

MINUTES OF THE MEETING OF THE JUDICIARY COMMITTEE
February 2, 1981

The House Judiciary Committee was called to order by Chairman Kerry Keyser at 8:00 a.m. in Room 437 of the Capitol. All members were present except Rep. Seifert, Rep. Iverson, and Rep. Daily, who were excused. (Rep. Iverson and Rep. Daily were both present during executive action).

HOUSE BILL 463 REP. WALLIN, chief sponsor, stated this is a bill to allow security guards employed by the Montana University System who meet minimum training standards to carry firearms under certain circumstances. This bill is being introduced on behalf of the Board of Regents. Security guards of the schools can carry firearms only from sunset to sunrise, or whenever guarding valuables or taking money to the bank or if there is a threat of bodily harm. There is a safety measure built into the bill -- only those who have completed a specified course can become a guard.

JOE SICOTTE, Montana University System, supports the bill. In many instances the guards need additional safety. EXHIBIT 1.

MIKE KAELEBE, Montana State University, gave out testimony from Amber Webb, President of the Associated Students of Montana State University. EXHIBIT 2. KAELEBE also gave testimony from GEORGE R. TATE, Police Department of Bozeman. EXHIBIT 3.

KAELEBE stated it is their priority to (1) protect the health and welfare of the people on campus and, (2) uniformed officers; the uniform, badge, equipment and firearms, serve as a deterrent. KAELEBE stated there are not a lot of problems but there are situations that do arise. The lowest priority that they have is the apprehension of any offender. They act most responsible when they have the firearms.

MERVIN G. GUNDERSON, University Police Officer at Montana State University, gave written testimony. EXHIBIT 4.

J. A. PARKER, University of Montana, was in support of this bill. PARKER's staff is composed of nine officers. These are not students, they are specially trained people. The total years of law enforcement combined of these people equals 123 years. PARKER gave written testimony. EXHIBIT 5.

KENNETH WALLETT, University of Montana, stated if the size of the campus was compared to a city, it would be the size of Kalispell or Anaconda. Those cities have larger police forces than the university. On all police departments the officers are armed. WALLETT stated there is an increase of domestic disturbances. On an annual basis more law enforcement officers are lost to domestic disturbances.

JIM MORABEE, Associated Students of Montana State University, supports this bill because of what it will hope to solve.

TERRY WATTERS, representing Associated Students of Montana Tech, NMC, EMC and WMC agrees with this bill.

There were no further proponents.

There were no opponents.

In closing, REP. WALLIN felt everything has been stated.

REP. HANNAH asked if the sponsor opposed to allowing officers to carry guns at all times. REP. WALLIN stated no.

REP. HUENNEKENS asked what area the officers have authority in. It was answered they have authority within one mile around the campuses.

REP. EUDAILY questioned if a statement of intent should be included. REP. WALLIN felt a statement of intent might be in order.

REP. ANDERSON asked if some of the security guards are students. WATTERS replied only EMC has a permanent security force. REP. ANDERSON questioned WATTERS interest in the bill. WATTERS replied EMC students do support the bill. There have been situations where this is added protection.

REP. KEYSER asked if this bill were adopted would this apply to all the campuses. SICOTTE replied each campus has a current policy. The board would look at each policy and combine them to make a new policy which they would suggest the universities adopt. The current policy is any individual who is hired complete a course of police training. If an officer fails to qualify he is taken off the force until he regualifies. The course is 6 weeks, then 2 weeks and then an additional 2 weeks. REP. MATSKO stated it is the same basic course that all police and sheriff officers go through.

That ended the discussion on House Bill 463.

HOUSE BILL 476 REP. WALLIN stated this is a bill to require mandatory restitution of an amount equal to three times the value of the property stolen from those persons convicted of theft. Presently if a person who commits a crime, he is picked up and fined \$50 and his hand is slapped. If he had to pay three times the amount of the theft along with returning the merchandise, it will help the victim.

There were no proponents.

There were no opponents.

REP. WALLIN closed the bill.

HOUSE BILL 402 REP. KEEDY stated this bill increases the witness's fees to testify. In the court of record it would raise witness fees from \$10.00 to \$25.00, witnesses in courts not of record in civil actions and proceedings would be raised from \$3.00 to \$15.00. Expert witnesses would receive what the court determines to be reasonable and proper.

TOM HONZEL, County Attorneys, stated the fees presently given to pay witnesses were set up many years ago. They are not reasonable today. It is the duty of our citizens to be witnesses. When a person is subpoenaed and they realize they are going to get only \$3.00 a day, it is not good. It costs a housewife more than \$3.00 to have someone babysit for the day. If a person who works has to take off time from work to testify, he does not receive very much and loses a day's pay. Expert witnesses cannot be expected to do outside work for the hearing and receive a small amount for their work.

There were no further proponents.

There were no opponents.

REP. KEEDY closed the bill.

REP. HUENNEKENS questioned why the difference between \$15.00 and \$25.00 for different courts. REP. KEEDY replied the commitment of time is less.

REP. EUDAILY questioned a fiscal impact. REP. KEEDY replied several cases would be tested as cost against the adverse party. When a witness is called on behalf of the state or county the fee would come out of the District Court Fund.

REP. HANNAH questioned if expert witnesses would be people in professional fields. REP. KEEDY said yes. It is difficult to have an expert witness come out of his office because of the fee he will receive.

REP. HANNAH asked what happens to the court if the fee schedule is eliminated. Couldn't the court decide the fee for all of the witnesses. REP. KEEDY felt that would be bad practice for the court to decide how much to pay someone based on his/her testimony.

REP. MATSKO asked if this would affect jury fees. REP. KEEDY said no. REP. YARDLEY stated it is comparative to jury's fees.

There was no further discussion on House Bill 402.

HOUSE BILL 403 REP. KEEDY stated there was a problem in the title and offered an amendment to clarify what is meant. On page 2, lines 12, 13 and 14, provides the issue "fitness to proceed". Whether that means he could do it or his counsel suggests he does it, should be a decision that the defendant alone must make.

On page 1 to clear up confusion, when there is reason to expect a defect, the court shall have a professional examination given. If the defendant files a written notice then the examination takes place. The main reason for allowing the defendant only to proceed is the designation to raise the issue. In Jackson v. Indiana there was a violation of a criminal statute and those that are handled civilly. The courts decided that the defendant may be released if more stringent under the criminal code.

