

STATE ADMINISTRATION COMMITTEE

Hearing: Senate Joint Resolution 35

March 10, 1977

A hearing on the above resolution was called to order at 7:30 P.M. by Chairman Joe Brand. Other members present were: Mular, Ryan, Meyer, Turner, Smith, Robbins, Feda, Kanduch, Kropp, Lien, Tower---Driscoll-exofficio. Sponsor, Senator Graham. Absent: Bardanouve, O'Connell, Menahan.

Mr. Chairman and members of the committee, I am Senator Graham of District #29 and appearing here on behalf of Senate Joint Resolution No. 35. I might say that the resolution - if it does pass both houses - is not a law; it is merely a direction in asking Congress to retain what we already have. Last session we appropriated something like \$130,000 from the General Fund to set up an Indian Task Force that addressed itself to trying to solve some of the problems that we are now faced with. The task force was made up of four Indians representing the reservations and four non-Indians, one of them a Supreme Court Judge for the state of Montana.

I was disappointed that this thing did not work. We had every great intention of trying to sit down across the table and talk to each other about the problems; but unfortunately, the Indian people from some of the tribes, not my reservation, refused to talk about some of the pertinent questions.

After about four meetings of this task force, a motion was made by one of the members of the reservations to abandon the task force. With seven members present, four Indian members, three white members (the Supreme Court Judge was absent that day) it was voted 4 to 3 to abandon the task force. So I think you know that we did make a real effort to try to come to some meeting of the minds about some of these problems we have.

I am going to talk mainly about the Crow reservation - some of the other witnesses here are going to talk some about the other reservations - but I have been there most of my life and they have gotten along very well, and I think that most of the Indians will agree to this point. However, we became disturbed last February when we found that a document called the Crow Law and Order Code (Att. #1) had been sent to the Secretary of the Interior for approval. I think that in going through this Code you will see that it is almost completely foreign to our way and our Judicial system; and I am going to have our attorney, Douglas Freeman, explain some points in this code and why we disagree with it.

The code was sent to the Secretary of the Interior, who was on it for a long, long time. Then, just a little while before

he went out of office, he did send us a letter saying that he did not think he had to approve this, that they could probably put it into effect anyway without his signature. We do not know if this is fact, but I think that probably he has to approve this. Anyhow, the very first page is what disturbed us highly to start with.

Reference code 0-107: "AS USED IN THIS CODE, CROW RESERVATION SHALL INCLUDE ALL LANDS WHETHER RESTRICTED, OWNED IN FEE SIMPLE, TRIBAL OR OTHER TRUST LANDS AND LANDS OWNED BY THE UNITED STATES OR BY ANY STATE (UNLESS SPECIFICALLY EXEMPTED), ALL SCHOOLGROUNDS, AND TOWNSITES, AS WELL AS WATERS, ALL WATER WAYS, HIGHWAYS, ROAD EASEMENTS AND RIGHTS OF WAY WITHIN THE EXTERIOR BOUNDARIES OF THE CROW RESERVATIONS." This is complete take over of the jurisdiction. We have got a system on the Crow Reservation and I think it works pretty well. The Indians do police themselves, they have their own policeman and I have never objected to that. If the Crow people are happy with this type of thing and they will live under this type of a code which I do not agree with, so be it. We have lived with them for years and have gotten along well. We do not respond to this because it is completely foreign to our rights in the Constitution of the United States.

I would like to tell you that on our reservation down there the population is almost 50/50 -- 50% Indian and 50% white -- according to our census figures. The land ownership is almost 50/50 -- 50% white owners, 50% Indian owners. This is excluding the mountainous area which is tribal land and which we are forbidden to go on and do not attempt to go on. It is posted, it is their tribal land, and we do not have any business on it nor do I wish to go up there. So we respected this. There have probably been a few violations and I suppose that the people who have violated it have been fined, which they should have been, and we have no objection to this. But the whole thing is that if they want to have their own law and order with their own people, I have no objection to this and this resolution does not address anything else. All this resolution says in the title is "A Joint Resolution in the state of Montana urging Congress and the President to enact legislation granting states jurisdiction over non-Indians on an Indian reservation within their boundaries and providing increased law enforcement on an Indian reservation" and I see today in the Billings Gazette, that this is going to come about....which I am glad of.

But I think that this committee will see why we have introduced this resolution when Douglas Freeman goes through it with his viewpoints. We are going to bring out certain points from this which we seriously object too. We are not asking to take any rights away from any Indians that they have got today and

and we want that plainly understood, but we are asking that under our constitutional rights that we remain under the laws of the state of Montana and the Federal government. Now it is as simple as that: You cannot read anything else into it. We have gotten no other intentions to take away their coal, or any other thing, nothing in there. We are willing to abide by the way it is setting today.

I do not know if they have attempted to put this into effect or not, but I do know that they have asked for it back there and that they were preparing to do it. I hope this is not a fact, but I think that under the circumstances, we surely have the right to stay within our constitutional rights.

Douglas Freeman

Mr. Chairman, members of the committee, my name is Doug Freeman, I am an attorney from Hardin, Montana, and have practiced all of my law at Hardin, Montana.

Basically, my experience with tribal law has been as Associate Tribal Attorney for ten years for both the Crow and the Cheyenne tribes. As County Attorney for eight years, I have served as chairman for the Governor's Crime Control Commission which has studied this issue from time to time with the Regional Commission. The point that I want to bring out and express initially here, is that this code was enacted by the Crow Tribal Council which is composed of duly enrolled members of the Crow tribe. The white community that resides on the reservation, has no input, no participation and no representation in the enactment of the proposed code. The basic objection, in my opinion, is that if there is to be government that rules and governs a large segment of the resident population on a reservation they certainly should be heard and represented in the enactment of those laws. I also want to stress that it is not our purpose here tonight to infringe upon the tribes' right to govern and regulate their own affairs. We certainly encourage that. I know that when I worked with the tribal attorney's office, we encourage much improvement in the law and order code, so we certainly encourage that type of activity. Now I will note that the area of the jurisdiction in this matter is all of the land within the exterior boundaries of the reservation--now that does not mean that it is checker boarded or reduced because of state land, school lands, highway easements or deeded land on the reservations. People reside there because they received patents from the United State government to live and reside there. They are not there in any violation whatsoever.

Now, if you will notice on page 14 of the code, specifically

Section 1-165, as to what persons this code applies to. (Section 1-165 IMPLIED CONSENT), "ANY PERSON WHO SHALL ENTER WITHIN THE EXTERIOR BOUNDARIES OF A CROW INDIAN RESERVATION SHALL BE DEEMED TO HAVE IMPLIEDLY CONSENTED TO THE CIVIL AND CRIMINAL JURISDICTION OF THE CROW TRIBAL COURT AND THEREFORE SHALL BE SUBJECT TO PROSECUTION FOR VIOLATIONS OF THE LAW AND ORDER CODE AND SHALL BE SUBJECT TO SERVICE OF PROCESS IN CIVIL ACTIONS IN SAID COURT. SAID PERSON ALSO SHALL HAVE BEEN DEEMED TO HAVE IMPLIEDLY CONSENTED TO THE JURISDICTION OF THE TRIBAL POLICE AND ~~SHALL BE SUBJECT TO ARREST AND~~ GAME WARDENS AND THEREFORE SHALL BE SUBJECT TO ARREST, APPREHENSION AND CONFINEMENT BY SAID TRIBAL AUTHORITIES AS WELL AS TO CONFISCATION AND FORFEITURE OF THEIR PERSONAL POSSESSIONS IN TRIBAL COURT. ANY PERSON ENTERING WITHIN THE BOUNDARIES OF THE CROW INDIAN RESERVATION SHALL BECOME SUBJECT TO ALL LAWS, REGULATIONS OR RESOLUTIONS OF THE CROW TRIBE OF INDIANS." It goes on to say that signs will be posted notifying anybody entering that reservation.

