

NATIONAL AMERICAN INDIAN COURT JUDGES ASSOCIATION

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Washington, D. C. 20036

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MODEL COURT DEVELOPMENT PROJECT!

State Court Enforcement of Indian Court Judgments

July 13-14, 1981

Pierre, South Dakota

Consultant

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INDIAN TRIBES AND FULL FAITH AND CREDIT

SOUTH DAKOTA STATE MEETING

JULY 13, 1981

Holiday Haus
125 West Pleasant Drive
Pierre, South Dakota 57501
(605) 224-5981

Room OAHE B

10:00 a.m. - 10:15 a.m.

KEYNOTE ADDRESS:

The Honorable Cranston Hawley,
Chief Judge, Fort Belknap Tribal Court
President, National American Indian
Court Judges Association

10:15 a.m. - 12:00 noon

FULL FAITH AND CREDIT IN THE STATE OF SOUTH DAKOTA

- Is there a problem?
- What are the problem(s)?

12:00 noon - 1:30 p.m.

Lunch

1:30 p.m. - 2:30 p.m.

TRIBE/STATE AGREEMENTS

2:30 p.m. - 3:30 p.m.

TRIBE/TRIBE AGREEMENTS

3:30 p.m. - 4:30 p.m.

CONCLUSION

- Prepare Presentations

THE PURPOSE OF THE FIRST DAY'S MEETING IS TO:

- determine whether or not there exists any problems associated with state court enforcement of tribal court judgments, whether it be civil, criminal or Indian Child Welfare decisions, in the State of South Dakota;
- identify the problems that may exist and develop recommendations to present to the state representatives;
- determine the existence and extent of any existing arrangements or agreements within the State;
- determine the existence, and extent, of any arrangements or agreements between tribes in the State;
- determine, based on the existence (if any) and the extent of any arrangements or agreements, whether or it would be useful or important to establish or develop any formal (written) agreements with the State and/or other tribes in the State; and,
- prepare a presentation, based on the findings and recommendations established or developed at this meeting, to State representatives.

National American Indian Court Judges Association

Suite 401 1000 Connecticut Avenue, N.W. Washington, D.C. 20036 (202)296-0685

INDIAN TRIBES AND FULL FAITH AND CREDIT .

SOUTH DAKOTA STATE MEETING

JULY 14, 1981

State Capitol
Pierre, South Dakota

10:00 a.m. - 11:00 a.m.

PRESENTATIONS BY TRIBES

11:00 a.m. - 12:00 noon

COMMENTS FROM STATE REPRESENTATIVES

- Honorable Roger L. Wollman
Chief Justice, South Dakota
State Supreme Court
- Mr. Mark Geddes, State Court
Administrator, South Dakota
Unified Judicial System

12:00 noon - 1:30 p.m.

Lunch

1:30 p.m. - 3:00 p.m.

GROUP DISCUSSION ON TOPICS PRESENTED

PROGRAM PARTICIPANTS

TRIBAL CHAIRMAN	CHIEF JUDGE	ASSOCIATE JUDGE	APPELLATE JUDGE
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Melvin Garreau	Honorable Gilbert LeBeau	Honorable Taylor Baldeagle	Honorable Mario Gonzales
Tribal Chairman		Honorable Ellsworth Brown	
Cheyenne River Sioux Tribe		Honorable James Chasinghawk, Jr.	
Eagle Butte, South Dakota 57625		Honorable Catherine LeCompte	
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- James G. Farrar
Senior Staff Attorney

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I. MODEL COURT DEVELOPMENT PROJECT

This meeting represents a shared concern by all in attendance for the improvement of tribal/state court relationships. Together we represent tribal council members, tribal leaders, tribal court judges, staff administrators and judges, NAICJA staff and consultants. The following materials have been gathered for your convenience and to help enlighten us as to what steps need to be taken to improve tribal/state court relationships in terms of enforcements of tribal court judgments.

This National Center for State Courts is providing assistance to the National American Indian Court Judges Association (NAICJA) under a federally funded National Scope project aimed at achieving state court enforcement of Indian court judgments. South Dakota is one of eight states selected for this effort.

The principal objective of this project is improved tribal and state court relations resulting in state enforcement of Indian court judgments. Almost all tribal courts have had state courts refuse to grant "full faith and credit" to their judgments. Relations between tribal courts and state courts vary immensely. Some states and counties have no relationship with tribes and tribal courts. The result of this situation has been confusion, alienation, anger, and a feeling of lawlessness. Crime prevention becomes more difficult and important due process rights are ignored.

In 1978 the Indian Child Welfare Act mandated that all courts in the United States grant "full faith and credit" to tribal court decisions regarding child welfare matters. Despite this congressional delegation of exclusive jurisdiction in child welfare cases, some state courts continue to withhold enforcement

of other tribal court judgments. It was because of this failure of enforcement that the NAICJA proposed a project to:

- 1) study, define, and document all the reasons state courts may have for refusing to enforce tribal court judgments; and
- 2) provide the needed technical assistance to tribes to improve and up-grade their court systems.

Some exerpts taken from grant application Model Court Development Program submitted by NAICJA



National American Indian Court Judges Association

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NAICJA is a non-profit, tax exempt organization, with a corporate office in Washington, D.C. and a tax base in the state of Colorado.

The National American Indian Court Judges Association was formed in 1968 taking as its purposes:

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- to improve the American Indian court system throughout the United States of America;
- to provide for the upgrading of the court system through research, professional advancement and continuing education;
- to further tribal and public knowledge and understanding of the American Indian Court system;
- to maintain and improve the integrity and capability of the American Indian court system in providing equal protection to all persons before any Indian court;
- to conduct any and all research and educational activities for the purpose of promoting the affairs and achieving the objectives of Indian courts and of the Association and to secure financial assistance for the advancement of the purposes of the Association.*

These primary goals represent NAICJA's devotion to the American Indian court system. Indian courts are necessary if tribal governments are to exercise the sovereign prerogatives of tribes as recognized by Congress and the federal courts. It is the job of Indian tribunals to interpret tribal laws and to apply them evenly to everyone under tribal jurisdiction. Congress had mandated in the Indian Civil Rights Act that this be done according to "due process" and without impairment of many individual liberties found in the federal Constitution. Before these goals can be met we must improve the abilities of our courts. The NAICJA will continue to function as an organization dedicated to work for the professionalization and up-grading of the Indian judiciary.

*Taken from Indian Courts and the Future, a report by the American Indian Court Judges Association, 1978. Judge Orville N. Olney, Project Director, David H. Getches, Project Planner/Coordinator.

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NATIONAL CENTER FOR STATE COURTS

The National Center for State Courts is a non-profit organization dedicated to modernizing court operations and improving justice at the state and local level throughout the country. It functions as an extension of the state court systems, working at their direction and providing an effective voice in matters of national importance. The National Center thus acts as a focal point for judicial reform--serving as a catalyst for implementing standards of fair and expeditious judicial administration, helping determine and disseminate solutions to the problems of state judicial systems.

Established in 1971, the National Center for State Courts is the youngest of the national court improvement organizations. Yet it has achieved a maturity which belies its relative youth, having grown rapidly in size and strength, and attaining recognition as the largest, most capable, and most influential organization in the field.

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The primary goals of the Center are:

- to conduct research projects on courts and court-related topics in order to identify needs and provide both short and long-range solutions to state courts problems;
- to conduct education and training programs, seminars and conferences;
- to serve as a technical assistance resource for the transfer and adaptation of improvements in court standards, operations, management, and technology; and
- to serve as a clearing house through which members of the courts community and others interested in courts can exchange information and encourage improvements in state court administrations, practices, and procedures.

These primary goals reflect the single factor which directs the energies of the Center: dedication to the state courts.

IV. STATE COURT ENFORCEMENT OF INDIAN COURT JUDGMENTS*

It is a fundamental legal concept that judgments and orders of federal and state courts are mutually recognized and enforced as a requirement of the United States Constitution, federal statutes, and case law.

Framers of the Constitution recognized that, due to commerce between the states, the legal rights of citizens could not be protected unless states were required to enforce the public laws and official orders and judgments of sister states on a mutual and common basis. Therefore, the concept of "full faith and credit" was embodied into Article 4 of the United States Constitution.

Federal case law has consistently recognized the independent status of Indian tribes from the states in which they are located. In 1832, the United States Supreme Court held in Wocester v. Georgia¹ that the Cherokee Reservation located in the State of Georgia was separate from the state and did not fall within state jurisdiction. More recently, the landmark case of Williams v. Lee² affirmed that a state does not have jurisdiction over cases involving tribal members where the dispute takes place on a reservation. The court held that, absent governing acts of Congress, the limits of state jurisdiction were to be determined by whether the state action would "infringe on the right of reservation Indians to make their own laws and be ruled by them."

In light of the separate status of Indian tribes, it would seem logical to expect some type of reciprocity to be in effect between the states and the tribes, either on the basis of "full faith and credit" or some other mutual reciprocity arrangement.

* Taken from Issues in Mutuality, prepared by the American Indian Lawyer Training Program, Inc., November 1976, see pp 1-4.

1 6 Pet. 515 (1832)

2 358 U.S. 217 (1959)

Yet, this is generally not the case. Few intergovernmental compacts providing for reciprocity exist between tribal and state governments, and there is continuing confusion regarding the requirements of federal law which perpetuates mutual antagonism and suspicion between tribal and state officials.

Although states are expressly limited in the exercise of power over Indians and Indian tribes by federal law, the application of some state laws, such as taxation and automobile registration and licensing requirements, to non-Indians on the reservation has given states indirect means of control on activities within Indian reservations. Often, the effect of such state control is to limit the incentive for tribal government regulation over identical areas. As a result, tribal officials are reluctant to enter into reciprocity agreements, formal or informal, for fear that states will gain more "control" on the reservation. On the otherhand, state officials generally do not concern themselves with the tribes unless there is a potential benefit to be gained thereby.

The implications of this lack of governmental interaction are significant. In the absence of mutuality, injustices for tribes and tribal members are common. Tribal members are often unable to enforce contract rights or other civil remedies which involve parties off the reservation. For example, accidents are often caused on reservations by drivers who are non-members of the tribe. Once across the reservation boundary line, the driver may not be subject to the tribal court's jurisdiction. This leaves the injured party without redress in the tribal forum because actions brought against non-members have no effect outside the reservation boundary unless tribal judgments are recognized by the state. Similarly, state court proceedings against Indians who reside on the reservation are not enforceable on the reservation absent reciprocity between

the two jurisdictions, or unilateral recognition by the tribal court. Limitations on criminal justice are likewise evident where mutual extradition agreements are lacking. State officials have often referred to the "refuge" aspect of reservations without any consideration of the numbers of non-member violators who simply cross reservation boundaries to escape from tribal authority. Obviously, lack of cooperation encourages violators on both sides. More importantly, the result is the extension of existing antagonism.

V. TRIBAL COURTS AND COURTS OF RECORD REQUIREMENTS*

Generally, states judges will recognize the judgment or decree of a tribal court only if the court meets state standards. One judgment must be from a "court of record" to be eligible for recognition. Although such a requirement is generally not statutorily mandated, it has been used in many instances as a ground on which to deny recognition to tribal court judgments. In effect, state judges analogize tribal courts to inferior non-record state courts, such as police courts or magistrate courts, whose judgments are often not recognized in courts of other states.

