

MINUTES

MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dick Pinsoneault, on March 20, 1991, at 10:00 a.m.

ROLL CALL

Members Present:

Dick Pinsoneault, Chairman (D)
Bill Yellowtail, Vice Chairman (D)
Robert Brown (R)
Bruce Crippen (R)
Steve Doherty (D)
Lorents Grosfield (R)
Mike Halligan (D)
John Harp (R)
Joseph Mazurek (D)
David Rye (R)
Paul Svrcek (D)
Thomas Towe (D)

Members Excused: none

Staff Present: Valencia Lane (Legislative Council).

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion:

HEARING ON HOUSE BILL 864

Presentation and Opening Statement by Sponsor:

Representative Bud Gould, District 61, said HB 864 was heard in State Administration and went out on the Consent Calendar. He told the Committee it is a simple bill to transfer the district court funding from the Department of Commerce to the Supreme Court. Representative Gould asked Senator Towe to carry HB 864.

Proponents' Testimony:

Newell Anderson, Administrator, Local Government Assistance Division, Department of Commerce, told the Committee he requested the bill. He said HB 864 is simple and straightforward, and that this is becoming more of a judicial policy program than a financial management program. Mr. Anderson explained that there would be no fiscal impact.

Jim Oppedahl, Administrator, Montana Supreme Court, advised the Committee that he supports the bill as it is an appropriate function for the Court Administrator. He said the bill would allow for depth and cross-training in accounting, and would help in developing and planning court needs.

Opponents' Testimony:

There were no opponents of the bill.

Questions From Committee Members:

Senator Mazurek asked Mr. Newell if he would follow this program to the Supreme Court. Mr. Anderson replied that he would not, but operating staff would.

Closing by Sponsor:

Representative Gould made no closing comments.

EXECUTIVE ACTION ON HOUSE BILL 864

Motion:

Senator Halligan made a motion that HB 864 BE CONCURRED IN.

Discussion:

There was no discussion.

Amendments, Discussion, and Votes:

There were no amendments.

Recommendation and Vote:

The motion made by Senator Halligan carried unanimously. Senator Halligan made a motion that HB 864 be placed on the CONSENT CALENDAR. The motion carried unanimously. Senator Towe was asked to carry HB 864.

HEARING ON HOUSE BILL 268

Presentation and Opening Statement by Sponsor:

Representative Bruce Measure, District 6, said HB 268 creates an appellate for the public defender. He stated that the defendant often raises the issue of ineffective assistance counsel, and this can cost a considerable amount of money.

Representative Measure stated that the Department of Commerce administers the funds to take care of these appeals, and that \$7300 for a full time appellate public defender would be money well-spent.

Proponents' Testimony:

Randi Hood, Public Defender, Lewis and Clark County, and Chairman of the State Bar Committee for Public Defenders, said the Bar Committee surveyed district court judges, county attorneys, and public defenders, and found that the most difficult problem was in funding appellate public defenders. Ms. Hood explained that appellate is a problem for public defenders. She said she has only done three appeals in the last four years, and that not only is it like starting over each time, but it takes a lot of time. Ms. Hood advised the Committee that this is being set up on a pilot basis, as there are several unknowns.

Randi Hood further stated that inassistance of counsel claims cost money, and will be done first, and that the appellate pubic defender would then handle other appeals. She stated that the judge could also ask an attorney to do a particular appeal. Ms. Hood advised the Committee that the five-member commission would be comprised of a district court judge, selected by the district court judges; a public member, selected by the Governor; and three attorneys, selected by the Public Defenders. She said it will be funded out of district court funds (which pays for appeals now), and would be 80 percent reimbursable. Ms. Hood commented that public defenders cost \$60-\$80 per hour now.

Ms. Hood stated she believes the State of Montana will pay less money for appeals under HB 268, and strongly urged the Committee to give the bill a do pass recommendation. She provided a small amendment concerning the attorneys on the commission (Exhibit #1).

Judy Browning, Deputy Attorney General, said she believes the quality of representation will be improved, aiding the process of justice. She urged the Committee to support HB 268.

Allen Chronister, Montana State Bar Association, advised the Committee that HB 268 came out of a State Bar Committee. He said it gives the opportunity to enact a good idea which doesn't cost much. Mr. Chronister stated that well-done appeals were the most enjoyable to work on, and that quality appeals clearly address the depth of the law, as well as promoting conviction of defendants, and fairness to citizens. He urged the Committee to support HB 268.

Paul Johnson, Assistant Attorney General, said he was appearing on behalf of Attorney General Racicot, and that he worked on the State Bar Committee for Public Defenders. He said that, right now, the Attorney General frequently frames both sides of issues and arguments in appeals, and that this does not work very

well in an adversarial system. Mr. Johnson said the bill would cut off insufficient assistance of counsel claims. He commented that these claims don't go away easily, and that the bill would have the effect of advocating, at the outside, what would be the best way to cut these claims.

Mike McGrath, Lewis and Clark County Attorney, and County Attorneys Association, stated his support of the bill.

Opponents' Testimony:

There were no opponents of HB 268.

Questions from the Committee:

Chairman Pinsoneault asked who makes the initial determination as to whether or not an appeal has merit. He commented that it will be very easy for public defenders to "bounce" these cases up, and that he could see the need for four or five more appellate defenders within the next few years. Randi Hood replied there has not been much luck on the part of defense in persuading defendants to appeal. She said she believes this legislation will not increase the number of appeals.

Chairman Pinsoneault asked what happens if the appellate defender decides no, and sends the case back. Randi Hood replied this legislation seems important for cases with highest priority issues.

Chairman Pinsoneault asked if other states do this. Mike McGrath advised him that Nevada, Washington, and possibly Alaska have similar systems.

Senator Towe asked if it were contemplated that only certain appeals would go, and what is contemplated by language at the bottom of page 4 and the top of page 5 of the bill. Randi Hood replied that there were 96 criminal appeals in 1990, and that one person can't do 96 appeals. She said the State Bar Committee has to determine what was most important, and does not believe these cases will demand all of the time of one person. Ms. Hood further advised him that the State Bar Committee wanted to leave this open, and that the district court judge might determine what issues are important enough.

Senator Towe asked why a roster of eligible attorneys is in the bill. Randi Hood replied that the rural areas have problems knowing who handles certain cases. She said the State Bar has a Criminal Defense Section that can be drawn from.

Senator Towe asked for an explanation of language on page 6, lines 18-21. He asked if money would come from the counties, if the state doesn't fully fund it. Randi Hood replied she believes this means the appellate defenders office comes off the top, and that other expenses are funded by the counties.

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Opponents' Testimony:

There were no opponents of HB 268.

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Closing by Bill Sponsor:

Representative Measure, thanked the Committee and urged that they pass HB 268.

EXECUTIVE ACTION ON HOUSE BILL 268

Motion:

Discussion:

Amendments, Discussion, and Votes:

Senator Towe made a motion that the State Bar amendment be approved. The motion carried unanimously.

Recommendation and Vote:

Senator Towe made a motion that HB 268 BE CONCURRED IN AS AMENDED. The motion carried unanimously. Senator Halligan was asked to carry the bill.

HEARING ON HOUSE BILL 567

Presentation and Opening Statement by Sponsor:

Representative Russell Fagg, District 89, said HB 567 modernizes statutory language of the Office of the Attorney General. He said language on the books now does not address what the Attorney General does, and that the bill changes about 42 lines and adds about five lines, condensing the Code. Representative Fagg reported that the Democratic members of the House Judiciary Committee had not problem with the bill.

Proponents' Testimony:

Judy Browning, Deputy Attorney General, explained that an audit by the Legislative Auditor this past year, uncovered the need to clean up this language. She said section 1 deals with state interest, and that subsection (5) on page 3, lines 9-12, deals with probate cases in which the state has an interest. Mrs. Browning urged the Committee to pass HB 567.

Opponents' Testimony:

There were no opponents of the bill.

Questions From Committee Members:

Senator Crippen asked if the changes in the bill would affect the Attorney General's ability to issue opinions. Representative Fagg replied it would not.

Closing by Sponsor:

Representative Fagg made no closing comments.

EXECUTIVE ACTION ON HOUSE BILL 567

Motion:

Senator Mazurek made a motion that HB 567 BE CONCURRED IN.

Discussion:

There was no discussion on the bill.

Amendments, Discussion, and Votes:

There were no amendments.

Recommendation and Vote:

The motion made by Senator Mazurek carried unanimously. Senator Mazurek made a motion that HB 567 be put on the CONSENT CALENDAR. That motion carried unanimously. Senator Doherty was asked to carry the bill.

HEARING ON HOUSE BILL 608

Presentation and Opening Statement by Sponsor:

Representative Tim Whalen, District 93, said HB 608 deals with two issues. He stated Title 69 pertains to railroad regulations and imposition of fines for intentional violations of the law, and the second part, making it clear that the Public Service Commission (PSC) has quasi-judicial powers, was amended out of the bill because it presented too many problems.

