal Register purporting to accept retrocession of jurisdiction over the Omaha Indian Reservation in Thurston County, Nebraska, purportedly pursuant to an offer of retrocession previously made by the Nebraska Legislature in accordance with 25 U.S.C.A., Section 1323.

(1) Defendant sets out seven assignments of error. The first is the denial of defendant's motion for a change of venue. He contends that "An avalanche of anti-Indian publicity" in Thurston County where the crime took place made it impossible to select a fair jury. The record does not support his contention. Defendant concedes his motion for a change of venue was technically defective in that it sought a change of venue to the district court for Douglas County rather than to an adjoining county, and that it was not supported by affidavits. The voir dire examination of the jurors, which is part of the record, indicates that 79 prospective jurors were called. While a substantial number of them had heard about the case through the various news media, which is not unusual in a case of this nature, the record does not reflect prejudice existing at the time of the trial, which was 8 months later, to sustain defendant's contention. Defendant was able to secure an impartial jury and passed it for cause. Further, no specific complaint of any nature is made herein as to any bias or improper conduct on the part of the jury or any individual juror.

(2) In State v. Losieau, 174 Neb. 320, 117 N.W. 2d 775, we said: "A motion for a change of venue in a criminal case is addressed to the sound discretion of the trial court, and its ruling thereon will not be disturbed unless an abuse of such discretion is disclosed."

In Dosek v. United States, 405 F. 2d 405, the Court of Appeals for the Eighth Circuit said: "The disposition by a judge of a change of venue motion rests largely in the discretion of the trial court who is the one most familiar with the local situation, and a trial court ruling upon such a motion will be upset only for a clear abuse of discretion." In that case the Court of Appeals emphasized that defendant had not charged or proved that any juror challenged for cause on valid grounds was not excused.

(3) Defendant's second and third assignments of error involve the penalty inflicted on the kidnapping charge. After the crime was committed but before trial, the Nebraska Legislature amended Section 28-417, R.R.S. 1943, to provide that the penalty should be death or imprisonment for not less than 3 nor more than 50 years at the discretion of the jury. The penalty in effect when the crime was committed provided the death penalty or life imprisonment at the discretion of the jury. The penalty inflicted was in accordance with the statute as it existed at the time the offense committed. In view of our subsequent holding in State v. Randolph, 186 Neb. 297, 183 N.W. 2d 225, the State concedes that the amendment to Section 28-417, R.R.S. 1943, which became effective September 19, 1969, should govern the penalty in this case.

In State v. Randolph, supra, we said: "There was no specific provision in the amending statute indicating legislative intent as to its prospective or retroactive operation. Section 49-301, R.R.S. 1943, provides that repeal of a statute shall not in any manner affect pending actions nor causes of action accrued prior to any such repeal except as may be provided in the repealing statute. This 'saving clause' on repeal applies to both civil and criminal statutes.

"The basic issue is, of course, the intention of the Legislature. As the Supreme Court of California said in *In re Estrada*, 63 Cal. 2d 740, 48 Cal. Rptr. 172, 408 P. 2d 948 (1965): 'It is an inevitable inference that the Legislature must have intended that the new statute imposing the new lighter penalty now deemed to be sufficient should apply to every case to which it constitutionally could apply. The amendatory act imposing the lighter punishment can be applied constitutionally to acts committed before its passage provided the judgment convicting the defendant of the act is not final. This intent seems obvious, because to hold otherwise would be to conclude that the Legislature was motivated by a desire for vengeance, a conclusion not permitted in view of modern theories of penology.'"

State v. Randolph, supra, which involved the kidnapping statute, Section 28-417, R.R.S. 1943, was not released until January 22, 1971. This was several months after defendant's trial in March 1970.

Section 29-2308, R.R.S. 1943, provides: "In all criminal cases that now are, or may hereafter be pending in the Supreme Court on error, the court may reduce the sentence rendered by the district court against the accused, when in its opinion the sentence is excessive, and it shall be the duty of the Supreme Court to render

such sentence against the accused as in its opinion may be warranted by the evidence. No judgment shall be set aside, or new trial granted, or judgment rendered in any criminal case, on the grounds of misdirection of the jury, or the improper admission or rejection of evidence, or for error as to any matter of pleading or procedure, if the Supreme Court, after an examination of the entire cause, shall consider that no substantial miscarriage of justice has actually occurred."

We said in Cryderman v. State, 101 Neb. 85, 161 N.W. 1045, that this statute should be liberally construed in favor of justice. In State v. Hall, 176 Neb. 295, 125 N.W. 2d 918, we construed it to grant authority to permit the reduction of a jury-imposed death penalty to life imprisonment when the circumstances indicated to us that life imprisonment was an adequate punishment for the offense.

We have no doubt of defendant's guilt herein. The misdirection of the jury as to possible penalties could not be considered a miscarriage of justice because it results from a subsequent construction of the statute involved. A verdict of life imprisonment was a permissible penalty for kidnapping when the offense was committed. This is no longer a penalty under our subsequent holding in State v. Randolph, supra. The maximum penalty under the amended statute which became effective September 19, 1969, 6 months before the actual trial herein, is death or imprisonment for not less than 3 nor more than 50 years. We hold the ameliorative act may be applied constitutionally to the act herein although committed prior to its passage because the sentence had not become final because of this appeal.

