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The Indian Bureau's Drive for Increased Police Powers, April 3, 1952

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THE INDIAN BUREAU'S DRIVE FOR INCREASED POLICE POWERS

Twenty-one different excuses and justifications have been offered by the Indian Bureau during the past two weeks for the pending bill (S.2543; H.R.6035) which would make Indians subject to arrest without warrant if they violate Indian Bureau regulations. Indians who have honest doubts about the merits or demerits of this bill can reach a fair conclusion on the subject by examining the excuses for the bill which the Indian Bureau is now circulating. If we charitably skip over the hysterical name-calling, such an examination will reveal the following discrepancies between what the Indian Bureau says and the actual facts:

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1. "The primary purpose of the bill is to provide these officers with the types of powers held by policemen in an ordinary American community."	There is no ordinary American community in the United States where a policeman has a right to arrest without a warrant anybody who violates an administrative regulation, promulgated by an official in Washington.
2. ". . . law enforcement officers of the Bureau of Indian Affairs. . . now lack. . . powers which they need for self-protection."	Every Indian knows that Indian Bureau law enforcement officers and many other Bureau employees carry guns now - without waiting for Congress to pass a law on the subject - and make arrests and searches just as state police officers do. If they are acting legally in doing these things, why do they need a new law? If they are acting illegally now, is there any reason to expect that they will be restrained by the cloudy limitations which the Commissioner finds in his new bill?
3. "In order to protect themselves and carry out their duties adequately, they need to be provided with the kind of authority which is possessed by other similar law enforcement officials of the Federal, State and local governments."	Neither the Federal Bureau of Investigation nor the U.S. Marshals nor the Secret Service nor any state or county or city law enforcement agency has the general power to make arrests without warrant for violation of administrative regulations.
4. "This is just what the bill would do. Under its provisions the powers conferred upon the Bureau's law enforcement officers are virtually identical with those now held by U.S. Marshals. The principal difference is that the powers of the Bureau's law enforcement officers would	"In the first place we call attention to the fact that there is no civilian Federal Agency today that has powers as broad as those which this bill would confer upon the Indian Bureau. United States Marshals, under Section 3053 of the Code of Criminal Procedure may make arrests without warrant only for felonies - not for misdemeanors - and certainly not for mere violations of executive regulations. The Federal Bureau of Investigation, the United States Secret Service, and even Federal prison wardens are likewise limited in the making of arrests without

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be limited to offenses committed under Federal laws and regulations applying specifically to Indians."	warrant to the most serious Federal crimes, under Secs. 3052, 3056 and 3050 of Title 18 of the U.S. Code. Yet under the proposed bill arrests without warrant could be made by any deputized employee of the Indian Bureau not only for felonies but also for misdemeanors and even for violations of regulations. Likewise our Federal law enforcement officers in the categories referred to can make searches and seizures without a warrant only for commission of a felony, and the proposed bill would authorize Indian Bureau employees to make searches and seizures without warrant merely for misdemeanors or violations of executive regulations." [Testimony on H.R.6035, by the Association on American Indian Affairs, Inc. (Oliver La Farge, President) on April 2, 1952]
5. "Mr. Cohen said that the Department's bill would authorize Bureau employees to shoot Indians. He first made the statement without qualification, implying that Bureau employees could go out at will and shoot Indians on sight. He later repeated the statement and added that the bill was intended to authorize Bureau employees to shoot down Indians who refuse to obey illegal and unconstitutional regulations. This is a false and malicious statement."	The bill authorizes Bureau employees to carry guns and to make arrests, even for violations of Bureau regulations; it follows that the guns may be used to effect such arrests. Over a long period of time many Indians have actually been killed or assaulted or arrested for resisting illegal orders of the Indian Bureau. This is not simply a matter of ancient history. Many Indians and some non-Indians now alive have been injured or threatened with violence by Bureau employees. "Within the last few months a case has been reported to the Secretary of the Interior in which a reservation farmer thought it his duty to shoot a tribal policeman who disagreed with the farmer about the ownership of certain property. Fortunately the Department interceded before the threat was carried out and made it clear that the judicial process, rather than gunplay, is the proper way of deciding such disputes." [Testimony on H.R.6035 by the Association on American Indian Affairs, Inc., on April 2, 1952]
6. "No policeman has the authority to shoot a citizen or any other person merely because that person is charged with violating the law. Under our American system of justice no person charged with committing a crime can be punished without first being properly arrested, arraigned, and given a fair and impartial trial before a court of law."	A bullet shot without authority hurts just as much as one shot with authority. Indian Bureau officials are notable for ignoring restrictions on their authority. Outside of Indian reservations policemen are generally trained to make arrests in a reasonable manner and to safeguard the constitutional rights of persons arrested. This is not always the case with Indian Bureau policemen. Unfortunately the Commissioner of Indian Affairs does not recognize that Indians are entitled to share in "our American system of justice." Under H.R.6035 the Commissioner or his employee would be law-maker, law enforcement officer, prosecuting attorney, judge, and prison warden, combined. No American citizen except an Indian faces that "system of justice."