TOM HONZEL, County Attorneys, supports this bill, particularly the second change on page 3 dealing with the fitness to proceed. Once the court makes the determination they give him to the Department of Institutions. It is charged back to the county. Some cases are quite high. All these crimes are prosecuted in the name of the state. If the person is found fit to proceed then a guilty verdict is imposed, the Department of Institutions would still be in charge of the person. It is not the county's problem to pay the fee if he is guilty.

There were no other proponents.

CURT CHISHOLM, Department of Institutions, stated the department does not take issue with the bill. There is an obligation that the Department would be responsible for picking up the tab.

N. A. ROTERING, Department of Institutions, does not have any objections to sections 1 and 2 of the bill. ROTERING stated they are sympathetic with the counties but the department will run into extreme financial problems if they are forced to pick up the tab. Some of the counties don't pay. If there were enacted, the Department would even have to pick up the transportation costs. ROTERING felt section 3 should be amended.

There were no further opponents.

In closing REP. KEEDY felt the state was in a much better situation to pick up the tab than the counties were.

REP. YARDLEY questioned if the counties were paying the fee if they stay over 60 days. ROTERING replied the court has only the order to go up to 60 days.

HOUSE BILL 405 REP. KEEDY stated this bill would allow courts to issue restraining orders in alleged spousal abuse. A study of needs of battered spouses and ways to deal with it was conducted. The social services presently collects a fee from marriage licenses to operate. This would try to increase public awareness of services provided including temporary shelter and help.

The law should be changed to give spousal abuse the ability to obtain restraining orders without filing for a divorce or separation. Spousal abuse is usually connected to child abuse. Spousal abuse has a damaging influence on the children. Many people do not want to file for separation or divorce because they feel the marriage is salvageable; at times the restraining order is necessary.

JONAS ROSENTHAL, Task Force on Domestic Violence, stated there was 3,116 reports of domestic violence from October of 1979 to October of 1980. He feels there were many more that were not reported. The problem is that lawyers tell the victim to file for a divorce. Sometimes the marriage is young and can be saved. Sometimes their religion does not allow divorce. This bill tries to keep families together. ROSENTHAL stated if the committee feels they should not become involved in the family, they should realize everytime a police officer has to go to a domestic disturbance the government is involved.

TOM HONZEL, County Attorneys, stated they don't really have a position on this bill. Often times the victim does go to a county attorney to do something. Many times they want a peace bond or restraining order. The county attorneys do not have the authority to give out peace bonds. A restraining order is a civil matter which county attorneys cannot be involved with. HONZEL stated the county attorney has to advise the person to go to a private practice attorney. A restraining order tries to prevent disruption until the court can hear the case.

DONNA WORTH stated she was a battered wife. Getting a restraining order was not a problem because she filed for divorce. WORTH stated the instances of three women who were battered wives.

CARYL BORCHERS, Chairman of the State Task Force on Spousal Abuse, gave written testimony. EXHIBIT 6.

MIKE MELOY, Montana Trial Lawyers Association, was in favor of this bill.

There were no opponents.

REP. SHELDEN was curious about the time involved. If a battered wife does not receive a restraining order the next time it does not help? MELOY stated if the victim is not willing to obtain

a restraining order she does not have protection.

HOUSE BILL 440 REP. JENSEN, sponsor, stated this bill is to provide a graduated system of fines for violation of the conservation speed limit. A \$5 penalty would be placed on speeds greater than the speed limit but less than or equal to five miles per hour in excess of the speed limit. A \$25 fee in excess of 60 mph up to 70 mph and a \$50 fee for speeds greater than 70 mph. This would encourage compliance with the speed limit and cover the costs of processing.

REP. JENSEN stated there is an error in the draft, on page 2 line 1 following purpose "of this section only" should be stricken and inserting subsection 1A only of this section. On page 2, lines 2 and 3 following "shall be" reinstate the stricken words. The \$4 should be stricken.

WALTER MILLER, Montana Highway Patrol, supports this bill. Compliance with the 55 mph speed limit will reduce the accidents. It is difficult to get compliance with this law. Five dollars is a joke to most people. MILLER stated they would support anything that would encourage compliance including a more expensive fee. MILLER gave a proposed amendment. EXHIBIT 7.

ALBERT GOKE, Highway Safety of DCA, handed out a graph. EXHIBIT 8. GOKE stated he believes the speed limits saves lives. He feels it will be a deterrent if the fines are increased.

LARRY MAJERUS, Department of Justice, supports this bill.

BEN HAVDAHL, Montana Motor Carriers, supports this legislation. HAVDAHL stated there is alot of truck traffic driving through Montana and there is a problem with the truck drivers driving in excess of the speed limit. Not only should the safety portion be realized but the fuel that is wasted should be evaluated. HAVDAHL gave the committee a book entitled "How to Save Truck Fuel" by the Joint Industry-Government Voluntary Truck and Bus Fuel Economy Improvement Program. Statistics were read to the committee from the book. Jim Mandy was in support of the bill. There were no opponents.

REP. JENSEN closed the bill and gave EXHIBIT 9 for the proposed amendments.

REP. EUDAILY questioned if \$14.00 a day was the correct figure to process a ticket. MILLER replied he did not know the exact figure, but by writing a ticket, court proceedings, clerical work, it would average to be about \$14.00. REP. EUDAILY asked if this would be a deterrent. MILLER felt it would be.

HOUSE BILL 396 REP. ANDERSON stated this was a bill to adopt the revised uniform enforcement of foreign judgements act. REP. ANDERSON read his testimony from EXHIBIT 10.

There were no proponents.

JAMES C. NELSON, an attorney from Cut Bank representing himself, agrees there is a need of foreign judgments act. Generally it is a good piece of legislation. NELSON offered EXHIBIT 11 as an amendment. EXHIBIT 12 was also given by NELSON.

There were no other opponents.

In closing, REP. ANDERSON, stated he has no problems with the amendment. There is a problem with tribes. Each tribe on the reservations have their own court.

REP. YARDLEY asked if the tribal court was a court of record. NELSON stated not in our state court system. Tribal courts are not dealt with at all in our state laws, just like California or any other state is not. They have a supporting court system of their own.

EXECUTIVE SESSION

The House Judiciary Committee went into executive session at 10:30 a.m.

HOUSE BILL 402 REP. YARDLEY moved do pass.

REP. HANNAH stated this bill gave him problems. Can a witness turn a person down if he is asked to testify? REP. KEEDY stated he could be subpoenaed. REP. HANNAH felt only travel costs should be allowed and eliminate fees.