Representative Whalen advised the Committee that the bill is left with the fine provisions from a minimum \$500 fine to a maximum limit of \$500 per day, and the requirement that these funds be directed to the complaining party or to the affected community.

Proponents' Testimony:

There were no proponents of the bill.

Opponents' Testimony:

Leo Berry, private practice attorney in Helena, representing Burlington Northern (BN), said he is not opposed to the penalty levels in the bill. He explained that the PSC has had the authority to go to court to seek assessment of penalty, and that HB 608 gives the PSC the authority to assess and to fine. He said language in the bill is unclear as to the ability of BN to appeal, and that he believes the bill is unfair, as well as bad public policy in subjecting railroads to this unilateral authority. (Ex #2)

Mr. Berry said he objected to language on page 2, lines 12-13, whereby the penalty can go to the community or the party to an order. He stated that 69-14-1001, MCA, makes it a standard procedure to award four years of labor protection when BN closes a station or a facility. Mr. Berry explained that when the Lodgegrass Agency was closed and the Hardin Agency opened, the agent at Lodgegrass was not replaced when he retired. He said the next person in line filed a claim, because he felt he should have had the Lodgegrass job. Mr. Berry advised the Committee that this bill could be applied to that claim, and that BN could have to pay the claimant up to \$500 per day. He said he believes these dollars should go to the state instead, but more so that the bill be killed.

Questions From Committee Members:

Senator Mazurek asked if anyone from the PSC appeared during the House Judiciary Committee hearing. Representative Whalen replied he did not remember, and that he didn't consult with them on this bill.

Senator Pinsoneault stated that if HB 608 were expanded to all corporate entities, there would not be enough time in a day to overcome all of the corporate interests.

Senator Towe said he was concerned about the point Leo Berry raised, as rulemaking and ratemaking is a legislative function, and to give this authority to the PSC would seem to be inconsistent with our system of government. Representative Whalen replied the PSC already exercises this authority under 69-14-1001, MCA. He said the PSC has the right to order and impose penalties now, and that the Attorney General enforces those payments not voluntarily made. Representative Whalen stated he did this to avoid a lengthy process with the PSC and the district courts. He said he didn't believe the BN's arguments were appropriate.

Senator Towe commented that the PSC would still have to go to the courts to enforce violations. Leo Berry replied that this bill deviates from all other forms of PSC authority as it relates to other utilities. He said it is not a good reason to single out BN, and that there is nothing wrong with having to go to court.

Senator Towe asked if BN would be satisfied if there were language to this effect in the bill. Leo Berry replied he would not be, unless it is done for all utilities and disposition of the fine is changed.

Senator Harp asked if this is normally done through an appeals process. Leo Berry replied that is outlined in his exhibit.

Senator Harp asked if the other parties would be protected by law on page 2, line 12 of the bill. Leo Berry replied that the last page of his exhibit addresses 69-14-1001, MCA, defining the procedure by which labor is protected. He said he believes the bill is an enforcement act, and not a compensation act.

Closing by Sponsor:

Representative Whalen stated it is not legitimate to say that HB 608 should not pass, as it doesn't apply to other utilities. He said that the bill only changes the fine to \$500 per day for intentional violation of statute, and allows the money to be paid to the community or the individual affected, if the PSC so orders. Representative Whalen stated the PSC has authority to set that rate up to \$500, but may set it at less. He said he had no problem with fixing any mechanical problems in the bill, and that the purpose of a regulating authority is to protect communities and people.

HEARING ON HOUSE JOINT RESOLUTION 9

Presentation and Opening Statement by Sponsor:

Representative Angela Russell, District 99, said HJR 9 urges Congress to pass legislation confirming jurisdiction over non-member Indians committing crimes on tribal lands. She stated it is a dollars and cents issue, dealing with Indian people.

Proponents' Testimony:

Pete Lamere, Tribal Councilman, Chippewa Cree Tribe, Rocky Boy Reservation, told the Committee he strongly supported HJR 9. He stated that Indian people have always had jurisdiction over Indian people, and that this needs to continue. He explained that the Tribe also deals with inter-tribal marriages and summer visitors, and considers this to be a very serious infringement on the jurisdiction of the tribes. Mr. Lamere advised the Committee that there have been problems on reservations ever since the Duro decision. He commented that he knows the Legislature has an influence on Congress (~~Exhibit~~ #3).

Jim Canon, former Area Director, Bureau of Indian Affairs (BIA), said he is familiar with the enormous jurisdiction problems on the reservations, and with problems caused by the Duro decision. He said he believes HJR 9 would be helpful in restoring jurisdiction that the tribes had for many years.

Steve Clincher, Sioux and Assiniboine Tribes, Fort Peck Reservation, read from the resolution adopted by the Tribe in support of HJR 9 (Exhibit #4). He said that U.S. Supreme Court Justice Sandra Day O'Connor told the tribes two weeks ago, that they should have the authority to exercise jurisdiction over non-member Indians.

Representative Bob Gervais, District 9, told the Committee he believes they are seeing a rippling effect. He stated that without HJR 9 certain Indians would no longer be eligible for health and other services on reservations. He commented that there will be a migration to the larger cities in Montana, at a cost to those cities.

Kathleen Fleury, Coordinator of Indian Affairs, said she worked seven years for the BIA as a judicial service officer, and was careful in drafting law and order codes for the tribes to ensure jurisdiction over members of other tribes. She read from prepared testimony in support of HJR 9 (Exhibit #6). Ms. Fleury said a resolution of the Western Governors (#90-014), urged Congress to resolve jurisdiction promptly.

Joan Christopherson, Missoula, told the Committee she is embarrassed and ashamed that this should come up again. She asked the Committee to endorse the bill, and to get this matter settled.

Merle Lucas told the Committee he has been involved in Indian affairs for the past 20 years, of which 12 of those years were with Montana. He stated he is in his second year as a tribal councilman on the Fort Peck Reservation, who is on record by resolution in support of HJR 9.

Opponents' Testimony:

Dan Hoven, Attorney, Flathead Joint Board of Control, said he represents irrigation districts on the Reservation, and is involved with Indian jurisdiction issues in the courts and in the Legislature. He explained that these issues are extremely complex, however, he feels competent to address HJR 9.

Mr. Hoven stated he has followed this legislation very closely, and made a decision to become involved after considerable deliberation. He told the Committee he did not appear in the House Judiciary Committee, because he was unaware of the bill then. Mr. Hoven said he believes HJR 9 would be detrimental to the Board's interests. He said Duro will be analyzed in civil context as well as criminal context.

Mr. Hoven reported that the Brendale zoning case in Yakima, Washington, is mentioned in Duro. He said he believes Duro is legally correct and sound. Mr. Hoven stated that tribal jurisdiction is contrary to the principles of the Constitution, as non-member Indians have no participating voice in the tribal government. He said Mr. Duro was charged with a crime on the Pima

Maricopa Reservation, and was prosecuted under federal law. Mr. Hoven said the indictment against Duro was dismissed because the federal government had a very poor case, and the Pima Reservation charged him with unlawful discharge of a firearm. He said the Court found there was an equal protection problem, and the 9th Circuit Court reversed the decision of the Tribal Court, and said the Tribe had inherent authority.

Mr. Hoven told the Committee that the case was then heard in another circuit, that the decision was split, and the U.S. Supreme Court reversed it, saying the tribes are sovereign, but their decision is based on Olefont which says tribal courts can't try non-Indians for crimes. He said he is very concerned about reversal of Duro and with the impact of Olefont, and Fishing and Hunting in Montana v United States.

Mr. Hoven stated that in tribal proceedings constitutional proceedings are not _____ as the Bill of Rights. He said the Duro court was also extremely concerned about the non-rights of participants.

Mr. Hoven commented that the draft of HJR 9 shows inherent errors. He said line 6 of the title, on page 1, is incorrect because as a matter of law, this authority can only be granted by an express delegation of congress. He further stated that line 18, page 1, discusses the historical and traditional practice of dealing with Indians committing crimes on reservations.

Mr. Hoven said he didn't believe the Supreme Court contradicted this, but specifically analyzed it. He read from the decision printed in the Supreme Court Reporter. He said he had a 50-page brief on the Duro decision and a 34-page response, and that the Court voted 7-2 which is not suggestive of an error as stated on page 2, line 3 of the bill.

Mr. Hoven said he hasn't see the supportive legislation suggested on page 2, lines 10-16 of the bill. He said he believes the Committee should see what they are voting for, and that the Inuway amendment referred to by Representative Russell is attached to a Defense appropriations bill.

Mr. Hoven explained that the Court said in Duro that federal law did not have to be construed to create a void. He commented that U.S. Attorney Doris Poppler mentioned Duro at the hearing of HB 797, and said she would have a manpower problem, but not a jurisdictional problem. He reminded the Committee that Ms. Poppler suggested intertribal agreements, and said it is difficult to ask the Committee to make this decision without more debate. He urged the Committee to kill HJR 9.