This code is all inclusive--criminal cases and all civil cases. Page 11 of the law and order code is quite explicit that the code applies to all civil cases originating on that Crow Tribal reservation. Including non-Indians and non-Indian property and all types of civil proceedings and controversies. The powers of the courts (1-117) clearly points out was intended here--it includes all of the powers of any court--including the right to supervise executors, administrators, guardians, trustees and administer oaths. In other words, it goes all the way, there is no point lacking where this court does not assume jurisdiction.

Section 1-162 specifies that Federal law, Crow tribal law and custom, and common law shall be applicable--it specifically declares that state laws shall not apply except by agreement of the parties and consent of the court. The Crow Tribal Court has three judges to be appointed and elected by the tribal council. The whites do not have any participation and no right of selection of the judges within the Crow Tribal Court.

You will also find that the tribal prosecutor and tribal defender likewise are appointed. I would like to call your attention specifically to the very first page pertaining to the tribal defender--he must be fluent in the Crow language and the prosecutor must be proficient in the Crow language. These provisions then are limited by selection and availability of persons affluent in the Crow language, as far as I know there is no written Crow language in which you could become fluent.

The non-Indian community on that reservation has no participation in the selection of the prosecutor or defender. Now how is the Crow tribal police department selected? On page

16, section 2-105, the law and order commission of the Crow tribe selects the Chief of Police. The non-Indian community has no participation in the selection. In one sentence they say that your constitutional rights will be guaranteed. Yet there is no language or explanation nor provision for the right to trial by jury, the right against unlawful search and seizure, the right to bail, the right to be represented by an attorney, the right against unlawful arrest and your various constitutional rights.

What is the effect if your rights are not protected in court? It does mean that in each instance you will have to go to tribal court either by writ of Habeas Corpus or whatever and initiate proceedings to establish your rights and sometimes these procedures, as we all know, take some time,

Something that struck me as being very detrimental not only to the white community, but to the Indian community as well, are the criminal penalties in the code. (Page 27 & 28) The penalty for murder on the Crow Reservation is six months in jail or \$500.00 fine or both; the penalty for burglary is 15 days or \$200.00. You can escape from the Crow jail and it is five days penalty or \$100.00 or both, whether your are in there on murder or whatever.

It is stated that no provision of this code shall be construed as a waiver of solemn immunity from suit of the Crow tribe of Indians and this immunity shall extend to businesses and corporations owned or operated by the Crow tribe. The Federal government permits recovery for wrongful action in the state of Montana.

He submitted numerous petitions attesting opposition to the code signed by the people from all over the state. See attachment #2.

Mr. Brad Spear

Mr. Brad Spear, rancher, on the Crow Indian reservation, Big Horn County, Montana, spoke.

I am in full accord with what Mr. Freeman and Mr. Graham have expressed to you already. I am familiar with the Law and Order Code and I believe that the rights of the non-Indians are violated by this code and in many instances I do not feel that the code is in the best interest of the Crow people. I do not believe that tribal jurisdiction over non-Indians on the reservation is within the concept and meaning of the constitution of the United States. I am not against the tribal government providing law and order for their people. However, I do feel

that the tribal government should not attempt to deprive the rights and property and freedom of the non-Indian residing, entering, or passing through the reservation.

I wish to urge approval of Senate Joint Resolution 35.

Mr. John Bowman

My name is Mr. John Bowman from Lodge Grass, Montana. The point that I would like to make is that in the past couple of weeks I have been to visit with the Crow people. 9 out of 10 of the Crow people that I have visited with are not in favor of this Crow Law and Order Code. In asking them why, they didn't speak up, they wouldn't speak up, they were afraid of reprisal. I think that would prove that they were not the only ones who are unable to speak up.

Mr. Glen Anknew
Lodge Grass, Montana

I have been involved in law enforcement for 19 years--all of it on Indian reservations--four different reservations, thirteen years of it in the Bureau of Indian Affairs--and am presently a deputy sheriff stationed in Lodge Grass, which is a portion of an incorporated town on the Crow Indian reservation. As an incorporated town, it provides law enforcement within the city limits, fire protection within the city limits, as well as other services provided by any incorporated town; and I would like to state that it is very important that this resolution be supported. If this code is put into effect, it seems to me that these services will be seriously curtailed. Presently under the system, we have quite a lot of difficulties due to the fact that we have no traffic laws. There are something like 1300 miles of paved roads on the Crow reservation; and with that much road, 7500 to 10,000 people and U.S. 90 going through the reservation--I think the problem of traffic alone is serious enough. With this, I would like to recommend that you support this Resolution.

Bud Lien
Poplar, Montana

Most of you have seen the March 6 Billings Gazette, with the complete coverage of this Crow Law and Order Code. Since I live on the Fort Peck reservation, I am interested in the Crow Law and Order Code, because if it is accepted there, it affects ours and all seven reservations in Montana and possibly very probably, eventually over 300 reservations in the United States. It will completely vulcanize our country. We would be split up into 300 different nations within the United States. The members of this committee and many of the people here tonight have taken

an oath at one time or another to uphold and defend the constitution of the United States whether as state service or in the armed service of the United States, and by the same token, we expect the protection of the United States. I am almost thankful to see the Crow Law and Order Code because it goes so far as to make us alien in our own land. I was born and raised on the Fort Peck Reservation and it is unthinkable that I should suddenly become an alien. We would have no provisions for appeal. We do not have as much problem on the Fort Peck Reservation, but both the tribal chairman and the tribal judge have stated that they have the right to levy taxes on the reservation, but they do not want to--and they do not want the jurisdiction because the state does a pretty job of promoting industry in our area and wants to do more, but if this were allowed to stand on the Crow reservation, it would knock out industry on all reservations. I would like to mention that one of the primary issues in the Revolutionary War was taxation without representation. There have been occasions when Indian police in the Harlem area have picked up people for driving over the 55 MPH speed limit. One of them that I know of is our present Congressman, Ron Marlenee. They collected the fine on it and this fine was not turned over to the state and it probably did not get to the tribe either. We hope that you will support this resolution as we have a great problem. Thank you.

William Big Spring from East Glacier

My name is William Big Spring. I am from East Glacier; I am a member of the Blackfeet tribe. I came down here to support the resolution. I have 4,000 acres that I pay taxes on, 1500 acres of this trust (?) land. I feel that I have to support this bill because if I do not, it comes under the tribe's jurisdiction and so there goes my land. I know what Indians will do by the way they have done it and I have proved that. I have a law suit which I have won; and so therefore, I hope you will support this and another thing I would like to say, I am a proud Indian too.

