ORIGINAL

In the

Supreme Court of the United States

Russell Bryan, Individually and On behalf of all other persons similarly situated,

Petitioner

v.

Itasca County, Minnesota,

Respondent

No. 75-5027

Washington, D. C.
April 20, 1976

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v. : No. 75-5027

ITASCA COUNTY, MINNESOTA,

Respondent

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Washington, D.C.

Tuesday, April 20, 1976

The above-entitled matter came on for argument at 11:44 o'clock a.m.

BEFORE:

WARREN E. BURGER, Chief Justice of the United States
WILLIAM J. BRENNAN, JR., Associate Justice
POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
THURGOOD MARSHALL, Associate Justice
HARRY A. BLACKMUN, Associate Justice
LEWIS F. POWELL, JR. Associate Justice
WILLIAM H. REHNQUIST, Associate Justice
JOHN PAUL STEVENS, Associate Justice

APPEARANCES:

BERNARD P. BECKER, ESQ., 2100 Summit Avenue, St. Paul, Minnesota 55105 For Petitioner

C. H. LUTHER, ESQ., Deputy Attorney General, Centennial Office Building, St. Paul, Minnesota 55155 For Respondent

C O N T E N T S

P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will hear arguments next in No. 75-5027, Russell Bryan against Itasca County, Minnesota.

Mr. Becker, you may proceed when you are ready.

ORAL ARGUMENT OF BERNARD P. BECKER, ESQ.

ON BEHALF OF PETITIONER

MR. BECKER: Mr. Chief Justice, and may it please the Court:

This case is here on a writ of certiorari to the Minnesota Supreme Court. The court sustained the lower court's decision imposing granting a judgment for a tax on a mobile home owned by an Indian which is placed on Trust Land.

The case originated in 1972 in the county court, the district court in the northern part of the Leech Lake Reservation when the county assessed certain taxes which are referred to in state law as a mobile home tax or personal property taxes on this mobile home owned by Mr. Bryan, who is an enrolled member of the tribe, lives with his family in this house trailer at Squaw Lake on the Reservation.

He has an assignment of tribal trust land from the tribe which he uses as his home plot on which the trailer rests. It is hooked to water, sewer and electricity.

The district court held that Public Law 280 authorized Minnesota to place and impose a tax on this kind of

property, a mobile home used by an Indian as his home.

The Minnesota Supreme Court sustained that reading of the statute and concluded that the Congress changed the authority that had heretofore been denied to the states and allowed the states to impose their tax laws, including the tax law which permitted the counties to collect the tax on this Indian's mobile home.

Now, the statute involved here is commonly known as Public Law 280 and if the Court please, I will refer to it as Public Law 280 throughout. It has become the jargon of the trade, so to speak -- in the citations that are in the briefs.

It was passed in 1953.

Prior to that time and as confirmed by this Court as late as 1973, states, absent some express authorization from Congress have no authority to impose their tax laws within the boundaries of an Indian Reservation on an Indian member of the tribe. We are not discussing non-Indians.

In 1953, due -- as the legislative history indicates, to a large measure the breakdown on some reservations of law and order and, in effect, a tribal court justice system, the Congress passed Public Law 280 and Public Law 280 provided that criminal offenses committed by or against Indians within the Indian country in certain specified states among which was Minnesota -- excepting the Red Lake Reservation -- would be prosecutable in state courts.

On the civil side, as long as courts of the states were effectuating some order, hopefully, and justice on the criminal side, the legislation included a provision for causes of action involving Indians which had heretofore been outside of the boundaries of state court jurisdiction to be subject to adjudication in the state trial courts.

The language of the statute, we think, is of critical importance. The language of the statute is at 28 U.S.C. 1560 of the codification of the statute after the clause indicating which states would mandatorily be subject to its terms as:

"The following states shall have jurisdiction over civil causes of action between Indians or to which Indians are party which arise in the areas of Indian countries listed."

And then the statute goes on, "And those civil laws of such state or territory that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere."

Now, that is the A part of the statute.

C we believe has to be read in conjunction with A.

Our position, very quickly, is that this is a cause of action. This is a lawyer's statute. Nobody uses "cause of action" in general parlance.

