JAMES A. FREAR:

A PROGRESSIVE RESPONSE

TO

AMERICAN INDIANS IN CRISIS

by

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Historian Kenneth Philp has written that "the years between 1923 and 1928 were certainly a seedtime for Indian reform."[1] It was this period that witnessed the emergence of the movement which was ultimately responsible for the termination of the Dawes Act and the re-establishment of Indian tribal identity as a major objective of Federal Indian policy. The Congressional spokesman for this multi-pronged movement, which included diverse individuals and groups, was veteran progressive Wisconsin congressman James A. Frear.

James Frear was born in Hudson, Wisconsin in 1861. He graduated from Lawrence College in Appleton in 1878 and the National Law University, Washington, D. C. in 1884. Following graduation from law school, Frear returned to Hudson to establish his practice.

Like many of the early progressives in Wisconsin, Frear was

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[1]Kenneth Philp, John Collier and the Crusade for Indian Reform, 1920-1954 (Tucson: University of Arizona Press, 1977), p. 91.

catapulted into reform politics not on the basis of ideology, but on the basis of personal experience.[2] He first became involved in politics when he was invited to attend a private meeting in Hudson where interests supported by the railroads sought to secure extensive city improvements through extra-legal means. Frear denounced the plan and then publicly led the fight which resulted in the defeat of the improvement proposal and the election to office of an anti-railroad faction.[3]

Frear was appointed District Attorney of St. Croix County in 1896 and held the post until his election to the Wisconsin State Assembly in 1902. In 1904, he was elected to the State Senate where he became a champion of progressive reform.

Frear's commitment to reform was tied closely to his relationship with Robert La Follette, which was both deep and enduring. Frear's reverence for the venerated leader of Wisconsin reform found one of its clearest expressions in his memoirs. "No man in all history, I am confident, acting practically alone, American or European," he wrote, "ever accomplished individually

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[2]David P. Thelen, "Social Tensions and Origins of Progressivism," Journal of American History 56(September 1969): 323-341.

[3]James A. Frear, Forty Years of Progressive Public Service: Reasonably Filled with Thorns and Flowers (Washington, D. C.: The Associated Writers, 1937), p. 8.

so many reforms in State or National legislation as ... La Follette."[4] It was this reverence for the elder La Follette that, to a large degree, was responsible for the longevity of their relationship, which was remarkable given the caustic temperaments of the two principals involved.[5]

Following three terms as Wisconsin Secretary of State (1906-1912), Frear was elected to Congress where he soon became known for taking unpopular positions. He first attracted national attention as a member of the Rivers and Harbors Committee by his opposition to the funding of many river and harbor improvement projects. His resistance to this and to other similar "pork barrel" legislation came in part from a deep-rooted fiscal conservatism which was common among progressive leaders.

True to his Wisconsin progressive background, Frear also advocated the establishment of regulatory boards "for intelligent management of waterways improvements." He further noted that

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[4]Ibid., pp. 34-35.

[5]La Follette's volatile temperament is most adequately covered in David P. Thelen, Robert M. La Follette and the Insurgent Spirit (Boston: Little, Brown and Company, 1976). See also Roger T. Johnson, Robert M. La Follette, Jr. and the Decline of the Progressive Party in Wisconsin (Hamden, Conn.: Archon Books, 1970) and Patrick J. Maney, "Young Bob" La Follette: A Biography of Robert M. La Follette, Jr., 1895-1953 (Columbia: University of Missouri Press, 1978). The nature of Frear's own combative personality will become obvious in his role as congressional spokesman for the AIDA.

"some such board controls waterways improvements in other countries, wherever an intelligent waterways system has been in force."[6]

While Frear's opposition to what he considered to be "pork barrel legislation" might have raised an occasional congressional eyebrow, his decision to vote against American involvement in World War I was subject to serious scrutiny. Frear's already dubious loyalty was compounded by his failure to denounce the activities of Wisconsin's senior senator and his political mentor, Robert La Follette, which were perceived to be a hindrance to the war effort. In the Republican primary of September, 1918, Frear's loyalty was challenged by the National Security League, a New York based group whose leaders included Elihu Root and Alton B. Parker. Frear, with considerable political sagaciousness, authorized Civil War veterans to circulate his nomination

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[6]New York Times, January 15, 1917, p. 8. Frear's own position that he was unselfishly fighting the special interests was attacked by Representative Joe Henry Eagle of Texas who charged Frear with promoting pork barrel legislation for Wisconsin while denying similar treatment to other states. In language befitting Frear, Eagle stated, "Every river, creek, lake, harbor, and inlet in that state that was big enough for a mud-turtle to swim in received appropriations. No sooner was this all fixed up than the gentleman accuses the rest of us who desire to use the enterprise and toil of our people as being 'pork barrel statesmen.'" New York Times, April 1, 1916, p. 5.

papers and he conducted a vigorous campaign defending his own patriotism.[7]

In the November general election, Frear was overwhelmingly returned to Washington. His stand in opposition to American involvement in Europe proved to be a political asset throughout the remainder of his congressional career.[8]

During the early 1920's, Frear continued to strengthen his reputation as a stormy petrel.[9] But it was as a member of the

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[7]James A. Frear Papers, Box 1, State Historical Society of Wisconsin. Following his victory in the Republican primary, Frear introduced a resolution in Congress calling for the investigation of the "War Profiteering League."