(4) Pursuant to Section 29-2308, R.R.S. 1943, considering all the circumstances and our subsequent holding in State v. Randolph, 186 Neb. 297, 183 N.W. 2d 225, we reduce the penalty of Count I, the kidnapping conviction, from life imprisonment to a term of 35 years.

(5) Defendant's fourth assignment of error is directed to the submission of the kidnapping charge. He relies on People v. Daniels, 71 Cal. 2d 1119, 80 Cal. Rptr. 897, 459 P. 2d 225, and People v. Levy, 15 N.Y. 2d 159, 256 N.Y.S. 2d 793, 204 N.E. 2d 842 and argues that the modern trend is away from the use of kidnapping charges for behavior that amounts in substance to robbery or rape. We see no reason to change the controlling rules in this jurisdiction. The victim herein was forcibly taken from the automobile in which she was a passenger and transported at least 2 miles to Big Elk Park where she was forcibly raped. The kidnapping statute, Section 28-417, R.R.S. 1943, as it existed when the act was committed, so far as pertinent herein, provides: "Whoever, having for any of the purposes aforesaid unlawfully carried off or enticed away, decoyed, secreted or imprisoned any person, shall in furtherance of any such purpose, do or threaten to do any injury to the person so carried off, decoyed, enticed away, secreted or imprisoned, such person so offending shall upon conviction suffer death or be imprisoned in the Nebraska Penal and Correctional Complex during the remainder of his natural life at the discretion of the jury." We last interpreted this issue in State v. Tatreau, 176 Neb. 381, 126 N.W. 2d 157, and State v. Salanitro, 176 Neb. 393, 126 N.W. 2d 164, which provide a conclusive answer to defendant's contentions.

Defendant, in his fifth assignment of error, argues that the evidence was insufficient to sustain a conviction of kidnapping. The following testimony of the victim on direct examination illustrates the nature of the force used to effect the kidnapping: "Then they started to pull me out of the car, and I tried to hang on to the steering wheel and force myself against the frame of the car so they couldn't pull me out, and I said just leave us alone, and there was an individual on each side of me, and they pulled me over to their car, and I was kicking and trying to fight with them, but they were just too heavy or too big and I couldn't get away from them, and when we got down to their car they tried to push me in the car, and I was very stiff, and they knocked my head against the open door so I was kind of dizzy for a few minutes, and then someone sort of like hit me in the stomach so that I would bend over, and that is when they put me in the front seat of the car, and then I remember kicking someone in the stomach who was pushing me in the car, and then they got in the car and one individual had his hand over my mouth and nose so that I couldn't breathe and I wanted the window down, so I was sitting on the lap of the person who was by the door and I had my head out of the window all the time to the park. That is where they drove to."

The complaining witness was forcibly removed from her automobile, manhandled, and forcibly taken to a park approximately 2 miles away. We do not agree that this is an insubstantial movement of the victim, as suggested by the defendant. While it may be true that the ultimate objective was the crime of rape, this is of no moment. The purpose of kidnapping in every instance is to make it possible to commit some other crime. Its very nature therefore embraces other crimes as well as that of kidnapping. The penalties of kidnapping are intentionally more severe than the other crimes which may be included because of the consequences which often result from its perpetration. See State v. Tatreau, 176 Neb. 381, 126 N.W. 2d 157.

(6) Defendant's sixth assignment of error is grounded on his contention that an accomplice, William Cayou, falsely testified that no consideration had been promised him for his testimony. This issue was injected by the defendant on his motion for a new trial on the grounds of newly discovered evidence. This evidence concerned some notes written by Cayou to a Charlene Earth while both of them were confined in the county jail. In this respect, we observe that the defendant had been told by Charlene Earth of her conversation with Cayou before his trial, and while defendant may not have had possession of the notes at the time of his trial, he was in possession of the information that Cayou was claiming he had made some type of a deal and was going to testify for the State.

There is no contention and certainly no evidence that the prosecution knowingly used perjured testimony. Even if we were to read into the inferences defendant wishes to make the finding that Cayou committed perjury, which we are unable to do, we still would have no evidence of the knowing use of perjured testimony by the prosecution. More important, however, we believe the evidence falls far short of

showing that any deal was made with Cayou by the prosecution for his testimony. Giving the evidence adduced on the motion every possible inference, it does not go to the question of the truth or falsity of Cayou's testimony, but rather only to the question of Cayou's motive in testifying. It was purely a collateral issue, not having to do with the guilt or innocence of defendant. Its only purpose would be to impeach or discredit the witness.

This court has frequently said that impeaching evidence is not proper basis for a new trial. See Rains v. State, 173 Neb. 586, 114 N.W. 2d 399, and Fugate v. State, 169 Neb. 434, 99 N.W. 2d 874, in which we said: "It is the rule that a new trial will not be granted on the ground of newly discovered evidence when the only effect of the evidence is to impeach or discredit a witness."