If somebody is going to say "The laws are applicable here," you are subject to that law. Nobody says, "You shall have a cause of action"and what it shall be. It is just not

the kind of language most people would use unless they happened to be trained in the law or mistrained or whatever but C section, I think, nails down that cause of action reading of section A and that is the last line.

It reaffirms the idea that the tribal governments will content you to have authority to promulgate ordinances and regulations and customs which will govern their members in their daily lives as Indians on the Reservation. The last --

QUESTION: What about civil law in the state of general applicability? Under law, doesn't 280 make that applicable on Indian reservations?

MR. BECKER: State law of general applicability in connection with causes of action, yes, and the question is, what kinds of law are those? Our position is --

QUESTION: I know you tie the civil laws to causes of action, but --

MR. BECKER: I think that is the only way to read it, otherwise --

QUESTION: I know you do, but it just says, "And those civil laws of such state or territory that are of general application to private persons or private properties shall have the same enforcement effect."

MR. BECKER: Well, I think if you look at the C section, your Honor, it says the Indian laws shall be given full force and effect in the determination of civil causes of

action pursuant to this section.

QUESTION: Well, I understand that.

MR. BECKER: And I think that --

QUESTION: It also says it is not inconsistent with any applicable civil law of the state.

MR. BECKER: That is correct, but the point I wanted to make is the determination; that determination, again, is a word of adjudication. It is a word that lawyers use for adjudging, you know, disputes between individuals.

The argument that civil laws of general application here means all laws, you know, irrespective, negates the whole idea of causes of action, you know, as being an adjudicatory demand.

QUESTION: Well, if I live in Itasca County and don't pay my taxes, doesn't either the county or the state have a cause of action against me for failure to pay the taxes?

MR. BECKER: That is correct. What we would call -- they could bring a civil action against you to foreclose on any property or, in some cases, depending on the tax court judgment for those taxes. That is correct. And that is a cause of action.

But I think you misread this statute if you read it as a termination statute because that is the way it comes out. Civil cause of action is a peculiar word. You are reading it , Mr. Justice Rehnquist, as, I think, as the

termination acts have been read. That is, all laws, civil and criminal, shall be applicable.

Our reading of this is -- and we think consistent with the legislative history -- is that this statute talked about making a forum for adjudicating disputes between Indians and nonIndians available on the Reservation, where they had heretofore been unavailable.

Once that decision to afford a forum had been made, the problem arises what kind of law is applied in that forum? What are the rules of decision?

QUESTION: Well, would you explain subsection B, then, which purports to be an exemption from a much more general type of authority, I think, than you are talking about?

MR. BECKER: We read subsection B very differently and I think that is a mistake that the Minnesota Supreme Court has made. The Minnesota Supreme Court argues, A, it means everything goes and B says, this doesn't go and we don't think that that is the proper reading.

B, in our view, is there for one purpose. It is there in the criminal section and the civil section. It is there for the purpose of assuring the Indians that there would be no change in the federal trust relationship and the federal trust responsibility and the fact that trust property taxes are referred to is part of that attempt by Congress to assure the Indians that this would work no change. This --

QUESTION: You said a moment ago that this was a lawyer's statute drafted by lawyers and presumably using legal language rather than just language of general applicability.

Now, certainly, a lawyer would read subsection B as carving out a portion of authority that is otherwise delegated, wouldn't he?

MR. BECKER: Not necessarily. I think that is a simple way to read it, but I think we are reading this against a background of Indian legislation which, prior to this time, there had been no authority at all.

QUESTION: If you wanted to give the Indians some assurance, you would say nothing in this section shall authorize any taxes on Indians or their property, period.

MR. BECKER: Well, that certainly would be one way of doing it.

QUESTION: And don't get complicated about it by talking about trust property. You just give the broad exemption, which is what you are arguing for anyway.

MR. BECKER: Well, we argue that that is the proper reading of the statute, your Honor. But I think the words, causes of action, combined with civil laws of general applicability indicate to us that it is an adjudicatory statute but at worst -- or at best, if you will, it is an ambiguous statute.

Certainly, it is not easy to figure out what it means

and I think the legislative history nails down that taxes were not intended to be authorized by the A portion of any other part of this statute.