Lloyd Ingraham

I am Lloyd Ingraham from Ronan, Montana. I am on the council for MOD, Montanans Opposed to Discrimination, city attorney for Ronan and the special city attorney for Polson, Montana, Flathead reservation. I have a few observations that I hope will sound the alarm and make you folks realize just how important this matter is. I do not know how many of you are aware that there are more non-Indians than Indians living within the confines of Indian reservations in the state of Montana. Each of them are Montana citizens. On these reservations, we are under the authority of Congress and that is the same authority that the Indians came under. But this whole program probably started four or five years ago when the policy

or validity of Indian self-determination first came out. The last American Indian Congress Convention, in Salt Lake City, which was attended by special representatives of President Ford and special representatives of the Carter camp then met with 3,000 Representatives from Indian tribes in the United States. One of the major platforms that came out of that convention was that the United States was resolved not to have any power or any type of control over the type of government that the tribal groups would form within the sovereign nations; however, the United States would be responsible for the necessary financial aid. The tribal spokesman for them will say that we are bound by the Indian Civil Rights Bill of 1968; however, I think that if you review the Law and Order Code, the constitution and the corporate charter of the incorporating tribes, you will find that there is no provision in these bylaws that are proposed to provide for the protection of very essential constitutional rights. For example: equal protection--non-Indians cannot vote for their representatives. With respect to taxation, there is no equal protection granted to the non-member with respect to the taxes that he is going to be subject to, or how the funds are going to be allocated. The right of due process--none of these law and order codes provide for a jury of your peers. Indeed, they restrict the juries. The tribal judges, everyone who is going to be trying your case has to be a member of the tribe. Now these things are some of the areas that we are concerned with, certainly we could challenge these things in Federal court. However, if any of you have ever been in Federal court, you know the time that it takes and the prohibitive cost. In fact, I just finished a case that went up into the Supreme Court. The defense fees that our side had to raise out of volunteer money (because there was no governmental money extended to us) was in excess of \$50,000. We are not special interest groups as so many spokesmen would like to label us. Take a look at the crowd out here--they are just every day citizens.

This resolution does nothing but affirm that the state of Montana would like to continue jurisdiction over the non-member Montana citizens within these Indian boundaries. We have on our reservation at Flathead, some 1800 miles of state or state governmental units of roads, all those roads could be taken over by the tribes. I am thinking of school districts that would be taken over by tribal jurisdiction because this encompasses civil jurisdiction also. Now the Senate, observing our feeling, has passed this resolution; I understand 42 to 2. I might ask you this, if the tribes continue on this and you do not pass this resolution, are we going to interpret that we are being disenfranchised; and that in fact you are no longer going to extend the protection that we should expect as Montana citizens from you?

I support Resolution 35 and I plead with you to investigate this as far as you need, but please join in with the Senate and pass this Resolution.

Richard Reid

I am Richard Reid and I am from Poplar, Montana.

Since the Fort Peck Reservation was open for settlement in 1913, white settlers and their decendants have lived and worked on the reservation. Sixty years have passed and most families are now in their third generation. We lived for those sixty years the same as any other resident of Montana. We paid our dues in the form of taxes and we continue to do so and we rate the same privileges as any other Montanan. Also in the sixty year period, we lived under the law of Montana. We ask that we continue to do so.

We were Montanans for sixty years and we must continue to be. If the white resident cannot survive under the Indian jurisdiction then we ask you to support the resolution so that we might save Montana. Indian jurisdiction would mean union sovereignty and that means dividing this great land. I remind you that our country's name is the envy of the world, the United States. It must remain that way - United.

Fred Johnson

I am Fred Johnson, County Commissioner of Glacier County-- I pack a big load upon the reservation. We have a lot of taxes and we have a lot of schools, a lot of roads to support. (We need to help the committee, to stay part of the jurisdiction of the United States of America and that is not a bad thing to be.) I live in the middle of the Blackfoot Indian Reservation. A lot of neighbors of mine are Indians and part of my family is married into the Blackfoot tribe and are now members of the tribe and we are not out there to hurt them in any way, but we do want to stay under the jurisdiction of the United States of America. I will carry on the load that I am carrying up there, try to make taxes reach; we have a lot of roads, a lot of schools, a lot of things to do.

Thank you.

Graham closes

We treat the whole county alike. We do not segregate anybody. Our work force on the roads is part Indian, the sheriff's office, they are Indian, we do not segregate nothing, that is our way of doing things up there. We had a meeting up

there the other night with the taxpayers and the taxpayers did not feel that they could survive under a tribal corporation law...and work under this law that they could not become a member of the Blackfoot tribe. You have got to be 1/4 Indian to become a member of that corporation. Without becoming a member of the corporation, I do not know just how we could work.

Opponents - 45 minutes

Mr. Chairman and members of the committee, my name is Obin Bear Don't Walk. I serve as legal counsel for the Intertribal Policy Board. I also serve as trial judge for the Northern Cheyenne tribe. I am a graduate of the University of Montana School of Law and have not been out of law school that long.

I would like to call upon the people who are going to testify as opponents against Senate Joint Resolution No. 35.

Earl Old Person - Chairman of the Blackfeet tribe.
Caleb Shields - Tribal Council member from Fort Peck also a representative and delegate on the Montana Intertribal Policy Board. Bob Darvis - Tribal Council member from Blackfeet tribe. Phil Roy - Blackfeet legal counsel also graduate from the University of Montana School of Law and a member of the Blackfeet tribe. Ray Spang - Tribal Council man from Northern Cheyenne.

As I look over the audience, I certainly see a number of people I recognize, I guess I have somewhat changed in regards to my youth, perhaps some of you do not recognize me. I have had various relationships with you. I have worked for some of you on farms and ranches, gone to school with your children, perhaps fought with them, many are friends, I suppose, but that is somewhat, I guess beside the point.

I would like to call Phil Peaumog, who is representing Chairman Pat Stands over here tonight. I do not know. I would like to consider myself a good advocate, but Senate Joint Resolution No. 35 passed the Senate by a vote of 42 to 2. I have yet to find out who the two were. Perhaps I might be surprised in regards to why they voted as they did. But the Montana Intertribal Policy Board will not change its position in regards to opposing this bill.

I was a part of that task force and I was proud of being hired right out of law school as legal council. Yes, Indian tribes withdrew, but let's also talk about the county commissioners that we had to hold onto very tightly to keep them as members. They threatened repeatedly, to withdraw from us, saying that

it was too pro-Indian. I worked on that task force and I think the record will bear me out that when the Indian tribe withdrew, I was willing to go ahead, but that decision was not mine to make. I recognize these problems, I have sympathy, I have empathy, I understand what the whiteman or the non-Indian may be concerned about. I studied Anglo-American law. Unfortunately, few of us have bothered to study customary or traditional or Indian law. Many have lived on reservations as Mr. Reed has stated for many, many generations and many of the non-Indians were very close to the Indians. As a matter of fact, many of them probably use their culture as well as if not better than some of we younger folks.

I think the record will show that there were tribes--the Crow, the Fort Peck, the Flathead, who attempted to continue on with a dialect. Do you know that the Flathead tribe has a dubious distinction of having the highest inmate population down at Montana State Prison? Do you know who takes jurisdiction over the Flathead Indian Reservation? Do you know that we were complaining about the type of legal council that will be provided or is going to be provided. You ask some legal scholars about our so-called Anglo-American defense system. You ask them what they think about having it on their reservations because they were told that they were the most deculturated and most dissimulated. They were told that they should accept state jurisdiction as far as criminal matters are concerned.

Now I did not have a hand in the Crow Tribal Code, unfortunately, I am on the wrong side of the political fence, very similar to when the Democrats are in and when the Republicans are off, and the Republicans in and the Democrats are off.

