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Foreword

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FOREWORD

Five years ago the North Dakota School of Law was the host of the first Canadian-American Symposium on the legal rights of Indians. Time dims the memory, but anyone who was at that meeting will never forget it.

It was held in Grand Forks at a local hotel. The meeting room was on the first floor, convenient to the dining room and the lobby. It was also close to the bar.

It was cold as the registrants clopped in out of the packed snow, picked up their packets of materials and moved stolidly into the meeting room.

There was not a single Indian included in the first panel which was composed of government officers and an historian interested in the subject. I was on the panel. The speeches droned on as the television cameras of CBC surveyed the gathering.

Several American Indians began to quiz the panel members from the audience. The questioning was restrained, stiffly courteous and quizzical. Upon completion of the first panel, a Canadian official from the Ministry of Indian Affairs presented the official Canadian view. He was questioned carefully, sometimes caustically by Canadian lawyers and law professors in the audience, but he stuck by his position in the finest tradition of the service. His was a bullet-biting performance. When he was through, and after a break for lunch, a new panel took the podium. Now the questions from the floor were less restrained, more rhetorical and accusatory. The CBC cameras seemed more interested as the audience arrayed itself against the panel, and by now both the panel and the audience were mixed with Indians and non-Indians.

The cameras whirred as the hub-bub reached such a crescendo that many of the participants, no doubt to escape the din, once again repaired to the bar where they formed themselves into similar discussion groups (as a participant I use the phrase advisedly). Finally, the group in the meeting hall disbanded altogether, unable to compete with the cacophony in the bar and the shouts from the audience.

Then an extraordinary thing occurred. The sponsors provided a private room for the Indian participants. They met for several hours while the group in the bar settled down for some hands-across-the-border socializing on the prairie. I think almost everyone thought the conference would go on the books as a failure.

I was interviewed by the CBC commentator and tried to mouth some hopeful platitudes. He thought the whole thing had been a great

success, but I tended to attribute this to a TV man's love of discord and tempest. I thought we had failed.

I was wrong. The Indians returned with a series of resolutions including specific recommendations regarding future conferences, international cooperation, inter-tribal cooperation and praising the conference.

Robert Bennett, American Commissioner of Indian Affairs (and an Oneida Indian) spoke eloquently and humorously at the evening banquet. We were all glued to our seats until one Indian rose and suggested a rousing vote of confidence in the speaker. The group responded and the conference was over.

That conference was not a failure. Certainly, there have been no more exactly like it. It was one of a kind.

All through the last five years those of us who attended that conference keep seeing each other at more recent conferences throughout Canada and the United States.

Now there are Indian lawyers who run the conferences.

Now there are reports of successful litigation.

Now Canada has an Indian Claims Commissioner and its government seems to have acknowledged a debt to that country's Indians.

Now there are articles prepared and papers read and law reviews such as this one devoted to the subject of the legal rights of Indians.

But I can't help thinking that if the bar had not been close by on that cold day in Grand Forks five years ago, a deadly, dull, structured symposium would have gone on the books having produced no true dialogue, no real results.

Out of our mutual embarrassment came good humor, understanding and friendship.

Time passes and here we are with the second issue of the *North Dakota Law Review* being devoted exclusively to Indian problems. It contains an excellent mixture of subjects, including two articles on taxation, the mortar that keeps the bricks of any governmental structure together.

The first article concerns Indian education and the right of Indians to control their educational facilities, thereby promoting local educational policies. The author, Michael Gross, is an attorney who has acted out his convictions about quality Indian education by dedicating himself unselfishly to attaining it. He argues that Indian parents have a constitutional right to control the education of their children. His arguments are novel and his experiences with the Wind River Reservation educational battle are enlightening and supportive of his thesis. All those involved in the current controversy over In-

dian educational self-determination will find Mr. Gross's contribution extremely interesting and provocative.

The second article is the work product of two dedicated attorneys in the employ of the Native American Rights Fund at Boulder, Colorado. They are Daniel Israel and Thomas Smithson. Their article is an authoritative analysis of Indian rights in the area of taxation. The contentions propounded by Mr. Israel and Mr. Smithson form the basis of the arguments advocating Indian sovereignty and freedom from restrictive state taxation. Their analysis of these critical areas of Indian law is both concise and compelling and fully supportive of their theory of the direction required for Indian economic development.

An article by Jerry Bean follows encompassing that vastly difficult issue of Indian rights—sovereignty.

Mr. Bean's overview of this core issue provides a significant perspective to the area of Indian law generally. His analysis of the amorphous concept of sovereignty is organized so as to provide the reader with an understanding of the critical impact the sovereignty issue has in all facets of Indian existence.

The last article is a practical package put together by Ronald Hodge, an attorney for the California Indian Legal Service. Mr. Hodge presents a simple and complete set of instructions for those attempting to acquire or re-acquire, as the case may be, the use of government surplus lands. The currency of Mr. Hodge's article is illustrated by the fact that there is now a movement to guarantee the Indian a land base of at least 150 million acres in perpetuity.

Finally the student notes and comments provide a satisfying supplement to the aforementioned articles. Sandra Danforth's note on the Indian Claims Commission is the most comprehensive study of the history of the commission that I've ever read. I hope that the fact that I, a former Chairman of the Commission, agree with the authors conclusions does not detract from that judgment. Another student note contains a further contribution concerning an analysis of a recent opinion by the Attorney General of North Dakota involving state sales taxation on Indian reservations.

In addition there are case comments on recent Indian cases and an array of book reviews on publications of interest to the casual, or hard core reader of Indian lore and history.

Eighty-three years after Wounded Knee the muffled drum beats of the Sioux are still in the air. A troubled group of Indians once again occupies the town and seemingly there are no solutions.

But there are solutions. Senator James Abourezk describes some of them and states his personal commitment to seeing them through.

Certainly all lawyers must agree that the Indian Trust Council bill is must legislation. This proposed legislation provides for a committee of three, at least two members of which must be Indians. The committee is directed and authorized to hire a lawyer and such assistants as may be needed. It was July 8, 1970, when President Nixon proposed the legislation which "would provide independent legal counsel, and representation on behalf of Indians and Alaska natives in assertion of their natural resource rights."

It is past time to provide the Indians with counsel independent of the entrenched areas of government and the dominant economic forces in the land.

The articles, comments and book reviews in this edition of the *North Dakota Law Review* will provide the basis for the continuing discussion and litigation essential to the orderly process of change.

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