[8]Frear received 16,900 votes to 1,814 for his opponent Frawley. The Madison-based progressive newspaper, the Capital Times (November 15, 1918), noted, "Congressman Frear has reason to feel proud of his showing from his constituents in these days when motives and ideals of men are so maliciously and cruelly distorted at the hands of kept newspapers and selfishly formed organizations."

[9]A complete list of Frear's Congressional activities would be out of place in a paper of this nature; however, several are worthy of note. He headed a Congressional sub-committee which investigated waste in the construction of airplanes for the war effort (New York Times, March 7, 1920). His opposition to features of the administration backed Fordney-McCumber Tariff Act drew a vigorous editorial attack from the New York Times (August 9, 1921, p. 8). His support of Filipino independence involved him in a personal dispute with Governor General Leonard Wood which led to a congressional inquiry into Wood's activities. Frear's activities in the Wood investigation prefigure his role in the Indian Bureau crisis of the later 1920's. (See the New York Times Index for May 1923 to June 1924 for a complete index to Frear's involvement in the Wood matter.) Frear opposed many of the tax proposals authorized by Secretary of the Treasury Andrew W. Mellon, (e.g. New York Times, February 1, 1921, p. 27; February 7, 1923,

68th Congress (1923-1925) that he exercised his greatest political power. In his obituary, the New York Herald noted that in the 68th Congress "he formed a coalition of insurgent Republicans and Democrats which ran the House as it pleased."[10]

It is one of the ironies of history that Frear, who considered his involvement with the Indian reform movement "one of the most significant humanitarian achievements during his congressional career," was placed on the House Indian Affairs Committee against his wishes.[11] Frear's demotion from the Ways and Means Committee to the Indian Affairs Committee came as part of a Republican disciplinary action taken against party members who had supported the insurgent 1924 presidential candidacy of Robert La Follette. In all, thirteen congressmen were barred from the Republican caucus called to organize the majority party for the Sixty-ninth Congress, ten of them from Wisconsin.

With regard to Indian affairs, Frear was, in many ways, uniquely unqualified for the role he was to assume. There were no Indians in his congressional district. Furthermore, his personal knowledge of Indians and their culture was minimal. Much of it

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p. 4; January 4, 1924, p. 1; and January 8, 1924, p. 1).

[10] New York Herald, May 30, 1939.

[11] Philp, John Collier's Crusade for Indian Reform, p. 91.

was gathered from stories told to him by his grandfather Archibald McNeil Richard who had brought his family to desolate northern Wisconsin in 1853. Richard saw "the Chippewa Indians in war paint cross over the St. Croix Lake from his Wisconsin home to Minnesota, there to fight their life long enemies, the Sioux Indians beyond St. Anthony Fall."[12]

Later, Richard made two extended trips to the West. The second resulted in near tragedy when his traveling companion became seriously ill in what was believed to be hostile Indian country. Unable to capture wild game, they were in danger of starving when they were discovered by an Indian hunting party. The party made friendly gestures and due to their desperate situation, the two men decided to trust them. The Indians led Richard to an area where they had encircled a small herd of deer and generously gave him a large portion of the kill. The story of this act of generosity, vividly described by his grandfather, left a deep impression on young Frear.[13]

Frear was propelled into the spotlight as a champion of Indian reform when he became spokesman for the American Indian Defense Association (AIDA), an organization which, during the 1920's,

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[12]Frear, Forty Years, p. 4.

[13]Ibid., pp. 181-182.

spearheaded the movement for termination of the Dawes Act. The case which marked the beginning of Frear's active involvement in Indian reform was the Lee Ferry Bridge Case.[14] The Lee Ferry Bridge was to be constructed over the Colorado River between Lee Ferry, Arizona, which was on a Navajo Indian reservation, and a point in the state of Utah. The project was to be funded jointly by the State of Arizona and the federal government, the federal share to be reimbursed by the Navajo tribe at a future date when the Navajo would be judged to have sufficient funds. It was the reimbursement feature that engendered opposition to the project. The senior member of the House, Wisconsin Congressman Henry Cooper, asked, "Upon what theory does the gentleman (Arizona Democrat Carl Hayden) propose that Congress shall compel the Indians to pay for a bridge across a stream when they own property only upon one side of it?" Cooper went on to argue that since the Indians were wards of the federal government, it was the government's obligation to pay the Indians' portion of the cost. Furthermore, the Navajo's treasury balance of $116,000 would be largely depleted by the project.[15]

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[14] Congressional Record, v. 67, part 3, p. 3330, contains a copy of a letter in which Collier asks Frear to introduce and support a measure to remove all indebtedness for the Lee Ferry Bridge. This is the first mention of Frear's relationship to the AIDA.