But let me say this, in regards to the homicide provision that was pointed out. I can count at least 10, 11, 15 murders and they are not non-Indians. They are Crow Indians. Going back to what my father has told me about them, what I have studied myself, that have never been solved and you know why because in 1887, the United States Government said that it is no longer safe for you Indians to handle these type of wrongs. I mean, my gosh, law and government did not come over with Christopher Columbus. We had customs, we had traditions and they were respected. As a matter of fact, we took care of such things as incest, that is why the clan system is matrilineal where you do not marry within your clan. And I do not expect the non-Indians to know this. If in fact, we are going to make something wrong, a crime, in order for it to be constitutional, it will have to be written down. Not like the Romans who put the laws way up on the high pillars, where people did not know.

We know that much of Anglo-American law. But that is why the homicide was in there. To call attention to it, because Indian life and Indian flesh has been very very cheap. And its a sorry society when I have to say that.

You asked for a perfect system in regards to the Crow, law and order -- the Court system you say that we are going to violate constitutional rights - I would remind you that constitutional rights are violated every day and I'm not advocating that -- I wish they were not - perhaps we lawyers would go out of business then, I do not know; but they are violated in federal and tribal courts. I would ask especially, my attorney brethren, that they review and understand the 1968 Indian Civil Rights Act, which was patterned after the Bill of Rights, which protects me and all of you in here in regards to your relationship visavis, the Federal Government. Thats what the 1968 Indian Bill of Rights is all about. But you have to have a balancing, and thats very esoteric, so I will not get into that at this time. Because I spoke more on an emotional level instead of a safe one - I would like to introduce this for the record, in regards to the reaffirmation of opposing Senate Joint Resolution No. 35. See attachment 3. At this time I would like to call on one of our leaders in the state of Montana, Indian Leader Earl Old Person.

Earl Old Person

As I have stated before this, my comments are a minority of a minority. I come here because I'm concerned that my first knowledge of this resolution was in the Great Falls Tribune. This was a very short time, and very short notice to me to become concerned that such a resolution was in the making and was in the process of being introduced by the Senate. One of the things that struck me very much, is that I believe too many times we jump to conclusions. I am just wondering if these people who are so concerned about this code-have you had gone to the tribal council, to the people of the Crow reservation, and had a chance to sit down or been asked to sit down, and discuss this particular code. I think this has happened too many times -- people who are concerned with certain things that arise become so concerned about it that other than going to the source where it originates, we jump to conclusions. I believe if there was something that we were concerned with we would first like to find out just what was behind this particular issue instead of going to a news media or areas other than to places where it originated.

Now, we as the people are concerned for our reservations -- we have a limited land base. These are lands that we were able to keep because of our ancestors. These are the lands that we were hoping that we would be able to develop -- as we would be able to develop a resources that may be within these reservations -- for a livelihood, or whatever it may bring to us. Because it is very obvious that we cannot go off the reservation, into other communities, to possess a land base, to possess the kind of lands that we could develop and expect a livelihood from. We want protection, and we are not out to get somebody or to go

out and to do things to harm people. There is no one that we want to harm. We only want to do the things where we feel we are doing something to develop and better our people. And so tonight, as I say, we are outnumbered. There are a few of us here that are able to stand and to speak on behalf of our Indian people. I think we have asked why can't we get together just once more and discuss these. You talk about the task force, but I think that right at the beginning of this task force again there was some influence. That task force was being influenced. Why can't we sit down, just once - even our County Commissioners - why can't they sit down with the Indian people and tribal leaders and discuss some of these problems. Perhaps we can arrive at a mutual agreement -- Something that will be for the betterment of those people that are concerned and the people that are directly involved. Why should we rush such a resolution? I think we're just as concerned as anyone else -- why can't we sit down, why can't we do something to try to come to some agreement -- if not, then I'd say we can go wherever we want to go-- and do whatever we want to do. We have a lot of non-Indians on our reservation. I have not seen where we're disagreeing with non-Indian rights on the reservation.

I think those people who are so concerned about it should go and seek the people where it originated. Sit down and talk with them, I'm asking and I'm pleading that this resolution at least give the people, the Indian people and the people who are concerned, especially the people who are residing on the reservation get together, talk it over, and then if we can't come to any conclusion, or if we come to the conclusions that we don't agree then we can go elsewhere.

Thank you.

Bear Don't Walk

It seems to me that we do not want to touch directly on what the problem is. Naturally, the non-Indian is concerned in regards to the property that he may own on the Indian reservation. I find it hard to believe that a non-Indian who would be subject to tribal jurisdiction for a criminal matter, who can afford one of the best legal councils, F. Lee Bailey, that can get him out of here, Timer Moses, if that is the case -- I find it hard to believe that he is going to be afraid to go into tribal court. The person who is going to be afraid is the tribal judge, wondering what type of objections he will have. I will understand that objection, how shall he rule on it, is he going to violate this person's rights -- when the Federal judge is going to be looking over his shoulder. But I would like to say this, to non-Indians. That Indians have in the past, and will now, if I have anything to say about it, will always respect property rights.

Caleb Shields

I would like to inform the committee that since the Senate hearing on SJR 35, the Fort Peck tribes in the last week have gone to the Chamber of Commerce on the Fort Peck reservation to open up a dialogue between the non-Indians and the Indians on the reservations. In our discussion with the Chamber of Commerce, we requested that they meet with the tribe to set up a date, for meetings on various areas of concerns: about jurisdictions, about law and order, about land management, hunting and fishing, etc. Both sides would be represented by legal council, we will be talking about facts. So since our last hearing in the Senate, we are trying to open up that dialogue, and that's where we think it should belong-- in the community rather than a bill or resolution. In the last hearing and today, I keep hearing the talk about the Constitution. People fight in the wars for the Constitution. I would like to remind the committee that Indian people on the reservations (especially on Fort Peck where we're about the same number of Indians and non-Indians), you will find that just about every Indian male and many females have died and are buried on the reservations with military honors. I could point that out that we have fought in the same wars -- we fought for the Constitution, the United States; at the same time we fought for our treaties, our reservations and our way of life. Its my desire and hope that the two amendments to the Senate bill would be stricken if the House committee wanted to support increased law enforcement on the reservation. If they want to put magistrates on the reservation, let the House and Senate support a separate bill or resolution. At the same time I'm requesting that the House Representatives vote down SJR 35. Thank you.

Bob Jarvis

I'm Bob Jarvis, member of the Blackfeet Council, Blackfeet tribe, I'm a veteran -- I hear a lot of talk about the Constitution, and I should state that I am an infantry veteran and I hear Mr. Big Spring relating on Indians, and as far as the Blackfeet enrollment is concerned, I am almost as much Blackfeet Indian as he is. I want this to be a part of the record also. I know a lot of people in this group from Glacier and Pondera County, I have worked in lands and water for many years, and they know me and they've always gotten a square deal as far as the Blackfeet reservation is concerned. And another thing I would like to relate on, is that as far as this Crow law and order code is concerned, as far as I can see it, that the issue all boils down to the Indians and land, water, minerals and hunting. We all know the Indians and non-Indians for which the stakes are very high. I should say that we are fortunate that we do have capable people - if we didn't, we would go down the tubes -- because we've always been economic hostages. We've always fought amongst ourselves. We have difficulty with finances, or we would have more Indians here. I am totally opposed to HJR 35. Thank you.

Bear Don't Walk

Thank you Bob. I would like to add that the Indian seems to take the brunt in regards to receipt of federal monies while there are about 11 billion dollars going out in federal subsidies to almost everyone in the U.S. Fortunately, our government Penn Central, Lockheeds, farm subsidies, welfare, small business administration loans at a preferred interest rate -- so lets keep that in mind.