The elements constituting a "court of record" vary from state to state. In some states those courts which are courts of record are defined by statute, although statutes may not set forth the criteria for determining when a court constitutes a court of record. Relevant criteria may be defined by case law. Some elements common to state definitions are that courts of record are courts whose acts and judicial proceedings are recorded for perpetual memory (testimony), and which have the power to fine or imprison for contempt.

There is no requirement in federal law that a judgment or order must come from a "court of record" before it will be accorded

* Taken from Issues in Mutality, prepared by the American Indian Lawyer Training Program, Inc., November 1976, see pp 10-12 and B-13 thru B-15

full faith and credit.¹⁵ There is a federal requirement that a judgment be "final" before full faith and credit will be accorded. This requirement can be met by the final judgment of tribal courts, which like state courts have mechanisms for appellate review, in the same manner as it is met by judgments of state courts. Thus, under federal law state "court of record" standards are not relevant.

Despite the fact that many tribal courts meet or come close to meeting the criteria for courts of record and that tribal courts are not entirely like other inferior state courts whose judgments are often denied recognition,¹⁶ some state judges have persisted in treating tribal courts as inferior state courts, and thus have denied recognition to their judgments. This treatment is detrimental for those relying on tribal courts as well as for the status of tribal courts themselves. However, its basis -- the fear of procedural deficiencies in tribal courts -- is something which cannot be ignored. Even though state court of record standards are of arguable relevance, state judges have persisted in making them a factor in questions of recognition. Certainly, the underlying concerns about the protections inherent in record keeping procedures are relevant to recognition questions, and

15 Federal Law, 28 U.S.C. §1738, does establish a method for authentication and proof of judicial acts, records and proceedings. However, it is arguable whether these standards should apply to tribal courts. In some states it has been held that judgments rendered by a non-record court of inferior jurisdiction of another state will be accorded full faith and credit as long as they can be authenticated and proved according to the laws of the forum, even though such authentication and proof may differ from that set forth in federal law. See Hazel v. Jacobs, 78 NJL 159, 75 A. 903 (1910); Evan v. Cleary, 125 Pa 204, 17 A. 440 (1889)

16 For example, the judgments of most inferior, non-record state courts are subject to de novo review on appeal, i.e., they are retried completely. On the other hand, many tribal courts keep records on a limited basis, and have provisions for appeals on issues of law or assignments of error, rather than requiring complete retrial of all cases.

particularly to the practicalities of work out state/tribal reciprocity arrangements. Therefore, such concerns were made an important focus of this research.¹⁷

Tribal Court and Court of Record Standards:* Apart from due process considerations, a necessary inquiry must be made to determine whether the qualifications attributed to "courts of record" should be required in all cases. The significance of this question will be evident when considering the "attributes" of a tribal court. For the most part, tribal courts are influenced by the Anglo system of law. This is true even though they may operate more or less by traditional customs of justice. They are autonomous legal systems and are entitled to recognition and respect. Because of the non-record character attributed to tribal courts, they have been subjected to criticisms similar to those advanced against state non-record courts. The same questions regarding the quality of justice of non-record courts have been asked about tribal courts.

Most tribal courts do maintain some type of record system although the system may be no more than a general log of pleadings filed, parties to the action, names, addresses, and dispositions of cases. An important need is to determine exactly what types and methods of record keeping are required of tribal courts. The possible determining factor is whether a particular method of record keeping enables one to tell if the criteria for according recognition to a judgment have been satisfied. For example, the following are some characteristics of a valid judgment entitled to recognition. The record must be

17 See Appendix B for a discussion of court of record requirements as they relate to tribal court reciprocity.

* Taken from Issues in Mutuality, prepared by The American Indian Lawyer Training Program, Inc., November 1976, see pp B-13 thru B-15.

adequate to show that these criteria have been met.

1. The judgment must be final under the laws of the rendering court.
2. The judgment must be on the merits, i.e., a consent judgment (cognovit) does not satisfy this condition.³⁸
3. The judgment must have been fairly procured by complying with minimum requirements of propriety. For example, fraud would bar recognition.³⁹
4. The judgment must have been procured by a procedure complying with the requirements of the rendering court. If a judgment is to serve as a basis for maintenance of an action under the full faith and credit clause, it must conform to the above outlined standards.

The feature of veracity can be determined by the fact that the record has the proper evidentiary effect, as described above. It is important in determining veracity that when an appeal is not taken within the time limits, the failure to do so should be presumed to reflect satisfaction with the procedures. This should include satisfaction with due process as afforded within the proceeding.

As indicated earlier, it has been suggested by several courts that a judge clerk, and seal be featured as attributes of a court of record. Despite criticism of non-attorney judges, it seems fair to say that the qualifications of a tribal judge should be different. The criticisms of non-record state court

38 D. H. Overmyer v. Frick, 405 U.S. 174 (1972).

39 Baker v. Erbert, 427 P 2d 461 (1967)

judges who lack formal legal training may be well founded considering the context and environment in which they work. However, a tribal judge's qualifications must be viewed within the context in which he or she functions (i.e., a separate and distinct community with different values and customs). Although there is some merit to the criticism that a lack of formal legal training will hamper the judge's ability to rule on legal issues, it should be noted that tribal judges often participate in workshops designed to keep most of them abreast of legal formalities and terminology. In addition, some of them have legal advisers. An argument can also be made that when professional counsel appears before a tribal court, the judge may be "snowed" by the legal technicalities or terminology, thus affecting his ability to rule correctly. The result might raise an equal protection issue, subjecting the tribal court to further confusion. A relatively easy way of resolving problems which might result from the tribal judges' lack of professional legal background would be for tribal courts to make use of lawyers as advisors to the court in such capacities as court advisors to the court in such capacities as court advisor or technical assistant, similar to the "special master" used by federal courts when faced with highly technical subject matters. The lawyer would assist the tribal judge in understanding the technical aspects of the law so as to arrive at a decision on the merits.

As indicated above, power to find and imprison for contempt is another common court of record standard. The tribal court has the power to fine and imprison for contempt of its authority. For similar reasons (i.e., to vindicate the ends of justice), the tribal court provides a means to enforce its orders through contempt.

In conclusion, tribal courts must develop their record keeping

to import verity and to provide the evidentiary elements necessary in the matters of appeal and recognition. A further corollary to this suggestion is that tribal courts themselves must define the standards they want for their record keeping. In doing so they must remember that the standard they establish must demonstrate observance of due process requirements.

Court of Record Standards as an Element of or Precondition to Reciprocity: Whether and the extent to which state court of record standards will be an element or precondition to reciprocity between the state and the tribe will depend on how much either of the sovereigns is willing to give. The state, if agreeable to reciprocal arrangements, would possibly argue that the court of record standard be a precondition to any type of reciprocal arrangement. On the other hand, the tribal court might argue that the state's court of record standard be reviewed simply as an element to be considered along with other distinct attributes of a tribal court, and that technical compliance with all of the court or record requirements should not be necessary.

SOUTH DAKOTA

The supreme court and circuit courts (including magistrate divisions) are courts of record. Any court created by statute will have its judgments and orders enforced (South Dakota Comp. Laws §19-7-1, 1967) specific records requirements for South Dakota state courts are established by supreme court rules. Records and judicial proceedings of state courts may be proved by original records being produced by the clerk or judge of the court (South Dakota Comp. Laws §19-7-4, 1967). However, the state attorney general has stated that the state has no duty to accept a tribal court record or judgment (opinion No. 75-75, April 21, 1925). Under the Indian Child Welfare Act, such records or judgments must be accepted and enforced.

VI. DUE PROCESS CONCERNS*

The fundamental importance of due process has been clearly established by the Supreme Court. "Parties whose rights are to be affected are entitled to be heard, and in order to enjoy that right they must be notified."³¹ It is equally fundamental that the right to notice and opportunity to be heard be granted at a meaningful time and in a reasonable manner.

Notice has been defined as an "elementary and fundamental requirement of due process in any proceeding which is to be accorded finality, and must be reasonably calculated, under all circumstances to apprise interested parties of the pendency of the action."³² The notice must, likewise, be of such nature as to afford a reasonable time for those interested to make their appearance, with due regard given to the nature of the proceeding.³³

The requirement of opportunity to be heard has been deemed as a safeguard whenever a significant interest is at stake.³⁴ The hearing must also be granted at a practical and reasonable time.³⁵

So viewed, the requirements of due process under the Fourteenth Amendment seem to impose a strong barrier against the deprivation of fundamental individual rights. A major question, however, is whether the passage of the Indian Civil Rights Act³⁶ imposes a different standard for Indians or whether it should be interpreted according to the United States Constitution standard.

* Taken from, Issue in Authority, prepared by the American Indian Lawyer Training Program, Inc., November 1976, see pp B-12 and B-13.

31 Baldwin v. Hale, 68 U.S. 223, 233 (1863)

32 Mullane v. Hanover, 339 U.S. 306 (1950)

33 Marco v. Supreme Court, 496 P. 2d 636 (Ariz. 1972)

34 Fuentes v. Shervin, 407 U.S. 67 (1972)

35 Phoenix Corporation v. Roth, 284 P. 2d 645 (Ariz. 1955)

36 25 U.S.C. §1302-03 (1970)

VII. THE LEGAL ALTERNATIVES*

There are significant differences within states and among tribes in the types of court systems maintained, available resources, local practices, and population. These differences point to the need for a substantial degree to flexibility and sensitivity in fashioning relationships between court systems. In addition, appropriate arrangements for reciprocity may vary according to the type of case involved. For example, different considerations are involved in criminal as opposed to civil law, and even within the civil law area, reciprocity can mean one thing in domestic relations and something else in contract or tort law.

Alternative approaches to tribal/state reciprocity include the following:

1. Full Faith and Credit: Where the full faith and credit clause is interpreted to be legally binding as a matter of federal law, the question of whether or not to enter into reciprocity agreements becomes moot, and the remaining issues to be settled concern the practicalities of applying the full faith and credit principle. As noted, only New Mexico has concluded that full faith and credit applies and the court's decision in that case (Jim v. CIT) did not address the question of how the law should be applied.
2. Judicially Defined Comity: In several instances, state courts have gone on record as recognizing orders on a theory of "comity." The term simply means that foreign judgments can be enforced as a matter of discretion on the part of the court. The point to be remembered about "comity" is that the court acts on each case on an individual basis. Because one judgment is granted comity does not necessarily mean that all cases from the same source will be similarly treated. While it is true that once comity is awarded in one probate case it will more than likely be granted in all similar probate cases, there is no

* Taken from Issues in Mutuality, prepared by the American Indian Lawyer Training Program, Inc., November 1976, see pp 27-28.

guarantee. Thus, the concept of comity allows for much flexibility in its application by the court.