The legislative history is clear that this is a law and order statute. The legislative history is clear that those states that were possibly coming under the terms of the statute because it was going to be, at that time, a fifty-three or consent feature -- a number of them, Nevada, for example, refused to come in. They refused to come in because they would not have been able to recoup what they felt was their cost through taxation and not just taxation on trust property.

There is discussions in the legislative history about taxation on sales and where they take place on and off the reservation and discussion of income taxes and corporate taxes and other kinds of taxes and it is -- if anything is clear from the language and the legislative history and the discussions, it is that nobody conceived this statute as changing in one iota the tax status of Indian Reservations and I might add that nobody was also sure of what the tax status was of Indian Reservations until 1973 so in a sense, that is an additional nail to the idea that Congress was not sitting there trying to figure now, which taxes are what we are going to authorize? Which are we not going to authorize?

The legislative history read in toto seems to us to say, we are not doing anything with regard to taxes on this and

B is in there. We want to assure you that the trust relationship is not changing.

Remember, in a sense, this statute was not imposed upon the Indians. The Indians came looking for this statute. The Government indicates the Indians agreed.

It wasn't a matter of the Government saying, "We are going to terminate you. We are going to impose these alien courts on you." There was agreement.

Those Reservations that did not agree, that felt they had adequate law and order situations, that felt they had an adequately sophisticated tribal government, the Red Lake Reservation, the Warm Springs Reservation in Ohio, the Menominee Reservation in Wisconsin, they were exempted without any difficulty. Nobody fought about it. Nobody argued about it.

It is not a matter of them arguing, well, we want to be outside of the scope of taxes. I think it is relatively clear from the legislative history that taxes were not to be included. Agreed. The choice of language, you know, is not the easiest for resolution of problems that could arise. We don't deny that. There would have been better ways to do it but the fact is that if you read all laws, civil and criminal into this, you are reading it in the face of contemporaneously adopted termination statutes which accomplish that particular end and you are making this statute a termination act because under this statute --

QUESTION: But only with respect to the specific areas to which it applies.

MR. BECKER: It applies to a large part of tribal life.

QUESTION: I know, but not to all and they excluded certain parts of certain states.

MR. BECKER: Mr. Justice White, I think you misunderstand the statute. The statute gave, in 1953, consent to every state in the union to assume jurisdiction unilaterally under the statute. That was not changed until 1968 and the passage of the Indian Civil Rights Act with the amendments to Public Law 280. In 1953, any state that wanted could have picked up jurisdiction under this statute.

Most states did not -- almost -- maybe two states did and they weren't out in the Middle West or the West and they picked it up -- those states, indeed, that did not pick it up, like South Dakota did not pick it up because of the tax problem because they felt they weren't going to get the revenue to achieve that end.

The discussion is relatively clear -- again I am thinking of the legislative history -- that the costs, whatever cost the addition of the court services and there is a discussion in the legislative history that this is dealing with court services -- whatever additional costs that were going to be involved in this would have to be borne by the states, that

Congress and the Department of the Interior was not going to put in additional funds, was not going to fund this as a separate matter. That is why many states opted out and I think that that was the intent is clear, whether the language may not be sufficient we agree, but it is clearly unclear language where the legislative history has to provide the backdrop for reading it. Otherwise --

QUESTION: Mr. Becker, I am a little confused by part of your argument. I want you to straighten me out. I understood you to at one point indicate that the statute was enacted in response to a request from the Indians and now I understand you to be saying that it was up to the states to opt to enter. I may have misunderstood the first part of your argument.

MR. BECKER: That is correct. The statute was adopted in conjunction with the Indians. There was -- the Government and the Indians did want a consent feature in the bill and some of the original drafts of the bill had a consent feature.

In other words, the tribes would have to consent with the state.

QUESTION: What I am really interested in, so you can explain it so that I understand it, is the principle on which some states are in and some are out, is that entirely up to the states to make the decision or was there Indian participation in the various decisions?

MR. BECKER: In the initial -- for the initial states, each -- the Department of the Interior indicated that they had conversations with both the state governments and the tribes in those states and that on the five mandatory states there was agreement except for the Reservations that were exempted, Red Lake, Warm Springs and Menominee.