Phil Roy

He presented a memorandum from the Commissioner of Indian Affairs addressed to the Deputy Solicitor. See Attachment #4. Now, I think that what we're talking about here is very well analyzed on this report on federal state and travel jurisdiction from the American Indian Policy review commission. I believe the topics that we are discussing here can boil down to a very small area. The Oliphant case, that I cited in my testimony is the one bit of legal precedent that I've heard discussed on our side to this point. The testimony from the MOD people is totally absent of any legal precedent. What has happened here today and at the Senate hearing and what the MOD representatives have been stating around the state and around this region, and the Western U. S., is to me reminiscent of the McCarthy era.

I was asked to rebutt, what Mr. Freeman had to say, and others about the Crow law and order code -- the word "confiscation", the words "rules of the road". They talk about non-representation, they talk about reprisal, they talk about confiscation, they talk about murder, they use words like: probably, it seems, it appears. These codes are embryonic, they are new, they are just in the drafting stages, and as this print out brings into focus --very severe safe guards are built into these codes. They protect each and every constitutional right of non-Indian people. The jury system is being used throughout all of the reservations. On several western reservations the jury system is now being modified and whites are now allowed to serve on the jury. I just wish that Mr. Freeman and others would get their facts straight and read the codes -- not as was done in the McCarthy Era but read them totally and don't take things out of context. These are inflammatory, scare tactics, you have been practicing these tactics for the last several years and it's not fair. I want you to read this statement, Mr. Freeman, to do a little bit of study on it and look at the cases.

Mr. Jim Conan
Director of the Billings Area Office, BIA

It seems to me that the decisions the legislature has to make are whether they are truly interested in finding some sort of solution to the various complex and serious problems that we know exist, or whether they're simply looking for a popular position to take. We understand that there have been efforts in the past, and we don't begin to suggest that this is going to be something easy. We feel that passage of this resolution can

only serve to polarize these two communities.

One comment was made earlier, that the proposed resolution does not in any way change the present situation--it simply protects the present situation. That's just not the case. Passage of the legislation that is proposed would take away many rights that Indian people now have and which have been sustained by court decisions going all the way back to Chief Justice Marshall. It will take away the right the tribes have to protect their lands against various kinds of encroachments that they now have the power to prevent. It also would take away something reaffirmed only last week by the Attorney General--under some situations where an offense was committed against an Indian, or his property, the jurisdiction was not with the state of Montana, but with the federal government. I can go on and indicate other ways but I think this points up the misunderstanding. There has been a tremendous over-simplification of the problem in an effort to say all we have to do is pass a resolution like this and solve it. And I can only endorse what the leaders have said, that there is only one way to solve this, start talking at the local level, and trying to work this out. Then, after such discussion has taken place, if it appears that some kind of legislation is necessary, then pass legislation, not now.

Bear Don't Walk

Thank you, Jim. There was also a comment made in regards to taxation without representation. I would remind you in regards to who got blamed for dumping the tea in the Boston Harbor.

Ray Spang

Council Member for the Northern Cheyenne Tribe

Now we have about a half a million acres down there on the reservation, and the tribe owns everything except about a thousand acres. The population down there is probably about 3500 Cheyennes and maybe 300 non-Indians. Now, if you pass the resolution and Congress does enact legislation, and 3 and 4 fire up and 14 and 15 fire up down there, you're going to get run over. And that is our stand. We're concerned with that. We're outnumbered. And we would like to keep control now. As it stands now, we do have jurisdiction over non-Indians.

I would like to read part of our resolution here - see attachment #5.

"Whereas SJR 35, is inaccurate in its entirety, and was adopted and approved by the 45th legislature, with that body apparently doing little or no research of the facts as they now exist and Whereas HJR 35 seeks to diminish tribal and federal control over reservation affairs without the consent of the Indian people affected and Whereas it appears that the 45th legislature of Montana is on a collision course with the Indian tribes of this state in their continued effort to subvert the unique and well established relationship we have with the US government and its federally

recognized Indian Tribes; now, Therefore let it be resolved that the Northern Cheyenne tribes goes on record as opposing SJR 35, or any other derogatory action of the 45th legislature may take that would be detrimental to the Northern Cheyenne tribes as well as the other Indian tribes in the State of Montana;...."

Way back in the 1400's when the first boat hit, Pilgrims starving and pretty sick and tired, and when they hit the coast they asked the Indians for a little piece of land. The chairman of the Senate committee on the nineteenth of February mentioned a similar statement. He said this is just a glorified letter to Congress. It's the same thing. It's just a glorified piece of letter.

Bill Morigeau
Attachment #6, page 4

Mr. Chairman, my name is Bill Morigeau, I'm from the Flathead Reservation in Western Montana. I would like to just state that in 1963, the Flathead tribe under HB 55 and Tribal Ordinance 36-A, turned over to the state, jurisdiction in nine areas. Now two important things I would like to mention is that we did turn over the 18 hundred miles of roads, streets and alleys, country roads. Also, we have assumed the responsibility under all ordinances passed by cities and corporate towns. But, we did have some problems when the task force was in operation; our tribe stuck in there as long as it could. We have the mini task force on the reservation that kept working as long as we could. We finally called the last meeting and it really wasn't getting anywhere because people on the state's side were county commissioners or maybe county attorneys and they were trying to get the tribe to take some of the jurisdiction back, and that's one of the main reasons they didn't get along--and I just want you to remember that.

Harold Gray

My name is Harold Gray, I'm an enrolled member of the Blackfeet Tribe, I'm also working at the Rocky Boy School on the Chippawa Cree Indian Reservaiton. As Mr. Spang mentioned to you previously, in the case of the Chippawa Indian reservation there is no white owned land, so why would you want to give the state jurisdiction over whites who don't even live on the reservation? It seems to me that this kind of a comic opera. The reason I say that is it seems to me every time he sees an Indian on the horizon, he wants to circle the wagons. The fact of the matter is that this whole problem of Indian-white jurisdiction would not have come about if, as in the case on the Flathead reservation, such men as C.P. Higgins of Missoula, or Senator Joseph Dixon did not have to be subject to the pressure of such groups as MOD, for the white homestead rights on an Indian reservation. If you like to talk to people at the University of Montana, you will find that it's the white people who wanted to be on the reservation. Why? Because of the land. The original resolution of this group mentions white interest in land--We notice the absence of any

mention of white owned land. Well does that mean white people who lease tribal land? None of these men mention to you that a lot of them are ranchers and farmers on the reservation, leasing tribal land, on which they probably pay no federal taxes because it is land held in trust. Would they kindly divulge their economic interest? You may find that that's what they are afraid of. I would like to move an amendment to this whole bill or resolution, simply saying that the Senate and House hereby resolves that until such time as Indians and whites on Montana Indian reservations show that they have sat down and mutually attempted to decide upon issues of mutual concern and interest, that this legislature will not act. Thank you.

Phillip Beaumogh

Mr. Chairman, members of the committee, I'm Phillip Beaumogh, Sr., a member of the Crow tribe, working as a director in the Planning Office of the Crow Tribe.

Bear Don't Walk

(Given one minute to conclude) As you can see there are diverse opinions, not all Indians have the same style. I would like to say that I am willing to sit down and talk and I would like to ask whether or not you are. Thank you.

Phillip Beaumogh

Since the Crow Tribe seems to be the tribe that is really concerned over this thing I am here expressing the wishes of the Crow Tribe according to Resolution 64-2. I am logging a copy of that resolution and presenting it to this committee and account of that I hope we are open to any comments. Thank you very much.

