The American Indian Religious Freedom Act of 1978 requires federal agencies to respect the customs, ceremonies, and traditions of Native American religions. This report and its recommendations are the result of a multi-agency cooperative effort with Native traditional and tribal leaders to assure that the interference and insensitivity of the past will not be repeated in future practice. Part I provides an historical treatment of the pertinent events and actions which have resulted in the protection of the religious freedom of American Indians, Aleuts, Eskimos, and Native Hawaiians. Part II contains President Carter's statement upon approval of Public Law 95-341; a summary of the establishment and activities of the Task Force to implement the Act and prepare this report to the Congress; summary statements of Task Force member agencies; and a brief record of consultation with Native traditional religious leaders, as required by the Act. Part III contains recommendations on land: on access to sacred sites and objects; and on ceremonies and traditional rites, as they relate to federal agency practice. Part IV contains a narrative treatment of other issues identified as priority concerns during consultations, with discussions advanced as concepts for subsequent federal and tribal recommendations to the Congress. (Author/AN)
AMERICAN INDIAN RELIGIOUS FREEDOM ACT REPORT

P. L. 95-341

Federal Agencies Task Force

Chairman, Cecil D. Andrus, Secretary of the Interior

August 1979
Section 2 of the American Indian Religious Freedom Act of 1978 (P.L. 95-341) requires a report to Congress one year from approval of the Act, containing the results of an evaluation, undertaken in consultation with Native traditional religious leaders, concerning administrative and legislative changes considered necessary for the protection and preservation of the religious cultural rights and practices of the American Indian, Eskimo, Aleut and Native Hawaiians.
Native American tribes, nations and peoples survive as distinct groups within the American society. The policy of the United States is to support their right to cultural and political integrity, while assisting them to adapt to the rapidly changing economic and technological conditions of the modern world. All cultures change with the times and adapt to the conditions of their environment, as a matter of survival. The question is whether the United States government and American society have put unwarranted pressure on these cultures to change.

Native traditional religions are the fabric of Native American cultures. At one time, the repression of American Indian and Native Hawaiian religions by government agents was a common practice and these religions were held up to ridicule by American society. Partly out of ignorance and partly as a result of these regrettable practices and attitudes, federal policies and practices not directed toward Native traditional religions were also hostile or indifferent to their religious values. And, when the official policy of deliberate repression was ended, no comprehensive review was made of residual incidental impact of federal practices on Native American religions.

For example, Native American people have been denied access to sacred sites on federal lands for the purposes of worship. When they have gained access, they have often been disturbed during their worship by federal officials and the public. Sacred sites have been needlessly and thoughtlessly put to other uses which have desecrated them. Native people have been denied the opportunity to gather natural substances which have a sacred significance and have been disturbed in their use when they have been able to gather them.

Indian beliefs regarding care and treatment for the dead have not been respected by government officials in the past. At border crossings into Canada and Mexico, sacred objects, practices and customs have not been respected. In public institutions, including both prisons and schools, Native Americans have been denied equal rights to their religious practices, and opportunities have been given to Christian denominations to proselytize while Native traditional religious leaders have been excluded.
In light of this history and the lack of a comprehensive review of the effect of past practices, the Congress passed the American Indian Religious Freedom Act of 1978 (P.L. 95-341, 42 USC 1996). On August 11, 1978, President Carter approved the Resolution, recognizing it as "an important action to assure the religious freedom of all Americans."

The Act includes American Indian, Aleut, Eskimo and Native Hawaiian people in its provisions. Here, as in the Resolution, the terms American Indian, Native American and Native are used interchangeably, with the last two terms used primarily in this report. It is important that the reader recognize that there are significant differences in federal law and policy in relation to American Indians, Alaska Natives and Native Hawaiians. However, while the legal, treaty and reservation distinctions do exist; the basic traditional values and spiritual relationships are barely distinguishable.

Federal agencies are now required by law to respect the customs, ceremonies and traditions of Native American religions. For one year the agencies have examined their policies and procedures, working with Native traditional and tribal leaders to assure that the interference and insensitivity of the past will not be repeated in future practice. This report and its recommendations are the result of a multi-agency cooperative effort, undertaken in close consultation with practitioners of the Native traditional religions.

With this new policy, it is now possible to administratively accommodate most of the Native religious needs under existing statutory authority, as delineated in Part III, Recommendations. Many agencies have achieved results in removing Native religious freedom impediments; have developed internal mechanisms for continuing consultation on specific concerns; are preparing policies which will enhance Native religious freedom nationally; and have incorporated the new policy into existing procedures and practices of their field offices.

Several agencies' initiatives have been combined into Task Force recommendations for uniform administrative procedure. Where it has been determined that administrative accommodations cannot be made under existing statutory authority, the Task Force has developed recommendations for legislative action concerning federal land-use designations for Native sacred sites, Native religious use of site-specific lands, protection of sites against vandalism and non-tribally controlled excavations, strengthening of conservation and antiquities laws and the exportation of significant objects in Native religious use. Those recommendations are currently being reviewed within the Administration.
Part I, Introduction, provides an historical treatment of the pertinent events and actions which have resulted in the protection of the religious freedom of American Indians, Aleuts, Eskimos and Native Hawaiians.

Part II, Categorical Actions Under the Act, contains the President's statement upon approval of P.L. 95-341; a summary of the establishment and activities of the Task Force to implement the Act and prepare this report to the Congress; summary statements of Task Force member-agencies; and a brief record of consultation with Native traditional religious leaders, as required by the Act.

Part III, Recommendations, follows the categorical areas of Congressional note in the Resolution: land and access to sacred sites, including cemeteries; sacred objects, including those gathered, transported and possessed by museums; and ceremonies and traditional rites, as they relate to federal agency practice. Examples of administrative responses to the expressed concerns are found throughout this section, together with recommendations for uniform administrative procedure.

Part IV, Conclusion, contains a narrative treatment of other issues identified as priority concerns during consultations, with discussions advanced as concepts for subsequent federal and tribal recommendations to the Congress.

The Appendices include an account of the progress and passage of the American Indian Religious Freedom Act in the 95th Congress, relevant materials on the Act itself, initial evaluations and reports of Task Force member-agencies; tabular presentations of problems identified during the period of consultation and guides to the consultations and written submissions.
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**Appendices**

A. Legislative History
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I. INTRODUCTION - HISTORICAL OVERVIEW

A missionary once undertook to instruct a group of Indians in the truths of his holy religion. He told them of the creation of the earth in six days, and of the fall of our first parents by eating an apple.

The courteous savages listened attentively, and, after thanking him, one related in his turn a very ancient tradition concerning the origin of the maize. But the missionary plainly showed his disgust and disbelief, indignantly saying:

"What I delivered to you were sacred truths, but this that you tell me is mere fable and falsehood!"

(The Soul of the Indian - Charles Eastman)

Historical Treatment of Native American Religions

The incident involving the exchange of creation stories gives an eloquent testimony to the manner in which non-Indians have generally received the Indian religious tradition. While proclaiming their own traditions to be infallible and literal truths, non-Indians have not accorded other religions the same courtesy. Indeed, Eastman's story continues with the Indians reproving the missionary for his lack of manners and his violation of the rules of civility.

The Spanish, uncertain about the theological status of the Natives, and to make certain that conquests proceeded according to Christian principles, adopted the famous "Requirement," which had to be read formally to the Indians they encountered before any hostilities could commence. The Requirement began with a brief history of the world since its creation, continued with an account of the establishment of the Papacy and described the donation by Pope Alexander IV of the lands then occupied by the Indians to the kings of Spain. The Indians, after hearing these sacred words, were supposed to acknowledge the lordship of the kings of Spain and to allow the Christian faith to be preached to them. Failure to surrender to the Spanish by the Indian justified whatever cruelties then followed and made the ensuing war theologically proper. While harsh in the extreme, this formalization of religious conflict at least had a theological and doctrinal base that the Europeans understood and which the Indians came rapidly to understand and abhor.
The Pilgrim Fathers adopted a similar posture. They lacked the absolute authority which the Papacy gave to the Spanish, but consoled themselves with sermons by John Cotton, Cotton Mather and Increase Mather, or the strong opinions of William Bradford. Conflict was not long in coming after the landing of the Pilgrims. When John Robinson wrote to William Bradford in 1623, he expressed great concern about the killing of several Indians: "Concerning the killing of those poor Indians, of which we heard at first by report, and since by more certain relation. Oh, how happy a thing had it been, if you had converted some before you killed any!" Later, when the whites of Massachusetts surrounded the principal village of the Pequots and burned it with all the Indian inhabitants, Bradford was to remark in his History of Plymouth Plantation:

Those that escaped the fire were slain with sword; some hewed to pieces, others rune throw with their rapiers, so as they were quickly dispatcht, and very few escaped. It was conceived they thus destroyed about 400, at this time. It was a fearful sight to see them thus frying in the fryer, and the streams of blood quenching the same, and horrible was the stink and sente there of; but the victory seemed a sweet sacrifice, and they gave the prayers thereof to God, who had wrought so wonderfully for them, thus to inclose their enimise in their hands; and give them so speedy a victory over so proud and insulting an enimie.

Repulsive as this history must be, it is important that it be understood in the broader historical perspective. The adoption of the United States Constitution, with its prohibition of any governmental establishment of religion and guarantees of religious freedom, signified a new sense of religious maturity greatly transcending previous views of the relationships of Christians and Natives.

Post-Revolutionary pressures on the tribes east of the Mississippi presented great difficulties. During the first three-quarters of American political existence, Christian missionaries were critically important in providing educational services to the tribes and interceding for them with government officials. Indeed, the Rev. Samuel Worcester and some other committed missionaries, learning of the dilemma presented by the Supreme Court decision in Cherokee Nation v. Georgia, which denied the Cherokees standing to bring a
suit against the state, voluntarily accepted the laws of the Cherokees, thereby suffering arrest and imprisonment by the state and initiating the companion case, *Worcester v. Georgia* 6/, which upheld the treaty rights of the tribe.