(7) Defendant's last assignment of error alleges that he was denied the effective assistance of counsel because of counsel's consumption of intoxicants. Defendant's counsel was not court appointed but was retained counsel of defendant's own choice. There is no doubt that during the course of the trial, particularly after lunch, defendant's counsel had the odor of liquor on his breath. It is also undisputed that counsel had represented defendant and his family on other occasions and they knew that he used alcoholic liquors during the day. There is nothing apparent from the record which would indicate counsel became so incapacitated that he could not adequately conduct defendant's defense. The evidence falls far short of any indication that counsel's propensity prevented a fair trial. The most it indicated is that counsel consumed liquor on occasions when he was not in court. In any event, this court is not in as good a position as the trial court to decide this issue. The trial court had the opportunity to observe counsel, and was in a position to know whether counsel's drinking affected his ability to adequately represent the defendant. It is a fact question on which we accept the finding of the trial court. However, we are convinced that if defendant's counsel had come to court so far under the influence of alcoholic liquor that he could not effectively represent the defendant, the trial court would have immediately postponed the trial and held counsel in contempt of court.

As the Eighth Circuit Court of Appeals observed In Hanger v. United States, 428 F. 2d 746: "'\* \* \* a charge of inadequate representation can prevail "only if it can be said that what was or was not done by the defendant's attorney for his client made the proceedings a farce and a mockery of justice, shocking to the conscience of the Court.'" Defendant's showing falls far short of even suggesting this possibility.

(8) Defendant injects the argument that the State of Nebraska has lost jurisdiction over the defendant by reason of retrocession. In 1953 Congress adopted 18 U.S.C.A., Section 1162, which so far as pertinent for discussion of the question raised, provides: "(a) Each of the States or Territories listed in the following table shall have jurisdiction over offenses committed by or against Indians

showing that any deal was made with Cayou by the prosecution for his testimony. Giving the evidence adduced on the motion every possible inference, it does not go to the question of the truth or falsity of Cayou's testimony, but rather only to the question of Cayou's motive in testifying. It was purely a collateral issue, not having to do with the guilt or innocence of defendant. Its only purpose would be to impeach or discredit the witness.

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As the Eighth Circuit Court of Appeals observed in Hanger v. United States, 428 F. 2d 746: "\*\*\*\* a charge of inadequate representation can prevail "only if it can be said that what was or was not done by the defendant's attorney for his client made the proceedings a farce and a mockery of justice, shocking to the conscience of the Court."\*\*\*\* Defendant's showing falls far short of even suggesting this possibility.

(8) Defendant injects the argument that the State of Nebraska has lost jurisdiction over the defendant by reason of retrocession. In 1953 Congress adopted 18 U.S.C.A., Section 1162, which so far as pertinent for discussion of the question raised, provides: "(a) Each of the States or Territories listed in the following table shall have jurisdiction over offenses committed by or against Indians

in the areas of Indian country listed opposite the name of the State or Territory to the same extent that such State or Territory has jurisdiction over offenses committed elsewhere within the State or Territory and the criminal laws of such State or Territory shall have the same force and effect within such Indian country as they have elsewhere within the State or Territory:

"State or Territory of	Indian country affected"
"Alaska . . . . .	All Indian country within the Territory
"California . . . . .	All Indian country within the State
"Minnesota . . . . .	All Indian country within the State, except the Red Lake Reservation
"Nebraska . . . . .	All Indian country within the State
"Oregon . . . . .	All Indian country within the State, except the Warm Springs Reservation
"Wisconsin . . . . .	All Indian country within the State"

In 1968 Congress provided for the voluntary retrocession of the jurisdiction granted by 18 U.S.C.A., Section 1162, by passing 25 U.S.C.A., Section 1323, which provides: "(a) The United States is authorized to accept a retrocession by any State of all or any measure of the criminal or civil jurisdiction, or both, acquired by such State pursuant to the provisions of Section 1162 of Title 18, Section 1360 of Title 28, or Section 7 of the Act of August 15, 1953 (67 Stat. 588), as it was in effect prior to its repeal by Subsection (b) of this Section.

"(b) Section 7 of the Act of August 15, 1953 (67 Stat. 588), is hereby repealed, but such repeal shall not affect any cession of jurisdiction made pursuant to such section prior to its repeal. Pub. L. 90-284, Title IV, Sec. 403, April 11, 1968, 82 Stat. 79."

On April 16, 1969, the Nebraska Legislature adopted Legislative Resolution 37, which, so far as pertinent herein, reads: "Now, Therefore, Be It Resolved By The Members Of the Nebraska Legislature In Eightieth Session Assembled:

"1. That the State of Nebraska hereby retrocedes to the United States all jurisdiction over offenses committed by or against Indians in the areas of Indian country located in Thurston County, Nebraska, acquired by the State of Nebraska pursuant to Public Law 280 of 1953, except as provided in paragraph 2 of this resolution.

"2. That the retrocession of jurisdiction contained in paragraph 1 of this resolution shall not apply to any offenses involving the operation of motor vehicles on public roads or highways.

"3. That the Executive Board of the Legislative Council is hereby authorized and directed to take all necessary action to put this resolution into effect, such action to include arrangements with the Department of the Interior and the department's Bureau of Indian Affairs concerning the assumption of law enforcement responsibilities in the areas of Indian country covered by this resolution."