Brand

Now we will allow 10 minutes for rebuttal by Senator Graham in any way he wishes to use this. After that, we will open it up for questions from the committee members to the people that have testified--and I would request that they stay around to be recognized.

Senator Graham

Thank you, Mr. Chairman. I think we have had an extremely good hearing and I am happy to see the Indians here. We have gained some of their thoughts along this line. While I don't agree with this law and order code, I think it is going to be a tough thing for them to live with, they have never tried it yet. They will get tired of living with it, and I know it is foreign to our way and our judicial system.

I might say today that there is not one single office, including the President of the United States, that any Indian past the age of 21 years or 18 years cannot hold. This includes School Boards,

Sheriff or any other position.

I served for many years in this body up here with one of the very finest Indians from the Blackfoot Reservation, a member of the Blackfoot Tribe, Senator Percy DeWolf, who retired from the Senate but I served many years with him. I think that if the Indians ask Senator DeWolf, who observed my voting record all these years, he will tell them I did a fine job for the Indians.

But I will have to disagree with the Indians when I think they are getting far out and trying to take away my constitutional rights and proposing to put me under a jurisdiction such as set forth in this code. This is a deep concern of many people that are here and if the committee will look at the crowd that is here, some that I know have traveled many, many miles to be here because they think this is a highly important matter.

Now myself nor any other person within that reservation that I know of, has ever been approached, ever been asked what I thought about it or if I agreed with it at all. I never had any right to vote on it and I submit to you that any law that we pass and any person that we send to the Congress or we send to the Senate or as a Representative, can be voted on by the Indians and this is good. We are in the United States of America and it should be thataway. We ask them for input as to our way of life and our judicial system because they have the right to vote for it. We have no right to vote down there and so be it as long as they are keeping it within their tribes within their jurisdiction. As long as their own people are happy with this, but when it goes beyond that, we go by the process that says we do have the right under the constitution to decide these things. I have no quarrel if they want to keep their jurisdiction down there among themselves, that is fine. If we go up on that Mountain (their sacred land) and violate things that they have posted, I would expect to be arrested by the Tribal Police. Some white people have and have been fined and that is the way it should be. But Lord, don't put something like this over on us guys down there. I have had lawyers research it and of course these are the things we just simply don't want to live under and this is why we have proposed this thing. I don't know if this code has been enacted, I just found out tonight that the Cheyenne Reservation has enacted it, I didn't know this and so be it if the people are happy with that. But for Lord's sake, you have got Interstate 90 running through the Crow Reservation, through Hardin, the road you might take from here to Denver or Sheridan, Wyoming and would come under this jurisdiction the minute you cross this line. And then you are subject to these laws, rules and regulations that you never had any say or hand in making. Now fellows, this is wrong. By and man's language, this is wrong.

I am sorry they didn't come up with a better Crow Law and Order Code, something that was more constitutional to our way of life. I told the Indians many times, "Look, we are here on this earth

within these boundaries of the United States and we are both here to stay, and let's try to get along with each other." I think I have lived all these years and have done a lot of things for the Indians but when I see something that is going to injure them and going to injure my constituents then I am going to take a stand on it if necessary and that is exactly what I did when I introduced Senate Joint Resolution 35. I hope the committee gives serious consideration and passes it. It is a must.

I have some brief overviews and some of the comments that have been made by the proponents. First of all, certainly I think that some sort of dialogue with the tribal members and non-tribal members is urgently needed to avoid the polarization that is occurring on the reservations. However, with respect to the agreement we are talking about, I would refer you to the case of Kennerly vs. District Court. In that case the Tribal Council had passed an ordinance permitting the state of Montana to assume civil and criminal jurisdiction over members on the reservation.

The U.S. Supreme Court, when this particular ordinance was challenged, came back and said no, you cannot grant the jurisdiction over an Indian to the State Courts. The only way that can be done is through the authorization of Congress and through the authorization of the State Legislature of Montana. I would also further like to comment briefly with respect to the precedent cases of the Tribal Councils and tribal government taking jurisdiction over non-members. The only case that I know of--and I challenge the opponents to refute this--are of the appellate nature and I am not speaking of district courts in Helena but with respect to the appellate type courts. The Oliphant Case has been referred to and that case was very unique. This happened to involve a man by the name of Oliphant who went up on the tribal reservation, went to one of their sacred ceremonies, got into a fight--he was extremely drunk--and they threw him in jail. The only other case that I know of in the appellate area is the case way back in 1883, Parte Crow Dog. In that case, the United States Supreme Court stated that the tribal government did not have jurisdiction over non-members living within the reservation.

As I see it, agreements can be made, they can be reached between the non-members and the tribal government; but Congress is the only one that can pass laws that are effective to give force to these agreements. The tribes, of course, always asserts in a lot of cases that the state of Montana waived all jurisdiction over the tribal members in the land within Indian reservations. This is one of the basic statutations?? However, in every reservation that was opened up Congress gave the state of Montana, when we came into the union in 1889, every 16th and 36th section within each township of the state, with the exception of the reservations; and they provided that the lands within these reservations were indeed distinguished.

THIS IS ALL THE TIME I CAN GIVE YOU. I AM SORRY. Now we will

open this up for members to ask questions of the individuals that have testified and I would appreciate it if they will be recognized when one of the members asks them a question.

Representative Mular:

(Question directed to Irvin) You alluded to some esoteric group; and a witness by the name of John Bowman, stated that of the Crow people, nine out of ten are not in favor of the Crow code. He said something about being frightened at reprisal, and I'm wondering if you could tell me what you meant when you made this statement of an esoteric group. Could you qualify that statement?

Irvin: Are you attempting to draw a conclusion between what Mr. Bowman has said in regards to an esoteric group that he may have taken a poll from, sir?

Mular: I would want you to qualify your statement. Could you tell me what you meant? He spoke of reprisal, and the word esoteric. The word reprisal kind of stuck in my mind, and I'm trying to qualify something.

Irvin: Well, certainly I've heard of Harris Poll, and I've also heard of the Gallop Poll, but I have never heard of Bowman Poll, so, pardon me. Since the law and order code was enacted by the Crow Tribal Council, which is composed of all members of the tribe (females who are 18 years and older, and males who are 21), I would have to assume or presume that a tribal council could see whether the tribe is in favor of it. Perhaps there may be some retreat from being in favor of it, but that would again have to be in tribal council action.

Mular: Did you imply then that the esoteric group could be tribal council or tribal leaders?

Irvin: Certainly not, I do not refer to the Crow Tribal Council as being esoteric in any way, sir.

Mular: One further question. Or another question if I may. Mr. Chairman, the question I have, I don't know if you have looked at the code or not, but something crosses my mind, about full-faith credit for the white, on judgments that they can be rendered by the Crow people. I'm wondering if you can tell me whether this is in violation of the full-faith in-credit division of the U.S. Constitution.

Answer: The full-faith in-credit clause is also what they call a comity--whereby a foreign jurisdiction recognizes other foreign jurisdictions. That does not apply to states vs. Indian jurisdictions but it has been done. It is not that unusual, it's not made applicable by the U.S. Constitution; but it has been done by the state of New Mexico--for example in regards to enforcing whatever action may be in that regard, judgments, execution of judgments, enforcement of child support, or other domestic relation areas.