Involvement of the missionaries in tribal affairs was not on the basis of Indian religious freedom, but primarily for the purpose of converting the Natives. Freedom of religion became quickly submerged when missionary endeavors and government policy became synonymous. Andrew Jackson, in his second Annual Message, described the progress in removing the Five Civilized Tribes from their homelands in the South and justified the Removal policy with the optimistic prediction that:

> It will separate the Indians from immediate contact with settlements of whites; free them from the power of the States; enable them to pursue happiness in their own way and under their own rude institutions; will retard the progress of decay, which is lessening their numbers, and perhaps cause them gradually, under the protection of the Government and through the influence of good counsels, to cast off their savage habits and become an interesting, civilized, and Christian community. 7/

The coalescence of government and religious goals which was achieved before the Civil War became the predominant theme of interpretation for both churches and government agencies. Commissioner Taylor, a member of the Indian Peace Commission of 1867–68, remarked in 1868 in his annual report as Commissioner of Indian Affairs:

> ...Assuming that the government has a right and that it is its duty to solve the Indian question definitely and decisively, it becomes necessary that it determine at once the best and speediest method of its solution, and then, armed with right, to act in the interest of both races.

If might makes right, we are the strong and they the weak; and we would do no wrong to proceed by the cheapest and nearest route to the desired ends and could, therefore, justify ourselves in ignoring the natural as well as the conventional rights of the Indians, if they stand in the way, and, as their lawful masters, assign them their status and their tasks, or put them out of their own way and ours by extermination with the sword, starvation, or by any other method.
But Taylor, recognizing that such a course of action would be a step backwards unworthy of the United States, argued:

If, however, they have rights as well as we, then clearly it is our duty as well as sound policy to so solve the question of their future relations with us, and each other, as to secure their rights and promote their highest interest, in the simplest, easiest, and most economical way possible.

But to assume they have no rights is to deny the fundamental principles of Christianity, as well as to contradict the whole theory upon which the government has uniformly acted towards them; we are therefore bound to respect their rights, and, if possible, make our interests harmonize with them.6/

That Christianity and federal interests were often identical became an article of faith in every branch of the government and this pervasive attitude initiated the contemporary period of religious persecution of the Indian religions. It was not, to be certain, a direct attack on Indian tribal religions because of their conflict with Christianity, but an oblique attack on the Indian way of life that had as its by-product the transformation of Indians into American citizens. Had a Christian denomination or sect, or the Jewish community been subjected to the same requirements prior to receiving affirmation of their legal and political rights, the outcry would have been tremendous. But Indians, forming an exotic community which few understood, were thought to be the proper object of this concern. Thus the Supreme Court, in deciding an important law suit involving a conflict between the Missouri, Kansas, and Texas Railroad Company and the Osage Indians, justified its decision as follows:

Though the law as stated with reference to the power of the government to determine the right of occupancy of the Indians to their lands has always been recognized, it is to be presumed, as stated by this court in the Buttz case, that in its exercise the United States will be governed by such considerations of justice as will control a Christian people in their treatment of an ignorant and dependent race... (Emphasis added)9/

Legislation also bore the imprint of this attitude. Mr. Perkins, Representative from Kansas, warmly endorsed the Dawes Severalty Act on the floor of House of Representatives, proclaiming:
This bill is in keeping with the sentiment of the country, as it is, in my judgment, responsive to the best interests of the Indians, the best interests of the whites, and the best interests of the country generally. It has the warm indorsement and approval of the Secretary of the Interior, of the Commissioner of Indian Affairs, and of all those who have given attention to the subject of the education, the Christianization, and the development of the Indian race.

Church groups enthusiastically endorsed the Dawes Act and pushed for its passage. Bishop Hare of the Episcopal Church, when informed of its enactment, was heard to remark that "time will show whether the world or the Church will be more alert to take advantage of the occasion." The Church came in a distant second.

The executive branch, charged with administering the Indian agencies, represented the government's most persistent presence in suppressing the tribal religions. Most agents were political appointees, chosen for a long time with the consent of Church groups, and their religious bias was enhanced and strengthened by a dreadful ignorance of the parameters of tribal religions. Interpreting religion as primarily a belief system according to the familiar outlines of institutional religion with which they were familiar, many of the agents were horrified with the Indian ceremonial life and sought ways to suppress it. Very few non-Indians could distinguish between a war dance and any other kind of dance. Since the war dance in popular fiction, from James Fenimore Cooper to dime novels, was characterized as a prelude to savagery, dancing was particularly distasteful to non-Indians who were charged with performing various functions dealing with the tribes.

Examples of the sustained campaign conducted by federal employees against Indian dancing are numerous and in almost every instance the dances are characterized as representing barriers to government objectives in an unrelated field such as economic development, education, and reservation government. The prohibition against dancing was, in a larger context, the effort to transform Indian social life into a replica of the non-Indian social life since dancing was only the external and most obvious expression of a deeper, more sublime, and more sophisticated social manifestation of the Indian personality. In 1877, the Indian Agent for the Yankton Sioux reported his attempt to educate the Sioux to a different form of economic activity. He identified their social functions as a handicap in their progress toward this goal:
As long as Indians live in villages they will retain many of their old and injurious habits. Frequent feasts, community in food, heathen ceremonies and dances, constant visiting - these will continue as long as the people live together in close neighborhoods and villages ... I trust that before another year is ended they will generally be located upon individual lands of farms. From that date will begin their real and permanent progress.11/

This then was taken up by officials in the Bureau of Indian Affairs. When the regulations under which the Indian courts were to be operated were revised by Commissioner Thomas Morgan in 1892, the first offense specified in the new regulations read:

(a) Dances, etc.- Any Indian who shall engage in the sun dance, scalp dance, or war dance, or any other similar feast, so called, shall be deemed guilty of an offense, and upon conviction thereof shall be punished for the first offense by the withholding of his rations for not exceeding ten days or by imprisonment for not exceeding ten days; and for any subsequent offense under this clause he shall be punished by withholding his rations for not less than ten nor more than thirty days, or by imprisonment for not less than ten nor more than thirty days.12/

Suppression of religious practices by the reservation agents was a major factor in the reluctance of the Indians to adopt the White man's ways and, since it alienated the people unnecessarily, inhibited government programs during the time it was enforced. Indians quickly found ways to subvert the Bureau of Indian Affairs regulations. The Lummi and Nooksack peoples of Washington State performed their most important ceremonies on national holidays deliberately informing their agent that they were performing these rituals to honor the United States. The suppression of Indian dancing continued until the Indian Reorganization Act of 1934 and Indian religious freedom was one of the most important reforms initiated by John Collier as Indian Commissioner. A scant twelve years before Collier's reform, however, the Office of Indian Affairs released Circular No. 1665 (April 26, 1921) which read:

The sun-dance, and all other similar dances and so-called religious ceremonies are considered "Indian Offenses" under existing regulations, and corrective penalties are provided. I regard such
restriction as applicable to any dance which involves ... the reckless giving away of property ... frequent or prolonged periods of celebration ... in fact any disorderly or plainly excessive performance that promotes superstitious, cruel, licentious, idle, shiftless indifference to family welfare.

In reviewing the history of federal treatment of Indian religions, it is important to note that little deliberate effort was made to eliminate religious practices because of their theological content. In this respect, the American treatment has been significantly more intelligent and responsive than previous treatment of Indian religions by both the Spanish and English colonial officials. There is one significant exception to this rule, however, and that consists of the violation of the sacred Pipestone Quarry in Minnesota. The quarry was a religious site of great importance to tribes for nearly a thousand mile radius. The quarry was under the protection of the Yankton Sioux people and in their treaties they took particular pains to ensure its sanctity. According to research done by their attorney, Jennings C. Wise (at one time an Assistant Attorney General of the United States), this quarry was deliberately damaged by the construction of a railroad through it in 1891 at the instigation of federal officials and missionaries who wished to destroy its value as a religious site. According to Wise, the sacred ledges which created the falls were deliberately blasted to erase all traces of their former outlines and to render them useless for ceremonial purposes.

In recent decades, there has been considerable interest in restoring both sacred lands and access to sacred places within the various federal lands to the religious leaders of the respective tribes. A major positive step in this respect was the return of the Blue Lake area to Taos Pueblo in 1973 and Mount Adams to the Yakima Nation in 1974. Although these land restorations were controversial at the time, they have been accepted as a tangible expression of the desire by the federal government and non-Indians to make amends for the previous suppression of Indian ceremonial life. Neither sacred site was diverted to other uses because of its religious significance, however, and so the solution of these specific problems is more in line with the types of continuing problems suffered by practitioners of Indian religions than the Pipestone Quarry situation.

The most critical aspect of past federal treatment of Indian religious activities, practices, and sacred locations is that abuses have for the most part arisen because of ignorance or misunderstanding on the part of the non-Indian. The treatment exemplifies
what can happen to a religious minority when its tradition is radically divergent from that of a majority in a society. Fortunately, there are no major theological barriers to confront but only the lack of precise knowledge, coupled with a lack of respect which such ignorance brings. In order that the progress already made be used as a cornerstone for enduring and fundamental changes, it is necessary to probe deeper into the theoretical gulf which presently separates the Indian religious tradition from that tradition which is commonly accepted by the non-Indian majority. Only when some of the assumptions and presuppositions are clarified and each side can understand and communicate with the other can true understanding occur to prevent future conflicts in this delicate area of religious practice and freedom. One of the present difficulties plaguing non-Indians is the question of when protection of religion becomes its establishment. The next section deals specifically with this question.

Religion and Culture

A vast difference exists between the major or "world" religions and the religions of smaller tribal groups. This difference can be seen in every instance of contact, whether between the western religious traditions and the tribal peoples they have encountered or the established eastern religions and the corresponding tribal people they have encountered. The larger religions can best be described as "commemorative" religions. That is to say, these religions trace their origins back to a specific person or event (TheErodeus, Jesus, Mohammed, Buddha, etc.) and the major portion of the religion deals with commemorating these sacred events in the proper ceremonies and rituals (Holy Communion, Passover, etc.).