By Executive Order dated November 21, 1968, the Secretary of the Interior was authorized to accept any retrocession of jurisdiction which was to be effected by publication in the Federal Register. On October 24, 1970, the Secretary caused the following notice to be published in the Federal Register: "Pursuant to the authority vested in the Secretary of Interior by Executive Order No. 11435 (33 F.R. 1733) I hereby accept, as of 12:01 A.M. EST, October 25, 1970, retrocession to the United States of All jurisdiction exercised by the State of Nebraska over offenses committed by or against Indians in the areas of Indian country located within the boundaries of the Omaha Indian Reservation in Thurston County, Nebraska, as follows: (Description boundaries omitted) except offenses involving the operation of motor vehicles on public roads or highways which retrocession was tendered and offered by Legislative Resolution No. 37 passed by the Legislature of Nebraska in 80th Regular Session on the 16th day of April, 1969.

"Walter J. Hickel  
"Secretary of the Interior"

It is to be noted that the Nebraska Legislature Resolution was to retrocede all jurisdiction over offenses committed by or against Indians in the Indian country located in Thurston County acquired by the State pursuant to Public Law 280 of 1953, except traffic offenses. In the discussion on Legislative Resolution 37, the statement is made that the Commissioner of Indian Affairs had approved the Resolution and had agreed to accept retrocession of all Indian territory in Thurston County, which includes both the Omaha and Winnebago Tribes. The acceptance by the Secretary of the Interior, however, is only a partial acceptance of retrocession of jurisdiction. It is specifically limited to the areas of Indian country located within the boundaries of the Omaha Reservation in Thurston County. This definitely was not an acceptance of the retrocession offered, which was all of the Indian territory in Thurston County and in our judgment is completely unauthorized by the terms of the Resolution of the Nebraska Legislature, and so does not constitute an acceptance. The difficulties apparent in trying to exercise jurisdiction in only a part of the Indian territory in Thurston County, which included both Winnebago and Omaha Indians, are so patent as not to need elaboration. The Nebraska Legislature recognized this problem, and manifested its unwillingness to accept the counter proposal.

On February 1, 1971, the Nebraska Legislature adopted Resolution 16, which provides: "Whereas, the Eightieth Session of the Nebraska State Legislature, 1969, adopted Legislative Resolution 37, relating to the retrocession to the United States of jurisdiction over offenses committed by or against Indians in the areas of Indian country located in Thurston County, Nebraska, acquired by the State of Nebraska pursuant to Public Law 280 of 1953; and

"Whereas, the United States has not accepted retrocession in accordance with the terms and provisions of said legislative Resolution 37,

"Now, Therefore, Be It Resolved By The Members Of The Eighty-second Legislature of Nebraska, First Session:

"1. That the action of the Eightieth Session of the Nebraska State Legislature, 1969, approving Legislative Resolution 37 is

rescinded, and the offer of retrocession therein contained is withdrawn.

"2. That a duly attested copy of the resolution be transmitted by the Clerk of the Legislature to the Secretary of Interior of the United States."

In our judgment, the original resolution of retrocession could not be effective until it was accepted by the federal government. A partial acceptance is not effective unless and until it is approved by the state. The determination of the extent of retrocession was left to the states by 25 U.S.C.A., Section 1323, since the United States is authorized to accept all or any measure of retrocession. The measure of jurisdiction to be retroceded was a matter for the state to determine, and is not dictated in any way by the federal act. The attempted acceptance was not in accordance with the terms of the offer, and was therefore of no force and effect. The offer of retrocession having been withdrawn, 18 U.S.C.A., Section 1162, is still applicable in Nebraska.

Having reached the conclusion that retrocession never became effective, it is unnecessary to discuss the questions raised by the parties to be considered in the event we had found retrocession to be effective.

For the reasons given above, the conviction of the defendant on both Counts I and II is affirmed. The penalty on Count I is reduced from life imprisonment to a term of 35 years. The judgment entered is affirmed in all particulars except as noted above.

Affirmed as modified.

McCOWN, Justice.

I concur in the affirmance of the convictions. I do not concur in the later disposition.

187 Neb. 48  
STATE of Nebraska, Appellee,  
v.  
Dennis TYNDALL, Appellant.  
No. 37889.

Supreme Court of Nebraska.  
May 28, 1971

Defendant was convicted in the District Court of Thurston County, Marsh, J., under information charging kidnapping, rape, and being an habitual criminal, and he appealed. The Supreme Court, Spencer, J., held, inter alia, that separate consecutive sentence for term of ten years on the habitual criminal charge, in addition to sentences for kidnapping and rape, was improper and would be vacated.

Affirmed as modified.

1. Criminal Law 1202(1), 1211  
Habitual Criminal Act does not create new and separate criminal offense for which person may be separately sentenced but provides merely that repetition of criminal conduct aggravates the guilt and justifies greater punishment than ordinarily would be considered; thus separate consecutive ten-year sentences on habitual criminal charge, in addition to sentences for kidnapping and rape, was improper. R.S. Supp. 1969, Sec. 29-2221.
2. Indians 38(2)  
Legislature having withdrawn offer of retrocession with respect to Indian country in certain county, federal statute conferring jurisdiction upon state over offenses committed by or against Indians in such Indian country remained applicable. 18 U.S.C.A., Sec. 1162.