3. Recognition, As Required or Allowed by Statute: As previously noted, Washington State has, by statute, provided for recognition of tribal court orders, but left the decisions up to each county government or court. Conceivably, the state could have gone even further and required rather than simply allowed such recognition. Tribal governments could pass similar laws enabling their courts to grant recognition to state court orders. One would assume that this would only be done where the state or county reciprocates. This method of statutory authorization has the advantage of clarifying the law so that judges know for certain that they do have the authority to grant recognition outside the scope of the full faith and credit principle and on a less ambiguous basis than comity. If, as in the example of Washington State, discretion still rests with local courts, there is no absolute certainty that judgements will be enforced, but as the local practice develops this uncertainty can be clarified and resolved.
4. Mutuality Through "Inter-Governmental Agreements": The final method for achieving mutuality discussed in the report is by agreements negotiated between tribal and state and/or county officials as evidenced by the Gila River Community Court. Unless either the tribe or the state has officially gone on record opposing this method (i.e., by enacting a law specifically prohibiting or restricting official participation in such agreements), it appears that as the law now stands there is no legal barrier to this method. Both tribes and states have the independent authority to initiate such agreements and bind themselves to enforce them. An obvious advantage to this method is that it clarifies the situation so that each court and law enforcement agency is aware of the scope and degree of mutuality existing between their respective governments. Additionally, since the agreements are usually in response to a need for clarification, they can be tailored to the areas where the need for mutuality has been defined, as opposed to initiating total reciprocity when there would be no need. Reportedly, the Gila River people have been satisfied with the way their situation has been working out and the application of reciprocity has proved to be successful.

a. Full Faith and Credit

The Authority for Full Faith and Credit is the United States Consitution.

Full Faith and Credit shall be given in each state to public acts, records, and judicial proceedings of every other state.

By Federal law Congress added "territories or possessions of the United States" to those entities covered by the Full Faith and Credit Requirements.

To the extent Full Faith and Credit is found to be applicable in any given situation, mutual recognition of judgments is legally required -- Constitutionally compelled -- a legal mandate -- not discretionary!

A judgment from one state, when enforcement is sought in another state (territory) is usually conclusive of the rights and obligations of the parties. Some available defenses, however, are available to the second court. These defenses include:

1. Lack of Jurisdiction

If there was not jurisdiction in the first court, the judgment is not entitled to Full Faith and Credit.

2. Fraud

A judgment may be attacked by the second court for fraud in its procurement. The Full Faith and Credit clause does not preclude an attack upon the judgment for fraud when the question was raised by the first court. The measure of credit given by the second court should be the same as what the judgment would receive in the first court.

3. Judgment Not on the Merits

The judgment in the first court must have disposed of the controversy on its merits. Whether or not a judgment is on the merits is governed by the law of the forum in which it was rendered (first court).

A court may not escape its constitutional mandate to give Full Faith and Credit by asserting the following:

1. Public Policy

It is settled that one state may not refuse to enforce a judgment of a sister state because of supposed conflict with local policy.

2. No Court Available in Forum

A state court may not provide that courts shall never have jurisdiction to entertain suits on judgments -- nor may a state accomplish the same result by limiting the means of enforcement to a form of action so complex and expensive that resort to its courts by enforcement would be practically impossible.

3. Error of Fact or Law

That the first court has erred as to a fact or a law is no defense. Such mistakes must be rectified by appropriate action in the first court.

A more traditional view of the Full Faith and Credit states that for a judgment to be acceded Full Faith and Credit, it must be:

- a final judgment;
- on the merits;
- rendered by a competent court;
- in which adequate notice was given; and
- in which opportunity to be heard was afforded.

SOUTH DAKOTA

The Attorney General of South Dakota has issued an opinion that South Dakota courts are not bound by the full faith and credit clause of the United States Constitution.⁷

The Attorney General believes the federal government's unique constitutional relationship with the Indian tribes may require the federal government to afford full faith and credit to tribal judicial acts but that these federal cases do not support the proposition that the states must give full faith and credit to tribal court orders. His analysis says in part:

"Section I of Article IV of the United State Constitution requires the states to give full faith and credit to the judicial acts of other states. This doctrine does not extend to the judicial acts of Indian tribes which are not states. Neither does the doctrine of comity which presupposes two independent sovereign nations. Begay v. Miller, 70 Ariz. 380, 222 P. 2d 624, 268 (1950).

"As my predecessor held in 1957-'58 A G R 65, 66, the state has not duty to accept a tribal court record for filing: Tribal Court records are not given effect by any law of the state nor is there any requirement that the action taken by such recognized tribunal must be made a record of any court of the state."

By way of contrast, the New Mexico Supreme Court has recently concluded that the Navajo Reservation in New Mexico must be defined as a territory under U.S. §1738 and has declared Navajo tribal laws entitled to full faith and credit.⁸ The effect that this 1975 New Mexico Supreme Court decision will have on gaining recognition for court judgments and decrees emanating from Indian court systems which are staffed primarily by people not formally trained in law persists.

7 So. Dak. Attny. Gen. Op. No. 75-75, April 25, 1975.

8 Jim v. CIT Financial Services, 87 N.W. 362, 533 P. 2d 751 (1975).

b. Judicially Define Comity

Comity is similar to Full Faith and Credit in that the result is the same. They differ substantially in other aspects.

Comity is not a mandate. It is voluntary, a rule of practice, not a rule of law. The discretion involved in comity is given to the court and the decision is made on an individual, case-by-case basis.

In Full Faith and Credit, a judge cannot consider public policy. In comity, by contrast, a judge has a multitude of available considerations to be used in his/her determination of whether to grant comity. Among these available considerations are the public policy, laws, and morals of the state; whether sufficient due process was afforded; and jurisdiction.

Unless contrary to public policy, courts will generally enforce a foreign judgment even though so similar rights exist in their state. By virtue of the Doctrine of Comity, rights acquired under a judgment rendered in one state will usually be given force and effect in the second state.

Before state judges will recognize a judgment they often require that the judgment must come from a "court of record". Though often a basis for not recognizing a judgment, this requirement is generally not statutorily mandated. The elements of what constitutes a "court of record" vary from state to state.

c. Recognition, As Required or Allowed by Statute

Although South Dakota has no statute authorizing or mandating (except in the area of Indian Child Welfare) state courts to enforce Indian court judgments, there are other states that have either enacted such legislation or are in the process of considering such legislation.

WASHINGTON

The state of Washington, has provided by statute that,

tribal ordinances, customs, not inconsistent with law applicable in civil cases. Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which may possess shall, if not inconsistent with any applicable civil law of the state, be given full force and effect in the determination of civil causes of action pursuant to this section. See, RCW 37-12-070.

In addition, provision in Law and Order Code of confederated tribes of Colville Indian Reservation, that tribal court would have concurrent jurisdiction with applicable state authority over domestic relations of members of tribe, did not give state court jurisdiction to declare certain enrolled members of tribe, dependent children, where in light of other sections of code dealing with domestic relations, reference to concurrent jurisdiction running to state was limited to marriage and divorce. State ex rel. Adams v Superior Court (1960) 57 Wn 2d 181, 356 P 2d 985.

WISCONSIN

The following proposed legislation is presently being considered for adoption in the state of Wisconsin. If enacted, state courts would be required to give full faith and credit to the Menominee tribal court by statute.

]]]]] PRELIMINARY -- NOT READY FOR INTRODUCTION []]]]

- 1 AN ACT to create 806.245 of the statutes, relating to extending full faith
- 2 and credit to the acts and court documents of Indian tribes.

Analysis by the Legislative Reference Bureau

This bill requires the courts of this state to give full faith and credit to properly authenticated acts of the Menominee Indian tribal legislature and to the records, proceedings and judgments of Menominee tribal courts. It provides a procedure for authentication of the documents prior to admitting them as evidence in state courts. The bill also provides that acts and court documents of other Indian tribes may be given full faith and credit.

For further information, see the state and local fiscal estimate which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 3 SECTION 1. 806.245 of the statutes is created to read:
- 4 806.245 INDIAN TRIBAL DOCUMENTS: FULL FAITH AND CREDIT. (1) Copies
- 5 of acts, records, judicial proceedings and judgments of the Menominee
- 6 Indian tribe of Wisconsin, authenticated as provided under sub. (2)
- 7 shall have the same full faith and credit in the courts of this state
- 8 as they have by law or usage in the Menominee tribal courts.
- 9 (2) To qualify for admission as evidence in the courts of this
- 10 state:
- 11 (a) Copies of acts of the Menominee tribal legislature shall be
- 12 authenticated by the certificate of the Menominee tribal chairperson.
- 13 (b) Copies of records, judicial proceedings and judgments of a
- 14 Menominee tribal court shall be authenticated the the attestation of

MAC:lt

1 the clerk of the court. The seal, if any, of the court shall be
2 affixed to the attestation, together with a certification by a judge
3 of the court that the clerk's attestation is in proper form.

4 (3) The courts of this state shall give the same full faith and
5 credit to the authenticated acts of other Indian tribal legislature
6 and to the authenticated records, judicial proceedings and judgments
7 of other Indian tribal courts when established.

8

(End)

DRAFTER'S NOTE: 1. You may want to consider the suggestion of the National Conference of Commissioners on Uniform State Laws for dealing with the enforcement of tribal court judgments:

UNIFORM FOREIGN MONEY-JUDGMENTS

RECOGNITION ACT -- 1962

This act is designed to govern the treatment accorded in state courts to judgments of courts not in the United States. The Act should not be altered to govern actions on judgments of Indian tribal courts, which should not be treated like courts of "foreign nations". Their judgments should come under the Uniform Enforcement of Foreign Judgments Act, which covers treatment of judgments of courts within the United States. Consistent with this conclusion, the only recommended change would be in Section 1 (1):

(1) "Foreign state" means any governmental unit other than the United States, or any state, district, commonwealth, territory, insular possession thereof, Indian tribe exercising powers of self-government within a reservation, or the Panama Canal Zone

If you choose to amend the uniform act, s. 806.24 of the statutes, sub. (2) of this draft should be created, possibly in ch. 909, to establish the method of authenticating tribal documents.

2 Subsection (3), as drafted, gives state courts discretion to grant full faith and credit to the documents of tribes other than the Menominee. Does this meet with your intent, or do you want to require courts to grant full faith and credit to any tribe with an established court system?

3 Is sub. (3) intended to apply only to Wisconsin Indian tribal documents or to those of any Indian tribe?

(Second Draft)

AN ACT to create sec. 806.245, Statutes, to accord full faith and credit to the acts, records and judicial proceedings of the Menominee Indian Tribe of Wisconsin.

The people of the State of Wisconsin represented in the senate and assembly, do enact as follows:

Section 1. 806.245 of the Statutes is created to read:

806.245

(1) The acts of the legislature of the Menominee Indian Tribe of Wisconsin or copies thereof shall be authenticated by the Menominee Tribal chairperson.

(2) The records and judicial proceedings of any court of the Menominee Indian Tribe of Wisconsin, or copies thereof, shall be provided or admitted in other courts within the State of Wisconsin by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

(3) Such acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the State of Wisconsin as they have by law or usage in the courts of the Menominee Indian Tribe of Wisconsin from which they are taken.