Allen Mikkleson, Executive Director, Flathead Joint Board of Control, said the Board represents three irrigation districts, comprising 110,000 of 127,000 acres, for both Indians and non-Indians. He explained that the Board is not trying to react, but

to do what is best, and that it is concerned with the destiny of the people living on the Flathead Reservation.

Mr. Mikkleson further stated that Duro upholds the right of U.S. citizens to be subject to the government in which he or she may participate. He said the same principles in the Yakima case are involved in Duro. Mr. Mikkleson stated the Supreme Court noted that consent of government coincides with the fundamental principle of power, and asked that the bill not be passed. He said he would support the Western Governors in their resolution calling for hearings in the West.

Brad Spear, Montana Stockgrowers Association, told the Committee he has ranching interests in Big Horn County, and read from prepared testimony in opposition to HJR 9 (Exhibit #7).

Lawrence Green, Big Sandy, and member of the Indian Relations Committee of the Montana Stockgrowers Association, stated his opposition to HJR 9 (Exhibit #8).

Reiny Jabs, representing himself, read from prepared testimony in opposition to HJR 9 (Exhibit #9).

Carol Moser, Montana Cattle Women, Montana Farm Bureau, and Montana Water Resources Association, stated her opposition to HJR 9.

Bill Covey, President, Citizen's Equal Rights Alliance, said the Alliance is represented in 30 states, and helped defend Duro. He read from prepared testimony in opposition to HJR 9 (Exhibit #10).

Questions From Committee Members:

Senator Crippen asked who has jurisdiction over non-Indians, if tribal courts do not. Dan Hoven replied that federal courts have jurisdiction on major crimes, and that a footnote in Duro indicates that federal statute would confer federal jurisdiction on lesser crimes.

Senator Crippen asked how Duro would affect Montana. Dan Hoven read from page 2066 of the Western Reporter on 110 SC 2053 in response.

Senator Crippen asked if the tribes can do intertribal agreements when the Court said they have no authority over those not giving their consent. Dan Hoven replied that the U.S. Supreme Court suggested tribal agreements.

Senator Crippen asked if the tribes have the authority to do this. Dan Hoven replied his analysis is that if the respective governments wanted to enter into such an agreement they could.

SENATE JUDICIARY COMMITTEE

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Senator Pinsoneault asked if an advisory committee was being formed. Kathleen Fleury stated that the advisory committee format alluded to by Mr. Spear was not subjected to tribal councils for consideration, and is in very preliminary stages.

Senator Pinsoneault read the concluding statement of the Duro decision, and asked Ms. Fleury if she had a problem with it. Ms. Fleury replied she did not.

Senator Pinsoneault asked if there were legislation drafted by congress. Ms. Fleury replied she didn't believe so, and said HJR 9 just asks for support. Dan Hoven replied that this case is brought on a Writ of Habeas Corpus.

Senator Pinsoneault asked if that isn't all that Duro addresses. Dan Hoven replied it only applies to criminal jurisdiction over criminal acts of non-Indians.

Senator Pinsoneault said he believes the Board may be bringing in other things that might not be there. Dan Hoven replied there is continuous debate on Indian jurisdiction nationwide. He stated it gets blended in and analyzed together, and so all issues are important.

Senator Pinsoneault said that is dictum, and is what Senator Crippen was trying to address.

Senator Doherty asked how many cases there have been in the past few years, and if there has been any attempt to limit any jurisdiction under the Hellgate Treaty. Dan Hoven replied a lot of issues dealt with administrative law.

Senator Doherty asked what the goal of the Board is and why they are here. Mr. Mikkleson replied he did not believe Duro was addressed as a treaty right, and that the Board is present because it deals with the Tribes daily on jurisdiction issues, and believes civil and criminal jurisdiction issues are linked in this case.

Senator Doherty asked what the goal of the Board is. Mr. Mikkleson replied it is to guarantee that constitutional rights of its constituency are not abrogated in any way.

Senator Yellowtail asked Mr. Spear if he lived on the Reservation. Mr. Spear replied he is a resident of Dayton, Wyoming.

Senator Yellowtail asked if he had read the resolution, and if he agreed that the language is plain concerning tribal jurisdiction. Mr. Spear said he agreed, and believes that is what it refers to. He said he is concerned with constitutional jurisdiction.

Senator Pinsoneault commented that jurisdiction is a painful process. He suggested that PL 280 is one way to resolve the

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SENATE JUDICIARY COMMITTEE

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matter, and that reciprocal agreements between tribes is another. Kathleen Fleury replied that HR 972 was introduced February 19, 1991 to make permanent 58 U.S.L.W. (May 29, 1990). She read from text (Exhibit #11), and said she believes it is well-established what jurisdiction the tribes have and what treaty rights they have. She explained that the tribes are dealing with the problem of safety and law and order on reservations. Ms. Fleury commented that the Indian Civil Rights Act, passed in 1917, provides all the rights of the U.S. Constitution.

Senator Pinsonneault advised those present that the Legislature writes law, but using the term "reverse" in relation to a U.S. Supreme Court decision is incorrect. He stated that is the Legislature's sole responsibility.

Closing by Sponsor:

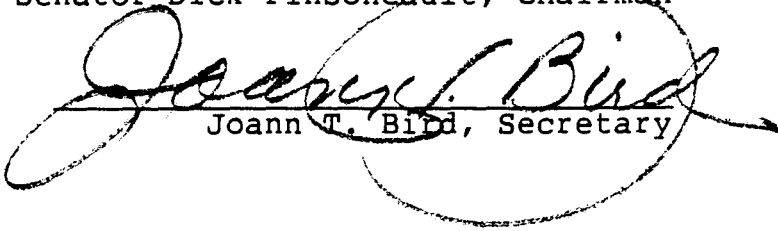
Representative Russell stated that this resolution deals with criminal misdemeanor jurisdiction, and has nothing to do with irrigation districts. She said she would remind Mr. Mikkleson that Duro deals with criminal jurisdiction and not civil jurisdiction, and that the federal legislation recognizing Indian jurisdiction over non-Indians (referred to by Kathleen Fleury) was introduced by Bill Richardson of New Mexico.

Representative Russell said U.S. policy defines Indian people as a political entity, and that she believes intertribal agreements would raise further jurisdictional problems. She said the International Association of Chiefs of Police passed a resolution stating that a void exists in criminal law within Indian Country (Exhibit #12). Representative Russell advised the Committee she had no objection to clarifying language on page 2, line 1 of the Resolution.

ADJOURNMENT

Adjournment At: 12:30 p.m.


Senator Dick Pinsonneault, Chairman


Joann T. Bird, Secretary

DP/jtb

ROLL CALL

SENATE JUDICIARY

COMMITTEE

52nd LEGISLATIVE SESSION -- 1999

Date 20 Mar 91

NAME	PRESENT	ABSENT	EXCUSED
Sen. Pinsoneault	✓		
Sen. Yellowtail	✓		
Sen. Brown	✓		
Sen. Crippen	✓		
Sen. Doherty	✓		
Sen. Grosfield	✓		
Sen. Halligan	✓		
Sen. Harp	✓		
Sen. Mazurek	✓		
Sen. Rye	✓		
Sen. Svrcek			
Sen. Towe	✓		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 20, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 864 (third reading copy -- blue), respectfully report that House Bill No. 864 be concurred in.

Signed: _____
Richard Pinsoneault, Chairman

191 3-20-91
Amd. Coord.

213 3/20 1:25
Sec. of Senate

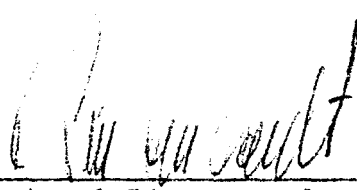
SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 20, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 268 (third reading copy -- blue), respectfully report that House Bill No. 268 be amended and as so amended be concurred in.

1. Page 2, line 25.
Strike: "during"
Insert: "while serving"

Signed: 
Richard Pinsoneault, Chairman

Page 3-21-91
Amd. Coord.

SP 3/20 1:45
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 20, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 567 (third reading copy -- blue), respectfully report that House Bill No. 567 be concurred in.

Signed: _____
Richard Pinsoneault, Chairman

1991 3-20-91
Amd. Coord.

DP 3/30 1:35
Sec. of Senate

Ex #1
20 Mar 91
HB 268

Measure:

Amendment to House Bill 268

Page 2, line 25
Following: "not"
Strike: "DURING"
Insert: "while serving"

Ex #2
20 Mar 91
HB 608

69-3-110. Enforcement of public utility law. (1) The commission shall inquire into any neglect or violation of the laws of this state by any public utility, as hereinbefore defined, doing business in this state or by the officers, agents, or employees thereof. The commission shall enforce the provisions of this chapter and report all violations thereof to the attorney general.

(2) All rates, fares, charges, classifications, and joint rates fixed by the commission shall be enforced and are prima facie lawful from the date of the order until changed or modified by the commission or in pursuance of part 4. All rules, practices, and services prescribed by the commission shall be enforced and enforcement actions shall be brought pursuant to the provisions of part 4 until the rules, practices, or services are changed or modified by the commission upon a satisfactory showing being made.