Question: Let's presume that the final draft is adopted of the Crows, and that a marriage was dissolved in the white man's court, then the parties to the dissolution reconcile their differences to the extent of co-habiting (no solemn vows taken) on the reservation, then, there is another dispute between them. Let's presume then, that one of the parties tries to enforce the judgment made in a Montana court, in the tribal court. Would the Crow tribal court honor the judgment made in the state of Montana?

Answer: If in fact they use the legal principle of comity, they of course would, but I don't find comity in the code, and we do not have full faith in credit. I would also make the argument that perhaps the reverse is true whereby the state of Montana does not recognize judgments handed down by a tribal court. At least I do not know that they have in the state of Montana as of yet.

Mular: Question: The posting of the entries of the reservation-- is that a necessity of those Roman Columns that you speak of?

Bear Don't Walk: Answer: I would be opposed, but you do have to put people on notice somehow. Somehow people would have to be put on notice.

Thank you.

Speaker Driscoll: Would like to ask a series of questions. It seems to me that Senate Joint Resolution 35 tries to address 3 problems. The first one is the question of jurisdiction. The second is the question of better enforcement from the federal level, and the third one is the question of whether or not you can get together. Now I would like to address the first question first. I think, Mr. Canan, in looking through the Montana Enab. Act of February 22, 1889 - 25 Stat. 676 (see Attachment #7), there is a qualifier in there subject to the disposition of the United States, and I notice that in our first constitution we adopted that language, and then in our latest constitution, in 1972 we adopted that language by saying all provisions of the enabling act, all provisions of the old constitution, including any agreement, and declaration of all land owned or held by any Indian or Indian tribes will remain under the absolute jurisdiction and control of Congress of the United States in full force and effect until revoked by consent of the United States and the people of Montana. Now my question is, does that language which we apparently go by now, apply to non-Indians who live on the reservations?

Canan: Answer: I think you can get lots of interpretations of that language, but generally, it's been interpreted to mean that this is pretty much as it says, that the state of Montana does not have jurisdiction over Indian lands, their trust lands, and the state cannot exert its power over them. Whether this would apply to non-Indian lands, within the boundaries is really one of the subjects of discussion. And I think lawyers would disagree on this point. We happen to feel that there is good reason

to think tribes do have jurisdiction to prevent things from happening on those lands that would infringe upon their situation, and I want to quickly mention one case that Mr. Ingraham may not be aware of, the recent Supreme Court Case, U.S. vs. Mazurie, refer to Attachment #3, which held that a non-Indian could not set up a bar on his land on the reservation without a tribal license. I think it clearly establishes the very principle that we're talking about. Thank you very much.

Driscoll: Mr. Ingraham, if you could comment just for a second. You mentioned the Kennerly case, and I notice that that held that the Blackfeet couldn't give jurisdiction to the state over non-Indians unless the state said it was O.K. Is that essentially what that case said?

Ingraham: Unless the state did adopt the provision, public law 280 would provide for the taking of jurisdiction by the state over reservations, yes.

Driscoll: All right, according to what I've dug up here, public law 280 was only in effect for a short time; so in other words, the Flatheads now have given some jurisdiction to the state, was public law 280 repealed by the Civil Rights Act of 1968?

Ingraham: NO. No. That public law 280 was passed in 1953, it remained in effect until 1968. It did not require the consent of the tribe for the maintenance of jurisdiction or the taking of jurisdiction by the state over the tribal members. The only change that has been made is that now the tribal individuals must, by referendum, vote approval of giving jurisdiction to the state--but the provision for taking jurisdiction by the state is still in existence and with respect to your quotation of the enabling act, Mr. Driscoll, there is some sections, I believe, that, have you got the original enabling act?

Driscoll: I don't have the whole act, I have the pertinent quotation.

Ingraham: The section 4. that you're talking about, states that they forever disclaim and forever waive their rights in these lands until such time as the federal titles thereto have been extinguished. This is the very essence of what we're talking about. (We will try to extinguish title at this time). Well, the land that we're talking about, the individually owned lands, are lands under which the federal title has been extinguished, and I think that if you will read further in that particular region, you will find that.

Driscoll: The titles that, say Senator Graham has, if he owns land on the Crow reservation--it seems to me that if this Kennerly Case said in effect that even though Senator Graham owned some land on the Crow reservation, the Crow still do have jurisdiction over Senator Graham, until the state of Montana says that it has jurisdiction. Is that correct?

Ingraham: Not at all, the Kennerly case says that the state

cannot maintain jurisdiction over an Indian tribal member, but it has nothing to do with non-Indians.

Driscoll: Has that been decided anywhere in court?

Ingraham: The other case that we're talking about is a Mazurie case, this involved whether or not the person on non-trust land had to have a license to sell Indian liquor in an Indian community but on his own private property; and the Supreme Court said this man must receive a tribal government license before he can sell to this tribal community in the reservation.

Driscoll: Well then, the thing that is in my mind, taking what you just said with Mr. Conan said earlier, it seems clear to me, unless somebody can change my mind, that if the state of Montana is to attempt to assert jurisdiction over the people who are not Indian, on Indian land, that we clearly have the power to do that right now.

Ingraham: Yes.

Driscoll: We have the power to do that right now, because of public law 280, and because of the civil rights act which apparently extended that law, these allow us to do it if we decide to do it, and if the tribes by referendum agree to it. But we have to do that not by passing a resolution, for Congress, which is really just a letter of acceptance, a letter that means a lot to a lot of people, we would do this by amending our constitution. Our 1972 constitution which says that right now under our constitution, we have disclaimed any responsibility for Indian jurisdiction and the jurisdiction over the Indian lands. Wouldn't the proper course of action be to amend the Montana constitution?

Ingraham: I believe, Mr. Driscoll, that you misinterpreted the import or the meaning or the application of the public law 280. Public law 280 does not go to the assumption of jurisdiction over non-members within reservations. It goes only to the assumption of jurisdiction by the state over tribal members. It has nothing to do with the jurisdiction over non-members.

Driscoll: I see your worry, but I still remain to be convinced in the absence of any court case.

Grey: Well, my name is Harold Gray, there was a Supreme Court case called Brian vs. _____, county, Minnesota, passed by the U.S. Supreme Court in June of 1976. Montana and similar states like Minnesota have all argued the business of public law 280, giving the states jurisdiction over Indian reservations. Now, the Brian case says that the states do not have jurisdiction over Indians, or Indian lands on reservations.

The U.S. Supreme Court said that the only purpose in passing public law 280 was to give Indians in court cases, by or against the

Indians, a forum in a state court, because there was a lack of tribal court, and tribal institutions to handle these matters. That was the only reason.

Driscoll: Sir: I'm really begging the aduItness of this committee and I have a couple of areas I would like to touch on, and I appreciate your answer.

This question of better enforcement, somebody mentioned that if we wanted to have better enforcement by the federal people, that we could have a separate resolution. Would you please comment on that. Is there a problem that both the Indians and the whites feel there should be better enforcement by the federal officials, something we can all agree on?

Caleb Shields: My name is Shields, tribal council member of the Fort Peck Tribes. I would ask to have greater law enforcement on reservations. As you are aware, U.S. Attorney Olson, has in this morning's paper notified the twelve magistrates to start prosecuting misdemeanor crimes of non-Indians against Indians. Now this could have been done a long time ago. Why did it take a Senate SJR 35 amendment to put the U.S. Attorney into action? This could have been done a long time ago. Meanwhile, the Fort Peck Tribes have been the last year or so, been in contact with Judge Madden, and Senator Mansfield--we have documentation of his support of magistrates on reservations--and we also have a letter dated just last month from Senator Lee Metcalf--his office is drafting legislation to Congress to provide magistrates for the reservation in Montana.