(4) Other Tribal Courts?

d. Mutuality Through "Inter-Governmental Agreements"

According to AILTP:

"Reciprocity signifies a mutual interchange between two or more sovereign governments of favors, privileges, or protections granted to the citizens of one government on the condition that similar advantages be returned on an equal and mutual basis. In most of the states where research was conducted, there was little or no interchange between tribal and state courts. A few arrangements for extradition have been developed but are often one-way on favor of state systems with limited application in favor of tribes. This practice has been the primary reason for tribal government objection to "reciprocal" arrangements."

SOUTH DAKOTA

South Dakota statute 23-24B-1 provides that an Indian who is a fugitive from tribal justice, and who is found outside tribal jurisdiction, but is within the state, may be extradicted to the tribe from which he fled.

However, there will be no extradition unless both the State and the Indian tribe involved have "mutually and formally" entered into an extradition compact where either party may exercise the power of extradition. [South Dakota Statutes, §23-24B-2] If there is a mutual compact, the statutes further provides that a written request for extradition be made to the state attorney general stating that the crime was committed on the reservation. The request also must contain a copy of the arrest warrant, a copy of any judgment of conviction, sentenced imposed, and other relevant details. The individual involved must be charged

with committing a specific tribal offense. [South Dakota Statutes §23-24B-3]

If the fugitive Indian has state criminal charges pending against him, the state attorney general may, at his discretion, hold the individual until he has been tried and convicted (or discharged) and punished by the state. [South Dakota Statutes §23-24B-3.1]

Before extradition is accomplished the relevant documents are to be submitted to any state circuit judge, who is to decide if the demand should be met [South Dakota Statutes §23-24B-3.2] If the judge decides the demand shall be complied with, he is to issue a warrant of arrest. It is unclear from the statute how much discretion the circuit judge has to refuse extradition. It appears his task is ministerial, however, in that if all the forms are properly filed, extradition will be ordered. The statutes directly specify that the circuit judge is not to inquire into the guilt or innocence of the accused in the extradition process. [South Dakota Statutes §23-24B-4.2]

Before an arrested individual can be extradicted to the Indian jurisdiction, he must first be taken before a committing magistrate and informed of the demand for his surrender, of the crime charged, and of the right to legal counsel. [South Dakota Statutes §23-24B-5.1]

WISCONSIN

The state of Wisconsin is considering the following proposed statute that would authorize the state to enter with an extradition agreement with the Menominee tribe.

AN ACT TO CREATE SEC. 976.07, STATUTES, TO AUTHORIZE THE STATE
OF WISCONSIN AND THE MENOMINEE INDIAN TRIBE TO ENTER INTO
MUTUAL AGREEMENTS RESPECTING EXTRADITION

The people of the State of Wisconsin represented in senate and
assembly, do enact as follows:

Section 1. 976.07 of the Statutes is created to read:

976.07 Agreement on Extradition; Menominee Indian Tribe of
Wisconsin.

(1) In recognition of the growing belief that it is to the
mutual advantage of both the State and the Indian tribes within its
border to work cooperatively in the area of law enforcement, it is
hereby declared that:

(a) The consent of the Legislature is hereby given [to appro-
priate officials of the State of Wisconsin] to enter into agreements
with the Menominee Indian Tribe on matters relating to the extra-
dition of fugitives [witnesses and evidence(?)] found within their
respective jurisdictions;

(b) Such agreements shall be subject to revocation by either
party upon six months' written notice to the other unless a differ-
ent period of time is specified in the agreement;

(c) Agreements entered into pursuant to this Act are subject
to the approval of the Governor [after consultation with the
Attorney General]. Approval and disapproval shall be given within
thirty days from date of submission to the Governor; if no decision
is rendered within the stated time period, the agreement shall be
considered approved;

(d) Nothing in this Act shall be construed to: (1) enlarge the jurisdiction over civil or criminal matters which may be exercised by either State or tribal governments under federal law; (2) empower the Menominee Tribe to enter into agreements except as authorized by their own organizational document laws; or (3) empower the State or any of its political subdivisions to enter into agreements which are restricted by the Wisconsin Constitution;

(e) The Governor [or Attorney General] is hereby authorized to appoint persons to enter into all negotiations which may be necessary to carry out the purposes of this act; and is also empowered to provide the necessary technical assistance and material support required to implement any agreement entered into pursuant to this Act;

(f) An agreement entered into pursuant to this Act must include language which ensures that (1) the person named in the warrant and arrested is the same person charged with the crime, (2) the accused was present in the demanding jurisdiction at the time of the commission of the alleged crime, and (3) the accused is allowed a reasonable time within which to apply for a writ of habeas corpus;

(g) In the event the State of Wisconsin retrocedes jurisdiction pursuant to Pub. L. No. 83-661 (68 Stat. 795, amending Pub. L. No. 83-280, 67 Stat. 588 or provisions of any future United States Retrocession law) to any other Indian tribe within its borders, such tribe shall, upon its request, be afforded treatment equal to that given the Menominee Tribe under this Act.

VIII. UNIFORM ENFORCEMENT OF FOREIGN JUDGMENTS ACT

Regardless of which avenue Indian and state courts decide upon (comity, full faith and credit, agreements, etc.), the following Act can be used as a checklist--a day-to-day detailed plan to help implement the enforcement of Indian court judgments by state courts.

The following states have adopted the Uniform Enforcement of Foreign Judgments Act:

	Effective date:
Arizona	1971
Idaho	1974
Washington	1953
Wisconsin	1965
1948 Act Oregon	1955

The following states have adopted the Uniform Foreign Money-Judgments Recognition Act:

Washington	1975
Oregon	1977
Michigan	1967

By mere implication, the fact that both Oregon and Washington have adopted both statutes there is reason to believe that statutes differ in effect of result. It is also possibly significant that both states adopted the Uniform Foreign Money-Judgments Recognition Act after their adoption of the Uniform Enforcement of Foreign Judgments Act.

The difference is very significant. The Uniform Foreign Money-Judgments Recognition Act applies to money-judgments from foreign COUNTRIES. The statute defines foreign states as "any governmental unit other than the United States". This Act then appears to be somewhat out of context for our needs.

The Uniform Enforcement of Foreign Judgments Act does not concern itself nor address any issues concerning foreign countries. The statute is rather short and simple and basically requires the following:

1. A foreign judgment is a decree entitled to full faith and credit;
2. A copy of the judgment should be filed with the clerk of court in the second court (enforcing court);
3. "The clerk shall treat any foreign judgment in the same manner as a judgment of the circuit court of this state."
4. Judgment so filed is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a judgment of a court of this state (second court).
5. Mail notice to judgment debtor;
6. No process of enforcement begins until 15 days after filing;
7. Judgment debtor given opportunity to show court grounds for staying enforcement;
8. Judgement creditor still has right to bring action to enforce.

The Uniform Foreign Money-Judgments Recognition Act has been adopted by several states including Michigan, Oregon,

and Washington. Although its interest is to increase recognition of judgments from foreign countries, many of the Act's sections are helpful in determining what standards need be met in the enforcement of a judgment from a sister state. See §3. The Act applies to any foreign judgment that is final and conclusive and enforceable where rendered.

For a foreign judgment to be conclusive:

1. The judgment must be rendered in an impartial tribunal and be compatible with due process requirements;
2. Foreign court must have jurisdiction over defendant or;
3. Over subject matter.

§4 A foreign judgment should be recognized if:

1. Defendant received adequate notice in foreign court;
2. Judgement was not overturned by fraud;
3. Cause of action is not repugnant to public policy of enforcing state;
4. Judgement should not conflict with another final and conclusive judgment;

5. Proceeding in foreign court should not be contrary to an agreement between the parties under which the dispute in question was to be settled other than by proceedings in that court, or;

6. If jurisdiction was based only on personal service, the foreign court was a seriously inconvenient forum.

§5 Personal jurisdiction is recognized if:

1. Defendant was served personally in foreign state;
2. Defendant voluntarily appeared in the proceedings (other than for the purpose of protecting property, or contesting jurisdiction);
3. Defendant, prior to commencement of proceeding, agreement to submit to the jurisdiction of foreign court;
4. Defendant is domiciled in foreign state when proceedings were instituted (or corporation, having its principal place of business);
5. Defendant has business office in foreign state and proceeding in foreign court involved a cause of action arising out of business;
6. Defendant operated a motor vehicle or airplane in foreign state and the proceedings involved a cause of action arising out of such operation.

WASHINGTON

The Yakcince tribe in the state of Washington has enacted the following code that authorizes enforcement of "foreign judgments" in the Yakcince tribal court. No provision is made or required for reciprocity in the state courts.

TITLE XXVII - FOREIGN JUDGMENTS

CHAPTER 27.01 UNIFORM ENFORCEMENT OF FOREIGN JUDGMENT ACT

SECTION 27.01.01: DEFINITIONS

As used in this CHAPTER:

- (1) "FOREIGN JUDGMENT" means any judgment, decree or order of a Court of the United States or of any state or territory which is entitled to full faith and credit in this Reservation.
- (2) "REGISTER" means to file a foreign judgment in the Yakima Tribal Court.
- (3) "LEVY" means to take control of or create a lien upon property under any judicial writ or process whereby satisfaction of a judgment may be enforced against such property.
- (4) "JUDGMENT DEBTOR" means the party against whom a foreign judgment has been rendered.

SECTION 27.01.03: REGISTRATION OF JUDGMENT

On application made within the time allowed for bringing an action on a foreign judgment in this Reservation, any person entitled to bring such action may have a foreign judgment registered in the Yakima Tribal Court.

SECTION 27.01.05: APPLICATION FOR REGISTRATION

A verified petition for registration shall set forth a copy of the judgment to be registered, the date of its entry and the record of any subsequent entries affecting it (such as levies of execution, payments in partial satisfaction and the like) all authenticated in the manner authorized by the laws of the United States or of this Tribe, and a prayer that the judgment be registered. The Clerk of the registering Court shall notify the Clerk of the Court which rendered the original judgment that application for registration has been made, and shall request him to file this information with the judgment.

SECTION 27.01.07: PERSONAL JURISDICTION

At any time after registration the petitioner shall be entitled to have summons served upon the judgment debtor as in an action brought

upon the foreign judgment, in any manner authorized by the law of this Tribe for obtaining jurisdiction of the person.

SECTION 27.01.09: NOTICE IN ABSENCE OF PERSONAL JURISDICTION

If jurisdiction of the person of the judgment debtor cannot be obtained, a notice clearly designating the foreign judgment and reciting the fact of registration, the Court in which it is registered, and the time allowed for pleading, shall be sent by the Clerk of the registering Court by registered mail to the last known address of the judgment debtor. Proof of such mailing shall be made by certificate of the Clerk.

SECTION 27.01.11: LEVY

At any time after registration and regardless of whether jurisdiction of the person of the judgment debtor has been secured or final judgment has been obtained, a levy may be made under the registered judgment upon any property of the judgment debtor which is subject to execution or other judicial process for satisfaction of judgment.

SECTION 27.01.13: NEW PERSONAL JUDGMENT

If the judgment debtor fails to plead within sixty (60) days after jurisdiction over his person has been obtained, or if the Court after hearing has refused to set the registration aside, the registered judgment shall become a final personal judgment of the Court in which it is registered.