The larger religions have as the mainstay of their beliefs the doctrine that their particular interpretation of reality is the most accurate expression of ultimate truth. In most instances this truth is revealed by the founder of the religion to a specific group of disciples with instructions to preach and teach others to accept the body of truths which has been set down. From this orientation, doctrines, dogmas, creeds and catechisms have been derived which are said to express the truth of the religion in more expanded and intelligible form. Doctrines concerning the person of Jesus and Buddha each took nearly half a millenium to formulate. In each generation, the theological enterprise of most major religions - but these two in particular - has been to restate the sacred truths for the society of its time.
Because of the extreme complexity of this enterprise and the absolute nature of the claims made by the major religions, in each instance religious institutions have been necessary so that the beliefs and formulas of the religion are not diluted by succeeding generations. Religion in many traditions, but particularly in the tradition of the west, has become an institutional activity and whenever this institution has too closely aligned itself with the political, social, economic, or educational structures, dissident groups seeking to return to the tradition have been produced. The religious tradition thus grows and expands through the production of beliefs and interpretations, heretical in one generation, the accepted interpretation in later generations.

Since these religions are commemorative and depend upon a "reenactment of the original revelation, the location of rituals and ceremonies is not nearly as important as the continuing tradition in which the original truth is manifested. History and cosmic process thus become critical to these religions and eventually the claim is advanced that their conception of deity includes dominance over the historical process. Whether this process is conceived as an inexorable motion of a series of events, chronology of the religion is critically important and appeals are continually made to the "Faith of Our Fathers" with efforts in worship devoted to as close a recapture of original events as is possible. The "laws" of God, as expressed in doctrine, dogmas, creeds and catechisms, are infallible guidelines for relating to the march of history or the cosmic process.

Western peoples, particularly those presently inhabiting the United States, originate from this tradition. Many of the first people to arrive on these shores came because of the oppression they experienced when a select group of individuals dominated their religious institutions and forced them to accept beliefs and practices which they considered foreign, heretical, or unfaithful to the tradition. From these bitter experiences came the demand, upon the adoption of the Constitution, but first incorporated in Virginia's Bill of Rights, that no religious institution could be established by or become the official religion of the political institutions. Thus religious controversy which has plagued Europe and Christendom and which had flourished briefly in established denominational expressions in the colonies, had to be laid to rest permanently.
The smaller or tribal religions represent the opposite pole of human experience. Instead of commemorating events, these religions are what could best be described as "continuing" religions in that they are not traced to a founding or founder. Their origin is clouded beyond recovery and almost all of them can be said to be older, in a chronological sense, than the founded religions since we must assume that they existed in one form or another before the founding of any of the major religions, almost all of which can be dated with a fair degree of accuracy.

The tribal religions do not incorporate a set of established truths but serve to perpetuate a set of rituals and ceremonies which must be conducted in accordance with the instructions given in the original revelation of each particular ceremony or ritual. Of critical importance in this respect is the manner in which ceremonies arise. These religions have the ability and propensity to experience new revelations and each new ceremony which is received by the religious community is given for a specific purpose and must be performed at the place and in the manner, and wherever the original revelation demands, at the time designated. American Indian tribal religions, in many instances, have acknowledged that the present ceremonies, given to them at the beginning of this world, must be performed continuously or great harm and destruction will come to the people.

No doctrines, dogmas, creeds, or catechisms are permitted in these religions since these statements are secondary to the ceremonies and basically commentaries on them or interpretations of the original revelations and this kind of speculation is an absolute violation of the ceremony itself. Instructions are passed from individual to individual as tribal elders perceive the personalities, capabilities, and temperaments of younger tribal members. Since the instructions generally pass from individual to individual, and since the test is the successful transmission of the task, no institutions can arise in these religions. Only one interpretation is possible in each generation.

Religious growth is possible when a tribal individual receives a particular ceremony and instructions respecting it. Heretical and dissident groups, until very recently, did not exist because there was no central set of beliefs against which such contentions could have been measured. Either the ceremonies helped to fulfill tribal existence or they didn't and the test was in their efficacy, not their logic or rationality. Divergent traditions within a tribe,
because they were all acceptable ceremonies, came to share the ceremonial year and were recognized as dealing with specific situations. Unlike the larger religions, the ceremonial year did not commemorate specific chronological historical events, and some ceremonies were reserved for occasions that warranted them. Not all ceremonies needed to be performed each year in the manner that the Christian year follows the life and passion of Jesus, for example. Some tribes in the Pacific Northwest had a "rain dance" in a region where it rains continually. The purpose of this dance was severely restricted, however, and was used only once or twice in each generation on those occasions when an unusual snow had made travel impossible. The dance brought rain which melted the snow and restored conditions to normal.

The most distinctive difference between the tribal religions and the larger religions in theological terms must certainly revolve about the idea of creation. For the larger religions the deity is the Creator who institutes natural laws which then govern the operation of physical nature, in most instances placing within our species an ability to recognize although not always fulfill the requirements of the moral dimension of the natural law. This natural law is the basis of the Declaration of Independence and it is to the free exercise of human conscience recognized in this law that the signers of the Constitution appeal. The ethics of other large religions have similar versions whereby they incorporate cosmic process and human conscience. But in this understanding a critical distinction is made between the world as created and the actual processes by which it operates.

The tribal religions regard the world as a continual process of creation and their concept of creator is simply one of identity, not one of function. With the world in a continual state of growth, creation being continuous, the requirement laid upon the human species is to move with cosmic growth and participate in it since we are part of it and do not stand outside it. The primary essence of the tribal religions is to remain in a constant and consistent relationship with nature and moral and ethical considerations must originate in a world which demands mature responsibility. Customs which adjust to the natural world and its inhabitants thus dominate the tribal religions where laws and institutions are the dominant factors in the larger religions.
When the freedom of religion is discussed in the context of the tribal traditions, it is the right to adjust to and maintain relationships with the natural world and its inhabitants that is addressed. Since each living entity is unique no authority can determine in advance what the specific occasion will require apart from the tradition which is being passed down. The ceremonies and rites themselves set fairly precise rituals and reveal in the performance of the acts their continuing efficacy. While no future revelations can be ruled out, it would be the rarest of events for a new ceremony to be introduced. Except in the most remote areas of Indian country, the urbanization of North America has precluded both Indian and non-Indian from the constant relationship with the natural world that would be conducive to the revelation of further ceremonies.

The establishment of a religion is not a problem when viewed from within the tribal context although tribes today live within the larger society. Establishment is fundamentally the imposition by the political institution of forms of belief and practice which are in conflict with or are distasteful to people of a different tradition. Protecting Indian religious practices from curiosity seekers, casual observers, and administrative rules and regulations is the only practical way that religious freedom can be assured to Indian tribes and Native groups. It is not the establishment of their religion because their religions, not being proselytizing religions, seek to preserve the ceremonies, rituals and beliefs, not to spread them.

Complaints occasionally arise that Native American religions have an exclusivity which, if protected, would mean the establishment of a tribal religion, in contrast to the separation of church and state which forms the basis of American civil freedoms. But this complaint is based upon the transfer of cultural attitudes and beliefs, most of which reveal the lack of understanding of Indian tribal religions, to the actual practices of the religions themselves. Not only are non-Indians excluded from some tribal religious ceremonies, but the unpurified Indians from outside the particular tribal traditions are excluded also. Unlike institutional religion, the tribal religions do not depend upon community participation, but upon the proper performance of the ceremonies. Exclusion is central to many ceremonies because participation is restricted to designated religious figures within the community according to the nature of the ceremony. Just as certain figures are the only ones ordained or designated to perform certain functions in the institutional religions, so in the tribal religions, there can be no ceremonies unless the proper persons perform them.
Native American Religious Freedom

The American Constitution represented a milestone in human thought. Separation of church and state and the guarantee of the sanctity of individual religious belief were radically new concepts in human government uniquely American in operation if not origin. The American experience has been one of building upon the foundations established by the Constitutional fathers and each generation has improved upon and sharpened the understanding of religious freedom in this country.

The Indian Reorganization Act recognized the difference in the cultural base of American Indian communities and established a principle of non-interference in Indian religious activities. Lifting the threat of intervention did not, however, guarantee religious freedom for American Indians because the nature of religious differences precluded proper understanding of the elements involved in tribal religions. During the 1970s with the restoration of the sacred lands of Taos Pueblo and Yakima Nation, additional recognition was given to the Indian religious traditions and its sometimes special need for preserving intact those places sacred to particular Indian religions and communities.

House and Senate religious freedom resolutions enacted in the 95th Congress made explicit sentiments and understandings which had been implicit and growing during the preceding half century. It marked a formal recognition that interpretation of the freedom of religion and establishment clauses in the American Constitution were sufficiently broad to include religions of historically and culturally different peoples. This resolution recognized also that past treatment of American Indian religious ceremonies and practices had been uneven and has been conducted in an atmosphere of misunderstanding and lack of information which had at times produced hardships unnecessarily.

In recent decades, American society has become more sophisticated about the nature of religious conscience and more concerned about establishing guidelines for institutional activities so as to preclude them from unnecessarily creating hardships for individuals who sincerely attempt to live full and constructive lives based on a mature understanding of human existence. The modern period can be said to have originated with the dissenting opinions in the Macintosh 13/ case in 1931. That case dealt with the question of
whether the statutory requirements for naturalization were satisfied by an applicant who testified that he was not willing to commit himself beforehand to bear arms in defense of the United States since he wished to reserve the right of moral judgment until confronted with a specific factual situation that demanded solution. Thereafter a line of cases leading directly to U.S. v. Seeger 14/, which affirmed the exemption from the Universal Military Training and Service Act of 1948 for conscientious objectors, served to expand public awareness of the social value of informed individual conscience. Today there is considerable concern with protecting the right of individual choice and personal growth in all areas of law.