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7. "The authorization of a policeman to use his gun when making an arrest is severely limited by law, and the special law enforcement officers of the Bureau would be given no greater authority to shoot than the ordinary policeman has."	This is Bureau "double-talk." Increasing a policeman's power to make arrests increases his opportunities to use his gun when making arrests. Indian Bureau law enforcement officers claim to be exempt from all state laws governing arrests and shooting persons who resist arrest. H.R.6035 would exempt the Indian Bureau from the Federal restrictions applicable to F.B.I. men, U.S. Marshals and other Federal officers, which limit arrests without warrant to serious felony cases.
8. "The bill does not authorize the imprisonment of anyone for any reason."	This is more Indian Bureau "double-talk." The bill does not use the word "imprisonment"; it simply authorizes Bureau employees to make arrests. As a practical matter a man under arrest is a prisoner whether he is in prison or a corral or handcuffed to a cottonwood tree.
9. "No regulation issued by the Commissioner of Indian Affairs, Area Directors of the Bureau, or any other Bureau employee is subject to enforcement by imprisonment of the person who violates it."	Actually there are more than 200 regulations, issued by the Commissioner of Indian Affairs and approved by the Secretary of the Interior or his representative, which are collected in Title 25 of the Code of Federal Regulations [Chapter 1. Bureau of Indian Affairs] which are enforceable by imprisonment of Indians who violate these regulations. More than 50 of these regulations expressly provide for terms of imprisonment. Other regulations simply declare what is "authorized." Acts which are not "authorized" are then made punishable under regulations like 25 C.F.R. 161.53. On unallotted reservations, for example, the Bureau claims that every unauthorized use of land or water by any Indian from the first step of a toddling child to his burial in the earth is subject to Bureau control, under 25 C.F.R. 161.53, reading: Any Indian who shall, without proper authority, use. . . any public property of the tribe. . . shall be deemed guilty of an offense and upon conviction thereof shall be sentenced to labor for a period not to exceed 30 days.
10. "The principal regulation of the Secretary that provides for a penalty of imprisonment is the regulation relating to the maintenance of law and order through the courts of Indian offenses, which is contained in 25 CFR 161, and the penalty is prescribed under existing statutory authority."	A reading of over 5000 statutes of Congress dealing with Indian affairs has not uncovered, nor has the Commissioner ever cited, any act of Congress prescribing any penalties at all for the offenses listed in 25 CFR 161.