REP. HUENNEKENS stated why not pay minimum wage for hours spent. REP. YARDLEY stated that would be an administrative problem. A person may be called to testify at the hearing and never actually be called to testify on the stand. A clerk would probably have to be hired to keep track of the hours. REP. HUENNEKENS replied every businessman has to do that. When a witness appears for a hearing he checks in with the clerk of the court.

REP. EUDAILY asked if a witness has to stay for an entire proceeding. REP. KEYSER stated usually the witness can ask the judge if he can be excused.

REP. EUDAILY asked what a juror makes. REP. KEEDY felt it was \$10

a day. REP. ANDERSON asked REP. MATSKO if police officers were paid the fee. REP. MATSKO replied no.

REP. CURTISS inquired what a court would determine any other necessary expenses. REP. KEEDY stated documents or exhibits, transportation, copies of things, etc.

JIM LEAR read to the committee that jurors receive \$12 for jury duty and \$7.50 for inquests.

The motion of do pass passed with only REP. HANNAH voting against it.

HOUSE BILL 403 REP. KEEDY moved do pass.

REP. KEEDY moved to amend line 6 striking "capacity of mental disease or defect" and inserting "fitness to proceed". The amendment passed unanimously.

REP. BENNETT moved on page 3, line 24 to strike "if he has any". The amendment passed with REP. KEEDY and REP. EUDAILY voting no.

REP. EUDAILY stated he could see the problem the Department of Institutions will have. They will have no way of knowing how many people will be referred to them. Their budget is set up by how many people they now have.

REP. HUENNEKENS stated the burden should be a state function. The county should not have to pay.

REP. KEEDY moved do pass as amended. The motion passed with DAILY, YARDLEY, HANNAH, EUDAILY, BROWN and KEYSER voting no.

HOUSE BILL 405 REP. EUDAILY moved do pass.

REP. HANNAH asked on page 3, line 12 if there was any reason for one year as the time limitation. REP. KEEDY stated the injunction could stand for one year. It would be time consuming and inconvenient to refile every three months or so.

The motion of do pass carried. REP. SHELDEN was absent during the vote.

The meeting adjourned at 11:15 a.m.


KERRY KEYSER, CHAIRMAN

mr.

HOUSE BILL #463

STATEMENT BY: MONTANA UNIVERSITY SYSTEM
HOUSE COMMITTEE: JUDICIARY
SUBMITTED BY: JOE SICOTTE, DIRECTOR OF LABOR RELATIONS

The Board of Regents, Council of Presidents and the Commissioner of Higher Education support House Bill 463.

Currently state statute authorizes security guards to carry firearms while on campus with some restrictions. We feel that the statute needs clarification and expansion. The current state statute reads:

M.C.A. 20-25-324. "Firearms. Security guards shall be authorized to carry firearms between sunset and sunrise and at any time when acting as guards for transportation of money or other valuables."

Since sunset and sunrise constantly varies day-to-day, we suggest that specific times between 5:00 p.m. and 8:00 a.m. be entered in place of "sunset" and "sunrise," thereby establishing specific times and eliminating varying times.

Although we currently require all security guards to successfully complete the basic course in law enforcement conducted by the Montana Law Enforcement Academy (MLEA), we suggest that the language be included into the statute.

In addition to these clarification modifications, we suggest that the statute be expanded to include the following language:

"whenever responding to an emergency in which potential harm to an individual exists."

With the addition of this language security guards will be more able to protect and assist students and in the case of married students their families when such an emergency exists. Numerous incidents have occurred on several of the campuses in

the past two years that support this request. Testimony by the campuses will provide more specific details as to incidents where firearms were involved when security guards responded to emergency calls.

The Board of Regents, in considering this specific change of statute, was firm and united in the position that when this house bill became statute they would immediately establish strict policies and procedure for all campuses.

In conclusion, the Board of Regents, Council of Presidents and Commissioner of Higher Education ask for your favorable support of House Bill #463.



Exhibit 2

TESTIMONY OF AMBER WEBB
JUDICIARY COMMITTEE OF THE 47TH LEGISLATIVE SESSION
RE: HB463
2/2/81

My name is Amber Webb, President of the Associated Students of Montana State University. I would like to thank the members of the House Judiciary Committee for this opportunity to testify on a matter that ultimately effects every student.

Student security and safety on Montana campuses is of concern to every citizen of Montana. I'd like to speak to you on behalf of the students at Montana State University concerning HB463--the authorization to carry firearms on Montana University campuses.

In September of 1979 the Associated Students of M.S.U. organized a unique Student Security Force for the purpose of assisting professional police officers in providing additional security to students, staff, visitors, and property of MSU. This group of trained students gains "hands on knowledge" of law enforcement by working closely with our MSU police. This "partnership" demonstrates the mutual respect on the MSU campus that students and police have for each other and their dedication to provide a quality protective service. This experience also opens a student's eyes to the "all too real" dangers of being a professional protective officer.

The time when a student needs protection or when any criminal activity occurs isn't only between the hours of 5 p.m. and 8 a.m. An officer has two alternatives from which to choose when confronted with a potentially dangerous situation, for example in married student housing, during the daylight hours. One would be to retreat back to the police station to retrieve his/her gun,

only to find upon return that it is too late. (Where is the protection of the student in this case?) Second, the officer could proceed unprotected into a situation where it is perceived that an officer in uniform would be wearing a gun. (Where is the protection of the police officer?) It is quite apparent that we are willing to protect money during daytime hours, but not people!

The total welfare of the students on campuses demands total protection at ALL times, not part-time. I feel that the decision to wear or not to wear firearms during daylight hours should be left to the Board of Regents and the Administrators of the individual campuses within the state of Montana.

GEORGE R. TATE
CHIEF OF POLICE

CITY OF BOZEMAN

34 NORTH ROUSE • BOX 640
STATE OF MONTANA 59715



Police Department

January 30, 1981

Exhibit 3

RADIO KOA 404
TELETYPE BZ
AREA CODE 406
586-3311

The Honorable Jack Yardley
Chairman, House Judiciary Committee
State Capital Building
Helena, Montana .

Sir:

I would like to address HB-463--the carrying of firearms by university security guards.

It is my belief that the bill as presented is inadequate as it restricts university guard personnel to the carrying of weapons primarily to the hours of darkness (5 P.M. - 8 A.M.).