The western tradition is based largely upon the principle of individual choice with the assumption that individuals honestly searching for solutions will arrive at understanding not radically variant from the teachings of the major religions as they have been traditionally experienced. The case of the American Indian has strong parallels to this principle, its only caveat being that the choice has already been made, by a community, prior to contact with other societies, and that communal conscience requires that the ceremonies be continued as they have traditionally been constituted and practiced. Once this parallel is understood, the problem of religious freedom of tribal peoples should present little difficulty. A few examples of misconception of the situation should illustrate the manner in which shortsighted or misguided interpretation of the behavior and beliefs of Indian communities has precluded Indian religions from assuming their rightful place in the mosaic which constitutes the American religious freedom tradition.

In 1882 the Sioux medicine man Crow Dog killed a leading chief of his tribe, Spotted Tail. Under the tribal traditions Crow Dog and his family made adequate compensation for the killing and the matter was considered closed by the Sioux. Since Spotted Tail was a well-known chief who had consistently sided with the United States, his murder set off a wave of public concern and Crow Dog was tried by a federal court in Deadwood, South Dakota and found guilty of first degree murder. His case was taken to the Supreme Court on a question of jurisdiction over the subject matter and the Court found for Crow Dog's position. Noteworthy is the comment by the Court in its opinion that imposition of an external federal law upon the Sioux:
... tries them, not by their peers, nor by the customs of their people, nor the law of their land, but by superiors of a different race, according to the law of a social state of which they have an imperfect conception, and which is opposed to the traditions of their history, to the habits of their lives, to the strongest prejudices of their savage nature; one which measures the red man's revenge by the maxims of the white man's morality. (Emphasis added.) 15

Viewing the Indian religious tradition through culturally-biased glasses, the Court characterized the Sioux penalty for murder as the "red man's revenge," describing the federal law as the "white man's morality." In point of fact, the Sioux tradition required that compensation be made to the family of the victim and did not require retribution except in the most severe circumstances. The "white man's morality," however, demanded retribution in the form of capital punishment. The descriptions of each way of dealing with the crime derive not from an understanding in the jurisprudential sense but from popular misconceptions about who the people are. Today, the two different approaches to the crime might be characterized in reverse order, describing the white man's morality as savage and barbaric and the Indian approach humane and sophisticated. Indeed, several states have adopted compensation to victims of crimes as a principle of their criminal and civil codes.

In 1884, Senator Henry Dawes of Massachusetts visited the Five Civilized Tribes of Indian Territory (now the state of Oklahoma) to examine their method of land tenure, a practice which derived directly from their religious understanding of human relationships to the earth. Reporting the next year to the 1885 Lake Mohonk Conference which concerned itself with the formulation of Indian policy, Dawes remarked:

The head chief told us that there was not a family in that whole Nation that had not a home of its own. There was not a pauper in that Nation, and the Nation did not owe a dollar. It built its own capitol ... and it built its schools and its hospitals. Yet the defect of the system was apparent. They have not got as far as they can go, because they own their land in common. It is Henry George's system, and under that there is no enterprise to make your home any better than that of your neighbors. There is no selfishness, which is at the bottom of civilization. Till this people will consent to give up their lands, and divide them among their citizens so that each can own the land he cultivates, they will not make much more progress. 16/
Discovering a political system with complex institutions which did not owe a cent and experienced no poverty within its society should have made Senator Dawes take notice and learn. With his predetermined idea of civilization, however, he could only describe the state of well-being of the Indians as a negative situation. Today as we strive to create Great Societies and resolve the problems of poverty, education, health care and the like, most Americans wish they could achieve the standard of civilized existence enjoyed by the Five Civilized Tribes in the 1880s.

These examples should forewarn us that application of a rigid set of criteria to human behavior, without considering alternatives, is dangerous at best and generally hazardous in its contemplation. The dreadful poverty and crime statistics which plague American Indian communities today are the result of misinformed neglect of the Indian religious tradition and the imposition of a set of external institutions and criteria on Indian communities. No deliberate effort was made to destroy the Indian institutions because of their divergent religious beliefs and practices. Yet few people in the previous century understood the larger parameters of social reality and tended to prejudge the Indian tradition according to the principles of their own cultural tradition.

With the enactment of the American Indian Religious Freedom Act, our Nation is being afforded the opportunity to correct past injustices and to begin anew with regard to treatment of those who adhere to the tenets of traditional Native religions. In countless ways in the past and present, both our government and our people have proved themselves equal to challenges inherent in new beginnings. This will be no exception.
FOOTNOTES


2. ARISTOTLE AND THE AMERICAN INDIANS, Lewis Hanke, Indian University Press, Bloomington, Indiana, 1959, pp. 15-16


5. 5 Pet. 1 (1831)

6. 6 Pet. 515 (1832)

7. Richardson, J.D. ed. A Compilation of the Messages and Papers of the Presidents, II, p. 519

8. Report of the Commission of Indian Affairs, 1869, p. 16


10. Congressional Record, 49th Congress, 2nd Session, December 15, 1886

11. Reports of the Commissioner of Indian Affairs, (1877), pp. 75-76


13. 283 U.S. 605 (1931)

14. 380 U.S. 163 (1965)

15. Ex Parte Crow Dog, 19 U.S. 556, 571 (1883)

16. Lake Mohonk Conference Proceedings, 1885, p. 43
II. CATEGORICAL ACTIONS UNDER THE ACT

A. White House

On August 12, 1978, the President issued the following signing statement on Senate Joint Resolution 102 on American Indian Religious Freedom:

I have signed into law S.J. Res. 102, the American Indian Religious Freedom Act of 1978. This legislation sets forth the policy of the United States to protect and preserve the inherent right of American Indian, Eskimo, Aleut, and Native Hawaiian people to believe, express and exercise their traditional religions. In addition, it calls for a year's evaluation of the Federal agencies' policies and procedures as they affect the religious rights and cultural integrity of Native Americans.

It is a fundamental right of every American, as guaranteed by the First Amendment of the Constitution, to worship as he or she pleases. This act is in no way intended to alter that guarantee or override existing laws, but is designed to prevent government actions that would violate these constitutional protections. In the past government agencies and departments have on occasion denied Native Americans access to particular sites and interfered with religious practices and customs where such use conflicted with Federal regulations. In many instances, the Federal officials responsible for the enforcement of these regulations were unaware of the nature of traditional native religious practices and, consequently, of the degree to which their agencies interfered with such practices.

This legislation seeks to remedy this situation.

I am hereby directing that the Secretary of the Interior establish a task force comprised of representatives of the appropriate Federal agencies. They will prepare the report to the Congress required by this Resolution, in consultation with Native leaders. Several agencies, including the Departments of Treasury and Interior, have already taken commendable steps to implement the intent of this Resolution.

I welcome enactment of this Resolution as an important action to assure religious freedom for all Americans.
B. Task Force

Following the approval of the American Indian Religious Freedom Act (P.L. 95-341; 42 USC 1996), the President's signing statement and the Act were circulated to legislative offices of all agencies, without regard to their potential applicability under the evaluation mandate. On January 26, 1979, the Secretary of the Interior transmitted a memorandum to all federal departments, agencies and instrumentalities, calling attention to the evaluation requirements and requesting a form response by February 12, indicating relevancy and representation. This form was transmitted twice to non-responding agencies. (Agencies not listed in this section failed to respond to all communications.)

1. Participation

Nearly 90 agencies responded to the inquiries on Task Force participation. Of these, thirty carried positive declarations as appropriate instrumentalities under the Act, including the Departments of Agriculture, Commerce, Defense, Energy, HEW, HUD, Interior, Justice, Navy, Transportation and Treasury; as well as the Advisory Council on Historic Preservation, American Folklife Center, Environmental Protection Agency, National Endowment for the Humanities, Tennessee Valley Authority and the U.S. Commission on Civil Rights. The evaluations of these and other participating agencies are summarized in the following section.

a. Comments from Responding Agencies

Several agencies, while declining Task Force participation, offered early evaluations worthy of note:

Office of Personnel Management - The Office of Personnel Management has no program responsibilities which would make us an appropriate agency to be on this Task Force. However, you should be aware of the fact that Title IV (entitled "Adjustment of Work Schedules for Religious Observance") of P.L. 95-390, September 29, 1978, requires the Commission (now OPM) to prescribe regulations providing for work schedules to accommodate employees' religious beliefs that require their absence from work. Conceivably, the proposed Task Force may reach conclusions which would require OPM modification of our regulations as they affect American Indians, Eskimos, Aleuts and native Hawaiians who are federal employees. The possibility of any modifications becoming necessary because of P.L. 95-341 appears to us remote. If any change does become necessary, from OPM's
point of view the change would be too slight to warrant ORM's participation on the Task Force. (Assistant Director for Policy Analysis, Feb. 9, 1979)

Veterans Administration - You will note that we have indicated the Veterans Administration does not have policies, procedures, guidelines, rules, regulations or statutory authorization relevant to American Indians, Alaska Natives or Native Hawaiians, within the context of P.L. No. 95-341. I should mention that the Veterans Administration does have a regulation, VA Regulation 5062 (38 CFR § 13.62), which requires that, in cases where VA benefits are due an incompetent adult or minor Indian, who is a recognized ward of the Government, those benefits may be awarded to the superintendent or other bonded officer designated by the Secretary of the Interior to receive funds under 25 USC § 14. However, we cannot see that this regulation can, in any way, be considered as having an impact on the religious rights and cultural integrity of Native Americans.