(3) Upon the request of the commission, it is the duty of the attorney general or the prosecuting attorney of any county to aid in any investigation, prosecution, hearing, or trial had under the provisions of this chapter and to institute and prosecute all actions or proceedings necessary for the enforcement of this chapter.

(4) Any forfeiture or penalty herein provided shall be recovered and suit thereon shall be brought in the name of the state in the district court of any county having jurisdiction of the defendant. The attorney general shall be the counsel in any proceeding, investigation, hearing, or trial prosecuted or defended by the commission, as also shall any prosecuting attorney selected by the commission or other special counsel furnished the commission in any county where such action is pending.

(5) In addition to the other remedies provided by this chapter for the prevention and punishment of any violation of the provisions thereof and all orders of the commission, the commission may compel compliance with the provisions of this chapter and of the orders of the commission by proceedings in mandamus, by injunction, or by other civil remedies.

69-3-207. Penalty for violation of natural gas pipeline safety provisions and regulations. (1) Any person violating any safety regulation or provision adopted under the Natural Gas Pipeline Safety Act of 1968, as amended, which applies to areas the commission has authority to enforce shall be subject to a fine of not less than \$100 or more than \$1,000. Each day in which a violation of a safety regulation or provision continues is considered a separate offense and is subject to the penalty prescribed in this subsection, except that the maximum fine may not exceed \$200,000 for any related series of violations.

(2) In determining the amount of the penalty, the following shall be considered: the nature, circumstances, and gravity of the violation and, with respect to the person found to have committed the violation, the degree of culpability; any history of prior violations; the effect on ability to continue to do business; any good faith in attempting to achieve compliance; ability to pay the penalty; and such other matters as justice may require.

(3) Such fine shall be recovered in a civil action upon the complaint of the commission in any court of competent jurisdiction.

(4) The commission may prescribe rules necessary to effectively administer this section.

69-3-209. Violations of public utility laws or orders. If any public utility violates any provision of this chapter, does any act herein prohibited, or fails or refuses to perform any duty enjoined upon it, fails to place in operation any rate or joint rate, or fails, neglects, or refuses to obey any lawful requirement or order made by the commission or any court, then for every such violation, failure, or refusal the public utility is subject to the penalty prescribed by 69-3-206.

69-14-131. Enforcement duties of commission. The commission shall see that the provisions of this chapter and all laws of this state concerning railroads are enforced and obeyed and that violations thereof are promptly prosecuted and penalties due the state therefor recovered and collected. The commission shall report all such violations, with the facts in its possession, to the attorney general or other officer charged with the enforcement of the laws and request him to institute the proper proceedings. All suits between the state and any railroad shall have precedence in all courts over all civil causes, criminal business and original proceedings in the supreme court excepted.

History: En. Sec. 34, Ch. 37, L. 1907; Sec. 4397, Rev. C. 1907; re-en. Sec. 3816, R.C.M. 1921; re-en. Sec. 3816, R.C.M. 1935; R.C.M. 1947, 72-139(part); amd. Sec. 27, Ch. 43, L. 1979.

69-14-132. Legal assistance for commission. The attorney general is the attorney of the commission, and the county attorney of every county in the state shall, on the request and at the direction of the attorney general, assist in all cases, proceedings, and investigations undertaken by the commission under this chapter in his own county. However, the commission may employ special counsel, with the approval of the attorney general, to assist in any case, matter, proceeding, or investigation instituted under this chapter. The attorney general, upon direction of the commission, and the county attorney of each county in this state, upon direction of the attorney general, shall institute and prosecute and appear and defend any action or proceeding arising under this chapter. All suits and proceedings filed in any court of this state under this chapter shall have precedence over all other business in the court except criminal business and original proceedings in the supreme court.

History: En. Sec. 20, Ch. 37, L. 1907; Sec. 4383, Rev. C. 1907; re-en. Sec. 3802, R.C.M. 1921; re-en. Sec. 3802, R.C.M. 1935; amd. Sec. 13, Ch. 315, L. 1974; R.C.M. 1947, 72-124; amd. Sec. 28, Ch. 43, L. 1979.

69-14-133. Collection and disposition of penalties and forfeitures. Unless otherwise provided, all penalties and forfeitures incurred, levied, and made under the provisions of this chapter shall be collected by the commission and paid over to the state treasurer and credited to the general fund. Should the commission fail or refuse to institute appropriate action for the recovery of any penalty or forfeiture provided for herein for the space of 60 days after notice of the cause of complaint by an aggrieved person or shipper, such person or shipper may institute and prosecute such action in the name of the state against such railroad, in the same manner as could the commission.

69-14-134. Court enforcement of commission actions. (1) The district court has jurisdiction to enforce, by proper decree, injunction, or order, the rates, classifications, rulings, orders, and regulations made or established by the commission under the provisions of this chapter. The proceeding therefor shall be by equitable action in the name of the state and shall be instituted by the attorney general or county attorney, whenever advised by the commission that any railroad, railway, or common carrier is violating or refusing to comply with any such rule, order, rate, classification, or regulation made by the commission and applicable to such railroad, railway, or common carrier. Such proceedings shall have precedence over all other business in such courts except criminal business.

(2) In any action the burden of proof shall rest upon the defendant, who must show by clear and satisfactory evidence that the rule, order, regulation, rate, or classification involved is unreasonable and unjust as to it. If, in such action, it is the decision of the court that the rule, regulation, order, rate, or classification is not unreasonable or unjust and that in refusing compliance therewith the railroad, railway, or common carrier is thereby failing or omitting the performance of any duty, debt, or obligation, the court shall decree a mandatory and perpetual injunction compelling obedience to and compliance with the rule, regulation, order, rate, or classification by the defendant and its officers, agents, servants, and employees and may grant such other relief as is just and proper. Any violation of such decree renders the defendant and any officer, agent, servant, or employee of the defendant who is in any manner instrumental in such violation guilty of contempt, punishable by a fine not exceeding \$1,000 for each offense or by imprisonment of the person guilty of contempt until he sufficiently purges himself therefrom. Such decree remains in effect until the rule, regulation, order, rate, or classification shall be modified or vacated by the commission. Nothing contained herein shall be construed to deprive either party to such proceedings of the right to trial by jury as provided by the seventh amendment to the constitution of the United States or as provided by the constitution of this state.

(3) An appeal shall lie to the supreme court from the decree in such action, and the cause shall have precedence over all other civil actions of a different nature pending in the supreme court except original proceedings in the supreme court.

Part 10

Railroad Personnel

Part Cross-References

Licensure of plumbing work in railroad not required. 37-69-102.

Limitation of hours worked in tunnel. 39-4-103.

Workers' compensation not applicable to certain railroad workers. 39-71-401.

Employment of children by railroad prohibited. 41-2-101.

Penalty for derailment of railroad cars. 45-5-113.

Penalty for abandonment of animal on railroad. 45-8-211.

Deaf and blind persons to be given equal accommodations. 49-4-211.

69-14-1001. Protection of employees affected by closure, consolidation, or centralization of station or other facility. (1) Whenever any railroad, as defined in 69-14-101, is granted the authority to close, consolidate, or centralize a railroad station or facility by order of the commission, the commission shall require employee protection. Before the commission may approve closure, consolidation, or centralization of a station or facility, it shall require from the railroad an agreement to protect each employee affected by the closure, consolidation, or centralization by providing a job at least equal in nature and pay to the job held by the employee for the 6 months prior to the closure, consolidation, or centralization or, if such job does not exist, compensation pay equal to that rate held by the employee 6 months prior to closure, consolidation, or centralization. The equal job and pay agreement must be in effect for a period of 4 years or, in the alternative, the number of years the employee has been employed prior to closure, consolidation, or centralization, whichever is shorter.

(2) Notwithstanding any other provisions of this section, an agreement pertaining to protection of the interests of affected employees may be entered into between the railroad and duly authorized representatives of the employees.

Exhibit #3
20 Mar 91
HJR 9

BEFORE THE SENATE JUDICIARY COMMITTEE

OF THE

MONTANA LEGISLATURE

ROOM 325 STATE CAPITOL

MARCH 20, 1991

3-20-91
HJR 9

MR. CHAIRMAN, MY NAME IS PETE LAMERE AND I AM HERE TODAY ON BEHALF OF THE CHIPPEWA CREE TRIBAL BUSINESS COMMITTEE WHICH IS THE GOVERNING BODY FOR THE CHIPPEWA CREE TRIBE OF THE ROCKY BOY RESERVATION. I AM CHAIRMAN OF THE LAW AND ORDER COMMITTEE ON THE RESERVATION.

The Chippewa Cree Tribe asks that you support House Joint Resolution Number nine (9) and we also request that you urge the Montana Congressional delegation to support legislation in the 102nd Congress which will recognize the continued jurisdiction of the Indian tribes over the criminal violations of non-member Indians on our reservations.