As far as the remaining states of the union who had any Indian country that is defined by the statutes within a -- the statute, as finally enacted by the Congress in '53 did not have a mandatory Indian consent feature. There had been a consent feature in the one draft and then a consultation provision and that was dropped out eventually on the theory that there would have to be consultation anyway which, in effect, occurred, I think --

MR. CHIEF JUSTICE BURGER: We will resume there at 1:00 o'clock, Mr. Becker.

[Whereupon, at 12:00 o'clock noon, a recess was taken for luncheon until 1:00 o'clock p.m.]

AFTERNOON SESSION

MR. CHIEF JUSTICE BURGER: Mr. Becker, you may continue.

MR. BECKER: Thank you, your Honor.

As my response to Mr. Justice Stevens' question on consent: In 1968, Congress changed the consent feature of the statute to make it mandatory that they charge consent to the assumption of jurisdiction. They did not alter the language of the civil section or the criminal section at all so that whatever the reading or the reading was in '63, it was the same in '68.

It seems to me almost beyond understanding for the Congress to expect the tribes to consent to coming under what the lower courts held to be essentially for the state jurisdiction if, in fact, that would subject their members to the full panoply of the state's taxes.

QUESTION: Well, the fact was, Mr. Berger, was it not, that as of that time the taxability of the personal property on Indian Reservations, both of Indians and of non-Indians was not at all settled. Isn't that correct?

MR. BECKER: That is correct and that is why I think that the reading that the lower courts -- that the state gives it indicate that Congress somehow went through and understood what the tax situation was and indicated that that was passed by the state as well.

I think that it is clear from the history and knowing that that questions was unclear and it was only partially settled in 1973 that there was no discussion one way or another about taxes and taxes as a concept, as an idea, were excepted from this statute. The statute basically has nothing to do with taxes but B provis, which appears both on the criminal side and on the civil side, seems to us is the kind of a provision as was put in there to assuage, as we indicate, that the Indian fears that there was any change in the trust relationship and, secondly, that there would be no reason to put that in on a criminal side.

Why would you put a statute that says, exactly as it does on a civil side, no taxes on trust property, no alienation of land, when we are talking about an offense, criminal offense jurisdiction? For the most part that would not rise. The authority to tax, if it came, would not come from the authority over the criminal section, it come because of all civil laws being applicable and somebody fails to pay and the failure to pay may be a criminal offense. But the authority would come from the civil side and yet that appears throughout the statute which indicates to me it was -- I don't want to call it a Congressional boilerplate, but a provision that appears in other places as well to make it clear to the Indians that they are not changing their status vis-a-vis the Federal Government.

Now, the way the state courts have read that is, B in fact turns out to be the section by which you find the authority. Suppose Congress had not put B in there? They could have said, we don't have to worry about assuaging any Indian fears. There is nothing they have to fear. Right?

And they took B out and they didn't put it in. Right?

And all you have is the A section. It would be awful tough to read that as conveying taxing authority. The only way the state courts read it is by coming back in through B and saying, well, then, why did they put B in if A didn't convey general taxing authority?

QUESTION: Well, I thought the Supreme Court of Minnesota's opinion seemed to go on the idea that A was ambiguous, when you talk about "All civil laws," but some light is thrown on its meaning when you see B, which apparently carves out otherwise existing authority to tax.

MR. BECKER: Well, I think that they relied very heavily on B as indicating their reading of A. That is correct. And without B being there, that they would have read A very possibly as not conveying the taxing authority.

By putting in B -- and in our view Congress put in B there as a help, as a method of persuading or assuring the Indians that they would not be changed in their status vis-a-vis the federal -- that their trust relations, that the historic federal trust responsibility would not be altered at all. All

that was happening was they were now getting a forum for adjudication of criminal matters and civil matters, which is what they wanted.

Now, to come in and to say Congress, by putting in B and telling them now that we are going to not change anything has, in fact, slipped one by the Indians. They slipped it by because by putting in B, you read that as meaning A conveys general taxing authority to the extent that B does not exempt it and I think that is an awful burden to put on Congress in terms of its general methodology of supposedly dealing within the ends to some degree of good faith.