In addition, the Veterans Administration entered into an agreement in 1978 with the Department of the Interior, Interagency Archeological Services, regarding excavations on VA property. Pursuant to this agreement, the Veterans Administration has recently requested Dr. Bennie Keel of your Atlanta office to assist in determining the proper disposition of Indian remains which were discovered some years ago at the Bay Pines, Florida, VA Medical Center. We expect that any such future discoveries on VA property will be handled in the same manner. Again, we do not believe that this type of activity or procedure is contemplated by P.L. 95-341. Certainly, the rarity of its occurrence (this was the first such episode that we can recall) would seem to argue against any active task force participation by this agency. (Administrator, Feb. 22, 1979)

U.S. Postal Service - In examining the legislative history of that Act, we find that one factor before the Congress was the matter of U.S. Customs Service enforcement of laws concerning the importation of certain controlled substances used in some Native American religious ceremonies. While the Postal Service administers criminal and civil mailability statutes that apply to some controlled substances (18 U.S.C. 1716 and 39 U.S.C. 3001), we find no indication that the mailability statutes have been considered relevant to the issues which led the Act to be adopted. (The Postmaster General, Feb., 16, 1979)
National Credit Union Administration - As of August 31, 1978, the following (percentages) breakdown of Native Americans were full-time employees of NCUA: GS-4 - 2%; GS-12 - 30%; GS-13 - 10%. NCUA's policies to assure compliance with the rights of all employees are explicitly broken down in the agency's Equal Opportunity Affirmative Action Plan. In regards to the legislation, this agency will take steps to assure Native Americans the right to observe their religious practices. This policy will be incorporated into our personnel regulations to assure compliance. Our agency has no direct authority for the enforcement of regulations assuring Native Americans access to particular sites for conducting various religious practices and customs to preserve their culture. In view of this, we do not believe it is necessary that we appoint a policy-level designee to serve on the Task Force to review government-wide recommendations and participate in preparing the Report to Congress on implementing the American Indian Religious Freedom Act of 1978. (Administrator, Mar. 12, 1979)

Administrative Conference of the United States - The Administrative Conference of the United States does not have policies, procedures, guidelines, rules, regulations or statutory authorization relevant to American Indians, Alaska Natives or Native Hawaiians, within the context of the American Indian Religious Freedom Act of 1978 (P.L. 95-341). The only activity that the Conference has undertaken relating to the rights of American Indians was its adoption in 1972 of a Recommendation on conflicts of interest in legal disputes involving the natural resources of Indian tribes. Recommendation 72-2 states that these conflicts stem from the Federal Government's dual status as trustee of the land and water rights of American Indians and as litigant in disputes between Indians and Federal agencies charged with responsibility for protecting Indian interests. The Recommendation suggests that legislation should be enacted to establish an independent Indian Trust Counsel Authority to assure adequate protection of American Indians' claims to natural resources and that, in the absence of such legislation, the Department of the Interior and the Department of Justice should take appropriate steps to ameliorate these conflict of interest problems. (Executive Director, Feb. 1, 1979)
Department of Labor - The only regulations issued by the Department of Labor relative to American Indians are those implementing the Comprehensive Employment and Training Act (CETA). A careful review of these regulations shows nothing that impinges upon any aspect of American Indian religious life. I might add that these regulations, which were just recently rewritten, have been reviewed by a cross section of the leadership of American Indian groups who have received CETA grants. In addition, the Indian and Native American CETA Coalition, representing many tribal and urban Indian organizations, worked very closely with the Department of Labor in the preparation of the regulations, and all of their significant suggestions were adopted. (Secretary of Labor, Feb. 15, 1979)

b. Listing ofResponding Agencies

The following is a listing of other departments, agencies and instrumentalities which conducted reviews under P.L. 95-341, determining that: 1) their mandates, functions and authorities do not apply to the Act; or 2) their policies and procedures are in compliance with the Act.

Pension Benefit Guaranty Corporation, Postal Rate Commission, President's Council on Physical Fitness and Sports, Selective Service System, Small Business Administration, Smithsonian Institution, Soldiers' and Airmen's Home, Susquehanna River Basin Commission, Transportation (U.S. Coast Guard, Federal Aviation Administration, Federal Highway Administration, Federal Railroad Administration, National Highway Traffic Safety Administration, Research and Special Programs Administration, Urban Transportation Administration), U.S. Railroad Retirement Board, Treasury (Internal Revenue Service).

2. Organization

In establishing the Task Force, the Secretary of Interior directed that the report to the Congress be based on the internal agency evaluations and consultation with Native traditional religious leaders, as required by the Act. Agency evaluations are contained in Appendix B and summarized in Section C of this Report.

On April 2, 1979, the Task Force was convened for the purpose of setting schedules for receipt of agency assessments, discussing the consultative process and meeting with tribal religious leaders and Indian legal advisors. The Task Force members called for the scheduling of consultations or hearings prior to the preparation of the report, to allow for full consideration of the Native American concerns.

During June and July, ten consultations were conducted by the Task Force in Alaska, Hawaii, Minnesota, Montana, Nevada, New Mexico, North Carolina, Oklahoma, South Dakota and Washington. Following these meetings, which are detailed in Section D, the Secretary of the Interior convened a work group to meet for two weeks in July to prepare the report to the Congress.

Task Force coordination was undertaken by the Interior Assistant Secretary for Indian Affairs, as well as the function of maintaining liaison with the non-governmental consultation project (which is discussed later in this section) and the American Indian community generally. Costs involved in the field consultations and other work of the Task Force were absorbed by the Interior Indian Affairs offices, with the exception of travel costs incurred by other agencies' representatives.
Composition of this Task Force illustrates the general problem encountered by Native Americans as they approach the federal structure: 1) point of entry— which office within each agency deals with their concerns; and 2) level of decision-making—who has the authority to respond to their concerns. These points are reflected in the divergent levels of response to this federal policy participation effort.

Below is a partial listing of Task Force membership by title and office, indicating 1) agency perception of Native American religious freedom as an organizational issue (i.e., civil rights, law and order, equal opportunity, economic development, anthropology, archaeology, public affairs, programs); and 2) the institutional level of attention afforded the Native American interest.

Department of Agriculture, Forest Service, Recreation Management Staff, Assistant Director, Dispersed Recreation.

American Folklife Center, Library of Congress, Director.

Department of Commerce, Economic Development Administration, Special Assistant for Indian Affairs.

Department of Defense, Office of the Assistant Secretary for Manpower, Reserve Affairs and Logistics (Equal Opportunity).

Department of Energy, Assistant Secretary for Intergovernmental and Institutional Relations, and Specialist for Indian Affairs.

Environmental Protection Agency, Office of the Deputy Administrator, Staff Assistant.

Department of Health, Education and Welfare, Deputy Assistant Secretary for Human Development Services, and Chairman, Intra-Departmental Council on Indian Affairs.

Department of Housing and Urban Development, Special Assistant to the Secretary (Indian Affairs).

Department of the Interior: Assistant Secretary for Indian Affairs and Special Assistant for Legislation and Liaison; Bureau of Land Management, Cultural Resource Program Leader, Division of Recreation and Cultural Resources; Bureau of Reclamation, Director, Office of Equal Opportunity; Fish and Wildlife Service, Deputy Associate Director, Wildlife Management, and Office of Wildlife Assistance; Heritage Conservation and Recreation Service, Office of the Director, Acting Chief, Division of State Programs, and Interagency Archeological Service, Archaeologist; National Park Service, Staff Archaeologist, Office of the Assistant Secretary for Land and Water Resources, Special Assistant.
Justice Department, Associate Deputy Attorney General.
National Endowment for the Humanities, Division of Special Programs.
Department of the Navy, Deputy Undersecretary, and Office of General Counsel.
Tennessee Valley Authority, Office of Natural Resources, Manager and Cultural Resource Program Staff.
Department of Transportation, Assistant Secretary for Governmental and Public Affairs, Chief, Community Planning Assistance, and Chief Counsel, Civil Rights.
Treasury Department, Customs Service, Chief Counsel.
U.S. Commission on Civil Rights, Assistant General Counsel.
C. Summary Statements, Member-Agencies

1. Department of Agriculture
   a. Forest Service

   The Forest Service has had a continuing policy to seek out and involve the public in the development of management direction. Over the years local managers have worked closely with representatives of Indian groups in the planning and decision-making process. This input has been given full consideration in the formation of policies and procedures, both on a national and a local basis. With the passage of the American Indian Religious Freedom Act, a new awareness of the needs of the Native American is occurring within the Agency.

   A task force was formed to review and evaluate the policies and procedures of the Forest Service relevant to American Indian religious freedom and to recommend changes as necessary. An interim policy was established directing line management officials at all levels that:

   "In the preparatory stage of land management planning, native traditional religious leaders will be notified of all public involvement activities and invited to provide input. If an issue concerning Indian religious freedom is identified, the cultural resource overview for the forest plan should provide substantive background on the traditional Indian religious practices within the planning area. When examination and consultation determine a need to protect and preserve certain lands or sites, this will be accomplished in and through the land management plan.

   "Each application by traditional Native Americans to use National Forest System lands for religious purposes shall be carefully considered. The careful consideration shall include those instances where a request involves an area under restrictions which would normally preclude the activity."
Review by field offices has not identified any policies or procedures which have a negative effect on or will result in abridgment of the religious freedom of Native Americans. During consultation however, representatives of the Native American Rights Fund identified such concerns as permit requirements, closure orders and cultural resource management that may infringe upon Indian religious freedom. In response, the Cultural Resources section of the Forest Service Manual has been rewritten to reflect the concerns of the Act. In addition, the Civil Rights and Permitting Sections will be revised to direct the Forest Service to consider the needs of American Indians in these potentially sensitive areas.

The Forest Service will continue to review these potential conflict areas in close cooperation with traditional religious leaders or their representatives to assure the protection and preservation of Native American religious rights and practices.

2. Department of Energy

For purposes of the Inter-agency Task Force on Indian Religious Freedom, the Department of Energy (DOE) has identified the protection of sacred sites as a potential problem area during the evaluation of procedures required in the American Indian Religious Freedom Act. To avoid in a systematic manner future religious infringements, the DOE is considering as a possible approach the following process, either as a regulation or as an internal issuance.