[15] Congressional Record, v. 67, part 3, p. 3325.

In response to Cooper's charges, the bill's chief sponsor, Hayden, noted that construction of the bridge would open a country "possessing tremendous attraction for tourists." He did not indicate exactly how the tourist industry would benefit the Navajo. Furthermore, Hayden defended the practice of making internal improvements on Indian reservations reimbursable from tribal funds. He noted that the practice dated back to 1911 and had never been intended to be applied "as soon as a few dollars were placed in the treasury." In fact, the Indians would only be liable at such time as they could reimburse the federal government without material injury to themselves. The arrival of that time was being accelerated by the discovery of high quality oil on the Navajo reservation.[16]

Frear took the floor to respond to Hayden. He sarcastically noted that the only benefit to be derived from the bridge for the Utah and Arizona Indians would be an increase in the sale of blankets. Secondly, he argued that the Navajo Indians had never consented to have money spent for such a bridge. Frear observed,

> It does not even connect different areas of the Navajo reservation, but it is to be placed across the north end of the Grand Canyon in order to provide a route for automobile travel between Salt Lake City and the Grand Canyon and between the Santa Fe and northern transcontinental automobile

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[16] Ibid., p. 3326.

> routes, while the Navajo Indians, who now herd their flocks, are to be robbed practically of all their money held by the government to their credit in order to construct this bridge for automobile tourists.[17]

Frear, depending partially on materials submitted to him by the AIDA, argued that the Navajo desperately needed educational facilities instead of bridges. But his remarks did not touch only upon the proposed Lee Ferry Bridge. Making further use of evidence compiled by the AIDA, Frear maintained that the problem at Lee Ferry was symptomatic of a deeper problem which existed because the Indian Bureau was the sole and supreme judge in all Indian affairs. Indians, Frear contended, were maintained by the Bureau in a condition of dependency without even the most elementary property rights unless they were declared competent by the Bureau or its functionaries.[18] Frear concluded,

> The tribal funds are largely created from the sale of land and through the collection of claims against the United States government. The sale of lands, as of timber and oil, goes on consecutively, thus replenishing the tribal fund. But it is not the interest on the tribal fund which is disbursed by Congress but the principal thereof. It is exactly the same as if Congress confiscated outright the oil areas, forests, or allotted or unallotted land.[19]

Frear not only served the AIDA as its spokesman in debate, but he also introduced the group's legislative proposals and used his franking privilege to circulate the organization's propaganda

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[17] Ibid., p. 3327. [18] Ibid., p. 3327. [19] Ibid., p. 3330.

widely.[20] At the request of the AIDA, Frear introduced a bill asking Congress to authorize the appropriation of $100,000 for the construction of the bridge at Lee Ferry, Arizona. The bill contained a provision disallowing any reimbursement from funds of the Indians on the Navajo reservation.[21]

The Lee Ferry Bridge issue was the first in a series of conflicts between Frear and the Indian Bureau. The second was also provoked by Congressman Hayden, who authored a measure (HR 9133) designed to allow white-owned companies to lease land on executive order Indian reservations for mining purposes.[22] Again, Frear's chief objection to the measure was not with its objective but with a feature which gave states the authority to levy a 37½ percent tax on Indian royalties. The Indians, who only received a small percentage of the total profits, were to bear the entire cost of the tax. Appearing before a hearing conducted by the House Indian Affairs Committee, Indian Commissioner Charles H. Burke defended the tax. Noting that it might be desirable from the Indian standpoint to drop the tax, Burke continued,

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[20] Ibid., p. 3330.

[21] House, Authorization of Congress to Appropriate $100,000 for Construction of a Bridge Across the Colorado River at Lee Ferry, Arizona, 69th Congress, 1st session, 1926, H. R. 8829.

[22] Executive order reservations were those established by presidential mandate after Congress had ceased making treaties with Indian tribes.