Syllabus by the Court

1. The habitual criminal act, Section 29-2221, R.S. Supp., 1969, does not create a new and separate criminal offense for which a person may be separately sentenced but provides merely that the repetition of criminal conduct aggravates the guilt and justifies greater punishment than ordinarily would be considered.
2. The Nebraska Legislature having withdrawn its offer of retrocession, 18 U.S.C.A., Section 1162 is still applicable in Nebraska.

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William G. Line, Kerrigan, Line & Martin, Fremont, for appellant.  
Clarence A. H. Meyer, Atty. Gen., Ralph H. Gillan, Asst. Atty. Gen., Lincoln, for appellee.

Heard before SPENCER, ROSLAUGH, McCOWN, SMITH, NEWTON, and CLINTON, JJ.

SPENCER, Justice.

Defendant Dennis Tyndall was convicted under an information charging kidnapping, rape, and with being an habitual criminal. He was sentenced to life imprisonment on the kidnapping count, to a term of 20 years for rape, and to an additional term of 10 years as an habitual criminal. The sentences are to be served consecutively. We affirm the convictions but modify the life imprisonment sentence on Count I (kidnapping), and vacate the sentence for a term of 10 years on Count III (habitual criminal charge).

Defendant, who was a member of the Omaha Indian Tribe, was one of seven Indians involved in the kidnapping and rape incident described in State v. Goham, 187 Neb. 35, 187 N.W. 2d 305. He was tried in October 1970, 7 months after the Goham trial. Reference is made to that case for recitation of the pertinent facts. As described therein, the complaining witness was forcibly dragged from her car, forced into a car occupied by seven Indians, and taken 2 miles to Big Elk Park where she was forcibly raped by them. The complaining witness identified the defendant as one of the individuals who forced her from her car and as the first one to rape her.

Defendant lists four assignments of error. They are: "The court erred: 1. In failing to vacate the conviction for kidnapping as the alleged kidnapping was incidental to the charge of rape. 2. In imposing a sentence of life imprisonment for kidnapping as the statute in effect at the time of trial provided for a maximum sentence of 50 years for kidnapping. 3. In sentencing defendant to a separate consecutive term of ten years imprisonment for being an habitual criminal. 4. In failing to dismiss all proceedings against defendant for the reason that the court had lost jurisdiction by virtue of retrocession of criminal jurisdiction to the United States."

We adequately discussed defendant's first and second assignments of error in State v. Goham, 187 Neb. 35, 187 N.W. 2d 305. What we said there is fully applicable and controlling herein.

(1) Defendant's third assignment of error must be sustained. The habitual criminal act, Section 29-2221, R.S.Supp., 1969, does not create a new and separate criminal offense for which a person may be separately sentenced but provides merely that the repetition of criminal conduct aggravates the guilt and justifies greater punishment than ordinarily would be considered. Gamron v. Jones, 148 Neb. 645, 28 N.W. 2d 403. We accordingly vacate the separate sentence on Count III, the habitual criminal charge.

(2) The fourth assignment of error alleges that the courts of Nebraska have lost jurisdiction herein because of the retrocession

of criminal jurisdiction to the United States. The defendant's trial was completed October 15, 1970. The Secretary of the Interior published a notice in the Federal Register purporting to accept retrocession of jurisdiction over the Omaha Indian Reservation in Thurston County, Nebraska, on October 24, 1970. Defendant's motion for a new trial was overruled and he was sentenced on October 24, 1970. The Nebraska Legislature on February 1, 1971, withdrew its offer of retrocession because the United States had not accepted it in accordance with the terms and provisions of Legislative Resolution 37, adopted April 16, 1969. The resolutions and discussion are more particularly set out in State v. Goham, 187 Neb. 35, 187 N.W. 2d 305. That case determined that the offer of retrocession having been withdrawn, 18 U.S.C.A., Section 1162, is still applicable in Nebraska. There is no merit to defendant's fourth assignment of error.

The conviction of the defendant on the three counts herein is affirmed. The sentence on Count III is vacated and the sentence on Count I, for the reasons described in State v. Goham, 187 Neb. 35, 187 N.W. 2d 305, is reduced from life imprisonment to a term of 35 years. In all other respects, the judgment is affirmed.

Affirmed as modified.

OMAHA TRIBE OF NEBRASKA,  
a Corporation, et al., Appellees,

v.

VILLAGE OF WALTHILL, NEBRASKA,  
a Municipal Corporation, et al.,

Appellants

No. 72-1002

United States Court of Appeals

Eighth Circuit

Submitted May 12, 1972

Decided June 5, 1972

Proceeding by Indian tribe, its tribal council and its membership to enjoin village, county, state and certain village, county and state officers from exercising criminal jurisdiction over the tribe. The United States District Court for the District of Nebraska, Richard E. Robinson, J., 334 F. Supp. 823, entered summary judgment for plaintiffs, and defendants appealed. The Court of Appeals held that under federal statute authorizing the United States to accept retrocession of all or any measure of the criminal or civil jurisdiction over Indians acquired by a state pursuant to prior federal law; the federal government was not obligated to either accept all or none of the Indian country in Thurston County, Nebraska; accordingly, its acceptance of only the Omaha Reservation was not a nullity, and Nebraska thus did not retain jurisdiction over offenses committed on the Omaha Reservation.

