Testimony of Mark C. Van Norman, Director
Office of Tribal Justice, U.S. Department of Justice
Before the Senate Committee on Indian Affairs
Concerning S. 1658; May 17, 2000

Good Afternoon, Mr. Chairman and Members of the Committee. My name is Mark C. Van Norman and I am the Director of the Office of Tribal Justice, Department of Justice. Thank you for inviting us to testify on S. 1658, a Bill to authorize the construction of a Reconciliation Place in Fort Pierre, South Dakota, and for other purposes.

At the outset, I should emphasize the importance of the government-to-government relations. Congress has a longstanding policy of promoting Indian Self-Determination and in recognition of Indian sovereignty, promotes government-to-government relations with Indian tribes. The Executive Branch also respects the sovereignty of Indian tribes and works with the tribes on a government-to-government basis. In 1998, the President issued Executive Order 13084, on Consultation and Coordination with Indian Tribal Governments, which explains fundamental principles of Federal-tribal relations:

> The United States has a unique legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, Executive orders, and court decisions. Since the formation of the Union, the United States has recognized Indian tribes as domestic dependent nations under its protection. In treaties, our Nation has guaranteed the right of Indian tribes to self-government. As domestic dependent nations, Indian tribes exercise inherent sovereign powers over their members and territory. The United States continues to work with Indian tribes on a government-to-government basis to address issues concerning Indian tribal self-government, trust resources, and Indian tribal treaty and other rights.

63 Fed. Reg. 27655 (1998).

In our Department of Justice Policy on Indian Sovereignty and Government-to-Government Relations with Indian Tribes, we have pledged to work with Indian tribes on a government-to-government basis, guided by respect for tribal sovereignty, and to assist Indian tribes as they work to develop strong law enforcement, tribal courts, and traditional justice systems. 61 Fed. Reg. 29424 (1996). The Office of Tribal Justice was established in 1995 to provide a permanent channel of communication for tribal governments to express their concerns to the Department of Justice; to coordinate departmental policy on Indian affairs both within the Department and with other federal agencies; and to ensure that the Department works with tribes on a basis of government-to-government relations.

S. 1658 would authorize the construction of a Reconciliation Place in Pierre, South Dakota, promote the formation of the Sioux Nation Supreme Court to serve as an appellate court

for the tribes of the Sioux Nation, and establish an economic development council.

The Administration believes that steps have been taken to render the construction of a Reconciliation Place and the establishment of an economic development council unnecessary. The Administration has requested in the FY 2001 budget funds for the planning and design of the Lakota Sioux Heritage Cultural Center at Badlands National Park. Planning for the Center's construction is well underway and road construction is ongoing in this Fiscal Year. The Center will promote the public's understanding of the history of the Sioux Nation and act as a repository for cultural and historical items.

Similarly, the Administration has established Native American EDGE. Native EDGE is HUD's Native American Economic Development Access Center which will, for the first time, link over twelve Federal agencies through a single toll-free number and web-site so that lending institutions, non-profits, foundations, Native American business owners, and private businesses can collaborate to achieve sustainable economic development in Indian country. The Access Center will provide personalized research, initiate dialogue among entrepreneurs, coordinate with other Federal agencies, and share knowledge and experience to ensure the expansion of economic development in Indian country.

Pursuant to our mission, the Office of Tribal Justice consulted with tribal representatives who have told us that they view efforts to promote the unity of the Sioux Nation as an important objective and support the concept of the Sioux Nation Supreme Court. The Department of Justice joins the Sioux tribes and the State of South Dakota in supporting a strong tribal court system as envisioned by section 102 of S. 1658.

Before turning to a discussion of the history and circumstances of the Sioux Nation, I would like to touch briefly on some of our general work in the areas of tribal law enforcement, tribal justice and reconciliation between the United States and Native Americans.

The Department of Justice has been working on both civil rights concerns and tribal justice concerns among Native Americans generally, and the tribes of the Sioux Nation in particular. The Department of Justice, for example, participated in the hearing that the South Dakota Advisory Committee to the U.S. Civil Rights Commission held in Rapid City, South Dakota in December, 1999 to address the concerns of Native Americans. In keeping with the S. 1658 policy that promotes the formation of a Sioux Nation Supreme Court, the State Advisory Committee made a number of recommendations to assist tribal courts in administering justice. Among other things, the Committee recommended,

> The Department of Justice and Interior should expand their efforts to provide funding, training, and technical assistance to tribal courts and tribal law enforcement. Tribal governments should make every effort to insulate their professional law enforcement entities and courts from the pressures of political influence and patronage.

Three years before this recommendation, the Department of Justice -- together with the Department of the Interior -- undertook the Indian Country Law Enforcement Improvement Initiative. The State Advisory Committee's recommendation reinforces the importance of our FY 2001 budget request. The Department of Justice requested $173 million to improve tribal law enforcement and justice systems, including $45 million for tribal police, $34 million for tribal detention, $20 million for tribal juvenile justice, and a $15 million request to enhance tribal courts, among other things. This request is essential because effective tribal law enforcement is a necessary adjunct to effective Federal law enforcement in areas of Indian country, like South Dakota, that rely on the Justice Department to prosecute general felony crimes by or against Indians. Furthermore, tribal courts are necessary partners with the tribal police maintaining public safety on Indian reservations.

