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Introduction

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INTRODUCTION

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The need has never been more evident for a clear, concise, federal policy enunciating the relationship of federal, state, and local governments to "Indian country." Federal Indian policy, such as it is, or has been, could be aptly described as a "pendulum" policy, swinging back and forth in response to the vague and sometimes hysterical whims of public opinion. That is the unfortunate legacy to all of us in positions of public responsibility involving Indian jurisdictional questions. We deal with a chaotic and volatile situation and seem to have little influence toward improvement. Various courts interpret the same treaty or contractual language in various ways and while we await resolution by the United States Supreme Court, other situations are developing, raising other questions which will, no doubt, make a confusing issue more confusing.

It is not generally known that from 1778 to 1871, treaties were made by the United States with the Indian tribes, and that by the Act of March 3, 1871, Congress provided "that hereafter no Indian nation or tribe within the territory of the United States shall be acknowledged or recognized as an independent nation, tribe, or power with whom the United States may contract by treaty." That particular congressional act assimilated the Indian Tribes and Nations into the United States of America, subject to previous treaty provisions. It did not resolve the inherent problem, however.

Paternalism then became the federal policy. Later, conscience stricken Congresses floundered through a period of making amends for past sins. Having salved the collective American conscience, Congress has apparently retired from the battle just when their potential for leadership is most needed.

The courts cannot be blamed for the confusion since they are interpreting today treaties and agreements negotiated during the 19th century. I submit that it is impossible without congressional direction for a coherent federal Indian policy to emerge from the maze of conflicting court decisions and federal agency programs, rules and regulations that now afflict jurisdictional questions.

I do not purport to be a professional commentator on the status of relations between Indians and non-Indians, but common sense and

some experience lead me to the conclusion that the vacuum that exists in regard to a clear and understandable policy is a contributing cause to the unrest and occasional violence on and around some of our nation's Indian reservations.

Congress must act soon to clarify our ("non-Indian") relationship to the tribes and their land and to include in that clarification fair compensation for Indian losses over the years reduced to a present value. The act must be comprehensive so that the relationship from the time of its passage forward can be one of mutual trust and respect, but most of all, such an act must clearly, concisely, and succinctly establish jurisdictional responsibilities, and it must no longer require that state and local governments act as unmilling surrogates for a disjointed, discordant, and disinterested federal Indian policy.