Affirmed.

Indians 38(2)

Under federal statute authorizing the United States to accept retrocession of all or any measure of the criminal or civil jurisdiction over Indians acquired by a state pursuant to prior federal law, the federal government was not obligated to either accept all or none of the Indian country in Thurston County, Nebraska; accordingly, its acceptance of only the Omaha Reservation was not a nullity, and Nebraska thus did not retain jurisdiction over offenses committed on the Omaha Reservation. Act of August 15, 1953, 67 Stat. 588; 25 U.S.C.A., Sec. 1323.

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Pender, Nebraska, Clarence A. H. Meyer, Atty. Gen. of Nebraska, for  
appellants.

William K. Schaphorst, U. S. Atty., Omaha, Nebraska, for appellees.

Before MATHER, Chief Judge, and HEANEY and STEPHENSON, Circuit  
Judges.

PER CURIAM

This controversy is between the Omaha Tribe of Nebraska, the Tribal Council of the Omaha Tribe and certain officers and members of the Council, as plaintiffs-appellees, and the Village of Walthill, Nebraska, Thurston County, Nebraska, the State of Nebraska, and certain village, county, and state officers, as defendants-appellants.

The dispute centers on the question of jurisdiction over crimes committed by or against Indians on the Omaha Reservation. Seeking a resolution of the problem, plaintiffs filed this action in the United States District Court for the District of Nebraska. They sought a declaration that exclusive jurisdiction over crimes committed by or against Indians is in the United States Government and the Omaha Tribe through the Federal Government, except as to offenses involving the operation of motor vehicles on public roads or highways.

Motions for summary judgment were filed by plaintiffs and defendants. The district court, Judge Robinson, granted the plaintiff's motion and entered judgment accordingly. Defendants have brought the case here by appeal.

The controlling facts are fully detailed in the district court's opinion reported at 334 F. Supp. 823 (D. Neb. 1971). Reference to the legislative enactments and ensuing action by the authorities, which are the crucial aspects of this litigation will suffice for the purpose of this opinion. In 1953, the Congress of the United States, by appropriate legislation, provided that the State of Nebraska should have jurisdiction over civil causes of action and jurisdiction over offenses committed by or against Indians on Indian reservations within the State of Nebraska to the same extent that the state had jurisdiction over other civil actions or criminal offenses. Nebraska assumed and exercised such jurisdiction. In 1968, Congress authorized the Federal Government to accept a retrocession by any state ". . . of all or any measure of the criminal or civil jurisdiction, or both, acquired by such state" (granted by 67 Stat. 588, 1953 Act). Acting pursuant to the 1968 enactment, the Nebraska Legislature adopted a resolution ceding to the Federal Government all of the criminal jurisdiction over offenses committed by or against Indians in Thurston County, except motor vehicle offenses. In October, 1970, the Secretary of Interior accepted the State's retrocession as to the Omaha Indian Reservation, but not the Winnebago Indian Reservation, also located in Thurston County, Nebraska. The partial acceptance of Indian Reservations in Thurston County precipitated this controversy.

Concisely stated, defendants assert that under the 1968 Act authorizing retrocession, the Federal Government was obligated to accept all or none of the Indian country in Thurston County. They submit acceptance of only the Omaha Reservation was a nullity and consequently Nebraska retains jurisdiction over offenses committed on the Omaha Reservation. Conversely, plaintiffs vouch for the validity of the partial acceptance.

The district court fully explored every facet of the issue in a soundly reasoned opinion and convincingly demonstrated that the retrocession acceptance procedures comported with the 1968 Act and therefore exclusive jurisdiction over offenses committed on the Omaha Reservation is in the Federal Government.

We affirm on the basis of the opinion of Judge Robinson. See also United States v. Brown, 334 F. Supp. 536 (D. Neb. 1971), where Judge Denney considered the identical issue and reached the same result.

Winnebago Agency  
FY 1973

PERCENTAGE CRITERIA USED

	<u>Santee</u>	<u>Winnebago</u>	<u>Omaha</u>
Service Population	13.7	33.7	52.6
Land Base	9.4	45.9	44.7
Roads Maintained	0	48.0	52.0

Winnebago Agency

BASIC CRITERIA USED

Education . . . . . JOM Contracts, Higher Education contracts and usage, and per AAO-Education

Adult Education . . . . . Contracts and service population

Community Services . . . . . Estimate of potential usage of PPe funds based on distance from agency headquarters.

Social Services . . . . . Contracts and estimated usage provided by Winnebago Agency.