> But these states that have these great areas in Indian reservations have discovered they are living under a handicap, in that they have great areas of land that are not susceptible to taxation. They endeavored some years ago to have legislation by which they would have had something from these areas to reimburse the states for having this liability of so much non-taxable property, and they came in, when legislation was proposed, and made a claim that they must have some part of the production or that they would oppose the legislation.
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> We did the best we could so far as we were concerned. We compromised, and in trying to get some legislation, trying to get something for the Indians, we consented that 37½ per cent might be diverted and would be used for road construction upon the reservation, or for the education of Indian children. This is a compromise.[23]

AIDA secretary John Collier, also appearing as a witness befor the Committee, vigorously attacked the proposal. While noting that at some point Indian reservations would undoubtedly come under state jurisdiction accompanied by state taxation, he objected to the "fragmentary" methods then employed to tax Indian properties. "Insofar as we can have a policy which gradually subjects the Indians to normal taxation conditions," Collier concluded, "a policy which can be developed across the years to which the Indians can adjust, we shall make progress."[24]

On March 5, 1926, at the behest of the AIDA, Frear introduced a bill that would give the states the right to tax produc-

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[23]House, Committee on Indian Affairs, Hearings on H. R. 9133, 69th Congress, 1st session, 1926, p. 25.

[24]Ibid., p. 51.

tion of oil and gas on Indian reservations at the same rate as it was taxed on non-reservation lands. It further stipulated that such a tax would not become a lien against land or property but only against royalties.[25]

By mid-June of 1926, Representative Hayden was willing to draw up a compromise which was acceptable to Frear and the AIDA. The revised measure called for a 3 percent tax on Indian royalties instead of the previously proposed 37½ percent tax. In recording his support for the revised measure, Frear stated, "This bill has been presented to parties representing the Indian tribes with whom I have been in touch in the past. I do not claim to represent them, but I am trying to protect the Indians - and this bill now meets with their approval."[26]

For Frear and the reform groups he represented, the plight of American Indians was conceived neither as a failure of traditional Indian culture nor as a deficiency in the dominant white culture, but as an example of bureaucratic bumbling. This is nowhere more evident than in the resolution he introduced to

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[25]House, To Amend Act of May 29, 1924 Providing for Leasing of Unallotted Indian Lands, 69th Congress, 1st session, 1926, H. R. 10053.

[26]Congressional Record, v. 67, part 10, p. 11383.

have a ten member bipartisan joint Congressional committee conduct a thorough investigation of the Indian Bureau. The resolution itself, written in a highly inflammatory style, indicted the Bureau for a series of crimes. both of commission and omission, against the Indian people. The specific charges alluded to the following: the Bureau's maintenance of unlimited control of $1.6 billion worth of Indian land, the practice of unqualified judges incarcerating Indians without due process, the Bureau's neglect of Indian health, and the Commissioner of Indian Affairs' practice of requiring Indians to lease land at what Frear considered to be unjust prices. Frear concluded the resolution with a ringing denunciation of the Bureau.

> Whereas after seventy years of Spanish Inquisition guardianship under an Indian Bureaucracy that today rivals the autocracy of a Russian Czar, the Indians are without hope or protection save through an aroused public sentiment and intervention by Congress.
>
> ...the Indian Bureau, with its notorious scandals, robbery of its wards, and systematic oppression, has outlived any usefulness it was supposed to have when first organized.[27]

Frear amplified these charges on the floor of Congress with a detailed review of Indian Bureau practices. "We have been working for years absolutely without law," he charged. "We are work-

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[27]House, Authorizing the Appointment of a Committee to Investigate the Indian Bureau and Report Thereon, 69th Congress, 1st session, 1926, H. J. Res. 189.

ing on what we call rules and regulations. It is the most absurd spectacle that has ever been presented to Congress, so far as my knowledge goes."[28]

The administration of justice on Indian reservations was a particular concern of Frear's. This interest was stimulated by the case of one Paul Moore, an Indian from Odanah, Wisconsin, who had been imprisoned, secured with a ball and chain. The Moore case served to highlight the fact that Indians were the only American citizens who were, in Frear's mind, without basic constitutional rights. He noted that such diverse Americans as Negroes and Filipinos maintained full property rights. At this point, Representative Grant Martin Hudson of Michigan interjected that Frear's charge was untrue. Hudson noted that "the five civilized tribes of Oklahoma were allowed the expenditure of their full income." "Gentlemen of the House," Frear countered, "I want you to remember the words of the gentleman from Michigan, because they described the situation, that Indians were 'allowed'; that these Indians who are now citizens were allowed; allowed by whom? By the Indian Bureau. They were allowed to manage their own property."[29]

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[28] Congressional Record, v. 67, part 5, p. 5032.

[29] Ibid., p. 5033.