I think the only way to read that A/B the way the state and the lower court does is, in fact, it was either inadvertent, which I doubt, or it was slipped by the tribes and I don't think that is true at all.

The tribes agree they knew what was happening to a degree by the statute. The language is not very good. We all agree that the language, "Civil cause of action and general law" is not the best kind of language and somebody is going to have to make sense of it while it still stands but the one thing it doesn't seem to us that it did was, convey general taxing authority.

Another matter I would like raise --

QUESTION: Is there any other kind of authority you think it doesn't convey other than taxing authority?

MR. BECKER: Well, that, of course, is one of its key problems. I don't know completely the answer to that. I think that arguments can be made in given cases that certain other kinds of regulatory powers over matters that are peculiarly involved with tribal life may not be conveyed but I have nothing on which to work in this case. This cases deals with taxes and taxes have always been treated as a special case under federal law. The McClanahan, Mescalero -- there has always been the special taxing jurisdiction requirement.

Congress has to expressly convey the authority. There is no other way to explain Squire versus Capoeman except by virtue of a special kind of taxing statute reading rule, if you will, with regard to Indians. So on that side I think the taxing part of it is clear.

What else is involved, I think we are going to have to wait for some adjudication to take place and one of the reasons it hasn't taken place, interestingly enough, is because the states I think only rather recently caught on to the fact that taxes may have been one of the things included.

This is the first case on 280 directly to reach this court. There is only two other cases on 280, you know. Both of them deal with this issue one way or another. There is the lower court opinion here and the Peters case. The rest of it are, you know, references here and there, Kennerly and a couple of other cases and 280, but there is very little

litigation over 280 and it has only been very recent that the states, from what we have been able to gather, have been attempting to assert that this new-found taxing authority.

Indeed, I would venture to say it might be contemporaneous with the McClanahan and Mescalero decisions, but --

QUESTION: Didn't we have this in Tonasket?

MR. BECKER: That arose in a very different kind of situation. It is --

QUESTION: I don't have the name quite right.

MR. BECKER: Tonasket.

QUESTION: Tonasket.

MR. BECKER: Tonasket versus Washington, yes, which was remanded back and there was a change of statute. There, there was a tax imposed, an attempt to impose a collecting tax for cigarettes on an Indian seller selling to non-Indians and the question is not like here, you are talking about taxing an Indian on a home that he lives in and it is quite a bit different. The question there is whether non-Indians who might buy cigarettes would be subject to the state's taxing power, whether from some means or other the state could compel the Indian to precollect that tax.

QUESTION: That was 280 were were dealing with there, was it not?

MR. BECKER: That was 280. That is correct. To a

degree. The state and the tribe had worked out the 280 arrangement there between them and only certain areas were conveyed and certain areas weren't. They did a --

QUESTION: It was an Indian dispute.

MR. BECKER: Right.

QUESTION: But that result might have been the same without 280?

MR. BECKER: That's a good possibility. You had the Moe case before you. It was recently argued in which -- that is, you came up that the 280 question would not be asked --

QUESTION: Is that your position?

MR. BECKER: Our position is that as far as the precollection and imposing the state law obligations to pre-collect on the Indians, that the answer is yes, that might be the irrespective of 280 on any reservation. That is a different matter.

One more point I'd like to make before I reserve some time and that is this: There is a narrow way to decide this case. The Minnesota Supreme Court said it wasn't raised properly. I think that is a mistaken view of the record in this case. The Attorney General has indicated that the question of whether this is personal property was for some reason or other not raised.

The only question that didn't appear to be raised from the record in the trial court was the question of this was

personal property attached to the land for purposes of Minnesota's land tax exemption for Indian land and we have that in our own statute in the Appendix.

The question has nothing to do with that. The question is, how is 280, a federal statute, read? What is -- which is a federal question, the question being, does the B proviso of 280 about regulation of Indian trust land also mean that an Indian who buys a mobile home because he is not rich enough to put a foundation in, and concrete in the ground -- and most of the, 15 percent of the tribe in our state uses mobile homes. That is the only thing that they can afford over housing.

QUESTION: That is consistent with the Indian tradition too, isn't it, to keep mobility?