The DOE is interested in seeing that the free exercise of religion is protected efficiently without setting up an unnecessarily cumbersome mechanism. Therefore, it seems likely that the process will be integrated into the environmental review process which is already established, perhaps as part of the Environmental Impact Statement. The process would likely apply to both substantial involvement by DOE or direct authority for DOE's proposed activity which affects any specific site for which an environmental review is required.

Before the DOE would proceed with its proposed activity, an investigation would be made to ascertain if the site at issue is related to the religious rites or ceremonies or is a sacred site of any traditional religion which is currently being practiced by any American Indian, Eskimo, Aleut or Native Hawaiian.
If the investigation finds indications that the site is currently a subject of religious practices, then the Native traditional religious leaders shall be consulted, in order to determine whether the DOE proposed action would infringe on the free exercise of religion in any way and to gain an understanding of any impact on the Native American traditional religions. We foresee that the most difficult issue for the DOE will be whether its proposed alteration of a site would deny access to a sacred site or otherwise infringe on the free exercise of religion.

If consultation indicates that the proposed DOE action may infringe on the free exercise of religion, then alternate plans will be prepared with additional consultation with the Native traditional religious leaders. Alternate plans which do not infringe on the free exercise of religion will be examined to determine whether they adequately meet the goals of the DOE for the site.

The DOE will make all deliberate effort to adopt a course of action consistent with the policy enunciated in P.L. 95-341. We are very aware of the rulings of the United States Supreme Court that the Federal government may not abridge the free exercise of religion unless there is a compelling governmental interest at stake.

If no alternative is feasible and DOE finds upon consultation that its proposed action would deny the free exercise of religion, then the difficult question must be asked: How crucial is the project? To safeguard against the answer being made by the program people most intimately involved in the project, the finding will be made within the environmental review, as previously noted. Within the DOE the Assistant Secretary for Environment is structurally separate from the major program offices.

If the DOE's proposed action is deemed to be compelling, and must proceed, then the findings and justification would be reviewed by the IR Secretariat, which includes the Indian Affairs Office. Then the findings and justifications, accompanied by the Intergovernmental and Institutional Relations report, will be forwarded to the Secretary for written approval before a final action is taken. Upon the Secretary's final approval, notice will be given. The findings and justification will be published and communicated to the native traditional religious leaders or other concerned parties.
3. Department of Health, Education and Welfare

a. Administration on Aging

The Administration on Aging may provide social and nutritional services to the Indian elderly under Title III and Title IV of the Older Americans Act. Title III is a state administered formula grant program, while Title IV is a new program that provides direct funding to Indian tribes and organizations as defined by the Indian Self-Determination and Education Assistance Act (P.L. 93-638). The Older Americans Act provides for the acquisition, alteration, renovation or construction of facilities for use as multipurpose senior centers. However, Section 37(a)(14)(A)(iv) requires that a multipurpose senior center funded under Title III "will not be used and is not intended to be used for sectarian instruction or as a place for religious worship." This provision does not apply to programs under Title IV. However, to date there has been no appropriation of funds for the Title IV programs, thus all services currently provided to elderly Indians are governed by the provisions of Title III.

b. Education Division

The Assistant Secretary for Education indicates that the only agency which falls under the purview of the American Indian Religious Freedom Act is the Institute for Museum Services. The Institute currently is evaluating its policies and procedures to determine compliance with the Act.

c. Indian Health Service

The policy of the Indian Health Service (IHS) during the course of administering health services to American Indians and Alaskan Natives is to protect and preserve the inherent right of all Native Americans to believe, express and exercise their traditional religions. The IHS recognizes the value and efficacy to traditional beliefs, ceremonies and practices of the healing of body, mind and spirit. Faith is most often an integral part of the healing process and provides support for purposeful living. It is, therefore, the policy of the IHS to encourage a climate of respect and acceptance in which an individual's private traditional beliefs become a part of the healing and harmonizing force within his/her life.
The IHS staff has been instructed to inform patients they have the freedom to practice Native religion when desired by the individual or family member in case of minors, or when the patient's condition is such that he/she cannot make the request. When an IHS patient (guardian - family member) requests assistance in obtaining the services of a Native religious practitioner, every effort will be made to comply. Such efforts might include contacting a Native practitioner, providing space or privacy within a hospital room for a ceremony, and/or the authorization of contract health care funds to pay for Native healer consultation when necessary.

Each IHS Area Office has the responsibility to consult with the Native Americans within their respected area as to the desire of each tribe in relation to their religious beliefs concerning autopsy and other postmortem operations, disposition of a dead body, disposal of a limb or disposal/burial of a fetus, and to comply in respect to the belief. Individual consent is required by the IHS before action on any of the above can be made. Since a person's Native religious beliefs are often very personal, the patient's right to privacy must be respected in these matters. No IHS employee should be guilty of uninvited probing into or interference with a patient's private beliefs. Many Indian patients prefer to say nothing about these beliefs and practices. This is a right that must be respected.

Within this policy, IHS staff must continue to be aware of, sensitive to and respectful toward traditional beliefs and practices of the Native Americans. Procedures which would tend to interfere with, dilute or modify these historic beliefs and practices must be avoided. Care must be exercised so that IHS support, in whatever form it takes, does not become a wedge which creates dependency or wrests control from the chosen and honored Native practitioners of ancient and effective healing practices. The goal is that there be respect and complementary interface between the two systems of medicine and religion. Care must be taken that apparent IHS and federal beneficence does not become a means of destroying a system of healing which has both a long history and contemporary relevance.
d. Rehabilitation Services Administration

The Rehabilitation Services Administration (RSA) indicates that all of its policies and procedures are in compliance with the American Indian Religious Freedom Act. It is the policy of the RSA to modify traditional rehabilitation services to accommodate the religious convictions and practices of its service clientele.

e. Social Security Administration

The self-assessment conducted by the Social Security Administration did not reveal any policies or procedures which need to be addressed. However, the agency is willing to continue its review if Native American religious leaders wish to provide specific examples of areas which should be examined.

4. Department of the Interior

   a. Bureau of Indian Affairs

   The Bureau of Indian Affairs (BIA), among all the federal agencies, has had the longest and most extensive relationship with American Indian tribes, nations and peoples. For over a century and a half, BIA has carried out this Nation's policy regarding Indians. This policy has varied greatly over the years but until fairly recent times has been preoccupied with religious conversion and social acculturation.

   The more modern and enlightened policy has been one of recognition of the strengths that are inherent in tradition and social bonds and building upon those strengths. This policy became our law with the enactment of P.L. 93-638, the Indian Self-Determination and Education Assistance Act of 1975.

   The American Indian Religious Freedom Act is in keeping with the policy of Indian self-determination, and the BIA actively supported its enactment. The President, after approving P.L. 95-341, directed the Secretary of Interior to establish a federal agency task force for implementation of the law. The Office of the Assistant Secretary of the Interior for Indian Affairs has coordinated these efforts on behalf of the Secretary and the BIA has been an active participant in the consultative process, taking positive steps to facilitate Indian religious freedom.
One identified problem is the conflict between federal employment practices and the traditional religious obligations of many of the 12,000 Indian BIA employees. The Assistant Secretary for Indian Affairs has directed the BIA to develop a plan which will seek to accommodate employees' religious practices requiring time away from work, and to study the same problem as it affects students in BIA schools.

Many problems regarding the BIA operated schools are being met through contracting operation of those schools to tribes and setting up Indian parent school boards. This is being done under authority of the Indian Self-Determination and Education Assistance Act.

The newly published BIA regulations under the Education Amendments of 1978, take specific note of the religious freedom rights of Indian students. 25 CFR, Part 31(a), states BIA policy to: "promote and respect the right to cultural practices, consistent with the provisions of the American Indian Religious Freedom Act."

In 25 CFR, Part 31, the following are recognized: 1) the right to freedom of religion, and the right to be free from religious proselytization; 2) the right to cultural self-determination based upon tribal thought and philosophy; 3) the right to freedom of speech and expression, including choice of dress, and length of hair; 4) the basic right to an education requiring a staff which recognizes, respects and accepts the students' cultural heritage, its values, beliefs and differences; and 5) the right to a meaningful education which shall be designed to insure that tribal elders and members having a practicing knowledge of tribal customs, traditions, values and beliefs are utilized in the development and implementation of cultural programs.

The BIA is currently developing regulations for implementation of the National Historic Preservation Act, pursuant to the regulations issued by the Advisory Council on Historic Preservation. The BIA regulations will also address other statutes relating to cultural resources. Special attention is being given to P.L. 95-341 in the development of these regulations, which will help ensure that BIA activities and programs are conducted in a manner consistent with the American Indian Religious Freedom Act.
The BIA recognizes that, because of its special responsibilities to Indians, other federal agencies are likely to request BIA participation as a cooperating agency in the preparation of environmental impact statements on proposed actions which may affect the free exercise of Indian religious activity. The BIA will assist other agencies in these assessments to the extent its resources permit.

b. Bureau of Land Management

Pursuant to the requirements set forth by the American Indian Religious Freedom Act (42 U.S.C. 1996; P.L. 95-341), the Bureau of Land Management (BLM) initiated an evaluation of relevant policies and procedures, in order to determine possible impacts upon the religious practices and beliefs of Native Americans. Where present or potential impacts were identified, recommendations were made regarding the need for either internal adjustments or changes in legislation.

Many separate potential impacts revolve around the BLM's land-use management decisions. In developing its land-use plans, the BLM is guided by the principle of multiple-use management of the public lands, as set forth by the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701). Relying on the inventory of the resources and values, the BLM, through its planning process, considers the present and potential uses of the land and formulates management plans based upon these uses. The BLM, therefore, has the overall policy and direction to incorporate socio-cultural values, such as Native American religious concerns, into its land-use planning and management systems. Many of the potential impacts upon Native American religious freedom can be avoided through use of these existing systems.