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11. "Mr. Cohen said that under the language of the Department's bill an Indian who violates any Bureau regulation would be subject to search and seizure. That is not true and the falseness of the statement appears from a simple reading of the bill. The bill clearly provides that special law enforcement officers of the Bureau may make searches and seizures only when 'permitted by law.' Unless such searches and seizures are permitted by some other law they would not be permitted by this bill."	More Indian Bureau "double talk." H.R.6035 expressly authorizes "searches and seizures" for violations of regulations. If this were only intended to authorize those searches and seizures which can be made under present law, why would the Bureau be asking for new legislation? If no searches and seizures can be lawfully made under present law, why are Bureau employees now making such searches and seizures? And if Bureau employees pay no attention to the limitations of existing law, why assume that they will pay more attention to obscure limitations in a new law?
12. "Mr. Cohen said that under the language of the Department's bill an Indian who violates any Bureau regulation would be subject to arrest. He referred specifically to regulations relating to leasing land held in trust, cutting timber on such land, and spending money held in trust. In the first place, these regulations are issued by the Secretary of the Interior, not by the Bureau. The Commissioner of Indian Affairs has no general authority to issue such regulations."	Another Bureau quibble. Commissioners have been issuing regulations (with the approval of the Interior Department) for more than 100 years. There are now more than 2200 such regulations collected in Volume 25 of the Code of Federal Regulations. Recently even Area Directors have been issuing regulations purporting to deprive indigent Indians of the right to use their own irrigation ditches - subsequently repudiated by the Secretary of the Interior.
13. ". . . no regulations of this character [relating to irrigation, cutting timber, spending money, etc.] provide for a criminal penalty of fine or imprisonment, . . . and the bill obviously is not intended and could not conceivably be construed to authorize arrests for violating regulations of that type."	Numerous Bureau regulations on the subjects mentioned expressly provide for criminal penalties, e.g., Sections 161.53 (30 days for unauthorized use of tribal property); 161.64 (3 months for non-support); 161.77NH (60 days hard labor for introducing livestock without Indian Bureau permission); 161.78NH; *161.81NH (6 months hard labor for building a fence without superintendent's permission); 161.82NH (3 months hard labor for violation of grazing regulations); 161.83NH (3 months hard labor for grazing livestock without permission); 181.86NH (60 days hard labor for trespass on administration grounds). (The last 5 presently apply only to about 75,000 Navajo and Hopi Indians.)
14. "Mr. Cohen said that the Commissioner of Indian Affairs claims a plenary power to control the conduct of all Indians, on or off Indian reservations, and that the power is claimed under a recent Solicitor's ruling. Both statements are	On Dec. 14, 1950, more than 25 Indian tribes, through their various attorneys, in conjunction with the Association on American Indian Affairs, argued that Commissioner Myer's attempts to control the conduct of tribal attorneys were unconstitutional. On June 22, 1951, the Solicitor of the Interior rejected this argument on the ground that Con-

* (6 months hard labor for refusal to conform to "range management plans")

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unqualifiedly false. The Commissioner claims no such power, he expressly denies the existence of such power, and he would strongly oppose any proposal to confer such power on him."	gress had a "plenary power. . . over the property and affairs of Indian tribes." The Solicitor's argument was recited by Commissioner Myer on July 25, 1951, at a meeting of the National Congress of American Indians, in support of his own claim to this "plenary power" in his handling of tribal contracts. On January 4, 1951, a representative of the American Bar Association, testifying before Secretary Chapman, referring to the Solicitor's opinion on which Commissioner Myer relied, declared: "This statement when read in conjunction with the Pyramid Lake Paiute decision indicates such a decided predisposition to administrative absolutism as to be somewhat alarming. ". . . the Solicitor is wrong in our judgment when he refers to the reasons as being those which he, the Secretary, deems to be properly related. "The only limitation on the Secretary's action, according to the Solicitor, would be the Secretary's own sense of self-restraint. The committee doesn't believe that the Congress intended the Secretary of the Interior to have that power." After hearing both sides of the question, Secretary Chapman rejected the position taken by his Commissioner of Indian Affairs. The New York Times reports, however, that Commissioner Myer seems unwilling to accept this over-ruling.
15. "Mr. Cohen said that the bill would give the Bureau the power to enforce illegal and unconstitutional regulations. As an attorney, Mr. Cohen must know that this is not true. It is a well settled principle of our legal system that no act of Congress can authorize the enforcement of an unconstitutional regulation."	More Bureau quibbling. When an Indian is shot or thrown into an Agency jail without a warrant for violating a Bureau regulation, and has no lawyer to defend his rights, what practical difference does it make to him whether the regulation under which he is imprisoned is constitutional or unconstitutional? When Mr. Myer was in charge of Japanese detention camps, he kept thousands of loyal American citizens of Japanese ancestry behind barbed wire. The United States Supreme Court later said this was illegal. But even the U.S. Supreme Court cannot restore the lost years of a man's life.
16. "Mr. Cohen said that the bill is part of a new program to reduce Indians to the condition of prisoners of the Bureau. He also stated that the bill would apply to Indians 'the same coercive measures' that were applied during wartime to American	Judge Denman, speaking for the Circuit Court of Appeals in the 9th Circuit, in the case of Acheson v. Murikami, 176 Fed. (2d) 953, said that conditions in the Tule Lake Center under Mr. Myer's administration were "in major respects as degrading as those of a penitentiary, and in important respects, worse than in any Federal penitentiary."