As these people are recognized by state statute as peace officers and are expected to execute the same control as municipally sworn police officers, it seem incongruous that they are not allowed to be fully armed at all hours of the clock as the university area is not in itself immune from criminal activity occurring within its bounds. They not only have the direct university population to work with but the city, county and state population as well during the course of the many functions which occur on the university campus.

We rely heavily on the university security system to handle their own affairs as we are not always physically able to respond immediately upon receiving a call from someone in distress. We have enjoyed close cooperation between the city and university police units. Since we often request their assistance at any hour of the day, I strongly feel that they should be allowed the defense of weapons, not only for their protection, but ours as well, as they are looked upon by the honest citizenry and by the criminal element as police officers. Therefore, they should be extended the authority to be fully armed.

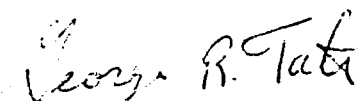
HOME OF MONTANA STATE UNIVERSITY
GATEWAY TO YELLOWSTONE PARK

2.

The Honorable Jack Yardley
Chairman, House Judiciary Committee
State Capital Building
Helena, Montana

I openly solicit your consideration as a committee to revive HB-463 to allow university security personnel to carry weapons full time rather than part time. These people are as well schooled in the use of weaponry as are others in the law enforcement field and I have no reservations about their qualifications. This would ease the mind of those empowered to enforce the laws of the land.

Sincerely,

A handwritten signature in dark ink, appearing to read "George R. Tate". The signature is written in a cursive, slightly slanted style.

George R. Tate
Chief of Police

TESTIMONY OF MERVIN G. GUNDERSON
JUDICIARY COMMITTEE OF THE 47TH LEGISLATIVE SESSION
RE: HB463
2/2/81

I have been employed as a university police officer at Montana State University since 1973. I am currently serving as one of three firearms instructors at the university. It is in that capacity that I wish to address the Judiciary Committee concerning House Bill 463.

Because of the unique environment of the university and the type of clientele served, we realize full well that an integral part of policing on a university campus is the comprehensive training in the use and limitations of firearms. We are also cognizant of the need for comprehensive training in laws relating to the use of force and the liabilities that ensue. For these reasons we have set up and utilize a stringent firearms policy.

Each officer of the university police must complete a Police Officer Standards of Training (POST) certified course through the Montana Law Enforcement Academy (MLEA) before he/she is allowed to carry a firearm in the performance of his/her duty. All of our officers must successfully complete the Basic training course through MLEA. This course is a six week overview of all aspects of law enforcement. Incorporated in the course is an extensive training in the use of firearms. Proficiency is an important aspect of the training. As important is the training received in the area of "use of force". Each officer receives training in the laws and liabilities that relate to firearms. They also receive training as to when a firearm may or may not be used.

Some of the areas relating to firearms that are covered in the POST certified MLEA Basic course are:

1. Firearms safety (on and off the range)
2. Rules of the range
3. Laws relating to use of force
4. Liabilities inherent in the use of force
5. Firearm maintenance
6. Actual firing of the firearm (day and night course)

Once an officer has completed the MLEA Basic course he is allowed to carry a firearm. It then becomes the responsibility of the firearms instructor to see that he is certified as being competent in proficiency and knowledge in the use of firearms. Each instructor must therefore receive additional training in firearms. This is accomplished by attending the MLEA Firearms Instructor course. The two week course entails comprehensive training in the techniques of increasing proficiency with a firearm and stressing the importance of teaching the legalities surrounding the use of a firearm.

We have set up a firearms qualification policy at Montana State University that requires we qualify a minimum of four times per year on the range. We also maintain an ongoing program of liability and law training. A firearms policy has been set up as a guideline as well as the incorporation of a range safety program.

The training program we have on the university is one of the most comprehensive in Montana law enforcement as well it should be. When dealing within the environment that exists on a university campus, a great deal more is expected of the university police officer than many other jurisdictions. Our policy and training is therefore stringent.

It is our contention that the use of firearms is the severest form of force that can be utilized by any officer. They are to be used only when all other avenues are exhausted. Firearms are only to be used when the life of the officer is in immediate jeopardy or the life of another person is in peril. Each officer knows the consequences of firearms usage and is well trained in all aspects that lead to the usage.

I will be very happy to elaborate on any aspect of this testimony or answer any questions you may wish to ask.

Respectfully submitted,

Marie H. Henderson

University of Montana

Missoula, Montana 59812

February 2, 1981

Judiciary Committee
Montana Legislature
State Capitol
Helena, Montana

Dear Mr. Chairman and Committee Members

SUBJECT: HB 463

History:

Today's University of Montana Security Officers are armed in accordance with Montana Codes Annotated, 20-25-324:

"Security guards shall be authorized to carry firearms between sunset and sunrise and at anytime when acting as guards for transportation of money or other valuables."

Our history of bearing arms goes back to the 1950s when security officers were deputized by the County Sheriff. On July 1, 1971, the Montana Legislature mandated the official formulation of University security departments and granted the status of "peace officer" to individuals at the various Montana University System campuses.

A partial listing of the problems experienced follows:

1. The peril of unarmed response to burglar alarms or distress calls.
2. A reluctance by the officers to respond to domestic disturbances while unarmed. (Please note: Student living areas allow the full time possession of firearms by the student resident.)
3. In the past year the division has responded to various incidents where knives or firearms were present.
4. A felony rape occurred during daylight hours on Mount Sentinel. The suspect, who was later apprehended, was armed with a loaded pistol.

5. A campus Security Officer disarmed an individual who was holding a hostage in one of the dormitories. Because the incident took place at night, the officer was armed and able to respond effectively.
6. An unarmed officer does not have the deterrent effect equivalent to that of the presence of an armed officer.
7. As a recognized peace officer, the campus security officer is obligated by law to respond to a "Mutual Aid Request" of any law enforcement officer, which is not possible during the time when University officers are not armed.
8. U of M Security Officers have been directly involved in the identification and apprehension of known felons. Some had been listed as armed and were considered dangerous.
9. Currently, University Security Officers are the only peace officers in the State of Montana required to perform their duties without being armed. Unarmed peace officers pose an inherent danger to the officers as well as those they are charged to protect.
10. The University puts an employee in a distinctive uniform, provides him with a badge of enforcement authority, places him in a totally equipped and highly visible patrol vehicle, and then directs him to preserve the peace through his powers of arrest. To deny the officer protection under these circumstances impairs his capacity to protect others and exposes him to unreasonable risk.