Housing Improvement . . . . . Contracts and service population

Employment Assistance . . . . . Contracts and estimated usage

Adult Vocational Training . . . . Contracts and estimated usage

J.P. & E. Services . . . . . Contracts

Forestry . . . . . Per estimate by AAO - Land Operations

Fire Suppression . . . . . Per estimate by AAO - Land Operations

Credit Operations . . . . . Per estimate by AAO - Credit

Reservation Programs . . . . . Service population

Soil & Moisture Conservation . . Land base

Maintenance of Roads . . . . Roads maintained

Real Property Management . . . Land base

General Trustee Services . . . Service population

Indian Business Dev. Fund . . . Actual grants made

Repair & Maint. of B&U . . . . Service population

Road Construction . . . . . Contracts and per AAO - Roads

Administrative Support . . . . Service population

Plant Operations . . . . . Service population

Reservation Cleanup . . . . . Service population

Santee, Winnebago and Omaha Reservations  
 Obligated Amounts of Bureau of Indian Affairs  
 Funds for Fiscal Year 1971

<u>Activity</u>	<u>Total</u>	<u>Santee</u>	<u>Winnebago</u>	<u>Omaha</u>
1/Education	474,921	66,783	224,526	183,612
Comm. Dev. & Adult Ed.	38,895	6,205	14,078	18,612
Social Services	346,645	29,465	69,329	247,851
Housing Improvement	126,458	13,345	48,463	64,641
Employment Assistance	6,997	947	2,097	3,953
Adult Vocational Training	66,907	8,765	20,340	37,802
Law and Order	116,900	---	---	116,900
2/General Government	24,520	---	12,260	12,260
Forestry	2,380	---	1,190	1,190
Fire Suppression	24,040	2,404	6,010	15,626
Credit Operations	22,213	2,910	6,753	12,550
Reservation Programs	62,686	6,268	28,209	28,209
Soil & Moisture Cons.	41,791	---	20,060	21,731
Road Maintenance	39,468	3,948	17,760	17,760
Real Property Mgmt.	27,680	24,680	1,000	2,000
Indian Business Dev. Fund	58,790	7,701	17,872	33,217
Road Construction	106,893	---	16,034	90,859
<b>TOTAL</b>	<b>1,588,184</b>	<b>173,430</b>	<b>505,981</b>	<b>908,773</b>

1/Includes JOM and High Education which are programmed from Area Office funds.

Santee, Winnebago and Omaha Reservations  
 Obligated Amounts of Bureau of Indian Affairs  
 Funds for Fiscal Year 1972

<u>Activity</u>	<u>Total</u>	<u>Santee</u>	<u>Winnebago</u>	<u>Omaha</u>
1/Education	759,436	121,359	237,470	400,634
Comm. Dev. & Adult Ed.	86,761	9,095	9,434	68,232
Social Services	552,824	51,389	120,731	380,704
Housing Improvement	131,105	16,405	50,850	63,850
2/Employment Assistance	22,737	5,925	16,812	---
Adult Vocational Training	178,959	12,560	89,564	76,835
Law and Order	144,731	---	---	144,731
Forestry	28,375	---	14,187	14,188
Fire Suppression	1,725	---	862	86
Credit Operations	23,358	2,336	5,840	15,182
Reservation Programs	25,393	3,479	8,557	13,357
Housing Development	3,000	---	---	3,000
Soil & Moisture Cons.	65,854	6,190	30,227	29,437
Road Maintenance	38,308	---	18,388	19,920
Real Property Mgmt.	39,026	3,668	17,913	17,445
General Trustee Services	6,232	854	2,100	3,278
Repair & Maint. of B&U	48,391	6,630	16,308	25,453
Road Construction	184,450	---	10,900	173,550
<b>TOTAL</b>	<b>2,340,692</b>	<b>239,890</b>	<b>650,143</b>	<b>1,450,659</b>

1/Includes JOM and Higher Education which are programmed from area office funds.

2/Omaha contract was funded under Adult Vocational Training.

Santee, Winnebago and Omaha Reservations  
 Programmed Amounts of Bureau of Indian Affairs  
 Funds for Fiscal Year 1973

<u>Activity</u>	<u>Total</u>	<u>Santee</u>	<u>Winnebago</u>	<u>Omaha</u>
1/Education	797,000	112,364	275,299	409,337
Adult Education	41,900	8,073	17,022	16,805
2/Community Services	1,100	700	100	300
Social Services	707,400	63,946	117,520	525,934
Housing Improvement	136,000	21,300	50,700	64,000
Employment Assistance	55,000	3,500	31,500	20,000
Adult Vocational Training	122,000	9,600	86,400	126,000
Law and Order	129,100	---	---	129,100
3/General Management	26,400	---	13,200	13,200
Forestry	23,000	2,300	5,750	14,950
Credit Operations	25,900	3,548	8,728	13,624
Reservation Programs	4,800	---	---	4,800
Housing Development	61,700	5,800	28,320	27,580
Soil & Moisture Cons.	35,000	---	16,800	18,200
Real Property Management	38,300	3,600	17,580	17,120
Repair & Maint. of B&U	32,000	4,384	10,784	16,832
Road Construction	515,000	15,000	240,000	260,000
3/Administrative Support	66,000	9,042	22,242	34,716
3/Plant Operations	41,420	5,675	13,958	21,787
Reservation Cleanup	3,000	282	1,377	1,341
<b>TOTAL</b>	<b>2,862,020</b>	<b>269,114</b>	<b>957,280</b>	<b>1,635,626</b>

1/Includes JOM and Higher Education which are programmed from Area Office funds.