The BLM, through its cultural resource program, will continue to evaluate its policies and procedures relevant to Native American religious concerns and will work toward providing full consideration of socio-cultural values in its land-use planning and management systems. (See Appendix B, BLM, for initial evaluation of policies and programs.)
c. **Fish and Wildlife Service**

The mission of the Fish and Wildlife Service (FWS) is to provide the federal leadership to conserve, protect and enhance fish and wildlife and their habitats for the continuing benefit of the people.

In compliance with requirements of P.L. 95-341, the FWS has evaluated its policies and procedures in consultation with Native traditional religious leaders, in order to determine appropriate changes necessary to protect and preserve Native American religious cultural rights and practices.

The FWS assessment of comments received during formal consultations identified some problems which have been rectified through policy changes and formulation. These changes include initiating a religious-awareness program for handling, preserving, storing and shipping eagles and eagle parts from the time a specimen is obtained to the time the requested items are mailed to the applicant. In addition to all eagle feathers and feet, golden eagle heads and breast bones will now be available to applicants through our permit system. A new policy has also been instituted making available excess buffalo on National Wildlife Refuges for Native religious ceremonial purposes. (See Appendix B, FWS, for initial evaluation of policies and programs.)

d. **Heritage Conservation and Recreation Service - Interagency Archeological Services**

In order to determine possible impacts upon the religious practices and beliefs of Native Americans, pursuant to the requirements set forth by the American Indian Religious Freedom Act of 1978, Interagency Archeological Services (IAS) has initiated a review of relevant policies and procedures.

The primary concerns revolve around the potential impact of archeological investigations on ceremonial and habitation sites, and human osteological remains at these sites. In developing policy relating to these archeological investigations, IAS is guided by the National Environmental Policy Act of 1969 (P.L. 91-190); Executive Order 11593; the National Historic Preservation Act (P.L. 93-291); Recovery of Scientific, Prehistoric, Historic, and Archeological Data: Methods, Standards, and Reporting Requirements (36 CFR 66); and the National Register of Historic Places and Comprehensive State-wide Historic Survey and Plans (36 CFR 60, 61). The concerns of Native Americans can be met through these legislative acts, either through amendments or additions. (See Appendix B, HCRS, for initial evaluation of policies and programs.)
e. National Park Service

On February 4, 1978, the National Park Service (NPS) issued Special Directive 78-1. This committed the NPS to a policy of concern with, informed awareness of and sensitivity to Native American issues, resources and sacred sites. This directive has served as an impetus to develop implementing guidelines, which is an on-going process.

With the signing of the American Indian Religious Freedom Act, the NPS has held consultations with Native American advocacy, secular and religious representatives, and is an active participant in the subject Task Force.

An assessment of the impacts of NPS legislative mandates, regulations, policies and programs on Native American religions has been prepared. In consultation with Native American representatives, these impacts are now under study at the park level and recommendations for future action are being prepared.

Through its natural and cultural resources programs, the NPS will continue to carry out its mandated missions, while being alert to possible impacts on Native American resources. Where necessary or practicable, such impacts will be avoided or minimized through alternative actions. (See Appendix B, NPS, for initial review of policies and programs, and NPS record of consultation.)

5. Department of the Navy

The Department of the Navy has been an active participant in the subject task force and has evaluated relevant policies and procedures in light of the American Indian Religious Freedom Act in order to determine what, if any, impact may occur upon the religious practices of Native Americans. The Navy has identified two specific problem areas at China Lake, California, and Kahoolawe, Hawaii. The Navy is diligently working to allow the desired access to these areas in a manner which is both safe to the participants and not disruptive to the Navy's mission. In May of 1979, a message was sent to all Naval stations by the Secretary making them aware of the requirements of the American Indian Religious Freedom Act and advising them to give deliberate consideration to legitimate religious concerns of Native Americans. The Navy will continue to cooperate with Native traditional religious leaders in an ongoing effort to ensure the free exercise of religious rights while at the same time ensuring the safety of all personnel and the completion of its military mission.
6. **Department of the Treasury**

   **a. Customs Service**

   After President Carter signed into law the American Indian Religious Freedom Act of 1978, the Commissioner of Customs, Robert E. Chasen, issued a policy statement on September 18, 1978, entitled "Policy to Protect and Preserve American Indian Religious Freedom." The policy statement transmitted a copy of the Joint Resolution signed by the President, together with the press release of the White House on the subject. (A copy of that policy statement is attached as Appendix B.)

   In that policy statement, the Commissioner directed all Port Directors, District Directors and Supervisory Customs Inspectors, who have Customs officers working under their supervision and who are responsible for examining and clearing articles accompanying American Indians crossing our land borders, to make certain that Customs officers working under their supervision are fully aware of this federal policy of protecting and preserving for American Indians their inherent right to believe and practice their traditional religion. They are instructed to institute measures to assure that, in the course of their examination for Customs purposes, they treat more sensitively the various articles that are used by American Indians in the exercise of their religious and cultural beliefs.

   In addition, to implement this policy, a Customs Indian Affairs Committee was established. The first meeting of the Committee was organizational in nature and was held in Albuquerque, New Mexico, where representatives of the American Indian Law Center and the Native American Rights Fund provided an excellent background briefing to the newly appointed committee members. It was decided that future meetings of the Committee should be held in different sections of the country so that as many tribal representatives as possible would have an opportunity to surface local problems they may be having with Customs officers upon crossing the border.

   The second meeting of the Customs committee was held in Burlington, Vermont, on November 29 and 30, 1978. Twenty-six Indian participants attended together with the local Associate Regional Commissioner of the Immigration and Naturalization Service and two representatives from Canadian Customs.
The third meeting was held in Tucson, Arizona, on February 13 and 14, 1979. Sixty-seven Indian representatives participated together with representatives from the Immigration and Naturalization Service, Department of Agriculture, Bureau of Indian Affairs, American Indian Law Center, Native American Rights Fund and the offices of Senator Barry Goldwater and Congressman Morris Udall.

A fourth meeting of the Committee was held in June 1979 in Great Falls, Montana. More than 100 Indian representatives and government officials attended. Canada was represented by Customs and Agriculture officials.

While serving initially as a catalyst for the expression of apparently long-held grievances on the part of the respective Indian tribes or bands represented, the meetings have established a dialogue or communications link with dedicated Indian representatives who have brought to Customs attention certain problems which should be addressed and, hopefully, resolved. Sometimes the problem was merely a lack of uniformity in the application of established rules and procedures on the part of Customs officers in a particular port of entry. Wherever this was brought to our attention, steps were immediately taken to correct the matter and to assure uniformity in the future. Sometimes the problem stemmed from an unawareness on the part of some Indians to the full extent of their rights as returning residents to bring articles with them into the United States or that they could register valuable personal possessions with Customs before leaving the United States in order to avoid any hassle or possible assessment of Customs duty on their return.

In this regard, we had a news release prepared which highlights the daily and monthly entitlements to exemptions from payment of duty and similar rights which would be of particular interest to residents who live at or near the border and cross into Canada or Mexico on a frequent or even daily basis. Copies of this news release were disseminated for publication in tribal or other newspapers that are circulated amongst Indians.
In an effort to compile a complete listing of the various kinds of natural objects which have a religious purpose or significance to Native American Indians, reprints of the lists that were admitted into the record of the hearing on the Joint Resolution before the U.S. Senate Select Committee on Indian Affairs were distributed to spiritual and tribal leaders. They were requested to review the lists and add to them any articles which they believe should be included and return them. Once compiled, such a reference manual will be made available to Customs officers who may be confronted with such articles so they will be able to authenticate, on the spot, their stated religious purpose.

At each of the regional meetings, a local Customs representative was designated as a contact point available to Indian representatives whenever a problem with Customs officers arises in that particular border area. We believe that most problems will be able to be resolved locally. In the event it cannot be resolved at that level then it will, of course, be elevated to an appropriate policy-making level for resolution.

Only two problems have surfaced so far which have not been able to be completely resolved at the local level. One involves the manner and extent of examination of medicine bundles and sacred articles, which is being addressed at the national level. A booklet for Customs officers is in preparation with the cooperation of the Yaqui Indians which illustrates the Yaqui sacred masks and other sacred objects which are brought into the United States from Mexico. It is hoped that this booklet will make Customs officials more aware of Yaqui sacred objects. This particular project may serve as a model to be followed in resolving similar problems with other Indian tribes which arise out of insensitive handling by Customs officers of their sacred or religious articles.

The other problem involves the long-held grievance of Indians on both sides of the United States-Canadian border that their rights under the Jay Treaty to cross and recross the border freely and to carry personal goods duty free across such borders have been held by courts to be abrogated. This subject was discussed at some length at the Burlington, Tucson and Great Falls meetings. The Indian representatives most directly concerned have expressed the hope that a recommendation will be made to the President that appropriate corrective legislation to restore such rights should be enacted.
7. **Advisory Council on Historic Preservation**

The Advisory Council on Historic Preservation was created by the National Historic Preservation Act of 1966 (P.L. 89-665, 16 USC 470 as amended) to advise the President and Congress on matters of historic preservation and to review and comment upon the impact of federal undertakings on historical, architectural, archeological and cultural resources of National Register significance. Section 106 of the National Historic Preservation Act requires that Federal agencies submit for review and comment by the Council all undertakings affecting properties included in or eligible for the National Register of Historic Places. The National Register does not list properties significant solely for religious reasons. Churches, for example, are listed only for architectural or historical reasons or if they contribute to the character of an historic district. Council comments on sites of religious significance to Native Americans occur therefore, only when such sites are listed in the National Register for other than religious reasons.