Qualifications:

In today's world of vicarious and civil liability, each Law Enforcement Agency is asked to provide fully trained and qualified peace officers. This includes the special areas of firearms certification. Each campus Security Officer is required to qualify on an annual basis. This training is conducted at the local police ranges or at the Montana Law Enforcement Academy. The standard tactical proficiency course of firing is basically the same for all Montana Law Enforcement Agencies.

Judiciary Committee
HB 463
February 2, 1981
Page 3

To date, the University of Montana has not been involved in a single incident where a firearm has been discharged by a peace officer. However, there have been a number of instances involving discharge of firearms by offenders. This is an exceptional record when one considers that our campus population is much larger than most Montana towns, and we are part of a major Montana community.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "J. A. Parker".

J. A. Parker, Director
University Facilities
Responsible for Safety and Security
at the University of Montana

January 24, 1981

Exhibit 6

The Honorable Kerry Deyser, Chairman
House Judiciary Committee
Helena, Montana 59601

Dear Chairman Keyser and Members of the House Judiciary Committee.

I am writing to ask you to support the continuation of the Domestic Violence Grant Program through the marriage license fee which Social and Rehabilitation Services has been administering since the 1979 Legislature, and to support HB 405 (an act to provide for Restraining orders to protect a person from Abuse by a Spouse).

Since the 1979 Legislature, the State Task Force Members have continued to do outreach to other Communities so that there are more 'support systems' in more Communities working on the problem of Domestic Violence throughout the State of Montana. I thought I would send along a more recent update for you. Asterisk denotes operating Shelt *

**Great Falls has done outreach education and training recently to:

- A. Hingham, Gilford, Kremlin, Havre, Browning, CutBank, Shelby
- B. Choteau and Fairfield
- * C. Butte-(who have been operating on a 'Safe Home-private home system' for several years, now have a Shelter rennovated and hope to have it operational by February 1981.)
- D. Several Counseling Workshops which included counselors from Region II.

**Missoula has done outreach education and training recently to:

- A. Hamilton, Stevensville, Darby
- B. Workshop for Kalispell and Whitefish. Kalispell received a State Grant this year for their Domestic Violence Crisis Line and did outreach to:
- C. Libby

Helena has done outreach and education and training recently to:

- A. Townsend
- B. Boulder

Bozeman has done outreach and education and training recently to:

- A. Livingston- 6 weeks training course on Advocacy
- B. White Sulphur Springs

** Billings Started their Shelter this past October 1980. Previously had "Safe Homes".

Twin Bridges, Dillon, and Hardin also received State Grants this year to continue their work in the field of Domestic Violence.

Glendive, Glasgow, Miles City- also received their 17-county State Grant and have done outreach to: Sydney.

In addition, the State Task Force is contracting with Manpower to write a 'training packet' on Domestic Violence. Task Force Members made a presentation to the State Mental Health Council to say that we would be happy to use this 'training packet' to present to the different Mental Health Regions if they would like us to. The State Task Force Members have been doing the education and training for 3 years on a volunteered time and money basis, including all of the State Task Force Meetings.

A Task Force Member also made a presentation to the County Attorney's Convention this summer.

Mid-January of this year, a State Workshop was held on Advocacy Training in Bozeman.

In June, the State Task Force made a presentation of a proposed 'Hospital Protocol for Spouse Abuse Assaults' which the State Hospital Administrator Board voted to have reviewed by one of their medical teams. The Medical Team from Columbus Hospital in Gt. Falls reviewed the protocol and in December the Hospital Administrators approved the Protocol and will have it operational in the 61 General Hospitals in Montana in January 1981. We plan to also present this Hospital Protocol to the Malmstrom Air Force Base Hospital and to the Federal Hospitals also for use on the Indian Reservations.


Our State Grant program for Domestic Violence (administered by Social and Rehabilitation Services) had requests for \$135,000 and could only fund \$68,000. We funded each Grant request but not for the amount needed obviously.

As a Shelter Director (Great Falls Mercy Home), I have seen many reasons why a Shelter can be an effective means to educate families on Domestic Violence in addition to preventing homicides.

- A. Domestic Violence calls are the number one cause of police officers' deaths since 1972 (FBI Statistics).
- B. 41% of female homicides are committed by husbands (Murray Straus, Sociologist).
- C. Kansas City Police Department found that in 87% of domestic Homicides police were called once prior to the murder and in 50% of the cases were summoned five times or more.

Violence is learned behaviour. Spouses who are forced to remain in abusive situations will in effect perpetuate the 'Cycle of Violence' as children learn violence is an acceptable way of life. Shelters and Domestic Violence Support Programs can help Families get counseling in addition to helping to educate Communities on this pervasive problem of Violence.

Sincerely yours,



Caryl Borchers, Chairman
State Task Force On Spouse Abuse
3251 4th Avenue South
Great Falls, Montana 59405

STATISTICS FOR December 1980

Great Falls Mercy Home

Since May 1977

1. Unduplicated Count of Program Beneficiaries (in shelter)	TOTAL
1a. Total Continuing from Previous Fiscal Year	1185
1b. Total New for the Year	8
1c. Total Outreach Advocacy for the Year	269
	284

WOMEN AND CHILDREN IN SHELTER

2. AGE GROUP	TOTAL	YTD <i>yearly total to date for 1980</i>
2a. Infants under 5	8	73
2b. Between 5 and 12	5	53
2c. between 13 and 17	2	14
2d. Between 18 and 29	6	80
2e. Between 30 and 64	3	57
2f. 65 and over	0	00

3. SEX	TOTAL	YTD
3a. Male	5	63
3b. Female	19	225

4. ETHNIC BACKGROUND	TOTAL	YTD
4a. White	21	196
4b. Black	00	1
4c. Hispanic	00	6
4d. Oriental	2	13
4e. Native American	1	57
4f. Other ethnic minority	0	4
4g. Not known	0	0

5. FAMILY INCOME	MONTH	YTD
5a. Below official poverty level	6	52
5b. At near poverty level	1	46
5c. Middle income locality median	2	45
5d. Upper Income	0	2
5e. Not known	0	0

6. USE	TOTAL
6a. Number of persons at the shelter	24
6b. Number of women at the shelter	9
6c. Total days used in the shelter(women)	94 days
6d. Total beds occupied	23
6e. Average length of stay	10.3 days

7. STATUS OF WOMEN SEEKING AID	TOTAL	YTD
7a. Battered	5	73
7b. Transient	3	21
7c. Transient and battered	2	10
7d. Psychological trauma (fear of abuse, confusion...)	1	32