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citizens of Japanese descent in War Relocation Authority 'concentration camps.' Both of these related statements in the memorandum are completely without foundation in fact. Nothing in the proposed bill would remotely affect the right of any Indian to reside where he wishes or to travel as freely as any other citizen. As far as the War Relocation Authority Program is concerned, the foremost objective of WRA from its earliest days was to take the evacuated Japanese-Americans out of the institutional environment into which they had been plunged by military orders and to restore them as rapidly as possible to ordinary American communities."

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In the case of Ex Parte Endo, 323 U.S. 288, the United States Supreme Court unanimously held that the regulations promulgated by the Director of the War Relocation Authority requiring an admittedly loyal citizen to stay in the Relocation Centers of the Authority until granted leave by this Agency were not authorized by any act of Congress or any order of the President. Justice Douglas, speaking for the Court, characterized Mr. Myer's activity as "discriminatory" and unauthorized. Justice Roberts expressed the further opinion that such action was unconstitutional. Justice Murphy's concurring opinion declared:

> "detention in Relocation Centers of persons of Japanese ancestry regardless of loyalty is not only unauthorized by Congress or the Executive but is another example of the unconstitutional resort to racism inherent in the entire evacuation program."

Dillon Myer is still defending this illegal program, condemned by the Supreme Court, as a "program. . . to restore them as rapidly as possible to ordinary American communities." Indians object to being the victims of any similar program.

It should be noted, however, that even Japanese enemy aliens in these camps had the right to hire counsel of their own choosing without Mr. Myer's approval. Because they were free to hire counsel of their own choice without the consent of the administrator whose regulations they were challenging, the victims of WRA illegalities were able to secure judicial correction or redress for what has been characterized by competent and disinterested critics as "Our Worst Wartime Mistake." (See Rostow, "Our Worst Wartime Mistake", Harper's Magazine, Sept. 1945; Rostow, "Japanese-American Cases - A Disaster" (1945) 54 Yale Law Jour. 489; Sen. Doc. 96, 78th Cong., 1st sess. 1920 (1943); Note (1943) 11 Geo. Wash. L. Rev. 482; N. Dembitz, "Racial Discrimination and the Military Judgment" (1945) 45 Col. Law Rev. 175; Konvitz, "The Alien and the Asiatic in American Law" (1946) 254-279).

Indians do not enjoy the prospect of being the victims of "America's Worst Peace Time Mistakes." Many Indians have read and strongly share the views expressed by the distinguished Congressman-at-Large, Mr. Bender, from Commissioner Myer's own State of Ohio:

> "* * * I have heard the comments of the chairman as well as the members of the subcommittee and those not on the subcommittee raising particular ned with the Bureau of Indian Affairs and the manner in which it is being conducted. Well, I asked the question of one of my colleagues here as to who the Administrator of this Bureau was and I was informed that it was a gentleman by the name of Dillon Myer. And, I said, I can now understand

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	why you are having difficulty with the administration of that Bureau; why you are dissatisfied. Is he not the same gentleman who handled the Japanese detention camps and did not the military police testify that they had more trouble with him than they had with all the Japanese combined? Is not this the same Dillon Myer who bungled the housing business? Is he not the same gentleman who was in charge of this inter-American relations program and made a mess of that? "I am not suggesting corruption or graft. However, I am not only suggesting but I am charging gross incompetence and mismanagement of this Bureau. His past performance is a guarantee of inefficiency here." [Cong. Rec., April 25, 1951, p. 4488] In the light of these public comments by distinguished judges and members of Congress, the words to which Commissioner Myer now objects seem rather restrained.
17. "The bill was originally written by the Bureau's special officer in charge of law enforcement activities, who is himself a Cherokee Indian."	This is an irrelevant dodge. The draftsman of this bill was not working for the Cherokee Tribe. He was working under Commissioner Myer.
18. "Altogether it must have been reviewed by at least a dozen highly responsible officials of the Government. Yet not one of these reviewers found in the bill the sinister effects and purposes which Mr. Cohen attributes to it."	Actually, at least three employees of the Interior Department objected to the broad scope of this bill, but their objections were overruled. One of the objectors thereafter resigned.
19. "Moreover, if Mr. Cohen were genuinely concerned about the effects of the bill, he could easily and properly have registered his misgivings either with the Department or the Bureau."	The genuineness of Mr. Cohen's concern may be measured by the fact that he has been registering his "misgivings" about this sort of legislation with Interior Department officials since 1934. His views on this particular bill were promptly communicated to high officials of the Interior Department at about the same time they were communicated to clients. It must be remembered that these bills had been introduced into Congress without giving Indian tribes or Indian welfare organizations any prior opportunity to discuss them or even to see them. Mr. Cohen had had enough experience interpreting legislation and teaching law school classes in legislative drafting to know what S.2543 meant when he read it. There was no need to ask the legal advice of Commissioner Myer, who is not a lawyer.
20. "Indian tribes that have retained him as their attorney. . . have a right to expect from him fair and sound legal analyses	Judging by the number of times the Indian Bureau has been overruled by the Interior Dept. and the courts in recent years, and judging by the million dollar swindles of Indian property which have been condoned by the Bureau and have been recently exposed by tribal attorneys, it would seem that Indians are better judges than the Commissioner of Indian Affairs of the quality of the legal services they pay for.