The Department of Justice promotes the formation of intertribal courts, consistent with tribal self-determination. The Sioux tribes have a vital need for assistance in the area of tribal law enforcement and tribal courts, and the Department of Justice, in cooperation with the Bureau of Indian Affairs, has been working actively with the tribes of the Sioux Nation under the Indian Law Enforcement Improvement Initiative.

The Civil Rights Division also actively protects the civil rights of American Indians and Alaska Natives through its enforcement of various civil rights statutes, including the criminal statutes that allow for federal prosecution of hate crimes and police misconduct, the Voting Rights Act, the Fair Housing Act, and the Equal Opportunity Credit Act. For example, the Civil Rights Division has brought lending discrimination cases against banks which charge Indians higher interest rates than other customers. In May 1997, the United States and a Nebraska bank that serves the Oglala Sioux community entered a consent decree, which provides that the bank will pay $175,000 for victim compensation, pay $100,000 towards application fees on new loans to Indians, actively recruit Indian employees, and provide an education program for Indian borrowers. Positive working relationships with tribal governments play an important part in the success of the Division's work to protect the civil rights of Native Americans.

The History of the Sioux Nation & the Need for Reconciliation

Historically, the United States adopted a policy to protect Indian tribes, Indian lands, and Indian rights. In the Northwest Ordinance of 1787, the Continental Congress declared:

> The utmost good faith shall always be observed to the Indians, their lands and property shall never be taken from them without their consent; and in their property, rights and liberty, they never shall be invaded or disturbed, unless in just and lawful wars authorised by Congress; but laws founded in justice and humanity shall from time to time be made, for preventing wrongs being done to them, and for preserving peace and friendship with them. . . .

Consistent with this policy, President Jefferson commissioned the Lewis and Clark Expedition in

1803 to explore the Louisiana Purchase.

As the expedition made its way up the Missouri River through South Dakota, Lewis and Clark stopped and visited the Yankton Sioux Tribe. Among the Yankton Sioux, a young baby was wrapped in an American flag by the expedition members. That baby later grew up to be the famous Yankton Chief, Struck by the Ree, and he led his people on a course of friendship with the United States. See Struck by the Ree, Yankton Daily Press & Dakotan (Sept. 12, 1994); http://www.yankton.net/stories/091599/bus_struck.html. In 1858, Chief Struck by the Ree signed the Treaty of 1858 with the United States on behalf of his tribe, preserving the peace and securing the Yankton Sioux homeland. See Treaty with the Yankton Sioux, 1858; 11 Stat. 748. This event is just one example of the profound effect that the Lewis and Clark expedition had on the Sioux Nation. The Lewis and Clark expedition met the Sioux people at other places along the Missouri River, notably near the present day site of Fort Pierre along the Bad River. Yankton Area Chamber of Commerce, Lewis & Clark Historic Trail: the South Dakota Trail http://www.lewisclark.net/sdtrail/index.html. Thus, the Bad River, or Wakpa Sica in the Lakota language, is a very appropriate site for a Reconciliation Center.

In 1815, the United States entered into treaties with the Dakota and Lakota tribes of the Sioux Nation, which pledged federal protection for the tribes. See e.g., Treaty with the Teton (Lakota), 1815, 7 Stat. 125. In 1825, the United States entered into treaties of peace, friendship and commerce with the tribes of the Sioux Nation to promote the fur trade and the safe passage of American citizens through Sioux Nation territory. See e.g., Treaty with the Hunkpapa Band of the Sioux Tribe, 1825, 7 Stat. 257. In 1851, to facilitate trade and reduce intertribal conflict that sometimes threatened safe passage, the United States entered into treaty with the Sioux and neighboring Indian tribes, which described their respective aboriginal areas. Treaty with the Sioux, 1851, 11 Stat. 749.

After the Civil War, the United States' expansion westward brought conflict with the Sioux Nation, who saw their buffalo herds begin to decline with the passage of settlers along the Oregon Trail. In 1866, the United States sought to build a road through Sioux Nation hunting grounds in the Powder River valley, and the Sioux tribes objected. For the next two years, the Sioux tribes fought the Powder River or Red Cloud's War to protect their hunting grounds and ultimately, the United States determined that the best course would be to enter into a treaty that established a permanent reservation for the Sioux Nation and delineated their hunting grounds. In the Treaty with the Sioux Nation, 1868, the United States set aside South Dakota west of the Missouri River as the Great Sioux Reservation as a "permanent home" for the Sioux Nation and delineated tribal hunting lands in the Powder River valley. Treaty with the Sioux, 1868; 15 Stat. 635.