SECTION 27.01.15: DEFENSES

Any defense, set-off, counterclaim, or cross-complaint which under the law of the Tribe may be asserted by the defendant in an action on the foreign judgment may be presented by appropriate pleadings and the issues raised thereby shall be tried and determined as in other civil actions. Such pleadings must be filed within sixty (60) days after personal jurisdiction is acquired over him or within sixty (60) days after the mailing of the notice prescribed in Section 27.01.09.

SECTION 27.01.17: PENDENCY OF APPEAL

If the judgment debtor shows that an appeal from the original judgment is pending or that he is entitled and intends to appeal therefrom, the Court shall, on such terms as it thinks just, postpone the trial for such time as appears sufficient for the appeal to be concluded, and may set aside the levy upon proof that the defendant has furnished adequate security for satisfaction of the judgment.

SECTION 27.01.19: EFFECT OF SETTING ASIDE REGISTRATION

An order setting aside a registration constitutes a final judgment in favor of the judgment debtor.

SECTION 27.01.21: APPEAL

An appeal may be taken by either party from any judgment sustaining or setting aside a registration on the same terms as an appeal from a judgment of the same Court.

SECTION 27.01.23: NEW JUDGMENT

If personal jurisdiction of the judgment debtor is not secured within sixty (60) days after the levy and he has not, within sixty (60) days after the mailing of the notice prescribed by Section 27.01.09 acted to set aside the registration, or to assert a setoff, counterclaim, or cross-complaint, the registered judgment shall be a final judgment of the Court in which it is registered, binding upon the judgment debtor's interest in property levied upon, and the Court shall enter an order to that effect.

SECTION 27.01.25: SALE UNDER LEVY

Sale under the levy may be held at any time after final judgment, but not earlier. Sale and distribution of the proceeds shall be made in accordance with the law of this Tribe.

SECTION 27.01.27: INTEREST AND COSTS

When a registered foreign judgment becomes a final judgment of this Tribe, the Court shall include as part of the judgment interest payable on the foreign judgment under the law of the State in which

it was rendered, and the cost of obtaining the authenticated copy of the original judgment. The Court shall include as part of its judgment Court costs incidental to the proceeding in accordance with the law of this Tribe.

SECTION 27.01.29: SATISFACTION OF JUDGMENT

Satisfaction, either partial or complete, of the original judgment or of a judgment entered thereupon in any other state shall operate to the same extent as satisfaction of the judgment in this Reservation as to costs authorized by Section 27.01.27.

SECTION 27.01.31: OPTIONAL PROCEDURE

The right of a judgment creditor to bring an action to enforce his judgment instead of proceeding under this CHAPTER remains unimpaired.

SECTION 27.01.33: CONSTRUCTION

This CHAPTER shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states and tribes which enact it.

APPENDIX A

DESCRIPTION OF INDIAN COURT JURISDICTION

DESCRIPTION OF INDIAN COURT JURISDICTION

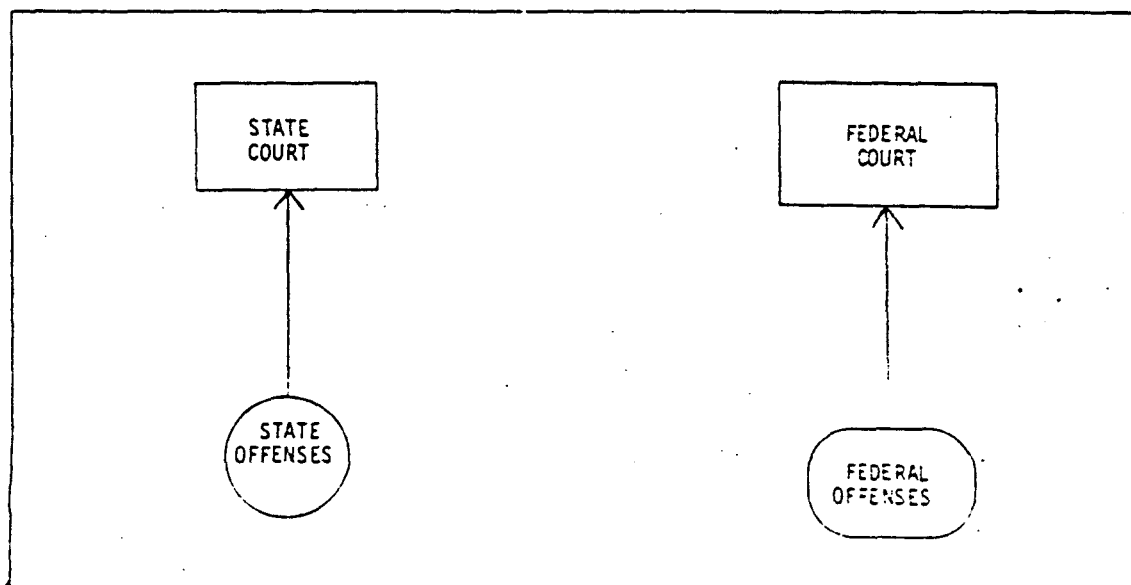
INTRODUCTION

A maze of legislative enactments, judicial interpretations, and administrative decisions have been addressed to the question of the law and order jurisdiction of Indian tribal governments. The effect has been to create a misunderstood and inconsistent body of law which is specialized to a degree which often makes it incomprehensible even to the people who live under it. When we speak of "law and order jurisdiction", we are referring to the power, right, and authority of tribal governments to define crimes, and to prosecute and punish those who violate them. Many Indian tribal governments are uncertain about the scope of their law and order jurisdiction, and the result is that much of the power arising from such jurisdiction is not being exercised. The purpose of this study is to identify the limits of tribal law and order jurisdiction so that its full potential will be recognized by Indian and non-Indian alike.

At the outset, to determine whether a tribe may exercise its law and order jurisdiction in relation to a particular criminal offense, several factors must be considered:

- (a) Whether the offender is an Indian;
- (b) Whether the victim is an Indian;
- (c) The nature of the offense;
- (d) The place where the offense was committed.

These and related factors determine the allocation of jurisdiction among the federal courts, the state courts, and the tribal courts. The graphs and accompanying discussion which follow indicate the complexities of such jurisdictional allocation. They are offered for illustrative purposes only and are not to be relied upon as an accurate guide for the solution of specific jurisdictional problems. Graph 1 illustrates the basic situation in which jurisdiction over state and federal crimes is allocated between state and federal courts respectively.



GRAPH 1. Basic Allocation of State and Federal Criminal Jurisdiction

Thus, as Graph 1 indicates, the resolution of questions of state versus federal jurisdiction is, in broad terms, very simple. The only thing that need be determined is the nature of the offense involved. If it is a federal offense, jurisdiction will lie with federal court; if it is a state offense, the state court has jurisdiction. It makes no difference whether the offender is an Indian or a non-Indian.

The entire jurisdictional situation becomes immensely more complex and difficult to resolve when the jurisdiction of tribal courts located on Indian reservations is taken into account. It is impossible, even in broad terms, to illustrate graphically the multiple jurisdictional situations which arise when the jurisdiction of a tribal court is in the picture. Graph 2 illustrates only a fraction of the jurisdictional problems which arise when jurisdiction is allocated among federal, state and tribal courts. Before studying Graph 2, it will be helpful to consider the following general principles:

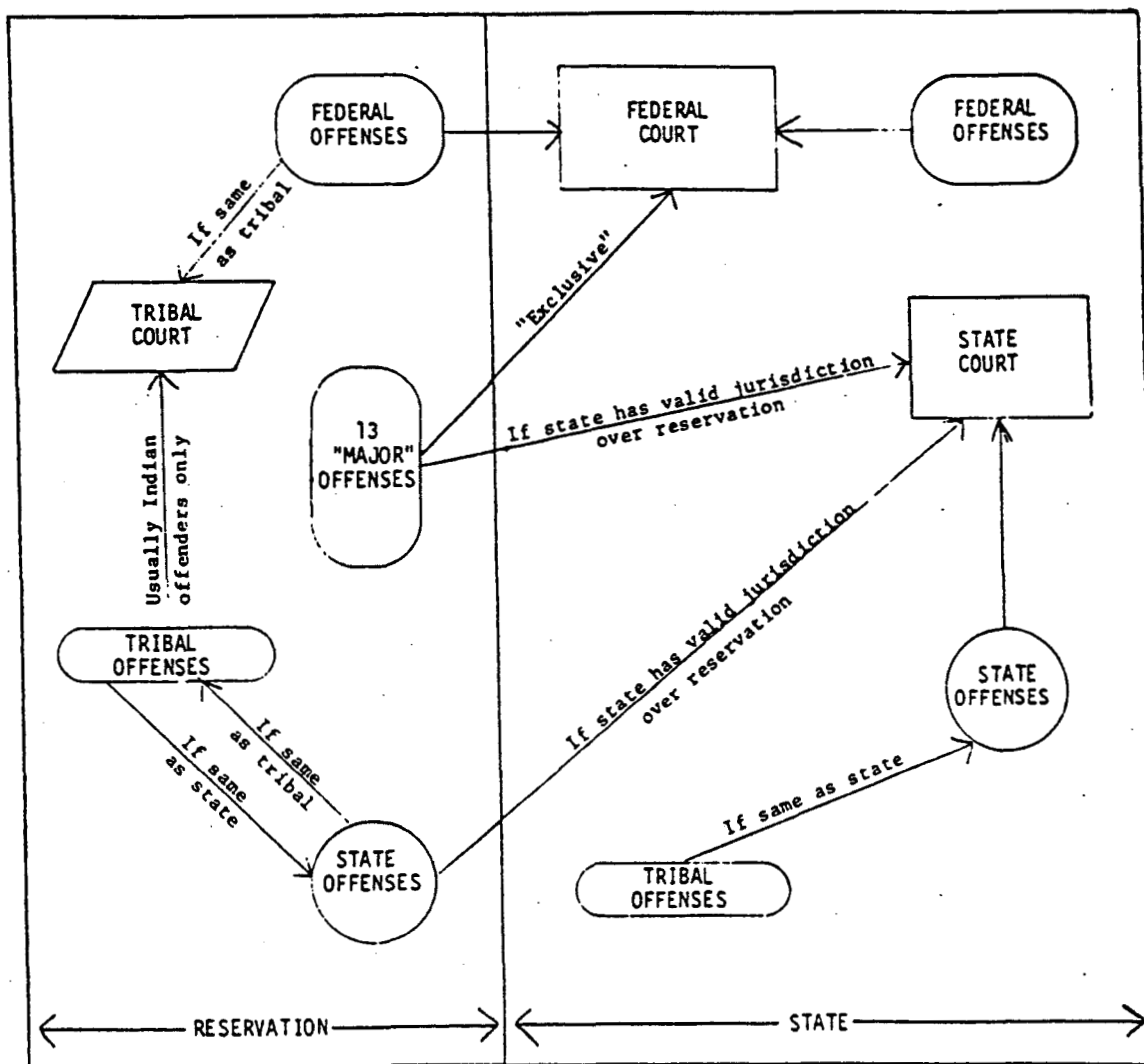
(1) A federal court has jurisdiction over all federal offenses, regardless of whether the offense is committed on or off an Indian reservation and regardless of whether the offender is an Indian or a non-Indian. An exception under federal law,¹ provides that a federal court does not have jurisdiction (a) over offenses committed by one Indian against the person or property of another Indian; (b) over any Indian committing any offense in Indian country who has been punished under tribal law; and (c) over any case where, by treaty, exclusive jurisdiction lies with tribal court. In addition, under the Major Crime Act,² a federal court has exclusive jurisdiction over thirteen enumerated "major crimes" if committed by an Indian in Indian country, namely, murder, manslaughter, rape, carnal knowledge as defined in the statute, assault with intent to rape, incest, assault with intent to kill, assault with a dangerous weapon, assault resulting in serious bodily injury, arson, burglary, robbery, and larceny. An important exception to the Major Crimes Act is that a federal court does not have exclusive jurisdiction over "major crimes" committed within Indian country to the extent a state has validly assumed jurisdiction over offenses committed within an Indian reservation pursuant to Public Law 280³ or the Indian Civil Rights Act of 1968.⁴ Under this exception, state and, to a degree, Indian courts have jurisdiction to the extent indicated below.