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rather than 'propaganda diatribes.'"	The Commissioner has not yet learned the lesson that the American Bar Association and the Secretary of the Interior tried to teach him, that he is the worst possible judge of the legal ability of his adversaries' attorneys. But the Commissioner's lack of legal skill may be compensated by his experience with "propaganda diatribes." For many months Commissioner Myer has been distributing thousands of pages of "propaganda diatribes" at Government expense, attacking Indians who disagree with him, their attorneys, and even his own superior officers. Prior to his tenure as Commissioner of Indian Affairs he was found guilty, after an extensive investigation, of maintaining "storerooms. . . replete with 'propaganda material' to influence passage of public housing legislation. This, despite the fact that sec. 201 of Title 18, U.S. Code specifically provides criminal penalties for the use of appropriate funds to influence legislation." [Statement by the Chairman of the Subcommittee on Government Operations of the House Appropriations Committee, Mr. Jensen, on June 11, 1947] Of Mr. Myer's more recent propaganda activities, Senator Chavez has said:

> "I do not think it is the business of the Indian Bureau to participate in matters of that nature. That is up to the individuals in the individual communities. I do not blame the Indians for resenting that kind of activity." [Senate Committee Hearings on 1952 Interior Department Appropriations, p. 2200]

21. "Our first reports indicate clearly that many Indians have been frightened by the Cohen memorandum."	Commissioner Myer is mistaken in thinking that Indians are "frightened." They don't frighten that easily. An increasing number of tribes now keep Washington watchdogs trained to bark when trespassers threaten Indian rights. These tribes are not frightened when they hear the watchdog barking. They know what needs to be done to block the efforts of the Commissioner to deprive them of independent legal counsel, to inject himself into the confidential relationship between an Indian and his attorney, to strip tribal councils of their power over lands and funds, to use Federal credit funds as a whip to beat down criticism of waste and corruption, to keep Indian delegates from coming to Washington with their grievances, to initiate drastic new legislative proposals (such as H.R.6035) without consulting the Indians first, to defeat outstanding Indian claims, and to drive out of the Indian Service devoted friends of the Indian and replace them by administrators whose only qualification is experience in handling prisoners. Indians are not "frightened." They know that they have defeated Mr. Myer on his attorney regulations, his irrigation regulations, his "credit freezes", and dozens of other issues, and they confidently expect to defeat him

again on his effort to get the power to arrest Indians who defy his orders. In that struggle Indians are proud to have the promised support of many Members of Congress who care for the protection of Indian rights and have pledged their opposition, at the proper time, to the pending measure. Indians are further heartened by the support that they are receiving from many individuals and organizations that rallied to their defense on earlier occasions, when their rights were in jeopardy and helped to win enduring victories.

Conclusion

The important question before Congress is a question that affects the rights and the liberty of every Indian in the United States. The question is a simple one:

> "Should Indians be subject to arrest without warrant by the Indian Bureau when they refuse to obey Indian Bureau regulations?"

Congress is now passing on that and will give much weight to expressions of public opinion on that question.

Indians who are concerned with this issue will not be swayed by scurrilous personal attacks. If the proposed bill becomes law, the chances are that it will affect the lives of hundreds of thousands of Indians not yet born, and will stand on the statute books long after Dillon Myer and Felix Cohen have passed on. The last time that kind of legislation was passed was in 1858, and it took until May 18, 1934 to get that legislation repealed.

Your watchdog has done his barking, now. The rest is up to you.

F.S.C.