MR. BECKER: Well, yes. But how much mobility? Then you get into -- one of the problems is, you get into how much -- if you take the state's point of view, you get into how much is attached? How many concrete posts do we have to put in before it is attached; how many sewer lines? Do we need a sewer connected to outside sewer? What about a cesspool or drainfield or any of the local kinds of sewage treatment proposals are used?

Our problem is that B, we think, clearly treats this as it would a home. Otherwise you end up with a rather absurd reading that an Indian who was wealthy enough -- I don't want

to make this an emotional argument, but it does seem to bother me, an Indian who builds a home, has sufficient income to build a home however small, and put a foundation in, is home-free because his property cannot be taxed. There is no question.

But an Indian who buys a mobile home, you know, then has to be judged by the number of bricks or blocks underneath the home to determine whether it is attached.

Now, we don't think the federal law requires that. We think B protects, in that instance, any kind of a thing, if you will, used as a home on the trust land. It flows with part of the Government guarantee when they set that reservation apart in 1855.

MR. CHIEF JUSTICE BURGER: Very well.

Mr. Luther.

ORAL ARGUMENT OF C. H. LUTHER, ESQ.

ON BEHALF OF RESPONDENT

MR. LUTHER: Mr. Chief Justice and may it please the Court:

The Respondent's position in this case, of course, is that the Public Law 280 does authorize the states to tax Indians on Indian Reservations with the exceptions as specifically spelled out in the law itself.

QUESTION: Absent 280 I take it you would agree you would not have the power.

MR. LUTHER: Yes, your Honor, I would.

The Respondent's position is based on four considerations. One is the statute itself. The second is the legislative history. The third is the judicial decisions and the fourth is the policy.

With respect to the statute itself, the Minnesota Supreme Court and our position is that the statute grants the authority to the states to have the civil laws that are of general application apply in Indian territory except that any real or personal property that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States shall not be subject to taxation.

We are not talking about the excepted property in this case. We are talking about personal property which is not held in trust and which is not subject to restriction against alienation.

I'd like to come back -- perhaps this is a good time to deal with the question of whether or not it is personal property or real property.

If this mobile home were real property, it would be exempt from taxation under the provisions of this statute. This case was tried from the beginning on the assumption that what we are talking about here is a tax on personal property.

It has not been contended in the District Court nor in the Minnesota Supreme Court or until now that this mobile home, for the purpose of this litigation, constitutes real

property but as I say, if this Court were to assume that this issue were open in the case, which I don't believe it is, and we were to assume that this mobile home is real property and not personal property, the statute exempts that property from taxation. There is no question about it.

At any rate, that is our reading of the statute.

Secondly, as far as the Congressional history, the legislative history, we have examined it very carefully and it is not helpful. There is nothing we were able to find in the Congressional hearings where this question of the taxation, whether the states were being granted authority to subject the Indians to these taxes was definitively discussed by anybody so I am afraid that we just can't have any -- there is no help for us in the legislative history of this case.

As far as the judicial decisions are concerned, we have four: the Minnesota District Court, the Minnesota Supreme Court, the Federal District Court in Nebraska in the Peters case which was affirmed by the Eighth Circuit Court of Appeals.

We have only these four judicial decisions. They each hold that Public Law 280 does grant to the states the authority and jurisdiction to tax the Indians, except for the excepted property which I have mentioned.

QUESTION: Has the Ninth Circuit gone the other way, Mr. Luther?

MR. LUTHER: Not to my knowledge, your Honor.

QUESTION: Not in the Santa Rosa case?

MR. LUTHER: No, your Honor. That was quite a different issue before the Court in that case.

QUESTION: And what other taxes might be involved here? Income taxes?

MR. LUTHER: Yes, your Honor. Income tax was the issue in the Peters case.

QUESTION: And how about gasoline -- the state gasoline tax? How about sales tax?

MR. LUTHER: Sales tax? Well, to answer your question, if your question is, what taxes do I contend that this Public Law 280 authorizes the states to levy, yes, sales tax, income tax, gasoline tax --

QUESTION: You would say any tax of general applicability.

MR. LUTHER: Yes, sir. Yes, your Honor, any tax except those on the property and the trust property itself. Or on restricted Indian property.

QUESTION: I suppose you have a state gasoline tax.

MR. LUTHER: Yes, we do.