(2) A state court has jurisdiction over all state offenses committed off an Indian reservation, regardless whether the offender is an Indian or a non-Indian. In addition, a state court has jurisdiction over all state offenses even if committed on a reservation, provided it has validly assumed jurisdiction over the reservation pursuant to Public Law 280 or the Indian Civil Rights Act of 1968, except as otherwise provided by treaty or federal law.

(3) A tribal court has jurisdiction over all offenses which violate tribal law and which are committed on the reservation. Most tribal law and order codes limit jurisdiction to cases involving Indian offenders. If the state in which the reservation is located has validly assumed criminal jurisdiction over the reservation, the tribal court may have jurisdiction concurrent with that of the state to the extent tribal law has been violated. It should be noted, however, that, as a practical matter, tribal

courts have jurisdiction over only those offenses which would be characterized as misdemeanors under state or federal law inasmuch as the Indian Civil Rights Act of 1968⁵ limits the punishment which a tribal court may impose to no more than imprisonment for a term of six months, or a fine of \$500, or both.

With the foregoing principles in mind, consider Graph 2:



GRAPH 2. Simplified Allocation of State, Federal and Tribal Criminal Jurisdiction

As indicated previously, Graph 2 is an incomplete illustration of the jurisdictional picture and, like any attempt to illustrate the interrelationships between state, federal and tribal jurisdiction, it can be misleading. Thus, for example, no court has jurisdiction to enforce tribal ordinances off a reservation. Thus, also, a state court has jurisdiction over tribal offenses only to the extent they are identical to state offenses, and the prosecution will be for violation of state, not tribal, law. Further, because tribal law and order codes usually limit tribal jurisdiction to cases involving Indian offenders on Indian reservations, it becomes important to know not only the nature of the offense, but also where it was committed and whether or not the offender is an Indian. Only when such information

has been established can the court which has jurisdiction in a specific instance be identified. The following list, which is a partial listing of the many possibilities involved, is offered for illustrative purposes only to indicate how the variables in a specific case can be used to determine the selection of the proper court for jurisdictional purposes:

<u>Defendant</u>	<u>Victim</u>	<u>Type of Offense</u>	<u>Locus of Crime</u>	<u>Court</u>
Indian	Indian	Misdemeanor, tribal	Reservation	Tribal
"	"	Misdemeanor, state	Off Reservation	State
"	"	Misdemeanor, federal	Off Reservation	Federal
"	"	"Major Crime" (18 U.S.C. Sec. 1153)	Reservation	Federal*
"	"	Felony, state	Off Reservation	State
"	"	Felony, federal	Off Reservation	Federal
Indian	Non-Indian	Misdemeanor, tribal	Reservation	Tribal
"	"	Misdemeanor, state	Off Reservation	State
"	"	Misdemeanor, federal	Off Reservation	Federal
"	"	"Major Crime" (18 U.S.C. Sec. 1153)	Reservation	Federal*
"	"	Felony, state	Off Reservation	State
"	"	Felony, federal	Off Reservation	Federal
Non-Indian	Indian	Misdemeanor, tribal	Reservation	Tribal**
"	"	Misdemeanor, state	Off Reservation	State
"	"	Misdemeanor, federal	Reservation	Federal
"	"	Misdemeanor, federal	Off Reservation	Federal
"	"	"Major Crime" (18 U.S.C. Sec. 1153)	Reservation	Federal*
"	"	Felony, state	Off Reservation	State
"	"	Felony, federal	Off Reservation	Federal
Non-Indian	Non-Indian	Misdemeanor, tribal	Reservation	Tribal**
"	"	Misdemeanor, federal	Reservation	Federal
"	"	Felony, state	Reservation	State***
"	"	Felony, federal	Reservation	Federal

* Assuming state has not assumed valid jurisdiction over the reservation. In the event the United States declines to prosecute, the cases are sometimes referred back to tribal court. There is divergence of opinion on the legality of this procedure. In most cases, when the United States Attorney declines to prosecute no further action is taken. If tribal court action may properly be taken, the charge must be reduced consistent with the tribal law and order code and the Indian Civil Rights Act of 1968.

** Assuming tribal law and order permits jurisdiction over non-Indian offenders.

*** Assuming state has assumed valid jurisdiction over reservation.

It is apparent that, from a practical standpoint, the difficulties which arise in the allocation of jurisdiction are multiple. For example, it is often necessary for a field police officer on a reservation to determine whether an offender is an Indian or a non-Indian, where the offense took place, and whether the offense is a violation of federal law. In making these determinations, the officer in the field must rely on established law. In this regard, both the determination of who is an "Indian" and what is "Indian country" have been defined by federal statutes. These statutes, however, are dated and do not settle all of the problems which occur. Indeed, the statutory definitions frequently create more problems than they solve.

Indian tribal governments are sovereign governmental entities. The degree of the sovereignty that is recognized is directly proportional to the amount of authority and attendant powers that tribal governments have. Moreover, tribal sovereignty in all probability will be recognized only to the extent that the inherent power that goes with it is exercised. In order to fully understand jurisdiction in that context, it is necessary first to trace the unique concept of sovereignty applicable to Indian tribal governments.

Specific jurisdictional problems which arise when Indian tribal sovereignty is taken into account involve the definition of an "Indian" and of "Indian country"; questions concerning the jurisdiction of cities and towns located on reservations; cross-deputization of non-Indian and Indian law enforcement officers; and the concepts of "fresh pursuit" and "implied consent". In many Indian communities, these are everyday problems, and to mention one area, it is perhaps not surprising that there is a trend among Indian communities today to try to alleviate their existing jurisdictional difficulties by passing the so-called "implied consent" ordinances whereby non-Indians who enter Indian reservations are deemed to have impliedly consented to the jurisdiction of the tribal government and to be subject to its laws. We have sought to examine these ordinances to determine their validity as well as to evaluate the role they play in rectifying the present problems.

The primary purpose of this paper is to identify some of the problems caused by the complex, confusing jurisdictional chaos which exists in Indian communities. Because of the scope of the subject we cannot identify all of the problems, much less propose comprehensive solutions to them. As stated in the grant application for this project, materials developed from this work will be used primarily to form the basis of future work in the jurisdictional area. Our principal concern throughout these materials is to illustrate the major problems which affect the daily living of both Indians and non-Indians. We hope that one result of this project will be that those who were previously unaware of these conditions will inquire further and cooperate in efforts to find solutions which will be effective on a nationwide basis.

At the same time, we would caution those interested in solving problems of Indian jurisdiction not to jump to the wrong conclusions. Many of the present difficulties exist because of distinctions

involving Indians and Indian country. We fear that good-intentioned people will immediately conclude that the problems set forth herein can be solved merely by eliminating the many distinctions which pervade this field. This is not the answer, as simple as it may appear, because Indian people judiciously want to retain their separate identities and institutions. To remove the distinguishing characteristics of Indian governments would compound the inequities which presently exist and produce added frustration. The negative acceptance of Public Law 280 clearly stresses this point. All qualified experts in the law enforcement field acknowledge that local law enforcement is vastly more effective than outside enforcement. This is simply because people are better equipped to understand and operate within their own laws and structures than they are in the case of those imposed by outside authorities. Within their own system people are able to perceive not only why certain laws are required, but also what they must do to be productive members of their society. When outside authorities enter into an Indian society, an occupation takes place involving the assertion of alien concepts which frequently are not in accordance with the needs and desires of the Indians themselves.

To examine the problems of jurisdiction we have investigated the following areas in depth: what is an Indian?; what is Indian country?; sovereignty and jurisdiction; cities, townsites and cross-deputization; "fresh pursuit"; and the theory of "implied consent". In the course of our study of these topics, we have traveled to a number of Indian reservations to determine the nature and scope of existing problems. We have sought to determine the opinions, needs and desires of the Indian people by conducting hundreds of interviews during which we vigorously solicited the opinion of those who must live and work under the prevailing conditions. In addition, we have examined applicable statutes, ordinances, regulations, and treaties, as well as judicial and administrative decisions which have defined the present circumstances. Finally, we have prepared suggested legislation which could ease the impact of the existing problems by strengthening the enforcement capabilities of tribal governments.

The legislative proposals which we offer are merely recommendations. We realize that each Indian community is a separate and distinct unit made up of people with differing needs, desires and customs, and therefore we encourage critical comments and suggestions from the Indian community. We have no wish to burden Indian tribal governments with laws which they do not want or need, but merely seek to present alternatives which might serve better than the laws which are presently in force.

Taken from Justice and the American Indian, Vol. 4: Examination of the Basis of Tribal Law and Order Authority.

FOOTNOTES

Introduction

- 1 18 U.S.C. Sec. 1152.
- 2 18 U.S.C. Sec. 1153.
- 3 *Specifically*, 18 U.S.C. Sec. 1162.
- 4 25 U.S.C. Sec. 1321, *et seq.*
- 5 25 U.S.C. Sec. 1302(7).

Chapter 1. Who Is An "Indian"?

- 1 93 Mont. 277, 19 P.2d 319 (1933); 22 Mont.L. Rev. 169 (1969).
- 2 29 Wash. 278, 69 P. 779 (1902) at 69.
- 3 69 P. at 782.
- 4 25 Fed. Cas. No. 14891 (1879).
- 5 151 U.S. 50 (1894).
- 6 Act of Feb. 8, 1887, 24 Stat. 388.
- 7 30 S.D. 239, 138 N.W. 377 (1912).
- 8 274 F. 47 (9th Cir. 1921).
- 9 Act of June 18, 1934, 48 Stat. 984, 25 U.S.C. Sec. 461 *et seq.*
- 10 234 U.S. 245 (1914).
- 11 20 Fed. Cas. No. 11719 (D.C.W.D. Ark. 1879).
- 12 103 F. 348 (C.C. Mont. 1900).
- 13 42 F. 320 (C.C.S.D. Cal. 1890).
- 14 99 F.2d 28 (7th Cir. 1938), *cert. denied*, 306 U.S. 643.
- 15 99 F. 437 (C.C.N.D. Wash. 1900).
- 16 99 F.2d at 31.
- 17 189 F. 690 (D.C.E.D. Wis. 1911).
- 18 195 F. 113 (C.C.S.D. 1912).
- 19 *See* U.S. v. Rogers, 4 How. 567 (1846), Westmoreland v. U.S., 135 U.S. 545 (1895) and Alberty v. U.S., 162 U.S. 499 (1896).
- 20 164 U.S. 657 (1897).
- 21 203 U.S. 76 (1906).
- 22 1 N.M. 422 (1869).
- 23 *See* U.S. v. Joseph, 94 U.S. 614 (1876), *aff'g* U.S. v. Varela, 1 N.M. 593 (1874).
- 24 231 U.S. 28 (1913), *rev'g* 198 F. 539 (D.C.N.M. 1912).
- 25 U.S. v. Chavez, 290 U.S. 357 (1933).
- 26 4 Stat. 729.