Frear proceeded to detail a series of cases in which the Indian Bureau had failed in its obligation to the American Indians. He charged that Commissioner Burke and his assistant, Edgar Meritt, had "looted the treasury" of the Navajo Indians in the already described Lee Ferry Bridge case. Quoting a letter he had received from Walter V. Woehlke, editor of Sunset Magazine, Frear also attacked the Bureau for making one hundred Yuma Indian families assume the cost of a bridge over the Colorado River between Arizona and California. These cases, coupled with the practice of requiring Indians to be responsible for reimbursement of the government for costly irrigation projects, indicated the completely irresponsible nature of the Bureau, according to Frear. "No jury in Christendom," he fumed, "would fail to bring a verdict against the Indian Bureau and its responsible officials based on the testimony I have submitted."[30]

If his colleagues thought Frear's tirade was coming to an end, they were mistaken, for the Wisconsin progressive had only begun to warm to his subject. He attacked the "Indian Bureau's oil lease joke" (HR 9133), a bill which would, Frear charged, validate the opinion of "another notable 'Protector of the Indians,'" the late Secretary of the Interior Albert Fall under

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[30] Ibid., p. 5037.

whose administration "over 400 oil speculators grabbed up over 7,000,000 acres of Navajo land." Frear noted that Attorney General Harlan Stone had rendered an opinion that executive order Indian lands were not open to exploitation but "this bill, if passed, will reinstate exploiters who were rejected by Attorney General Stone's opinion and may, subject alone to the ruling of Indian Commissioner Burke, include practically all speculators without limit." Furthermore, Frear argued that the measure would require that all state taxes be placed upon the Indians' royalties in direct violation of the tax laws of such states as Wyoming and Oklahoma which required that all state taxes be paid by oil producers or lessees. Frear continued,

> I do not believe Congress, if made acquainted with the situation, will ever consent to this unjust proposal, but I am calling attention to the willingness of Commissioner Burke and his bureau according to the bill to surrender to this oil mob all these permits illegally given by Fall and then to require the helpless Indians to pay all the taxes for the oil mob. I submit the evidence of refusal to protect the Indians again is overwhelming.[31]

Returning to the subject of Indian courts, Frear vividly described the process through which Commissioner Burke controlled the Indian legal process. Burke, Frear charged, made the laws and appointed Indian agents who in turn appointed Indian judges.[32]

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[31]Ibid., pp. 5038-5040.

[32]Local Indian agents were given authority to name Indian

"These sub-deputy 'commissioners,'" Frear noted, "are above the law and in fact are the law, the judge, the jury, the final court of appeals."[33] Frear concluded,

> Not only the Commissioner but the entire Bureau should be investigated and dismissed from public service with a temporary dissolution arrangement, whereby Indians may be accorded their full rights without needless delay. A fair, impartial probe ought to present an intelligent speedy method of winding up the government's management of Indian affairs and the abolishment of an archaic bureaucratic control that always has been and always will be connected with scandal.[34]

On March 23, Frear took the House floor again to attack the Bureau. After repeating his previous charges, Frear added a new charge, attacking a practice by which the Indian Affairs Committee did not act upon proposed bills dealing with Indian affairs unless these bills were recommended by the Indian Commissioner. This usurpation of legislative prerogatives, Frear charged, made the commissioner, and not the congressional committee, the legislative agency for Indian affairs. Frear observed,

> Every member of the Committee must humble himself and his case, however meritorious, before the Indian Bureau, and

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judges who were to establish reservation courts to try offences committed on reservations for which no punishment was provided by federal law, as established by H. R. 7826, 69th Congress.

[33]Ibid., p. 5041.

[34]Ibid., p. 5042.

> woe be it to any member who steps far off the Indian Bureau reservation. Unless 'regular' in conduct, his own Indian projects are subjected to the blue pencil of the autocrat of the Bureau. Of 35 bills reported to date by the Indian Affairs Committee only one failed to have the endorsement of the bureau and that bill has been held up for weeks in in the Senate by the Bureau.[35]

None of Frear's own bills had been considered.

Off the floor of Congress, Frear was beginning to receive recognition for his role as spokesman for Indian reform. Mrs. Stella Atwood, chairman of the Division of Indian Welfare of the General Federation of Women's Clubs, wrote, "I feel it is a direct intervention of Providence that you have the opportunity of taking up this great problem. Your experience, splendid mind and outstanding ability make you a tower of strength to our Indians."[36]

The great confidence Frear had in the accuracy of the information he received from reform minded philanthropic groups was not shared by the Indian Bureau or its supporters on the Indian Affairs Committee. On April 10, Commissioner Burke was granted time to appear before the Indian Affairs Committee to answer Frear's charges. The Committee, against Frear's protes-

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[35]Ibid., v. 67, part 6, pp. 6109-6116.