8. LOCATION OF RESIDENCE (in shelter)	MONTH	YTD
8a. Cascade County	7	157
8b. Montana	1	60
8c. Other (out of state)	2	19

9. <u>REFERRED FROM</u>	<u>MONTH</u>	<u>YTD</u>
9a. Crisis Center	4	59
9b. Law Enforcement	2	49
9c. SRS	0	18
9d. Other	3	39
<hr/>		
10. <u>OUTREACH AND TELEPHONE ADVOCACY</u>	<u>TOTAL</u>	<u>YTD</u>
<u>27</u> clients served this month		
10a. Individuals relocated in Cascade County	3	43
<hr/>		
11. <u>AID PROVIDED</u>		
11a. Shelter		
11b. Meals <u>530</u> meals		
11c. Transportation		
11d. Support Groups (average of 10 people served per month)		
<hr/>		
12. <u>VOLUNTEER HOURS (TO DATE)</u> (<u>37,514</u>)	<u>HOURS</u>	
12a. Houseparent	248	
12b. Volunteers	293	

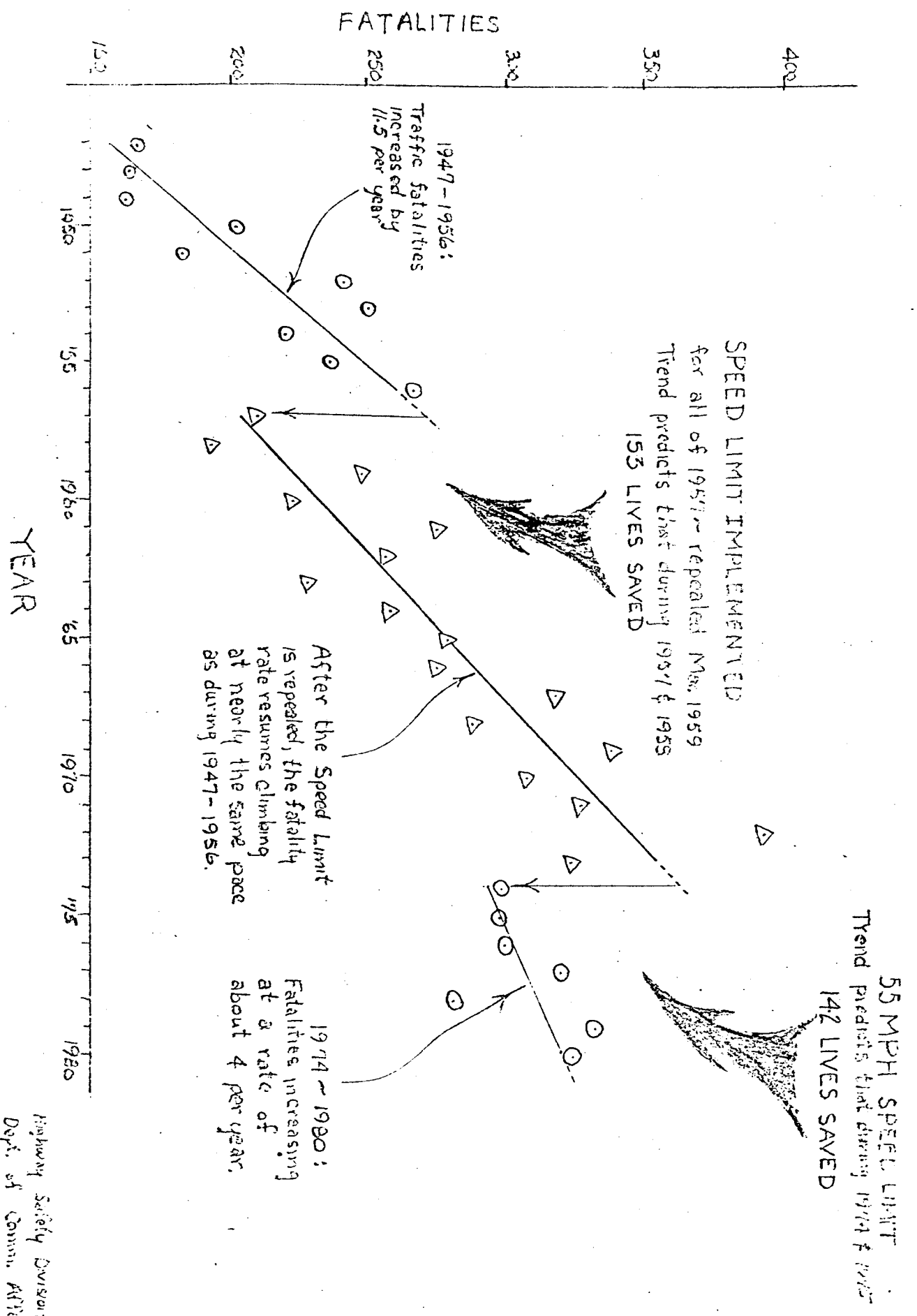
REFERRED FROM AND REFERRED TO:

S.R.S.	Area Churches
Legal Aid	Salvation Army
Crisis Center	Montana Job Service
Opportunities Inc.	WIC
Women's Group	WIN
YWCA	C.E.T.A.
St. Vincent de Paul	Sheriff's Dept.
Chaplains	Mental Health
Out of town (shelter exchange)	FISH
Buchanan Enterprise	Hospitals
Home Bound Teaching	GF Clinic
Detox Center	County Attorney
Passages	Women's Resource Center
Great Falls High School	Private Lawyer
Court of Conciliation	Indian Ed. Center
Private psychiatrist	Wesley Center
Alcoholics Anonymous	Franklin School
Alanon	

SUGGESTED
AMENDMENT TO HOUSE BILL 440

AMEND HOUSE BILL 440 ON PAGE 2, LINE 1, FOLLOWING THE WORDS "PURPOSE OF" BY STRIKING THE WORDS "THIS SECTION ONLY" AND INSERTING IN LIEU THEREOF THE WORDS "SUBSECTION 1(A) ONLY OF THIS SECTION"; AND FURTHER AMENDING HOUSE BILL 440 ON PAGE 2, LINES 2 AND 3, FOLLOWING THE WORDS "SHALL BE" BY REINSERTING THE STRICKEN WORDS "THE BALANCE OF THE FINE NOT OTHERWISE ALLOCATED BY LAW AND SHALL"; AND FURTHER AMEND HOUSE BILL 440 ON PAGE 2, LINE 3, FOLLOWING THE WORDS "AND SHALL" BY STRIKING THE FIGURES AND WORDS "\$4 TO".