Buried artifacts, human burials and religious sites that happen to be associated with significant archeological sites are all likely examples of situations where the values expressed in Public Law 95-341 could be incorporated with the values already covered under the Historic Preservation Act. Section 106 review and final resolution is based upon a professional assessment of the impact that "causes or may cause any change, beneficial or adverse, in the quality of the historical, architectural, archeological or cultural characteristics that qualify the property to meet the criteria of the National Register." Since some properties in California, Washington and Idaho have been entered into the National Register for reasons of cultural significance to American Indians (under criteria (a) "Broad Historical Associations"), and do not have associated archeological or historical resources, the Council has the potential of being asked to comment on the effect of federal undertakings to these kinds of properties. Its comment, however, would be limited to the impacts covered under the Historic Preservation Act and the Council's Regulations (36 CFR 800), and would not be construed to be participation in the undertaking itself.
8. American Folklife Center, Library of Congress

The American Indian Religious Freedom Act of 1978 is very much in accord with the stated purposes of the American Folklife Preservation Act of 1976 (P.L. 94-201) to "preserve and present American folklife." Native Americans are a very important element in American folklife, and they have contributed greatly to the cultural richness of the Nation.

The American Folklife Center firmly believes that the religious rights and cultural integrity of Native Americans are in need of preservation. None of the provisions of the Center's enabling legislation interferes with the intended purpose of the American Indian Religious Freedom Act. In fact, our authority directs us to assist in the accomplishment of the purposes of this declaration, within existing personnel and financial resources of the Center at the Library of Congress.

It is our view and that of the folklife community that Native Americans be encouraged and assisted in preserving their religious and tribal beliefs and customs for present and future generations. One useful approach is through orderly and thorough documentation of these traditions.

The Center is anxious to encourage the preservation of these traditions primarily at the local level and in regional or national archives when consistent with the policies of tribal leaders. The Library of Congress with the financial assistance of the Bureau of Indian Affairs is undertaking a major project to transfer approximately 3,000 wax cylinder recordings to magnetic tape as part of an effort to preserve these recordings which contain in large part materials concerning Native American traditions. The cylinders are the property of the Library, the Smithsonian and the National Archives. When the duplication is completed, the collection will be maintained by the Library and, in addition, copies will be made available to appropriate tribal institutions.
9. **Commission on Civil Rights**

Pursuant to the implications and thrust of the American Indian Religious Freedom Act, 42 U.S.C. § 1996, the U.S. Commission on Civil Rights evaluated its policies and procedures as they may impact on Indian religious freedom. The U.S. Commission on Civil Rights is not an agency which administers federal laws, regulations or policies pertaining to Indian religious freedom; it, however, does have the authority to study issues of religious freedom and make recommendations concerning such issues to Congress.

A review of past projects indicated that there had been no Commission studies pertaining to religious discrimination against American Indians. In order to receive input for the review, the Commission actively participated in the consultation process with American Indian religious leaders. This spring, the Commission sponsored a consultation concerning religious discrimination which specifically included Indian issues. Several Commission publications have been revised to expand coverage of Indian religious discrimination issues.

10. **National Endowment for the Humanities**

The National Endowment for the Humanities is fully committed to the implementation of the American Indian Religious Freedom Act of 1978. All Endowment policy and programs are developed and administered in harmony with the goals of this Act. The Endowment firmly believes that the protection of Native American cultural rights is consistent and in accord with the agency's stated goals as directed by the Congressional act which established the National Endowment for the Humanities in 1965.

These goals are: (1) to promote public understanding and use of the humanities and to relate the humanities to current conditions of national life; (2) to improve the quality of humanities programs in educational institutions, and to encourage and assist nontraditional ventures in humanistic learning; (3) to enrich and broaden the intellectual foundations for humanistic endeavors, and to support scholarly additions to humanistic knowledge and (4) to sustain and enhance essential facilities and resources which undergird humanistic pursuits and to help inform the future role of humanistic concerns.
The Endowment is establishing an internal agency task force to monitor and promote the application of Public Law 95-341 in the areas of new agency policy considerations, grant application guidelines, grant evaluation procedures and agency staff education on the significance of the Law to all areas of Endowment policy and programs.

The National Endowment for the Humanities views the American Indian Religious Freedom Act (P.L. 95-341) as a significant measure in advancing research, education and public activity in the humanities.

11. Tennessee Valley Authority

In accordance with the policy set forth in the American Indian Religious Freedom Act, the Tennessee Valley Authority (TVA) initiated a review of its policies and procedures to determine possible infringements upon the free exercise of religion by Native Americans.

TVA has not identified any Agency policy or procedure which directly interferes with the exercise of traditional religion by Native Americans, although some Agency activities (such as construction) could have an impact upon these religious concerns. TVA is actively seeking to accommodate the religious rights of Native Americans, and is taking steps to further incorporate the religious concerns of Native Americans into the environmental reviews of proposed activities. In addition, consideration of Native American religious concerns is being factored into the land management and planning functions.

TVA recognizes its responsibilities under P.L. 95-341 and will continue to actively evaluate its activities and procedures relevant to the religious needs and concerns of Native Americans. (See Appendix B for initial evaluation of policies and programs.)
D. Consultation

1. Federally-Funded Religious Freedom Project

Prior to the enactment of P.L. 95-341, several federal agencies explored possibilities for an effective consultation process which would: 1) allow for two-way communications between the Native traditional religious leaders and the federal agencies; 2) provide to the Native American religious practitioners the legal and technical expertise necessary to evaluate past and proposed federal actions; 3) accord the opportunity for Native Americans to present their undiluted views as a part of the record; and 4) permit the federal agencies, particularly those with minimal past dealings with Native Americans, to work directly with those who are affected by administrative actions.

To facilitate this process, three agencies entered into an agreement to jointly fund two Native American legal associations for a parallel study to the governmental assessment required by the Act. Parties to the inter-agency agreement were the Administration for Native Americans (DREW), the Community Services Administration and the Bureau of Indian Affairs, with project liaison activities coordinated by the Interior Assistant Secretary for Indian Affairs.

The religious freedom project was conducted by the American Indian Law Center and the Native American Rights Fund. The legal associations established a project advisory board comprised of American Indian, Alaska Native and Native Hawaiian tribal and religious leaders. Project activities included: 1) notifying Native Americans of the Act, proposed federal actions and Task Force consultations; 2) conducting legal, historical and cultural research on issues and problems identified by religious practitioners, tribes and agencies; and 3) assisting the Task Force and member-agencies to prepare their reviews.

Project and advisory representatives participated in all phases of the implementation of P.L. 95-341, including the preparation of the final report in draft. They met with the Task Force at its April 2 meeting in Washington, D.C., and its June 7-8 consultation on the Cheyenne River Sioux Reservation.
2. Member-Agency Consultation

Before passage of the American Indian Religious Freedom Resolution in the Senate, the Customs Service established its Committee on Indian Affairs (which is detailed elsewhere in this report). The Customs Committee has met with American Indians in key locations at the northern and southern borders of the contiguous United States for the purpose of addressing American Indian concerns, religious and otherwise. One of the Task Force consultations was held in conjunction with the Customs Committee, which will continue its activities beyond the required evaluation period.

The National Park Service (NPS) has also established an internal mechanism for continuing consultation on these issues. All NPS regions now have regional coordinators who serve as liaison with local, regional and Washington NPS offices and Native Americans. As a result of ongoing consultation, many park areas have waived fees for Native American spiritual visits and have accommodated traditional religious practitioners' needs for access to sacred sites and gathering plants for ceremonial purposes. The NPS is presently consulting with Native Americans on such policy matters as archaeological research, sacred site protection, burial ground disturbance and the concept of credentials of eminence, as well as with specific tribes and groups on an issue-by-issue basis. A record of NPS consultation can be found in Appendix B.

The U.S. Commission on Civil Rights, under its authority to study issues of religious freedom and make recommendations to Congress, participated in the Task Force consultations and specifically included American Indian issues in Commission-sponsored consultation concerning religious discrimination. During the period of consultation, the Forest Service encouraged its Regional Foresters, Station Directors and Area Directors to work with the religious freedom project and Native leaders in order to gain awareness of the Native American religious issues. Several Regions have met with local religious leaders as a result of this direction. Likewise, the Department of Energy has promoted local-level consultation with Native tribal and religious elders regarding contemplated sites and projects.

The individual agency consultations have opened new communications and already have produced results to the satisfaction of those agencies, tribes and groups concerned. Examples of these results - most notably with the Bureau of Land Management, Department of the Navy, and the Fish and Wildlife Service - are provided in Part III of this Report.
3. Task Force Consultation

Following the April 2 Task Force meeting, ten consultations were scheduled throughout the country. Notices of consultation were sent by the Department of the Interior and the religious freedom project to Native traditional religious leaders, Native Hawaiian groups, American Indian and Alaska Native tribes and villages and Native American national and regional organizations. Additionally, notices were sent to all BIA Area and Agency Offices and the NPS Hawaii State Office for distribution, as well as to Task Force members. Local coordinators for each consultation distributed notices in their areas and, where appropriate, notified tribal and regional press and officials.

Consultation sites were selected for a variety of reasons, including desire of the local tribes and Native communities for such a meeting, the needs on issues of particular regions, the availability of local coordinators and the specific interests of agencies active in the process. (Notices of consultation, charts of identified concerns and guides to the transcripts appear in Appendix C.)

The first consultation was held at the Cheyenne River Swiftbird Project, Cheyenne River Sioux Reservation, South Dakota, June 7-8, 1979, which was selected: 1) because the Department of Justice had an interest in a consultation focusing primarily on the needs of Native American prisoners, and 2) because of its location on a reservation where federal or national Indian meetings are seldom held. Swiftbird is a federally-funded alternative incarceration center for Indian inmates. It has special provisions for the religious and cultural needs of Indian people and its only fence is one built to keep the surrounding buffalo herd from scattering. Federal representatives of the Departments of Justice and the Interior and the U.S. Commission on Civil Rights met with religious leaders from the Cheyenne River Sioux and other Sioux reservations, as well as the religious freedom project advisory board, on issues related to penal institutions and the full range of concerns identified by the project representatives.

The second consultation was held in Cass Lake, Minnesota, at the Minnesota Chippewa Tribal Council Chambers, June 11-12, 1979, where statements concerning Native American prisoners were also raised, in addition to those of the Tribe and surrounding region. The Departments of Health, Education and Welfare and the Interior were represented (Social Security Administration, BIA and NPS), along with the Customs Service and Forest Service.