JIM v. CIT FINANCIAL SERVICES CORPORATION N. M. 751

Cite as 533 P.2d 751

87 N.M. 362

Allen JIM, Petitioner,

v.

CIT FINANCIAL SERVICES CORPORATION, Respondent.

No. 10200.

Supreme Court of New Mexico.

April 11, 1975.

Enrolled member of Navajo Nation brought action under Tribal Code to recover a minimum civil judgment against finance company which repossessed his pickup truck without written consent. The District Court, San Juan County, sustained defendant's claim that it had a right under Uniform Commercial Code to self-help repossession and dismissed case with prejudice, and plaintiff appealed. The Court of Appeals, 86 N.M. 784, 527 P.2d 1222, affirmed, but since no precedent was created in that a majority of panel was unable to agree upon any single basis for its action, the Supreme Court granted certiorari on ground that issues involved were of substantial public interest. The Supreme Court, Stephenson, J., held that the laws of the Navajo Tribe of Indians are entitled by federal statute to full faith and credit in the courts of New Mexico because the Navajo Nation is a "territory" within the meaning of that statute; however, full faith and credit is not an inexorable and unqualified command when a foreign legislative enactment or statute is sought to be enforced in forum state; and though parties were free to choose whether Navajo Tribal Code or Uniform Commercial Code governed transaction, whether conditional sales contract conclusively established that parties made a choice, not only as to law governing validity and interpretation of contract, but also as to law governing remedies for a breach of contract, or whether contract failed to so establish, thus requiring a choice of law analysis were questions which should have been decided prior to

determining whether finance company had a right under Uniform Commercial Code to self-help repossession.

Remanded with directions.

1. States ⇨ 5½

The laws of the Navajo Tribe of Indians are entitled by federal statute to full faith and credit in the courts of New Mexico because the Navajo Nation is a "territory" within the meaning of that statute. 28 U.S.C.A. § 1738.

2. States ⇨ 5½

Full faith and credit is not an inexorable and unqualified command when a foreign legislative enactment or statute is sought to be enforced in forum state.

3. Courts ⇨ 8

A forum state need not subordinate its own statutory policy to a conflicting public act of another state.

4. Contracts ⇨ 1

A valid contract between parties governs their rights and duties.

5. Contracts ⇨ 144

Competent parties are free to make a choice of law which governs performance and enforcement of contractual arrangements which exist between them. 1953 Comp. § 50A-1-105.

6. Secured Transactions ⇨ 228

Member of Navajo Nation and finance company with which he financed his purchase of a truck were free to choose whether Navajo Tribal Code or Uniform Commercial Code would govern their relations, but whether conditional sales contract conclusively established that parties made a choice, not only as to law governing validity of interpretation of contract, but also as to law governing remedies for breach of contract, or whether contract failed to so establish thus requiring a choice of law analysis, were questions which should have been decided prior to determining whether finance company had a right to self-help repossession of vehicle

upon a default in payments. 1953 Comp. §§ 50A-1-105, 50A-1-105(2), 50A-9-102, 50A-9-103.

Richard W. Hughes, Shiprock, Richard B. Collins, Window Rock, Ariz., for petitioner.

Tansey, Rosebrough, Roberts & Gerding, R. Thomas Dailey, Farmington, for respondent.

↑ OPINION

STEPHENSON, Justice.

Appellant (Jim) is an enrolled member of the Navajo Nation residing on the Navajo Reservation in San Juan County, New Mexico. Mr. Jim purchased a pickup truck in Farmington, New Mexico and defendant-appellee (CIT) financed the purchase. Thereafter, Jim defaulted by failing to make payments as required under the contract. Two agents of CIT came upon the Navajo Reservation and, without the written consent of Jim, repossessed the pickup. CIT filed no replevin or other action in the Navajo Tribal Court. Subsequently, Jim filed suit in the District Court of San Juan County based on §§ 307 and 309 in Title 7 of the Navajo Tribal Code. Section 307 states the procedures for repossessing "personal property" of Navajo Indians situated on tribal lands, viz.: written consent of the Navajo at the time repossession is sought or by order of the tribal court "in an appropriate legal proceeding." Jim alleged CIT violated § 307 and sought a minimum civil judgment under § 309 of the Tribal Code of "an amount not less than the credit service charge plus ten percent (10%) of the principal amount of the debt or the time price differential plus ten percent (10%) of the cash price." He argued the pickup was used for "personal purposes" thus bringing it within § 309's definition of "consumer goods" and entitling him to the minimum recovery. CIT answered and, as its first defense, alleged the complaint failed to state a claim for which relief could be granted. See § 21-

1-1(12)(b)(6) N.M.S.A.1953. This was apparently based on the theory that New Mexico laws applied and, under the Uniform Commercial Code, § 50A-9-503, N.M.S.A.1953 (hereinafter § 9-503), CIT had the right to self-help repossession if done without breach of the peace. The district court, treating the defense as a motion to dismiss, sustained CIT's claim and dismissed the case with prejudice. Mr. Jim appealed.

A majority of the sitting panel of the Court of Appeals affirmed the district court but were unable to agree upon any single basis for that action. *Jim v. CIT Financial Services Corporation*, 86 N.M. 784, 527 P.2d 1222 (Ct.App.1974). Since no precedent was created on the important legal issues involved, we granted certiorari, considering them to be of substantial public interest. See Rule 28, Rules Governing Appeals, § 21-12-28, N.M.S.A.1953 (1974 Interim Supp.).

[1] We reject and disapprove the opinion of Judge Hendley and the specially concurring opinion of Judge Lopez. We agree with the dissenting opinion of Judge Hernandez insofar as he held that the laws of the Navajo Tribe of Indians are entitled by Federal Law, 28 U.S.C. § 1738, to full faith and credit in the Courts of New Mexico because the Navajo Nation is a "territory" within the meaning of that statute. Cf. *Mackey et al. v. Cox*, 59 U.S. (18 How.) 100, 15 L.Ed. 299 (1855); *Americana of Puerto Rico, Inc. v. Kaplus*, 368 F.2d 431 (3rd Cir. 1966). We do not however agree with the result reached by Judge Hernandez.

[2,3] The parties agree, however, that full faith and credit is "not an inexorable and unqualified command." *Pink v. A. A. Highway Express, Inc.*, 314 U.S. 201, 210, 62 S.Ct. 241, 246, 86 L.Ed. 152 (1941). This is especially true where, as in this case, a foreign legislative enactment or statute is sought to be enforced in the forum state. A forum state need not subordinate its own statutory policy to a conflicting public act of another state.

Hughes v. Fetter, 341 U.S. 609, 71 S.Ct. 980, 95 L.Ed. 1212 (1951).

So the real issue in this case involves a conflicts choice of law.

[4,5] It is fundamental that a valid contract between parties governs their rights and duties. The parties here were competent and free to make a choice, inter se, of the law which governs the performance and enforcement of the contractual arrangements which apparently exist between them. This freedom of choice is explicitly recognized in § 1-105 of the U.C.C.:

"(1) Except as provided hereafter in this section, when a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties. Failing such agreement this act * * * applies to transactions bearing an appropriate relation to this state."

[6] Section 1-105, Subsection (2) spells out limitations on the parties' right to choose the applicable law and makes express provision for the application of §§ 9-102 and 103 on secured transactions, with any contrary agreement being effective only to the extent permitted by the law specified. Nothing in those two sections of Article Nine indicates that, under the facts of this case, the parties were not free to choose their own law. Under § 1-105 it is only where there is no agreement as to the governing law that the determination of which jurisdiction bears the "appropriate" relation is left to judicial decision.

In this case, whether the law of the State of New Mexico or that of the Navajo Tribe was chosen, we cannot now say. No evidence has been adduced and the conditional sales contract is not before us. We can only now hold that it was error to dismiss the complaint.

533 P.2d—18

The issue concerning choice of governing law must be resolved in the same fashion as any other involving contract. Perhaps the contract will conclusively answer the question as to whether the parties made a choice, not only as to the law governing the validity and interpretation of the contract, but also as to that governing the remedies for an admitted breach of an admittedly valid contract. Failing such provision in the contract, it is only then that a choice of law analysis would come into play.

This case is remanded to the district court with directions to set aside the judgment and proceed in accordance with the views we have expressed.

It is so ordered.

McMANUS, C. J., and MONTROYA and MARTINEZ, JJ., concur.

OMAN, J., dissenting.

OMAN, Justice (dissenting).

I agree with the majority that the parties to a contract may make a choice as to the law applicable to the rights and duties created by their contract. However, as I understand the position of Mr. Jim, he has never claimed the applicability of Navajo law is dependent upon his agreement with CIT. His claim, at all stages of these proceedings, has been that Navajo law was applicable because the repossession occurred on the Navajo Reservation. 4

I agree with Judge Hendley of the Court of Appeals that the conflict of laws question argued on appeal was not raised in the trial court. I also substantially agree with the opinion of Judge Hendley, and do agree with the result he and Judge Lopez reached.

I would quash the writ of certiorari as having been improvidently granted. The majority disagree. Therefore, I dissent.

APPENDIX C

Profile No. 75*
OGLALA SIOUX TRIBE
PINE RIDGE RESERVATION

* Taken from Indian Self-Determination and the Role of Tribal Courts, prepared by the American Indian Lawyer Training Program, Inc., February 1977.

Profile No. 75 *

OGLALA SIOUX TRIBE

PINE RIDGE RESERVATION

Location: Southwestern South Dakota

<u>Reservation Acreage</u>	<u>1/</u>	<u>Population</u>		
Tribal:	485,365 S.D. 397 Neb.		BIA '73	BIA '76
Allotted:	1,160,973 S.D.	Indian Residents:	12,515	9,237
Federal:	74,691 S.D. 155 Neb.	Non-Indian Residents:		3,941
TOTAL:	1,721,581	TOTAL:		13,178

Organization and Structure of Tribal Governing Body

The tribe, organized under the Indian Reorganization Act and operating under a constitution and by-laws adopted in 1936, is governed by a 21-member council. The council is elected and includes a chairman and four other officers.

Organization and Structure of Tribal Court

The tribal court operates under Section 25 of the Code of Federal Regulations. There is a separate juvenile court on the reservation, and, in theory at least, there is an appellate process. The court's current annual operating budget is \$200,000. Approximately 80 percent of the total amount is provided by BIA contracts.

Tribal Court Personnel

Judges are elected and then confirmed by a two-thirds vote of the tribal council; however, at the time of the interview, a judicial reorganization was taking place, and new provisions for selection and removal of judges are being drafted. Judges' salaries range from \$9,300 for associates to just over \$10,000 per year for the chief judge.