Effects of Speed Limits on Traffic Fatality Trends in Montana from 1947 to 1980



SUGGESTED
AMENDMENT TO HOUSE BILL 440

AMEND HOUSE BILL 440 ON PAGE 2, LINE 1, FOLLOWING THE WORDS "PURPOSE OF" BY STRIKING THE WORDS "THIS SECTION ONLY" AND INSERTING IN LIEU THEREOF THE WORDS "SUBSECTION 1(A) ONLY OF THIS SECTION"; AND FURTHER AMENDING HOUSE BILL 440 ON PAGE 2, LINES 2 AND 3, FOLLOWING THE WORDS "SHALL BE" BY REINSERTING THE STRICKEN WORDS "THE BALANCE OF THE FINE NOT OTHERWISE ALLOCATED BY LAW AND SHALL"; AND FURTHER AMEND HOUSE BILL 440 ON PAGE 2, LINE 3, FOLLOWING THE WORDS "AND SHALL" BY STRIKING THE FIGURES AND WORDS "\$4 TO".

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, FOR THE RECORD I AM
REP. ROBERT ANDERSON, DISTRICT 16, FLATHEAD COUNTY.

HB 396 OTHERWISE KNOWN AS A UNIFORM FOREIGN JUDGEMENTS ACT,
CAME ABOUT ON ACCOUNT OF THE ACTIVITIES OF JUDGES, LAWYERS,
AND OTHER LAW OFFICIALS THROUGH WHAT IS KNOWN AS THE NATIONAL
CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS. A BRIEF
HISTORY WOULD TELL YOU THAT THIS COMMISSION WAS ESTABLISHED IN
THE LATE 1800'S AND HAS BEEN ON AN ON-GOING REVIEW OF STATE
LAWS FOR ALMOST A CENTURY. DURING THIS PERIOD OF TIME 100'S OF
UNIFORM LAWS HAVE BEEN ADOPTED BY THE STATES.

MONTANA HAS THREE MEMBERS APPOINTED TO THIS COMMISSION AND
DIANA DOWLING OF THE LEGISLATIVE COUNCIL IS ONE OF ITS MEMBERS.

IN HIS STATE OF THE JUDICIARY SPEECH WHICH WE HEARD EARLY IN THE
SESSION, CHIEF JUSTICE HASWELL MENTIONED THAT THERE HAD BEEN
A LARGE INCREASE OF CASE LOADS FOR DISTRICT COURTS IN THE PAST
SEVERAL YEARS. COURT CONGESTION IS A PROBLEM COMMON TO ALL STATES.
OVER-CROWDED DOCKETS, OVERWORKED JUDGES AND COURT OFFICIALS, WITH
ATTENDANT DELAYS, I BELIEVE TEND TO LOWER THE STANDARDS OF THE
ADMINISTRATION OF JUSTICE.....ONE OF THE PROBLEMS THAT GREATLY
CONTRIBUTES TO THE CONGESTION WITHIN THE COURTS IS THE NECESSITY
OF COMPLYING WITH ARTICLE 4 SECTION 1, OF THE UNITED STATES
CONSTITUTION.....WHICH REQUIRES ONE STATE TO GIVE "FULL FAITH
AND CREDIT" TO THE JUDGEMENTS OF COURTS IN OTHER STATES.....THIS
BILL ALLOWS FOR COMPLIANCE OF THE ARTICLE...BUT ALSO MAKES THAT
PROCESS MUCH LESS COMPLICATED.

WHAT NORMALLY HAPPENS IN THE CASE OF A FOREIGN JUDGEMENT IS THAT A CREDITOR...SAY IN WYOMING OR IDAHO...HAS RECEIVED A JUDGEMENT AGAINST A DEBTOR AND BEFORE HE CAN EXECUTE ON THAT JUDGEMENT THE DEBTOR FLEES TO ANOTHER STATE...SAY MONTANA. IN ORDER TO COLLECT OR EXECUTE THE JUDGEMENT... NOW THE CREDITOR MUST FILE ANOTHER ACTION IN A MONTANA COURT. (IT IS IMPORTANT TO NOTE THAT THE ACTION FILED IS NOT A WHOLE NEW HEARING TO DETERMINE LIABILITY, BUT RATHER TO DETERMINE IF INDEED THE JUDGEMENT IS AUTHENTIC.)

UNDER 396 A FOREIGN JUDGEMENT COULD BE FILED WITH THE CLERK OF COURT IN THE STATE WHERE THE DEBTOR CAME TO RESIDE. THE CREDITOR WOULD BE RESPONSIBLE FOR FILING AND AFFIDAVIT OF THE DEBTORS NEW ADDRESS. THEN, THE CLERK WOULD MAIL A NOTICE OF THE JUDGEMENT WITH THE DEBTOR AND ALLOW 20 DAY BEFORE EXECUTING ON SUCH A JUDGEMENT.

At the end of Section 3

.... but shall not include any judgment, order
or decree of any Indian Tribal Court in
this state or elsewhere nor any judgment, order
or decree of any court not of record in the other
state.

ATTORNEY GENERAL
MIKE GREELY

STATE CAPITOL BUILDING, SPOKANE, 1980 TELEPHONE (406) 499-3026

26 June 1980

James C. Nelson, Esq.
Glacier County Attorney
P.O. Box 1244
Cut Bank, Montana 59427

Dear Mr. Nelson:

You have requested my opinion on the following questions:

1. Does the Blackfeet Tribal Court have exclusive jurisdiction over the dissolution of marriage actions between members of the Blackfeet Tribe residing within the exterior boundaries of the reservation?
2. Is the clerk of court required to issue marriage licenses to applicants where the prior marriage of either one or both of the parties was terminated by a dissolution in the Blackfeet Tribal Court?

The Montana Supreme Court recently decided State ex rel. Stewart v. District Court, ___ Mont. ___, 609 P.2d 290, 37 St. Rptr. 635 (April 1, 1980), in which the state district court's jurisdiction over the dissolution of marriage of two Crow Indians was challenged. In a unanimous opinion, the court held that the state court lacked jurisdiction.

The decision was based on a finding that the 1978 Crow Uniform Divorce Act was duly enacted and that the Crow Tribal Court was currently exercising jurisdiction "in such a manner as to preempt state jurisdiction for members of the Crow Tribe living within the exterior boundaries of the Crow Reservation." 37 St. Rptr. at 636-37. Since the Crow Tribal Code was duly enacted, "the Crow Tribal Court [has] exclusive jurisdiction over the dissolution of marriage actions between members residing within the exterior boundaries of the reservation." 37 St. Rptr. at 637.