The U.S. Supreme Court chose to ignore an historical fact when they ruled in the DURO V. REINA case that a tribe could not maintain criminal jurisdiction over an Indian who was not from the reservation where the crime was committed. The historical fact that the court ignored is that, as Indians, when we leave our tribe and go to live with another tribe we know that we must live by their laws and that we face the same punishment as tribal members who break such laws. We also know that we enjoy the benefits of the tribal government such as police protection, fire protection, governmental services and social benefits. It certainly did not occur to us to take the position that we could commit a crime on a reservation not our own and then claim immunity from prosecution there. But some enterprising lawyer decided that he could make a argument against tribal jurisdiction based on the atrocious Oliphant decision.

One of the concerns that the U.S. Supreme Court had in Duro

was that the Indian who was being subjected to tribal criminal jurisdiction by an Indian tribe other than his own did not enjoy the "full franchise" of being a tribal member such as the right to vote and run for office. I want to remind you that we as Americans travel to many countries of the world where we do not have the right to vote and participate in government. In some of these countries we would not be given the right if we took up residence for life. Saudi Arabia and Kuwait are two examples.

I also want to remind you that the denial of full participation in government to non-members has come about as a matter of federal law and regulations and not as a matter of tribal self-government. Some tribes have started to take action to see that non-members participate in tribal government to the greatest degree possible without destroying the integrity of the tribe. Our Court System at Rocky Boy has asked non-members and non-Indians to serve on juries. The tribal government has asked non-members to serve on some sub-committees of the tribal government. I understand that this is also a practice on the Flathead Reservation.

Before I end my statement I would like to relate to you a true story of the harmful affect that the DURO decision has on the law and order system at Rocky Boy.

Shortly after the U.S. Supreme Court handed down the DURO decision there was much publicity to the effect that the decision had created a void in law enforcement on the reservation. It did not take long for certain non-member Indians to realize that they

could engage in certain kinds of criminal activity without fear of sanction. They realize that the tribe could not prosecute them, the State could not prosecute them and that the Feds would not prosecute them unless what they did was a serious crime. These non-member Indians saw the opportunity to initiate violence against tribal members against whom they had harbored a grudge. The resulting attacks went virtually unpunished due to the void left in local law enforcement. The Duro decision had so disrupted the normal law enforcement procedures that the individuals flaunted their newly discovered immunity from tribal law enforcement. The procedures for getting the FBI, the U.S. Attorney or other federal agencies to bring charges proved ineffective.

Ultimately the tribe had to rely on its civil authority of "expulsion" to force the individuals to leave the reservation so peace could be restored. Even then some of the individuals secretly returned to the reservation. Even if we had managed to apprehend them what recourse would we have had against someone who simply chose to ignore the civil order.

There has been some suggestion that State Law enforcement officials should have been asked to address the problem. I do not believe this would have been legal. State Law enforcement could only exercise criminal jurisdiction against Indians on reservations pursuant to Public Law-280. We are not a 280 reservation. Additionally I do not believe we could have expected a consistent law enforcement effort from the State. The State currently maintains jurisdiction in the Box Elder Community which is

surrounded by the reservation. However they frequently ask tribal officers to answer calls in that community, especially disturbance calls at the local taverns. I don't believe we could depend on the State to enforce the law on the reservation if they are reluctant to do the job in the Box Elder community where they have maintained jurisdiction.

I also don't believe the State can or should bare the financial burden of patrolling, investigation, judicial process, and incarceration and parole supervision relative to non-member criminal activities on reservations. That burden should be on the federal government and the tribes.

PLEASE VOTE TO SUPPORT THIS RESOLUTION AND CONTINUE TO SUPPORT CONGRESSIONAL EFFORTS TO PERMANENTLY RECOGNIZE TRIBAL JURISDICTION OVER THE VIOLATION OF THE TRIBAL CRIMINAL LAWS BY NON-MEMBER INDIANS.

I thank you on behalf of the Chippewa Cree Tribe.

Ex. 4
3-20-91
HJR 9

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 20 day of March, 1991.

Name: Stephen J. Cluncheon

Address: Box 1027
Bellevue Mt. 57055

Telephone Number: 406-768-5155

Representing whom?

For Rick Silver in Assiniboine Tribe

Appearing on which proposal?

HJR #9

Do you: Support? ☒ Amend? Oppose?

Comments:

Mr. Silver is support HJR 9
and would like entered for the
Record our Resolution stating so
186-9-2.

WHEREAS, the Fort Peck Tribal Executive Board is the duly elected body representing the Assiniboiné and Sioux Tribes of the Fort Peck Reservation and is empowered to act on behalf of the Tribes. All action shall be adherent to provisions set forth in the 1960 Constitution and By-Laws and Public Law #83-449, and

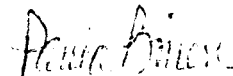
WHEREAS, House Joint Resolution #9 introduced by Representative Russel, Representative Gervais and Senator Yellowtail, of the Senate and the House of Representatives of the State of Montana urging the United States Congress to pass legislation confirming that a Tribal government within the United States has the authority to maintain criminal jurisdiction over non-member Indians who commit criminal acts within the Boundaries of the respective Tribes Reservation and upon the Tribal Government's Lands, and

WHEREAS, the A & S Tribes supports HJR 9 and recommends that the word "Exterior" be inserted in the Title so it reads... within the exterior Boundaries...

NOW THEREFORE BE IT RESOLVED, the Fort Peck Sioux and Assiniboiné Tribes endorses and urges the Montana Legislative to adopt House Joint Resolution #9.

C E R T I F I C A T I O N

I, the undersigned Secretary/Accountant of the Tribal Executive Board of the Assiniboiné and Sioux Tribes of the Fort Peck Indian Reservation, hereby certify that the Tribal Executive Board is composed of 12 voting members of whom 10 constituting a quorum were present at a Special meeting duly called and convened this 25th day of February, 1991, that the foregoing resolution was duly adopted at such meeting by the affirmative vote of 8.

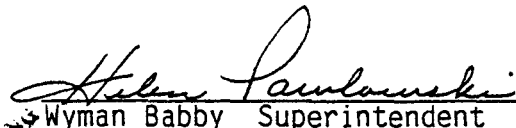


Paula Brien, Secretary/Accountant

APPROVED:



Chairman/Vice Chairman
Fort Peck Tribal Executive Board



Wyman Babby Superintendent
Fort Peck Agency

Ex. 5
3-20-91
HJR 9

**Testimony of Michael T. Pablo
on behalf of the
Montana-Wyoming Tribal Chairman's Association**

Senate Judiciary Committee

HJR 9 - Duro Resolution - March 20, 1991

Mr. Chairman, members of the committee, my name is Mickey Pablo. I am here today as chairman of the Montana/Wyoming Tribal Chairman's Association. All tribes in the states of Montana and Wyoming support HJR 9, and we urge your support also.

HJR 9 is not creating new law but is merely making a recommendation to the U.S. Congress.

The Duro decision has created a literal void or vacuum in jurisdiction. Unless permanently fixed, neither the states, the tribes or the federal government has criminal jurisdiction over non-member Indians who commit misdemeanor crimes on other Indians' reservations. After the decision came down, a number of tribes literally had to release sentenced (non-member Indian) prisoners from tribal jails. These people, particularly if they sense that they are immune from jurisdiction, may well feel free to continue violating the law.

We are not trying to create any new or additional powers for tribes or tribal courts. We are merely trying to maintain the status quo. Indian people have always known that they must abide by the laws of whatever reservation they are on (just like I have to abide by Montana's laws, Idaho's laws, or Canada's laws or whatever jurisdiction I may be in). Tribes have not drawn this distinction between an enrolled member and a non-member Indian. Additionally, there are many non-member Indians who have married into another tribe and have children and own property on another tribe's reservation. It is absurd to suggest the tribe where this person is living should not have jurisdiction.

If the tribes do not have jurisdiction, in all likelihood no entity will. However, if the states were to try and assert jurisdiction, they would be taking on tremendous additional burdens with no source of funding. States would have to hire more police, more judges, more prosecutors, more defenders, and build more jails.

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HJR 9

Since federal and tribal lands can't be taxed by the state, you would have to raise the taxes of your non-Indian constituents to pay the bill for the additional services needed. There are literally thousands of non-enrolled Indians living on other tribe's reservations. Should the state try to assert jurisdiction, would you want to begin, for instance, to send state officers on to the Crow Reservation to prosecute misdemeanor violations by Flatheads or Northern Cheyennes?

Our pow wows are another example. The Arlee Pow Wow draws between 5,000 to 10,000 visitors, which includes Indians from all across the United States and Canada.

If the state tries to assert jurisdiction in this area you may have to amend your action this morning on HB 268 to include another 6 or 7 officers for the public defenders appellant process.

Two weeks ago, Supreme Court Justice Sandra Day O'Connor told a group of tribal delegates that the Court's Duro decision had created a void and that tribal people should lobby the U.S. Congress to pass a law confirming that tribal governments do have the authority to exercise criminal jurisdiction over non-member Indians. That is exactly what we are trying to do, and we are asking for your assistance by your passing HJR 9.

Thank You.