[36]Mrs. Stella Atwood to James Frear, March 30, 1926, Box 1, James A. Frear Papers, State Historical Society of Wisconsin.

tations, voted to bar the insurgent Republican from questioning Burke until he had responded specifically to Frear's speeches. It also denied Frear's request that the Committee subpoena witnesses who could substantiate Frear's charges. Burke began,

> I want at the outset to exonerate Mr. Frear from having possibly made some misleading statements and statements that are inaccurate, and perhaps, not true, because it is very apparent that he has made no study of the subject; that he is speaking without any knowledge acquired by research, but has taken his information from an organization in which he apparently has entire confidence, and then, such statements as he may have picked up from mixed bloods, or other Indians and may have accepted as true, without any regard to what official reports of Congress may disclose or what the files of the Department of the Interior contain relative to statistics and other information, but he accepts statements that come to him recklessly without questioning the authority or the reliability of the source from which the information comes.[37]

Burke continued his defense by noting Frear's "rather close, apparently quite intimate" relationship with AIDA secretary John Collier. He noted that "Mr. Frear has accepted statements that Mr. Collier has made as quite reliable." Burke then attacked the AIDA as an organization "that is operating as much for Mr. Collier himself as for any other purpose."

The body of Burke's defense ran for over forty pages. In it he responded specifically to each of Frear's charges. The picture Burke drew of the Indian Bureau differed markedly from

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[37] House, Committee on Indian Affairs, Leasing of Allotted Indian Lands, H. R. 8823, 69th Congress, 1st session, 1926.

Frear's. Rather than an inept bureaucracy committed to self-enhancement at the expense of the American Indian, Burke pictured an organization committed to realistic policies but handicapped by congressional interference.

Burke noted that the construction of the Lee Ferry Bridge had first been recommended in 1919, two years before he had become Indian Commissioner and had been approved by the Army Corps of Engineers. He noted that the proposed 37½ percent tax on Indian royalties from executive order reservations was to be used for improvements upon the reservation. Burke reminded Committee members that the law and not the Bureau declared Indians incompetent because, Burke argued, experience indicated that Indians would sell their land if left to their own devices and then would be without means for their own support.

In reponse to Frear's charge that the practice of declaring Indians incompetent was incompatible with their recently won American citizenship, he quoted the Supreme Court decision in the United States vs. Nice case, which had ruled that "citizenship is not incompatible with tribal existence or continued guardianship, and so may be conferred without completely emancipating the Indians or placing them beyond the reach of Congressional regulations adopted for their protection."[38]

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[38]Ibid., p. 25.

Throughout his long defense, Burke repeatedly reminded the Committee that Congress, and not the Indian Bureau, was responsible for many of the injustices Frear had charged against the Bureau. He noted that the policy of making Indians liable to reimburse the government for "improvements" on reservations, such as roads, bridges, and irrigation projects, originated not in the Bureau, but among Frear's colleagues in Congress. Burke's testimony ended in an anti-climactic fashion as Frear, much to Burke's disappointment, refused to question him because the Committee had not allowed him to subpoena witnesses.[39]

On April 10, the same day Commissioner Burke began his testimony, Representative Hudson, one of the Bureau's strongest supporters on the Indian Affairs Committee, called for Frear's retirement from the Committee. Frear's supporters rushed to his defense.[40] "Has the American Congress come to the place," Wisconsin Governor John J. Blaine charged, "where members of its committees are to be dismissed because they differ on policy with the administration?"[41]

On April 23, Frear took the House floor to respond to Burke's defense. He noted that the Indian Affairs Committee had, on a tie

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[39]Ibid., p. 1-67. [40]New York Times, April 11, 1926, p. 14.

[41]John J. Blaine to James A. Frear, April 12, 1926, James A. Frear Papers, Box 1, State Historical Society of Wisconsin.

vote, denied John Collier's request to answer Burke's charges. Arguing that Collier had a right to respond to Burke's statement, Frear defended the AIDA secretary and the organization he headed.

> I will only say that no man in my experience has possessed anything like the comprehensive grasp of Indian affairs and Indian legislation shown by Mr. Collier who has first knowledge from having lived among Indians. His activities in their behalf are in striking comparison with those of the seemingly complacent officials. Collier acts through the eyes of a crusader who sees the neglect, injustice, and oppression practiced by the Indian Bureau, while the government's guardians of the Indians act with an eye primarily directed toward the permanency of bureaucracy.[42]

The April 1926 dialogue between Frear and Burke reveals major weaknesses in Frear's critique of the Bureau of Indian Affairs. First of all, Frear's inflammatory rhetoric was more suited to induce conflicts, often of a personal nature, than to resolve the highly complex problems with which the Bureau was forced to deal on an everyday basis. Secondly, Frear failed to view the unfortunate conditions found among American Indians as anything other than the result of bureaucratic mismanagement by the Bureau. This is not to deny the sincerity of Frear's statements, but only to underscore his limited view of the scope of the problem.

Taking Commissioner Burke's contention that he had little first hand knowledge of Indian affairs to heart, in the fall of

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[42] Congressional Record, v. 67, part 7, p. 8068.