The court, having found that exclusive jurisdiction lies with the Crow Tribal Court, said that the state court should abstain under the principles of comity "and leave to the Tribal Court the decisional task of divorce matters between tribal members of the Crow Tribe." 37 St. Rptr. at 637.

The Supreme Court expressly limited its holding to the Crow Indian Reservation. 37 S. Rptr. at 638.

On the basis of Stewart and the decisions cited therein,¹ it is clear that the Blackfeet Tribal Court has exclusive jurisdiction over dissolution of marriage actions between members of the Blackfeet Tribe residing within the exterior boundaries of the reservation, provided that the Blackfeet Tribal Court is exercising jurisdiction over such actions, and provided that the Blackfeet Tribal Code relevant to such actions was duly enacted.

There do exist significant structural and legal distinctions between the Crow Tribe and the Blackfeet Tribe.² These distinctions may provide substantive reasons for limiting the applicability of Stewart to the Crow Reservation in terms of the "due enactment" proviso, because the Crow Tribal Constitution does not require ordinances to be approved by the Department of the Interior to be effective, while the Blackfeet Tribal Constitution requires secretarial review. Blackfeet Const., Art. VI, sec. 2. However, if the provisos are met, there appear no substantive reasons for limiting Stewart insofar as dissolution jurisdiction is concerned.

An independent finding of "due enactment" of the Blackfeet divorce code is impossible at this time because of the inaccessibility of tribal codes. Such a finding would serve little purpose in any case as the code could be amended at the next council meeting. Nevertheless, the information presently available indicates that the Blackfeet code was duly enacted and so would fall under Stewart. Further, there is no need to make an independent finding concerning the current exercise of divorce jurisdiction since that finding is inherent in the questions presented.

The current procedure for Blackfeet tribal ordinances requires council approval and review by the Secretary of the Interior. If the secretary does not affirmatively reject

¹ Notably, State ex rel. Iron Bear v. District Court, 162 Mont. 335, 512 P.2d 1292 (1972), and Fisher v. District Court, 424 U.S. 382 (1976).

² For example, the Blackfeet Tribe is organized under the Indian Reorganization Act, 25 U.S.C. §§ 461, et seq., while the Crow Tribe is not.

the ordinance within a specified period of time, the ordinance is duly enacted. Therefore, the current Blackfeet divorce code appears to have been duly enacted. The substantive rule of Stewart that the tribe has exclusive divorce jurisdiction over its members residing on the reservation therefore applies to the Blackfeet Tribe.

Prior to Stewart, there has been no authority from which to determine the ground(s) upon which the State of Montana could recognize tribal court decrees. Even after Stewart, the question is not precisely answered since the fact situation there involved a jurisdictional question between courts rather than a question of subsequent recognition of one court's decree.

Stewart held that state courts should abstain from dissolution proceedings "under the principles of comity." 37 St. Rptr. at 637.

In so doing, we should reduce the "intergovernmental friction" likening the "competing interests" of the State and the tribes to a "Pullman-type abstension situation."

37 St. Rptr. at 637.

If the Stewart facts are insufficient to conclusively establish comity as the principle upon which a Montana clerk of court may rely to subsequently recognize a tribal court divorce decree, the Stewart rationale at least provides a heretofore absent basis for such recognition in Montana.

There are two primary theories upon which recognition of tribal law and decrees has been grounded: (1) comity, and (2) full faith and credit. Full faith and credit under 28 U.S.C. § 1738³ has been held to be a sufficient ground upon which to recognize tribal laws, Jim v. CIT Financial Services Corp., 87 N.M. 362, 533 P.2d 751 (1975), but on an identical fact situation, has been held insufficient. Brown v. Babbitt Ford, Inc., 117 Ariz. 192, 571 P.2d 689 (1977). The decisions considering comity are also split. In Begay v. Miller, 70 Ariz. 380, 222 P.2d 624, 628 (1950), it was held that comity was inapplicable to recognition of tribal

³ The Full Faith and Credit Clause of the United States Constitution, Art. IV, sec. 1, is not applicable because it refers only to states. However, 28 U.S.C. § 1738 extends full faith and credit to territories. Thus, the question has been whether Indian reservations are included in the term "territories."

James C. Nelson, Esq.
26 June 1980
Page 4

divorce decrees because comity applies only to independent sovereigns. However, In re the Marriage of Red Fox, 542 P.2d 918, 920 (Or. App. 1975), held that "the quasi-sovereign nature of the tribe does suggest that judgments rendered by tribal courts are entitled to the same deference shown decisions of foreign nations as a matter of comity."

The Montana Supreme Court has selected comity as the vehicle for reducing the inter-governmental friction between the competing interests of the State and the tribes. This, of course, does not require the State of Montana to recognize all of the decrees and laws of the other governmental entity. Rather, usual rules of application are to be used. As was stated in Red Fox, supra:

A rule of general application is that a judgment entered by a court of a foreign nation is entitled to recognition to the same extent and with as broad a scope as it has by law or usage in the courts of the jurisdiction where rendered, if: (1) the foreign court actually had jurisdiction over both the subject matter and the parties; (2) the decree was not obtained fraudulently; (3) the decree was rendered under a system of law reasonably assuring the requisites of an impartial administration of justice--due notice and a hearing; and (4) the judgment did not contravene the public policy of the jurisdiction in which it is relied upon.

542 P.2d at 921.

Therefore, tribal divorce decrees should be recognized unless in violation of state policy under the usual rules of comity.

Very truly yours,


MIKE GREELY
Attorney General

JUDICIARY.

COMMITTEE

Date 2/3/81

NSOR _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

HOUSE _____ COMMITTEE _____

2/3/81

Date 27/2/81

RULL 402

SPONSOR _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

HOUSE JUDICIARY COMMITTEE

403

BILL _____

DATE 2/3/81

SPONSOR _____

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

HOUSE COMMITTEE

2/3²/81

Date _____

SPONSOR

_OPP(

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

HOUSE JUDICIARY COMMITTEE

2/7/81

BILL 440

Date _____

SPONSOR _____

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

COMMITTEE

2/3/81

Date

Wallin

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

HOUSE JUDICIARY COMMITTEE

LL 496

Date 2/2²/81

SPONSOR

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.