STATE COORDINATOR OF INDIAN AFFAIRS

EX #6
3-20-91
HJR 9



STAN STEPHENS, GOVERNOR

1218 EAST SIXTH AVENUE

STATE OF MONTANA

(406) 444-3702
KATHLEEN M. FLEURY, COORDINATOR

HELENA, MONTANA 59620-0401

TESTIMONY ON
HOUSE JOINT RESOLUTION
NO. 9

The Coordinator of Indian Affairs supports House Joint Resolution No. 9 which would urge the United States Congress to pass legislation confirming that tribal governments within the United States have the authority to maintain criminal jurisdiction over Indians who reside within the exterior boundaries of the reservation, who are not enrolled members of the tribal government. Tribal governments have always exercised criminal jurisdiction over Indian persons not enrolled in their respective tribe, but who are within the exterior boundaries of the tribal government. This authority is important to preserve the safety of all persons who reside within the exterior boundaries of the reservation. Many enrolled members from other tribes throughout the United States attend tribal celebrations and Pow Wows.

To preserve law and order for all persons residing within the exterior boundaries of the reservation, tribal governments must have the authority to exercise criminal jurisdiction over other Indian persons who come within the exterior boundaries of the reservation. This authority protects all persons residing on the reservation and is an internal matter of the tribal government.

STATE COORDINATOR OF INDIAN AFFAIRS

EX. #6

3-20-91

HJR 9



STAN STEPHENS, GOVERNOR

1218 EAST SIXTH AVENUE

STATE OF MONTANA

(406) 444-3702

KATHLEEN M. FLEURY, COORDINATOR

HELENA, MONTANA 59620-0401

Further, because of the marriage between tribal members of different tribes who may reside on a reservation, tribal governments must be allowed to exercise criminal jurisdiction over the non-enrolled Indian. Again this authority is clearly an internal matter of the tribal government and preserves safety for all persons residing therein.

We urge support of House Joint Resolution No. 9 for the reasons stated.

Western Governors' Association
Resolution 90-014

July 17, 1990
Fargo, North Dakota

SPONSOR: Governor Carruthers
SUBJECT: Response to Duro v. Reina

A. BACKGROUND

1. In May of 1990, the U.S. Supreme Court issued a decision in Duro v. Reina that Indian tribes do not have criminal jurisdiction over non-member Indians.
2. It appears that the decision creates a jurisdictional gap for certain classes of crime where neither federal nor tribal courts have jurisdiction. States may be the only enforcement and court system which could fill the gap.
3. The feasibility of states expanding their criminal jurisdiction is unclear, from both a tribal and state perspective.
4. Tribes are concerned that the problem of crimes committed by non-member Indians on reservation be addressed.

B. GOVERNORS' POLICY STATEMENT

1. Better understanding is needed to determine the size and nature of the problem as well as the options for resolving it.
2. Until final resolution is achieved, the jurisdictional gap must be closed. Congress has authority to do that.
3. Accordingly, we urge Congress to:
 - a. Hold hearings in the West to illuminate the extent and nature of the problem; and
 - b. Pass legislation promptly to allow tribes temporary jurisdiction to enforce criminal laws and prosecute all Indian violators, both member and non-member Indians on their reservation.

C. GOVERNORS' MANAGEMENT DIRECTIVE

1. Convey this resolution to the Secretary of the Interior, the Senate Select Committee on Indian Affairs, the House Interior Committee, the western congressional delegation, the western attorneys-general, the National Congress of American Indians and the Native American Rights Fund.

Adopted unanimously.

90res014\duro.res

EX # 7
20 Mar 91
HJR 9

TESTIMONY

HOUSE JOINT RESOLUTION 9

WEDNESDAY, MARCH 20, 1991

GOOD MORNING MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE. FOR THE RECORD MY NAME IS BRAD SPEAR. I HAVE RANCHING INTERESTS ON THE CROW INDIAN RESERVATION IN BIG HORN COUNTY. I AM CHAIRMAN OF THE RESERVATION RELATIONS COMMITTEE OF THE MONTANA STOCKGROWERS ASSOCIATION.

I OPPOSE THIS RESOLUTION BECAUSE THE SUPREME COURT IN ITS WISDOM OF CONSTITUTIONAL RIGHTS AND AFTER MAKING A THOROUGH STUDY OF THE FACTS, FOUND THAT TRIBES DO NOT HAVE CRIMINAL JURISDICTION OVER NON-MEMBERS, WHETHER THEY ARE INDIAN OR NOT.

GOVERNOR STEPHENS IS FORMULATING AN ADVISORY COUNCIL CONSISTING OF REPRESENTATIVES OF THE TRIBES, THE INDIAN COORDINATOR OF MONTANA, THE GOVERNORS OFFICE, THE ATTORNEY GENERAL, THE U.S. ATTORNEY IN MONTANA AND OTHER INTERESTED PARTIES. THIS COUNCIL WILL BE STUDYING ^{The Jurisdiction of} JURISDICTION, TRANSPORTATION AND ECONOMIC DEVELOPMENT ON AND ADJACENT TO INDIAN RESERVATIONS. THE MONTANA STOCKGROWERS IS VERY SUPPORTIVE OF THE FORMATION OF THIS ADVISORY COUNCIL.

I WOULD RECOMMEND THAT ALL JURISDICTIONAL MATTERS SUCH AS HJR 9 AND OTHER BILLS BE REFERRED TO THIS ADVISORY COUNCIL FOR THEIR RECOMMENDATIONS AFTER THOROUGH STUDY AND EXCHANGE OF IDEAS

2x. 1
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HJR 9

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REACHED BY POSITIVE COMMUNICATION BETWEEN THE PARTIES OF THE
COUNCIL.

HOPEFULLY, THRU THIS ADVISORY COUNCIL, CONFUSION AND
DISCRIMINATION IN CONSTITUTIONAL JURISDICTION AFFECTING TRIBAL
MEMBERS, NON-TRIBAL MEMBERS AND NON-INDIANS LIVING ON OR ADJACENT
TO, WORKING ON, OR EVEN THE PUBLIC PASSING THROUGH AN INDIAN
RESERVATION WILL BE CORRECTED. THUS ELIMINATING THE NEED FOR A
RESOLUTION SUCH AS THIS.

FOR THESE REASONS, I ASK THAT YOU DO NOT PASS HJR 9 AND REQUEST
THAT IT BE DIRECTED TO THE GOVERNOR'S COUNCIL.

EX #8
20 Mar 91
HJR 9

TESTIMONY

HOUSE JOINT RESOLUTION 9

WEDNESDAY, MARCH 20, 1991

GOOD MORNING. MY NAME IS LAWRENCE GREEN. I'M FROM BIG SANDY AND I'M A MEMBER OF THE RESERVATION RELATIONS COMMITTEE OF THE MONTANA STOCKGROWERS ASSOCIATION. I'M HERE TO EXPRESS SOME CONCERNS WE HAVE REGARDING HJR 9.

WE FEEL THAT HJR 9 DOES NOT PROVIDE A SATISFACTORY SOLUTION TO THE PROBLEM CREATED BY THE DURO DECISION AND WE BELIEVE THAT OTHER ALTERNATIVES SHOULD BE EXAMINED TO RECTIFY THE SITUATION.

ONE OF OUR CONCERNS IS THAT HJR 9 IS NEGATING ESTABLISHED U.S. CONSTITUTIONAL RIGHTS BY ADVOCATING THAT TRIBAL GOVERNMENTS BE GIVEN CRIMINAL JURISDICTIONAL OVER NON-MEMBER INDIANS WHO COMMIT CRIMES ON A RESERVATION. THE MANY INDIANS WHO ARE NOT TRIBAL MEMBERS THAT LIVE ON RESERVATIONS, ARE EMPLOYED ON RESERVATIONS, OR PASS THROUGH RESERVATIONS ARE AT RISK OF LOSING THEIR CONSTITUTIONAL RIGHTS IF CONGRESS WERE TO PASS THE LEGISLATIONS PROPOSED BY HJR 9.

ANOTHER OF OUR CONCERNS IS THAT WE QUESTION THE LEGALITY OF TRIBAL GOVERNMENT'S SINGLING OUT NON-MEMBER INDIANS FOR PROSECUTION. THAT ASPECT OF HJR 9 SEEMS TO US TO BE DISCRIMINATORY. WE ARE ALSO CONCERNED OF THE EFFECT THAT OVERTURNING DURO WOULD HAVE ON NON-INDIANS.

BECAUSE HJR 9 PROPOSED TO NULLIFY THE U.S. CONSTITUTIONAL RIGHTS OF NON-MEMBER INDIANS AND BECAUSE THE RESOLUTION AS IT IS WRITTEN IS DISCRIMINATORY IN ITS APPLICATION TO NON-MEMBER INDIANS, WE URGE THE JUDICIARY COMMITTEE TO CONSIDER THE LONG-RANGE RAMIFICATIONS

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OF HJR 9 AND VOTE TO GIVE IT A RECOMMENDATION OF "DO NOT PASS".

I WOULD RECOMMEND THAT HJR 9 BE REFERRED TO THE GOVERNOR'S ADVISORY COUNCIL
ON INDIAN AFFAIRS AS HAS BEEN PREVIOUSLY MENTIONED.