1926, Frear attempted to rectify this inadequacy by making an extensive personal tour of American Indian reservations. Beginning at Billings, Montana, on September 12, 1926, Frear and his companion, John Collier, traveled 4,480 miles during the ensuing six weeks. Frear concluded,

> Based on my trip, irrespective of the personal study reports and other investigations, I am prepared to say that I believe every charge contained in my former request for an investigation is substantially accurate even though previously made in part from outside information.
> ...the facts I have studied in the field are such that I reiterate every charge I have made and offer to furnish witnesses in many cases who are familiar with the facts.[43]

Frear recounted how he had traveled to the site of the proposed Lee Ferry Bridge and then farther for forty miles in one direction "without seeing any more than two Indian hovels."[44]

With Frear's fact-finding trip complete, the Wisconsin progressive joined Collier in an AIDA sponsored tour of California to publicize the injustices of the Bureau of Indian Affairs. On December 1, 1926, Assistant Commissioner of Indian Affairs Edgar Meritt traveled to California to respond to Frear's charges. Meritt contrasted Frear's lack of experience in Indian affairs

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[43]Ibid., v. 68, part 1, p. 1067-1068.

[44]Senate, Committee on Indian Affairs, Survey of the Indians of the United States, 1929-1944, p. 4.

with Commissioner Burke's forty years among the Sioux. "No man," Meritt argued, "ever filled the office of Commissioner of Indian Affairs who was more efficient, better equipped, or more sincerely interested in Indians than is Commissioner Burke. He is the soul of honesty, honor, and fair dealing, and deserves the undivided support of the American people."[45]

Meritt, in a detailed response to Frear's charges, defended the Bureau's record. He stated that Indian per capita wealth was greater than that of any other American group. Furthermore, he reminded the audience that the Indian Bureau had given up jurisdiction over one-third of the American Indian population in the previous twenty years. He defended the Bureau's support for the Lee Ferry Bridge and the 37½ percent tax on Indian oil royalties as being beneficial to the Indians. The speech, to a great extent, repeated Commissioner Burke's April defense before the House Indian Affairs Committee.

On December 13, 1926, Frear took the House floor to respond to Meritt's defense of the Bureau. Again, he spoke in a highly personal and inflammatory style. He described Meritt's speech as

> the most inane example of artful dodging ever sprung on innocent though not unsophisticated audiences....No reply was

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[45]Reprinted in the Congressional Record, v. 68, part 2, p. 1401-1402.

> offered by him to definite charges directed against the Indian Bureau and specifically made on the floors of Congress. Childish evasive generalities were alone offered. One hundred questions touching conditions of Indians in California and elsewhere were signed and presented to Mr. Meritt by leading citizens of that state, practically all of which were ignored in his discussion of purported remarks. I was alleged by him to have made at some time and some unknown place, and which, on questioning, he admitted were gathered from newspapers or some other source - but none taken from the express specific charges made by me before the House.

"Mr. Meritt," Frear charged, "is generally regarded by Senators and Members not satisfied with Indian Bureau administration to be the real power in the Bureau and to be responsible for conditions that have invited much criticism although done in the names of Mr. Burke or [Interior] Secretary Work, who approved matters really placed before them."[46] Frear accurately dismissed Meritt's statement about relative Indian wealth because the large incomes of a few Indians who owned oil said nothing about typical Indian incomes. Frear went on to restate his earlier charges, but he added new charges against the Bureau's failure to combat Indian health problems and the practice of sending Indian children to boarding schools. "The action of the present Indian Bureau in tearing young children away from their parents and sending them hundreds of miles away to distant non-reservation schools," Frear emphatically argued, "is one of the most

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[46] Ibid., v. 68, part 1, p. 385.

cruel practices of modern times." Frear then related how Navajo children who had contracted tuberculosis while in boarding school in Phoenix were sent home in incurable stages of the disease only to die in their own villages and infect members of their own families.

In general, the picture Frear drew of Indian health conditions differed markedly from Meritt's view that Indian health had shown steady improvement in recent years under Indian Bureau supervision. Frear described the manner in which the Indian Bureau's disposal of sewage from buildings on the Zuni reservation had contributed to disease "and the resultant high death rate" he had observed on that reservation. "I have studied conditions there," Frear sardonically stated, "and can say that, if any health officer in the average country village permitted health conditions to exist as they now exist on the Zuni reservation, he should be jailed with Mr. Meritt's ball-and-chain attachments, if necessary, and condemned to live under like conditions for the rest of his days."