QUESTION: Is it being collected on the Reservation?

MR. LUTHER: Yes, it is. Sales tax also. And the income tax, too.

QUESTION: Inheritance?

MR. LUTHER: I don't know, your Honor. That --

QUESTION: Of course, that could be property, I mean, trust property.

MR. LUTHER: Well, the Indians are so impoverished that it is doubtful that the inheritance tax would apply.

QUESTION: How about personal property tax?

MR. LUTHER: Well, this is the personal property tax that we are talking about.

QUESTION: That is what I thought.

MR. LUTHER: I might mention that this is a rarity because the personal property tax is no longer operative in the State of Minnesota except with respect to certain property such as mobile homes which are taxed as personal property because they are so frequently on leased land that it isn't administratively feasible to tax them as real property. Other than that, there are no personal property taxes administered.

QUESTION: But on the trust land you could not tax the land.

MR. LUTHER: You are absolutely right, sir, we could not tax the land.

QUESTION: Well, could you tax the furniture in the home on the land?

MR. LUTHER: If we had a personal property tax which was applicable to that kind of personal property, yes.

QUESTION: You just couldn't tax the building?

MR. LUTHER: You can't tax the land itself or the

building which is part of the land in the sense that it is real property.

QUESTION: But anything else.

MR. LUTHER: Yes.

QUESTION: Of course, defending the taxing power to the state isn't quite responsive to the need that was being expressed at the time, is it? I mean --

MR. LUTHER: No, your Honor, I don't believe it is. I think I would agree with Mr. Becker that this legislation, this Public Law 280 when it started out, it started out as a very -- it started out it was going to be applicable only to the State of California and only to certain Indians in the State of California.

QUESTION: And the problem that precipitated the issue was the lack of remedy and the lack of standards.

MR. LUTHER: Well, I think the problem that precipitated it was it started out with a criminal statute, essentially and as it progressed through the Congress, it expanded in its scope and it expanded from merely a criminal -- subjecting the Indians to the state criminal law and state jurisdiction on criminal matters, to civil, which is the section that we are speaking of and then that expanded and progressed to the point where it included not only giving the Indians access to the state courts for civil litigation purposes --

QUESTION: Making them sumbject to rules.

MR. LUTHER: Exactly. Which it may be appropriate now to bring up the fourth point that I want to bring up, which is the policy question.

The express policy of Congress at the time this law was enacted was one of integration of the Indians into the community -- integration and assimilation and this law was a step, as the courts have all mentioned, this Public Law 280 was a step toward effecting that Congressional policy of assimilation and integration and I wish to make this very clear that in considering and in construing this law that policy be kept in mind.

Statewise, we have a policy consideration, too, and that is the Indians are citizens of the state. They have all the rights and all the privileges of all the other citizens of the state and as a matter of policy we feel it only just -- and perhaps this is what Congress had in mind -- only just and proper that they bear their fair share of the expenses of the state.

Now, of course, the biggest tax impact on people of this kind is the tax on their real property, and that property is not taxable. It never has been and is not specifically excluded from taxation in this law. But, why should not these citizens of the state who are enjoying all the rights and privileges of all the other citizens of the state share in the expenses, at least to the extent of these lesser taxes

which we have talked about, the sales tax, the gas tax, personal property tax.

QUESTION: I suppose that same argument could have been made in McClanahan?

MR. LUTHER: Yes, your Honor, it could have been made in McClanahan, but McClanahan didn't have Public Law 280 and this is, of course, the major difference because our position is that Public Law 280 authorizes -- grants its jurisdiction to the state and Public Law 280 did not apply in the McClanahan case. It didn't apply to Arizona.

QUESTION: General Luther, may I ask you a question, please? Is it your view that the selection of the states that originally were going to be subject to the law of 280, that various lands were subject, were they chosen on the grounds that they were more ready for assimilation and those were higher-developed areas? Or were they areas where there was a greater breakdown of law and order and therefore a greater need for state criminal jurisdiction? Or is it clear?

MR. LUTHER: I am not clear on that, your Honor.

QUESTION: It might make quite a difference on whether you think they are ready to pay their share of the taxes or not -- which view you take.

MR. LUTHER: Yes, I suppose it would. I honestly don't know that much about it. I couldn't answer your question.