Zx #9
20 Mar 91
HJR9

TESTIMONY

HOUSE JOINT RESOLUTION 9

WEDNESDAY, MARCH 20, 1991

GOOD MORNING MR. CHAIRMAN, AND MEMBERS OF THE COMMITTEE. FOR THE RECORD MY NAME IS REINY JABS A FARMER AND RANCHER FROM ST. XAVIER MONTANA. I AM REPRESENTING MYSELF AT THIS HEARING TODAY AND AM SPEAKING IN OPPOSITION TO HOUSE JOINT RESOLUTION 9.

I SOMETIMES HEAR THE QUESTION - WHY ARE NON-TRIBAL MEMBERS ON RESERVATIONS TO START WITH. ATTACHED TO MY TESTIMONY IS A CLIPPING FROM AN ADVERTISEMENT IN THE HARDIN SCHOOL ANNUAL FROM 1924. I'M SURE THIS WAS RUN IN SEVERAL PAPER IN THAT AREA.

"CROW INDIAN RESERVATION BIG HORN COUNTY MONTANA OFFERS GOOD OPPORTUNITY FOR THE FARMER OF LIMITED MEANS WHO IS WILLING TO WORK AND LIVE ECONOMICALLY, AS WELL AS FOR THE FARMER WITH EQUIPMENT TO HANDLE LARGER ACTIVITIES.

LAND IS FREQUENTLY OFFERED FOR SALE, AS THERE ARE MANY TRACTS WHICH MUST BE SOLD TO SETTLE INDIAN ESTATES. THERE IS LAND FOR LEASE TO THOSE NOT IN A POSITION TO BUY OR WHO WANT TO SPEND SOME TIME IN THE COUNTRY BEFORE BUYING."

ANOTHER PARAGRAPH DESCRIBES THE LAND AND TYPES OF FARMING AVAILABLE AND CROPS THAT CAN BE GROWN, PLUS LOCATIONS CLOSE TO RAILROAD AND SCHOOLS ETC.. THE LAST PARAGRAPH STATES, "IF INTERESTED, WRITE, GIVING SOME DETAILS AS TO THE PROPOSITION IN

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HJR 9

PAGE 2

WHICH INTERESTED AND PARTICULARS WILL BE FURNISHED BY
SUPERINTENDENT CROW RESERVATION, CROW AGENCY, MONTANA."

PEOPLE WERE URGED BY THE U.S. GOVERNMENT TO SETTLE ON THE
RESERVATION TO FARM AND USE THE LAND.

I'M SURE THE PEOPLE THAT RESPONDED AND MOVED ON THE RESERVATION
IN THE EARLY 1900'S DIDN'T THINK THEY WERE MOVING TO AN ALIEN
COUNTRY WHERE THEIR HEIRS SOME DAY WOULD BE UNDER THE
JURISDICTION OF ANOTHER AUTHORITY OTHER THAN THE U.S. GOVERNMENT.

IF TRIBAL JURISDICTION IS GRANTED OVER INDIANS WHO ARE NON-TRIBAL
MEMBERS, THE NEXT STEP WOULD BE TO EVERYONE LIVING ON
RESERVATIONS--THUS, I WOULD BE SUBJECT TO TWO GOVERNMENTS.

THE JUDGES OF THE TRIBAL COURT ON THE RESERVATION WHERE I LIVE
ARE POLITICAL APPOINTEES AND THERE IS NO STABILITY IN THE COURT
SYSTEM. I'VE BEEN TOLD BY ATTORNEY'S IT IS A TOTALLY FRUSTRATING
PROCESS TRYING TO WORK WITH THE TRIBAL COURT.

I UNDERSTAND THE TRIBAL LAWS AREN'T COMPLETE, SO IN INSTANCES
WHERE TRIBAL LAWS OR CODES DON'T APPLY, THEY REFER TO FEDERAL LAW
OR INDIAN CUSTOMS.

PAGE 3

THE INDIAN CIVIL RIGHTS ACT IMPOSES SOME LIMITATIONS IN THE EXERCISE OF TRIBAL AUTHORITY OVER THOSE PEOPLE WITHIN THE POWER OF A TRIBE. HOWEVER, PROTECTION AFFORDED BY THE U.S. CONSTITUTION INCLUDING THE BILL OF RIGHTS, DO NOT APPLY TO TRIBAL COURTS (SANTA CLARA PUEBLO V. MARTINEZ). THE ONLY REMEDY AVAILABLE TO ONE UNDER TRIBAL JURISDICTION AND CHALLENGING TREATMENT IN TRIBAL COURT IS A WRIT OF HABEAS CORPUS. TRIBAL SOVEREIGN IMMUNITY PRECLUDES SUIT FOR BREACHES BY A TRIBE OF CIVIL RIGHTS.

I'M STILL A CITIZEN OF THE U.S. AND WANT THE PROTECTION OF THE U.S. GOVERNMENT. IN THE FOURTH WHEREAS, IT STATE "WHEREAS, THE UNITED STATES CONGRESS IS NOW CONSIDERING LEGISLATION THAT WOULD RECTIFY THE ERROR OF THE UNITED STATES SUPREME COURT."

THE COURT VOTED 7-2, BASED ON ITS PRIOR DECISIONS AND A FULL STUDY AND UNDERSTANDING OF THE ISSUE, SO WHO IS TO CALL THIS DECISION AN ERROR.

I OPPOSE THE LEGISLATURE INTERVENING TO REVERSE THE COURT DECISION AND IMPOSING JURISDICTION ON PEOPLE WHO DO NOT HAVE A VOICE IN THAT GOVERNMENT, TAKING A POSITION CONTRARY TO A WELL THOUGHT OUT AND RESEARCHED DECISION OF THE SUPREME COURT AND OPPOSE THE LEGISLATURE TAKING A STAND CONTRARY TO A RIGHT

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PERPETRATED ON THE CITIZENS BY THE SUPREME COURT.

THANK YOU.

1924

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CROW INDIAN RESERVATION

Big Horn County, Montana

OFFERS good opportunity for the farmer of limited means who is willing to work and live economically, as well as for the farmer with equipment to handle larger activities.

Land is frequently offered for sale, as there are many tracts which must be sold to settle Indian estates. There is land for lease to those not in position to buy, or who want to spend some time in the country before buying.

The lands offered vary in quality and proximity to market, but much of it is near the railroad. The dry land is suitable for wheat, flax, corn, beans and most years anything grown in this climate. Irrigated land is suitable for alfalfa, grain of all kinds, sugar beets, potatoes, all staple garden crops, dairy cows, poultry, bees, etc. There is a lot of good grazing land leased which can sometimes be secured adjacent to farm land.

Good schools are accessible from most parts of the reservation.

If interested, write, giving some details as to proposition in which interested and particulars will be furnished by Superintendent Crow Reservation, Crow Agency, Montana.

KODAK FILMS

INDIAN ROBES

NAVAJO BLANKETS

Dry Goods—Shoes

Groceries—Grain

Richardson-Skipton
Company

CROW AGENCY, MONTANA

Headquarters For the Best Hardware, Implements and

Furniture Money Can Buy

HARDIN HARDWARE

THE WINCHESTER STORE

CITIZENS EQUAL RIGHTS ALLIANCE, Inc.

Ph. 406/849-5068 P. O. Box 215 Big Arm, MT 59910-0215



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March 20, 1991

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Bellingham, WA 98226
KATHY THOLE
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Montana State Senate
Senate Judiciary Committee

Re: House Resolution 9

I am Bill Covey, President of Citizens Equal Rights Alliance, Inc., (CERA), a national citizens organization incorporated in Montana, with members in 30 states. CERA was organized three years ago to represent citizen interests in national federal Indian policies.

CERA's interest in the Duro v. Reina case began when it was accepted for review by the U. S. Supreme Court. CERA joined with a western state (not Montana) in retaining an attorney knowledgeable in Indian Law, to assist the attorneys defending Duro -- an Indian from California involved in a criminal case on a reservation of which he was a non-member.

CERA's interest stemmed from the view that Duro, a U. S. citizen, was fighting jurisdiction by a Tribal Government in which he had no membership. We viewed the case as a possible erosion of the Supreme Court decision Oliphant v. Suquamish Tribes which prevented Tribal governments from having criminal jurisdiction over non-tribal members.

The decision in the Duro case, in our view, reaffirmed the protection obtained by non-tribal members in the Oliphant case.

Joint Resolution 9 would urge Montanas congressional delegation to work in Congress to give jurisdiction of criminal cases involving non-member Indians to Tribes.

There are two principal concerns we have with the proposed Resolution:

1. A group of U. S. citizens is being considered as not having equal rights as other citizens have because they are of Indian descent.
2. Overturning the Duro decision would erode the Oliphant decision.

In our view, Indians, whether tribal members or not, should be treated as any other U. S. citizen once they leave their

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Citizens Equal Rights Alliance, Inc.

member reservation. To do otherwise is to discriminate against them.