The court is staffed by a clerk, a deputy clerk, an administrator, an assistant administrator, a court reporter, a complaints clerk, and a bailiff. There is also a tribal prosecutor. All are full-time employees. An interpreter is utilized as needed, as are additional court reporters and an alternate tribal prosecutor. Salaries are derived from Buy-Indian Act funds which are distributed through the tribe. No retirement or pension benefits are provided.

1/ Includes land in Nebraska.

Court and Detention Facilities

Although the tribal court has a courtroom and judge's chambers, there is no jury room, and the only accessible law library is located within the state legal services office. The BIA operates jail facilities on the reservation, but the facility which was designed to incarcerate 75 persons must sometimes hold 150 prisoners. It has inadequate plumbing facilities and was reported to be unsanitary.

Nature and Volume of Court Caseload

The tribal court convenes every day, including weekends when necessary. About 1,500 cases were handled by the court in 1975. The court dealt with criminal misdemeanors, some civil cases, domestic relations cases, juvenile matters, and land regulation disputes. Although hunting and fishing disputes are within the court's jurisdiction, there have been no such cases to date. There is a separate juvenile court and a juvenile program, but there are no separate juvenile detention facilities. The number of jury trials during 1975 was not recorded. An estimated 100 cases were appealed during the year.

The court exercises jurisdiction over non-Indians, but only in 10 to 15 land-related cases each year. Although the tribe is not prohibited from exercising jurisdiction over non-Indians in criminal matters, it chooses not to do so, primarily because of its relationship with the non-Indian community. Instead, offenders are turned over to state or federal authorities.

It was reported that the court's judgments are recognized by some other tribal courts. The state and its counties, however, do not recognize tribal court judgments. The support orders, extradition requests, and creditor claim judgments of surrounding counties and the state may be honored in tribal court at the discretion of the judge. A formerly effective cross-deputization agreement is no longer operative.

Tribal Court Procedure

There are no written procedural guidelines for the tribal court's use, and no prerequisites to practicing before the court. An individual may represent himself or be represented by an attorney or another tribal member. Although a three-judge appellate panel is desired, the lack of judges makes it impossible, and the chief judge generally hears appeals.

Legal Resources

The tribe has the part-time services of an attorney. Legal services are available to the council for representation

of the tribe in litigation. Public legal services are available to tribal members both on and off the reservation, and are available to the tribe as well. The necessary legal reference materials are available to the tribe.

Assessment of Tribal Court Needs

A court improvement plan at the direction of the council and a three-judge panel is currently being developed. At least one source said that it would be necessary to provide facilities, including a new jail, increased personnel, additional training, a law library, additional equipment for improved court reporting, and a halfway house. An additional secretary is needed, as are a paralegal and a defense attorney. There are tribal members who would commit themselves to the legal training necessary for the positions. However, salary upgrading is essential.

The tribe still needs legal assistance for revision of its law and order code and constitution, for tribal court litigation, for training sessions and for legal advice for the tribal court.

APPENDIX D

SOUTH DAKOTA*

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- * Taken from SJIS State of the Art 1980, prepared by the National Center for State Courts under a federal grant awarded to the National Center by the Systems Development Division, currently the Bureau of Justice Statistics (BJS) part of the U.S. Department of Justice, under the Omnibus Crime Control and Safe Streets Act of 1968, as amended (November 1980)

South Dakota *

Judicial Organization

Administrative Structure

The South Dakota court system, as shown in Figure 1, is composed of a court of last resort called the supreme court and a general jurisdiction circuit court of two divisions: the lawyer magistrates division and the lay magistrates division. In 1975 South Dakota's courts were reorganized into a unified judicial system when an amendment to the state constitution took effect. Jurisdictional divisions are uniform in the appellate and general jurisdiction circuit court. Within the general jurisdiction circuit court, however, the magistrate courts differentiate jurisdiction between lay and lawyer magistrates.

The supreme court, as the court of last resort in South Dakota, has final statewide appellate jurisdiction of all cases and the power to issue any writs necessary. The supreme court has no divisions and may hold sessions in cities other than the capital. There is no intermediate appellate court.

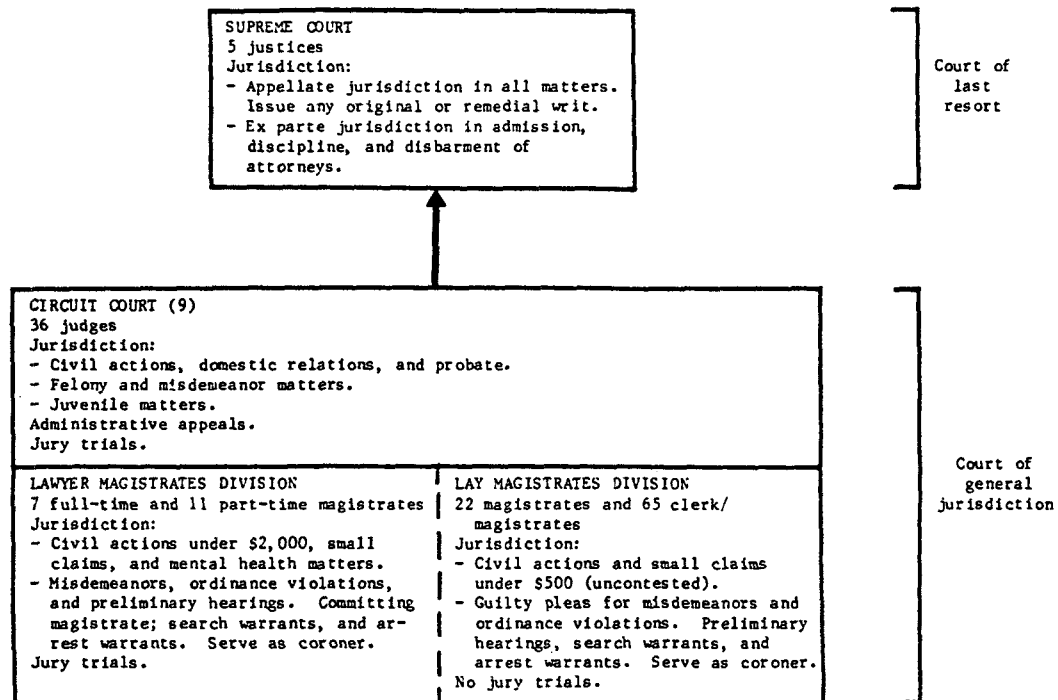
The state is geographically divided into 8 circuits, in which there are a total of 36 circuit court judges. In each circuit, there are magistrates who act as judges in cases involving less serious criminal acts and smaller amounts of money. There are approximately 115 magistrate courts, composed overall of 5 lawyer magistrates, 32 lay magistrates and 64 magistrate clerks, some serving in several counties.

The office of the state court administrator is a nonjudicial office which assists the courts in administering the unified system. Within this office there are internal offices of budget and finance, personnel and training, and planning and systems development.

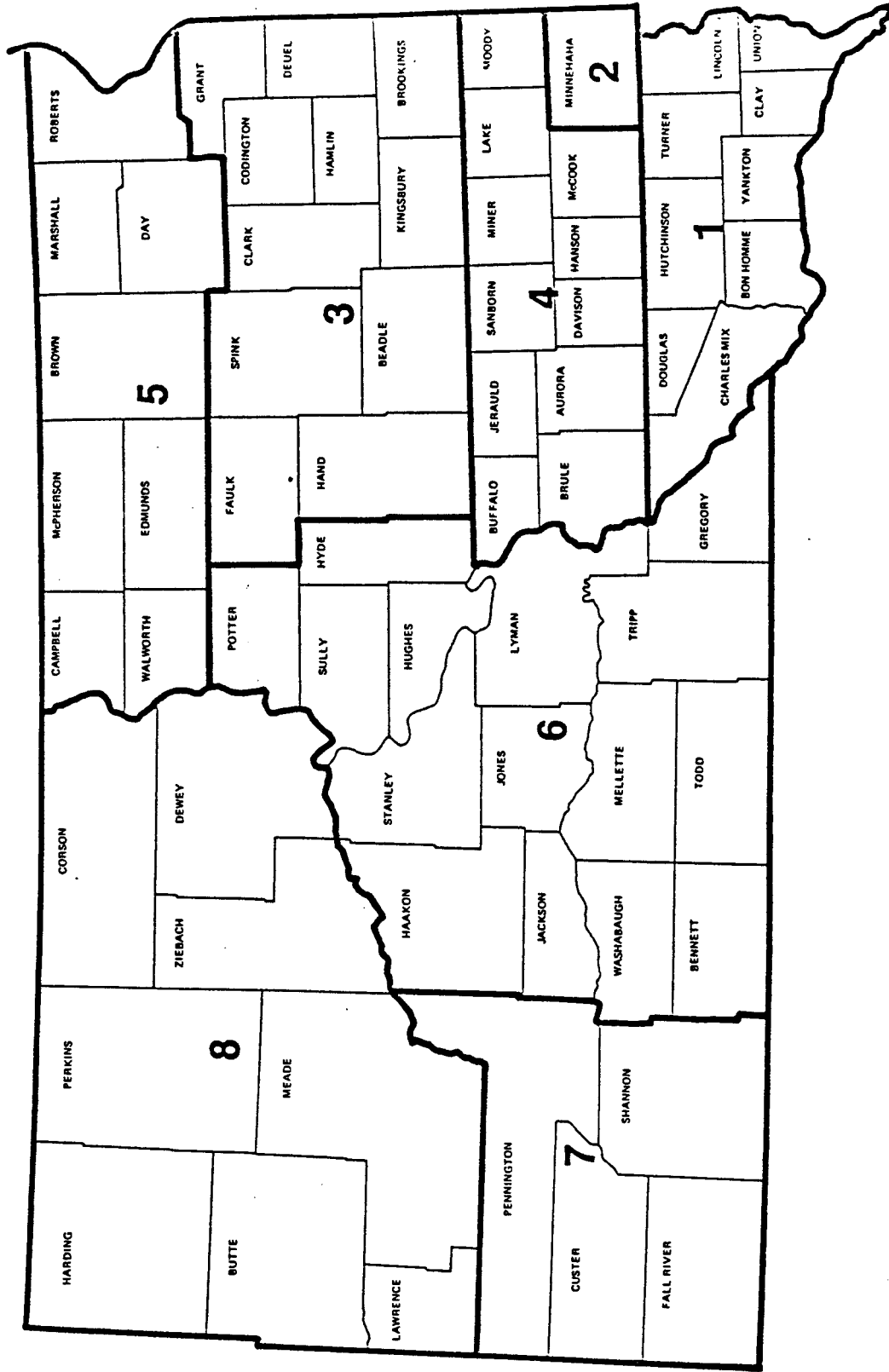
The latest verified case volumes for the state of South Dakota are reflected in Figure 2.

STATE PROFILES

Figure 1: South Dakota court system, 1980



↑ Indicates route of appeal.



SOUTH DAKOTA CIRCUIT COURTS AND SOUTH DAKOTA MAGISTRATE COURTS

APPENDIX E

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