Driscoll: Sir, so you would agree with that portion of the resolution that would have this legislature ask the federal congress to ensure that they beef up their federal enforcement.

Shields: In a separate resolution.

Driscoll: Well, say this committee decided to strike everything except that, that portion would be agreeable to you.

Shields: To support the legislation from Senator Metcalf's office, yes.

Driscoll: It would be good for the Indians as well as the non-Indians on the reservations apparently.

Shields: Is there any disagreement with that?

Driscoll: Senator?

Graham: Certainly it is agreeable with me, I was the author of the bill, and it was amended in the Senate and I very willingly bought that part of it. Put it in there.

Driscoll: This is in my mind the most important area that came up in both sides. And Mr. Earl Old Person, if you would please

come up to the mike.

Sir, I was looking through the original articles of the Inter-tribal Policy Board, and apparently, Governor Bonner began that board back in 1951 and 1953--and it was a creature of this legislature which I found very interesting. My questions to you sir, is No. 1, are you a member of that policy board?

Old Person: Yes, I think all tribal leaders are a member of Intertribal Policy Boards.

Driscoll: They do have designated representatives. How is it financed? It must have been financed, at first by this legislature, how is it financed now?

Old Person: Well, right now, I think it's usually financed, at one time I believe maybe Mr. Cannon might correct me, that it was financed by the (kind of a joint deal) BIA? VIA?

Driscoll: Is that organization pretty much respected amongst the Indian tribes in Montana, is it one of the organizations that seems to have political clout amongst Indians.

Old Person: We recognize that this is the leading organization for the tribes in the state of Montana.

Driscoll: Thank you. May I speak to Mr. Urban Bear Don't Walk.

Bear Don't Walk: I think that we also have problems within this state coordinator often times, because we felt this was the source that was needed to act as a mediator between the tribes--and often times we have problems--to have this established and continued --I think this is one source that is very much needed.

Driscoll: Thank you, sir. Mr. Bear Don't Walk, you apparently are the attorney for the Policy Council, as well as a former member of the task force that fell apart. Now, if we were to work up some kind of mechanism from this legislature that would bring the non-Indians together with say, the Policy Council which apparently is a vital organization, alive and well, would there be something different about that from the task force that fell apart?

Bear Don't Walk: Well I think, first of all, when I went to work for the task force I felt that there had been an agreement between both the Indian people and the non-Indian people, and evidently the ground work had really not been done, so if in fact, some good basic foundations are built, I think it would stand a good possibility of succeeding.

Driscoll: One other thing sir, how is the Policy Council financed right now? Does it have any money? I mean, could you travel to meetings or would it need an appropriation from the legislature? If it were on an equal basis?

Bear Don't Walk: The Montana Intertribal Policy Board has never really been financed to any degree--the tribes individually support their own membership to the Intertribal Policy Board.

Driscoll: Senator Graham, the final section, lines 15 through 22 of page 3, where it says "BE IT FURTHER RESOLVED, that the proper representatives of Indians and non-Indians on or adjacent to each reservation shall meet together and work out the mutual problems of jurisdiction on each reservation...etc." What did you have in mind, sir, when you had that when that amended in.

Graham: I think that my people, again, in some future date, if the Indians are willing to come in and set down and talk over all of the questions, not eliminating some that are pertinent to us, --and I would hope that we would abide by the same rules--make an honest and sincere effort to achieve something like this--it has never been my policy to close the door and say the negotiations are all over. I think that it goes far beyond the jurisdiction thing. The jurisdiction thing is upon us today, but there are so many other things that should be talked over and discussed. I want to leave the door open so that we in good faith, representing the people, from my district, could come again to put together something to come to some agreement.

Thank you sir.

Caleb Shields: Chairman, there was a question asked a minute ago about the possibility of a task force. There were many Indian people, some Indian tribes that were opposed to the structure of the last task force, put together by the Governor's Office through the Senators. I think in the same line, we're talking about the Intertribal Policy Board being the voice of Indian people in Montana. It is my understanding that the Governor's Task Force did not come to the Intertribal Policy Board. I don't know how much money we spent on that task force, I don't think that it was very much. \$30,000 out of a \$130,000. In 1972, the state of South Dakota put together the Governor's Task Force, the same as Montana did. They had a two year study in 1974, two years later, they completed it. And there were a lot of good things that came out of the South Dakota Task Force. One of the reasons they were successful, was the structure such that every tribal chairman for the South Dakota reservations was on it. So it had the support of all the tribes to start out with. I would just like to put that on the record that if there is a possibility of a future task force that those comments be a recommendation.

Brand: What people were asked to be on the task force here in Montana?

Shields: There was one tribal chairman. My tribal chairman from Fort Peck, Norman Hallow.

Brand: Helen Peterson, I don't know all the members, I wasn't on it. I saw the names when it was first structured, but I would

like to ask you a further question regarding this task force. Don't you think it ought to be diversified, instead of having one portion dictate the policy of that task force? Don't you think a task force as diversified would have more input?

Shields: Right, you can be diversified in other areas, Indian to non-Indian, but at least include all the tribal chairmen, or at least have the support of the Intertribal Board.

Brand: Would there be other factions that would not support the task force, would we have problems then?

Shields: There are a lot of problems on one reservation that do not concern another tribe. But I like to say it again, it should have the support of the Montana Intertribal Policy Board.

Brand: Could the Intertribal Policy Board, would they be an ex officio member of this task force, would that take care of the task force problem?

Shields: I would think, this is my own personal opinion, that the individual tribal chairman should be the member, and if he so desires, he can select an alternate, in his absence, because I do know that many tribal chairmen are very busy in today's world, but that authorization should first come from the tribal chairman. I would look on the task force at least seven tribal chairmen, and possibly an equal number of non-Indians.

Yes sir, you wanted to talk.

Big Spring: First I want to state that I'm self-employed, I've never been on welfare, and I work for no one. About three years ago, I bought some land from the Great Northern which was deeded back in 1920. I think it was 640 acres. So I took part of that and I started subdividing it. I went to the Tribal Council, with my proposal, they OKed it, all nine of them. Nine months later, I got a nasty letter back, calling me a fraud, they inserted certain words in this proposal--they said they were sending a resolution; and they also wrote to the state health up here in Helena, saying that I did not have the water rights on my land that the Blackfeet Tribal Council had it, on down under and over. So they recommend I did not get the permit to go ahead with this subdivision. So that's when we got into a battle, and so then I got this letter back from Frizell, Washington D.C., telling me that tribal council did not have jurisdiction over non-Indian or deeded land. So I have about 55 hundred acres that I have worked a lifetime for and I'm 58 years old and I do not want anybody to tell me what to do with it, and that's law and order, why do we have to have all these resolutions, all these bills, why don't we go under one system, this county, state and federal, but I borrow from the banks and from the insurance company and the ruling I came out some stupid Senator, ruled that an Indian go ahead and pay your bills, but work the hardship on every

Indian on every reservation and as far as I'm concerned, Mr. Jim Cannon, is here in conflict of interest, he does not represent me, just the nine tribal chairmen, nor Tribal Council of the Blackfeet and other council members of those seven tribes. And so there again, I still say I support Resolution 35.

MEETING ADJOURNED - 10:15 p.m.

Joe Brand, Chairman

Anita C. Sierke
Anita C. Sierke, Secretary