QUESTION: The history doesn't really shed --

QUESTION: Do you know why Red Lake was excepted?

MR. LUTHER: Well, I would defer to Mr. Becker. He is more of an expert than I. I think it was because they had a -- what can I say? -- a better tribal operation there. In other words, they were able to handle their problems internally tribally where these other tribes didn't have as effective an organization. That is my understanding.

QUESTION: Well, if that were so, then that is a partial answer to the question posed by Mr. Justice Stevens, I suppose.

MR. LUTHER: Yes. Yes. Maybe.

Now, if there are no further questions, that is all I have.

MR. CHIEF JUSTICE BURGER: Very well.

Mr. Becker.

REBUTTAL ARGUMENT OF BERNARD P. BECKER, ESQ.

MR. BECKER: Thank you, your Honor.

Let me respond to just a number of things.

As far as the gasoline and sales tax, the Buck Act passed by Congress a number of years ago authorizes the imposition and collection of both sales and gasoline taxes on Indian Reservations or in other federal enclaves, military reservations, the Sales Act -- it is not at all clear as to whether the Sales Act part of it makes it applicable to Indians buying from traders or from --

QUESTION: In the absence -- how about the sales tax on a reservation, absent 280?

MR. BECKER: Absent 280? In a sale to an Indian? Clearly no. The question is still open.

QUESTION: Despite the Buck Act.

MR. BECKER: Despite the Buck Act.

QUESTION: All right.

MR. BECKER: As far as the other point I'd like to make, as far as Red Lake is concerned, I think Red Lake and Warm Springs and Menominee were specifically exempted out because they did have ongoing tribal governments and they were, if the idea is that this statute should be read against an assimilationist, terminationist background, then you would think that Congress would pick for termination of assimilation those tribes that had advanced over the pupilage state which was, you know, the concept in Tragama and the older cases as to what the government was supposed to be doing.

Yet, in fact, it was only the tribe in the areas where the tribes were the least developed, where there was less development that 280 was made mandatorily applicable and the reservations that were furthest advanced had the greatest assets. Menominee and Warm Springs were exempted from this.

QUESTION: Well, that is consistent, is it not? I mean, if the -- even under an assimilative integration policy to the extent that there was a great strong tribal

identification you might mitigate that policy a little bit and to the extent that there wasn't, you would pursue the policy.

MR. BECKER: Well --

QUESTION: Now, of course, the policy has changed.

MR. BECKER: Oh, yes.

QUESTION: Or since 1953 it changed and the whole policy now is to preserve the integrity of the tribes and so on.

MR. BECKER: My problem is I am not even sure you can necessarily read this as, you know, a terminationist statute. Obviously, the House has the Resolution there. There is nothing I can do to make it go away. But this statute itself, you know, was something significantly less than a terminationist or assimilationist statute. One can make the argument that it was designed to help the tribal governments along over a difficult period by allowing the C provision and authorizing the courts as vehicles for bringing about some level of order so that something --

QUESTION: Well, it did something that didn't exist before, though, didn't it?

MR. BECKER: That it did. It made state courts available.

QUESTION: It worked a major change but I don't think it worked a major change of subjecting the Indians to state taxes, to the full panoply of state taxes. That would have engendered an awful lot of opposition from an awful lot of

tribes and it just doesn't come up anywhere in the legislative history.

QUESTION: Well, except you I thought, conceded earlier, for all the Congress knew or all the Indians knew, they were subjected to the full panoply of state taxes as it was and --

MR. BECKER: Well, they had been fighting this.

QUESTION: -- if that were true, this wouldn't have effected any change.

MR. BECKER: They had been fighting on that for awhile. They had never given in on that.

QUESTION: That was wholly unsettled and unclear, was it not?

MR. BECKER: It was wholly unsettled and unclear. However, not -- by no means acquiesced in by the Indians. They had been fighting that issue. It had just never reached this Court. There had been a number of state court decisions.

QUESTION: Both ways.

MR. BECKER: Umn hmn.

MR. CHIEF JUSTICE BURGER: Thank you, gentlemen. This case is submitted.

[Whereupon, at 1:26 o'clock p.m., the case was submitted.]