In conclusion, Frear returned to the subject of Meritt and Burke. He said that Meritt, "the shining light that illuminated the Oakland Forum," had taken a missionary (an elder in the United Presbyterian Church) into Commissioner Burke's office where the missionary was told that, if the Indians fought the Bureau,

they would be unable to get their bills through Congress.[47]

Frear decided not to return to the Indian Affairs Committee for the Seventieth Congress. Instead, he accepted an opportunity to return to the House Ways and Means Committee. However, this by no means terminated his involvement with Indian reform and the AIDA. He continued to speak out for Indian reform on the floor of Congress and made several appearances as a witness before a special Senate committee to survey the conditions of American Indians. He continued to supplement his knowledge of American Indians with extended western vacations. He also used local newspapers and a national periodical to publicize "Indian Bureau Brutality."[48]

An article by Frear on Indian problems which appeared in the August 1928 issue of Plain Talk was greeted warmly by critics of national Indian policy. "I don't know how to express sufficiently my admiration for your article," Vera Connolly wrote. "I am a professional journalist....But I can assure you, although I make it my business to read great numbers of magazine

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[47]Ibid., p. 385-391.

[48]For example, see the Whitehall (Wis.) Times, May 10, 1928; also, James A. Frear, "Indian Bureau Brutality," Plain Talk 3 (August 1928):159-170.

articles every month, I do not know when I have read anything as powerful - in every way it is a fine work....It is thrilling."[49]

The Plain Talk article summarized Frear's major criticisms of the Indian Bureau. It also reflected to a greater extent Frear's growing concern over the state of Indian health. Quoting state health officials from California, Wisconsin, and Montana, Frear noted that, in spite of the fact that the Indian death rate was over twice that of the white population, that the Indian infant mortality rate was three times the white rate, and that over twenty percent of the Indians under Bureau control suffered from trachoma, "the Indian Bureau refused to transfer its so-called medical service for Indians to the United States Public Health Service." "The time has come," Frear concluded, "to demand a square deal for these wards of the nation who are being decimated by disease, neglect, and starvation. No one argument can be advanced for the continuation of this cold-blooded Indian Bureau policy which savors of the Spanish Inquisition."[50]

Frear's contribution to the Indian reform movement was outlined by John Collier in his memoirs. He wrote,

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[49]Vera L. Connolly to James A. Frear, October 6, 1928, James A. Frear Papers, Box 1, State Historical Society of Wisconsin.

[50]James A. Frear, "Indian Bureau Brutality," pp. 167-170.

> It was in Congress that most of the struggles of these years were in the last analysis, decided, and Representative Frear was our first good Friend in Congress. For years he forced on the attention of Congress and the public the abuses of the Indian Bureau policy of reimburseable indebtedness. Forty million dollars had been levied on the tribes when Congress finally, in 1932, authorized the Secretary of the Interior to cancel all such debts.
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> Representative Frear also led the fight against the Indian Bureau's bill to give statutory force to the denial to Indians of constitutional rights. He took it upon himself to know at first hand the conditions of the Indians. He did not have a single Indian in his district, but he went often with me, into all parts of Indian country, and he informed himself about Indian law, and entered into correspondence with numerous Indians. For our first year or two, he battled almost alone.[51]

However, Frear's active involvement in Indian reform was not without serious limitations. Nowhere was this more evident than in his conception of the cause of Indian maladjustment to American society and his solution to this problem. For Frear, the difficulties Indians confronted stemmed entirely from Indian Bureau mismanagement. The problem with this view is that, although many Indian commissioners were sadly inept, efficient management and individual virtue do not solve the problems of a native population adjusting to a dominant alien culture. Frear, with his volatile temperament and acid tongue, was not sensitive enough to deal with complex problems of this nature. His solution, the abolition of the Indian Bureau,with Indian health and

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[51] John Collier, From Every Zenith: A Memoir and Some Essays on Life and Thought (Denver: Sage Books, 1963), pp. 143-144.

education responsibilities reverting to the states, might have worked in "progressive" states like Wisconsin and California, but it would have certainly proven a dismal failure in states like Idaho, which have large Indian populations and inadequate financial bases from which to draw support for meaningful health and education programs.[52]

In spite of his obvious inadequacies, one should not judge Frear too harshly. Frear, even granted his limited vision, depicted real problems in a manner almost certain to attract attention. The Bureau of Indian Affairs was, as Frear repeatedly charged, guilty of mismanagement and favoritism toward white economic interests operating on reservations. Its administration, under Charles Burke and Edgar Meritt, reflected the concerns that had produced the Dawes Act, individualization and Americanization, not the new concerns raised by anthropologists for the maintenance of tribal identity that would be reflected in the Wheeler-Howard Act of 1934. Frear played no small role in eliciting the support that culminated in this subsequent Indian reform endeavor.

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[52]For a discussion of Frear's solution to the Indian dilemma see Vera L. Connolly, "The End of the Road," Good Housekeeping, May, 1929, p. 156.

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