Yet, in 1874, gold was discovered in the Black Hills of South Dakota, and a gold rush began. After attempting to maintain existing reservation boundaries, the Grant Administration sought to purchase the Black Hills, but the Sioux Nation declined. In 1876, the United States ordered the Sioux to report to Indian agencies along the Missouri River and in Nebraska, away

from the Black Hills. When Sitting Bull, Crazy Horse, and several bands of Sioux refused to comply, the United States sent out the army to force the issue. This led to the Battles of the Rosebud and the Little Big Horn. After Custer's defeat at the Little Big Horn, the United States sent out more troops to force the Sioux to report to the Indian agencies, resulting in the Battle of Slim Butte and many other battles where a number of Sioux were killed. United States v. Sioux Nation, 448 U.S. 371, 379-80 (1980). In 1877, Congress passed an Act taking the Black Hills from the Sioux Nation. Act of Feb. 28, 1877, 19 Stat. 254.

In the 1880s, the United States sought more land from the Sioux. In the 1889 Agreement with the Sioux, the United States divided the Great Sioux Reservation into the Cheyenne River, Crow Creek, Lower Brule, Pine Ridge, Rosebud, and Standing Rock Sioux Reservations. The United States acquired several million acres of surplus lands. Shortly after this Act, the Ghost Dance religion became popular on several of the reservations. Some non-Indians were alarmed because the Ghost Dance was practiced in substantial encampments, the U.S. Army was called in, and in December, 1890, more than 300 Sioux Indians, mostly unarmed elderly, women and children, were massacred at Wounded Knee. Sioux Tribe of Indians v. United States, 7 Cl. Ct. 468, 476 (Cl. Ct. 1985). The United States has expressed its sincere regret for the Wounded Knee Massacre.

Many of the Native American people of South Dakota continue to feel the loss brought about by these events. Against this background, it is appropriate for Congress to establish a Reconciliation Place to reflect the history of the Lewis and Clark Expedition and to promote knowledge of and understanding of the history and culture of the Sioux Nation. This effort would help foster a healing spirit of reconciliation among the Sioux Nation and other citizens of South Dakota and would promote a better understanding of Native American history and culture among the Nation as a whole.

Furthermore, the Committee might consider reconciliation among Native Americans in a larger sense. There is a need for Native American mediators trained in conflict resolution techniques throughout Indian country to address conflicts that sometimes arise between Indian tribes and neighboring communities and within tribal communities themselves. Presently, the Department of Justice Community Relations Service (CRS) provides mediation services to tribal governments throughout the Nation. There are many situations where CRS cannot respond due to jurisdictional restrictions or resource allocation issues. The Committee might consider whether these needs might be addressed by the establishment of a mediation training center at the proposed Wakpa Sica Reconciliation Place. Such a mediation center would enable tribal leaders and officials to acquire mediation skills useful in mediating conflicts that arise in Indian communities and surrounding communities. CRS could assist by providing technical assistance to such a mediation training center.

The Sioux Nation Supreme Court

As I noted earlier, the Department supports the development of intertribal courts. There are a number of such efforts in place among tribes in the United States, including intertribal courts of appeals like the Northwest Inter-tribal Court of Appeals. These intertribal courts can produce a number of benefits. They promote inter-tribal unity. The resource sharing they represent can produce efficiencies. In instances where multiple tribes share a common political, historical, and cultural experience, they can represent a step towards that tradition of political unity. They can provide a means for marshaling legal expertise – including expertise in tribal customary legal structures – to provide high quality adjudication of disputes.

The Department of Justice supports the efforts of the constituent tribes of the Great Sioux Nation to form the Sioux Nation Tribal Court. These tribes share a history and tradition of unified political structure and action. Many of their respective constitutions and by-laws retain a recognition of that historical structure by authorizing their tribal councils to select delegates to serve on a Sioux Nation Council. Moreover, as federally-recognized Indian tribes, each constituent tribe of the Great Sioux Nation "possess[es] the inherent authority to establish [its] own form of government, including tribal justice systems." 25 U.S.C. § 3601(4). This authority has been termed "the first element of sovereignty." Felix M. Cohen's HANDBOOK OF FEDERAL INDIAN LAW (1982 ed.) at 247. Their respective decisions to participate in the Sioux Nation Tribal Court is an exercise of that authority. The Department supports that exercise, consistent with the Department's Policy on Indian Tribal Sovereignty and Government-to-Government Relations with Indian Tribes, which declares the Department's commitment "to strengthening and assisting tribal governments in their development and to promoting Indian self-governance."

Section 102(a) of S. 1658 would direct the Department of Justice to provide technical and financial assistance to the Sioux Nation towards the development and operation of the Sioux Nation Tribal Supreme Court and this provision falls within the Department's commitment to assist Indian tribes as they develop strong tribal courts. The language of section 102(a) requires technical amendment, however. The current language of section 102(a) directs the Department to "provide such technical and financial assistance to the Sioux Nation as is necessary." This language should be amended to provide that: "To promote the development and operation of the Sioux Nation Tribal Supreme Court, the Attorney General may provide appropriate technical and financial assistance to the Sioux Nation from available funds."

Conclusion

In conclusion, the Administration supports the vision of strong tribal courts as embodied in S. 1658. Again, thank you for the opportunity to testify before the Committee today.