2/For tribal participation in PPE preparations.

3/Included in Activity totals for FY 1971 and FY 1972.

## BIBLIOGRAPHY

### Books and Publications

Deloria, Vine, Jr., Of Utmost Good Faith. New York: Bantam Books, 1972.

"Handbook of American Indians", Bulletin 30, Bureau of American Ethnology, 1910.

"The Omaha Indian Reservation", Bureau of Indian Affairs, Winnebago Agency. Winnebago, Nebraska, May, 1971.

"The Santee Indian Reservation", Bureau of Indian Affairs, Winnebago Agency. Winnebago, Nebraska, June, 1971.

"The Winnebago Indian Reservation", Bureau of Indian Affairs, Winnebago Agency. Winnebago, Nebraska, May, 1971.

"Uniform Crime Reports", Winnebago Agency, 1973.

Time, November 13, 1972.

Washburn, Wilcomb, E., Red Man's Land-White Man's Law. New York: Charles Scribner's Sons, 1971.

Steiner, Stan, The New Indians. New York: Dell Publishing Co., Inc., 1968.

Nebraska Commission on Law Enforcement and Criminal Justice Comprehensive Plan--1974-1975.

Bubak, E. M. and Greaves, Leroy, "Police Protection for the Santee Sioux Tribe of Nebraska--Whose Responsibility?". February, 1974.

"Catalog of Domestic Assistance", U.S. Office of Management and Budget. Washington, D.C.: U.S. Government Printing Office, 1973.

Lewis, Oscar, Children of Sanchez. New York: Random House, 1961.

Brophy, William A. and Aberle, Sophie D., et al., Report of the Commission on the Rights, Liberties, and Responsibilities of the American Indian, The Indian, America's Unfinished Business.

Uncommon Controversy, Fishing Rights of the Muckleshoot, Puxallup and Nisqually Indians, A report prepared for the American Friends Service Committee. Seattle: University of Washington Press, 1970.

Winnebago Bureau of Indian Affairs Office Budget for Nebraska Tribes,  
FY74.

"Bureau of Indian Affairs Report of Labor Force Statistics", Winnebago  
Agency, 1973.

National American Indian Court Judges Association, Justice and the  
American Indian, Vol. 1, "The Impact of Public Law 280 upon  
the Administration of Justice on Indian Reservations", 1974.

Yankton Daily Press and Dakotan, "Santee Development Includes 300  
Per Cent Growth of Town", July 29, 1974.

Update of 1973 Catalog of Federal Domestic Assistance.

Deloria, Vine, Jr., We Talk, You Listen. New York: A Delta Book -  
Dell Publishing Co., 1972.

Deloria, Vine, Jr., Custer Died For Your Sins - An Indian Manifesto.  
New York: Avon Books, 1971.

Cahrn, Edgar S., (Editor), Our Brother's Keeper: The Indian In  
White America. New York: A New Community Press Book - World  
Publishing Co., 1970.

Fey, Harold E. and McNickle, D'arcy, Indians and Other Americans -  
Two Ways of Life Meet. New York: Perennial Library, Harper  
& Row, 1970.

#### Laws and Acts

Free Flow of Information Act, "Revised Statutes of Nebraska", 1943  
20-144 et seq.

Public Meeting Laws, "Revised Statutes of Nebraska", 1943, 84-1401  
et seq.

Laws 1972. LB 1332.

23 Stat. 385, 1883.

48 Stat. 984. 25 U.S.C.A. 461 et seq.

Public Law 280 (67 Stat. 588), 83rd Congress, 1st Session, August 15,  
1953.

April 11, 1968, PL 90-284, Title II, Sec. 201, 82 Stat. 77, 78, 79, 80.

"Revised Statutes of Nebraska", 1970, 23-362, Amended 1961, C91; 1967,  
C123; 1963, p. 444, 1969 (LB491), 1974 (LB131).

Revised Statutes of Nebraska, 1972, Laws 1032, 82nd Legislature, 2nd  
Session.

Act of March 3, 1871, 16 Stat. 544, 25 U.S.C.A. 71.

89 Congress, 1 Session, House of Representatives Hearings on Appropriations for 1966, Part I, The Johnson-O'Malley Act of April 16, 1934 (48 Stat. 596).

43 Stat. 244, U.S.C. 398.

Community Development Law, Revised Statutes of Nebraska, 1943, 18-2101 et seq.

Laws, 1974 L.B. 499.

Revised Statutes of Nebraska, 1943, 21-2301 et seq.

Revised Statutes of Nebraska, 1943, 77-27, 142 et seq.

Revised Statutes of Nebraska, 1943, 81-1214 to 81-1219.

Revised Statutes of Nebraska, 1943, 84-131 et seq.

Legal Cases

State v. Goham, 187 N.W. 2d 305.

State v. Tyndall, 187 N.W. 2d 298.

Omaha Tribe v. Village of Walthill, 460 F. 2d 1327, 8th Cir. 1972.

**END**