The argument that without jurisdiction there would be an area of criminal activity with no enforcement, was addressed by the the Supreme Court in the Duro case. The court stated that the Tribes can exclude from their tribal areas, anyone they want to, that they can seek criminal jurisdiction by states under PL 280 and in major crimes the federal government has jurisdiction.

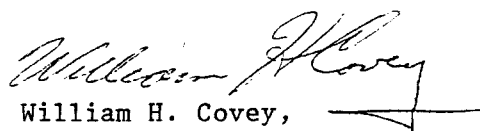
In any event, there are solutions to be had without discrimination based on race and without putting a U. S. citizen before a tribunal that does not provide constitutional protections as a matter of right. Further, it is wrong for a citizen to be tried in court by a government in which the citizen cannot vote, sit on one of their juries or hold an office in the government trying him.

The situation is as straight forward as I have presented it. It has nothing to do with Tribal self-determination, tribal sovereignty or questioning tribal courts. The U. S. Congress and the U. S. Supreme Court have addressed the issue of Tribal government criminal jurisdiction over non-members. Tribal government jurisdiction in criminal matters has been repeatedly restricted to tribal members. It is unacceptable to us to broaden that view.

You members of the Legislature have been asked in Joint Resolution 9, to recommend law enforcement based on race, to Montanas' U. S. Congressional delegation. You must ask yourselves, before you vote:

Are U. S. citizens, who happen to be of Indian descent, less entitled to all of the Constitutional protections than I am? -- Should this group of citizens be discriminated against because of their race?

JOINT RESOLUTION 9 needs to die in this committee. Please vote "NO".


William H. Covey,
President

102D CONGRESS
1ST SESSION

H. R. 972

To make permanent the legislative reinstatement, following the decision of Duro against Reina (58 U.S.L.W. 4643, May 29, 1990), of the power of Indian tribes to exercise criminal jurisdiction over Indians.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 19, 1991

Mr. RICHARDSON introduced the following bill; which was referred to the Committee on Interior and Insular Affairs

A BILL

To make permanent the legislative reinstatement, following the decision of Duro against Reina (58 U.S.L.W. 4643, May 29, 1990), of the power of Indian tribes to exercise criminal jurisdiction over Indians.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 **SECTION 1. CRIMINAL JURISDICTION OVER INDIANS.**
- 4 Section 8077, of Public Law 101-511 (104 Stat. 1892)
- 5 is amended by striking out subsection (d).

Call McAlhenny

EX #11
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may Hearings
Olipkoff



APR EX#12

3-20-91

HJR 9

WHEREAS, It is essential for all local governments to have effective law enforcement controls to insure the maintenance of law and order, health and safety of all persons within their communities; and

WHEREAS, Federally recognized Indian governments are an integral part of the United States and whose purpose it is to insure that law and order, health and safety is maintained within their communities for all people who live and sojourn there; and

WHEREAS, The relationship that Indian people have results in frequent visitations between their communities, and marriages between members of different tribes resulting in a significant number of Indian people living in Indian communities of which they are not members; and

WHEREAS, The U.S. Supreme Court in the case of *Duro v. Reina* (No. 88-6546, decided May 29, 1990) held that an Indian Tribe does not have the authority to impose criminal sanctions against an Indian who is not a member of its tribe; and

WHEREAS, Nonmember Indians who violate the criminal code of a Tribe are not now subject to such tribal law; and

WHEREAS, Federal law applies only to offenses against the Major Crimes Act or under the Indian Country Crimes Act and Assimilated Crimes Act to offenses between Indian and Non-Indians; and

WHEREAS, States which have not adopted Public Law 280 (Act of August 15, 1953) jurisdiction have no jurisdiction over offenses committed by nonmember Indians within Indian communities; and

WHEREAS, A jurisdictional void exists in criminal law within Indian Country and that void will result in an increase in criminality which cannot be effectively dealt with; now, therefore, be it

RESOLVED, That the International Association of Chiefs of Police urges the U.S. Congress to grant to Indian Tribes the authority to impose misdemeanor criminal sanctions against nonmember Indians who violate the tribal criminal code.

February 19, 1991

CONGRESSIONAL RECORD — *Extensions of Remarks*

**RECOGNIZING INDIAN TRIBES
CRIMINAL MISDEMEANOR JU-
RISDICTION OVER NON-
MEMBER INDIANS**

HON. BILL RICHARDSON

OF NEW MEXICO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 19, 1991

Mr. RICHARDSON. Mr. Speaker, today, I am introducing legislation to address a critical problem facing Indian tribes in my district and across the country. Because of the Supreme Court decision handed down last year in the case of *Duro versus Reina*, tribal courts no longer have jurisdiction over misdemeanor crimes committed on tribal lands by Indians who are not members of that tribe. Since States generally do not have jurisdiction over crimes committed in Indian country, and the Federal Government maintains jurisdiction only over major crimes, a jurisdictional void has resulted. I share the grave concern of tribal leaders that this decision has undermined their ability to provide for the health, safety, and welfare of their people.

In the third district of New Mexico alone, there are Navajo, Ute, Apache, and Hopi Indians as well as 19 different Indian Pueblos, all culturally and geographically very close to each other. Indian Governors and leaders have informed me that thousands of their people reside on, work at, or visit other tribal reservations every day, and that many have spouses who are members of different tribes. Because of this, many of the misdemeanor crimes on reservations are committed by nonmember Indians. According to tribal courts, eliminating tribal jurisdiction over these crimes is tantamount to issuing nonmember Indians a license for crime.

There is little doubt that defining the scope of Indian tribal jurisdiction is a complex undertaking—but one need only look at the relationship between the Federal Government and Indian tribes over the last 200 years to establish a strong case for tribal jurisdiction over nonmembers in misdemeanor cases.

When the tribes were incorporated into the territory of the United States, they relinquished some of their sovereign powers in return for the protection of the Federal Government. However, throughout history Congress has never questioned the power of tribal governments to exercise criminal misdemeanor jurisdiction over Indians and nonmember Indians in Indian country. From the very start, Congress has consistently exempted crimes com-

mitted by Indians against other Indians from the reach of Federal and State power. This recognition is consistent with the plenary power over Indian affairs that is vested in Congress under article I, section 3, clause 8 of the U.S. Constitution.

At the end of last session, Congress took action to correct the misguided *Duro* decision by passing legislation that reaffirmed the jurisdiction of Indian tribes over nonmember misdemeanor crime. However, the legislation included a provision establishing a 1-year deadline, meaning the jurisdictional void will again become a reality after September 30, 1991, if we do not act decisively to make the relief permanent.

The legislation I am introducing today makes permanent Congress' reaffirmation of Indian criminal misdemeanor jurisdiction by eliminating the September 30, 1991 deadline date. I urge my colleagues to support this critical legislation.

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 19 day of March, 1991.

Name: Alan Mikkelsen

Address: P.O. Box 639

St Ignace Mt SE865

Telephone Number: 745-2090

Representing whom?

Flathead Joint Board of Control

Appearing on which proposal?

HJR 009

Do you: Support? Amend? Oppose? X

Comments:

COMMITTEE ON

Sen Judiciary

DATE 3-20-91

1062

H.R. 9

VISITORS' REGISTER

H.B.

864-608-567-268-

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Stephen J. Clincher	Four Peck Tribes	HJR 9	✓	
PETE LAMERE	CHIPPEWA CREE TRIBE	HJR 9	✓	
Allen Chronister	State Bal Mont.	HB 268	✓	
DAVID DICKER	Confed Salish & Kootenai Tribes	HJR 9	✓	
Michael T. Pablo	CS & KT		✓	
John Dupuis		HJR 9	✓	
Carol McCrea	C.S & K Tribes	HJR 9	✓	
R. Budd Gould	Sponsor	HB 864	✓	
Jim Gmelch	Court Administrator	HB 864	✓	
Brad Spear	Mont. Stock Growers	HJR 9		✓
Deany Jabs	self	HJR 9		✓
Bill Cobey	CERA	HJR 9		✓
Gene Chisney	self	HJR 9		✓
Randy Hood	Table Def Comm - St Bar	HB 268	✓	
Judy Browning	Atty General	HB 268		
Judy Browning	Atty General	HB 567	✓	
Lerna Frank	Mont. Farm Bureau	HJR 9		X
Bob Gower	N.D.G.	HJR 9	✓	
Bill Christensen	HJR 9 MSGA	HJR 9		✓
Lawrence B. Allen	MSGA	HJR 9		✓
KATHLEEN FLEURY	COORDINATOR OF INDIAN	HJR 9	✓	
Noell Anderson	Self Dept of Commerce	HB 864	✓	
Jenny L. Valle	Rocky Bay			✓
Loren L. Valle	Rocky Bay			✓
Jim Canan	Self	HJR 9	✓	
CAROL MOSHER	MT. CATTLE WOMEN	HJR 9		X

(Please leave prepared statement with Secretary)

2 of 1

Dr. Jidoking

VISITORS' REGISTER

[illegible]

(Please leave prepared statement with Secretary)