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THE INDIAN LAW PROGRAM AT THE
UNIVERSITY OF MONTANA

by John T. McDermott*

INTRODUCTION

This issue of the MONTANA LAW REVIEW, devoted as it is to Indian law and Indian legal problems, is a most appropriate media for announcing the newly established Indian Law Program at the University of Montana School of Law. Although this program is new, the Law School's involvement in Indian legal problems is not. Since its inception in 1966 the Montana Defender Project has, through the use of senior law students, provided legal services to indigent prisoners in state penal institutions. Since that time law students have represented over 500 state prisoners. For several years, law students from this University have been assigned by the United States District Court for the District of Montana to assist counsel appointed to represent indigent defendants in Federal Court. During the past five years well over a hundred students have assisted in the representation of these indigent defendants. Through the Montana Legal Services Association, law students assist indigent persons with legal problems of a civil or administrative nature. Although statistics are not kept on an ethnic basis, many of the clients served by these students are Montana Indians.

In addition to these programs which are operable during the academic year, the Law School established in 1966 a summer intern program as an integral part of its plan to provide comprehensive clinical training for all law students at the University of Montana. These summer programs include supervised training on Montana Indian reservations. Students have served as advisors to the Tribal Courts, Tribal police and Tribal Councils. One of the most significant contributions made by students was a complete revision of the two different tribal legal codes. One was subsequently adopted by the Gros Ventre and Assiniboine Tribes on the Fort Belknap Reservation. Students also acted as ombudsmen for individual members of the tribes in their dealings with tribal, state and federal officials and agencies.

In 1967 the Law School, with a grant from the Law Enforcement Assistance Act, sponsored a Tribal Judges Conference, attended by Tribal judges from all parts of Montana. Although this conference was very enthusiastically received by the participating judges, the Law School was unable to hold other such conferences due to lack of sufficient financial resources.

In 1971 the University of Montana School of Law received a grant from the Council on Legal Education for Professional Responsibility

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to assist in the expansion of its clinical training program to place even greater emphasis on service to Indians and Indian communities in Montana. This grant has made it possible for the Law School to increase its faculty and to allow a member of the faculty to develop an expertise in the field of Indian law and Indian legal problems which has not previously existed. This new faculty member will also supervise the expanded clinical program particularly with regard to the summer interns who will spend the summer on one or more of the Montana Indian reservations. The expansion of this phase of the program is in keeping with the policy of the Law School to make clinical education and training an integral part of its educational process.

INDIAN LEGAL PROBLEMS

In his July 8, 1970, message to Congress, President Nixon described American Indians as "the most deprived and most isolated minority group in our nation." He observed that "from the time of their first contact with European settlers, the American Indians have been oppressed and brutalized, deprived of their ancestral lands and denied the opportunity to control their own destiny." The President then went on to describe the new policy of *self-determination without termination*. This new policy adds a new dimension to Indian law and Indian legal problems. In the past it has been generally assumed that Indian governments and tribal courts were transitory in nature and would exist only for that brief period of time during which the Indian was being engulfed in the "main stream" of America. There was little or no effort to establish permanent tribal governments and tribal courts or to offer permanent solutions to vexing jurisdictional and other legal problems. The article by Alan Parker focuses on the breadth of the jurisdictional morass, as do two of the student notes.

The 1968 Civil Rights Act makes the protection of a somewhat modified "bill of rights" available to reservation Indians for the first time. The wisdom and impact of the Indian Bill of Rights is discussed in another student note. As pointed out by the comment on water rights, the development of resources is perhaps one of the most important problems facing the American Indian today. The establishment of commercial enterprises on a reservation presents countless legal problems. The increased jurisdiction of tribal courts and the impact of the Indian Bill of Rights makes it imperative that those courts develop new and better techniques for administering justice on the reservation and that programs be established to constantly improve the training and education of persons serving as tribal judges and tribal court officials.

These are some of the legal problems of the American Indian community. The legal problems of the *individual* Indian are much like those of other minority persons. They are frequently unaware of their legal rights and unwilling to seek legal services even when such services are available. Perhaps the most misunderstood and oppressed descend-

ants of the first Americans are the urban or landless Indians. They suffer from the cruelest form of discrimination. They are mistreated by their neighbors, and they are often denied the federal assistance available to reservation Indians. In this issue, Lee Selar tells of their plight, bitter disappointments and frustrations and describes the illegality of the policies that have led to that situation.

The equally deplorable condition of Indian juveniles is described in a comment, based not only upon jurisdictional entanglement, but upon empirical evidence of its effect.

THE INDIAN LAW PROGRAM

It is not the purpose of this program to attempt to compete with those persons and organizations presently providing legal services to Indians and Indian communities in Montana. There are, however, areas where legal services are unavailable or where they could be augmented by the use of law students under the close supervision of the faculty. The goal is to develop programs which will provide such services. For this reason the program must be kept very flexible.

The program begins, as one would expect any law school program to begin, with a classroom component. We are offering, for the first time, a seminar on contemporary Indian legal problems. This course is open to all senior students and to other students by permission. Through this course we hope to develop an insight into and an appreciation for the unique and complex legal problems facing Indians and those dealing with Indians in Montana. Particular emphasis is placed on civil and criminal jurisdiction, natural resources, hunting and fishing rights and the Indian's relationship with federal, state and local governments. The seminar is not simply an academic exercise, for it is built around the analysis of current problems suggested by Indian leaders and by Montana attorneys involved in Indian legal problems. The analysis of such problems not only serves as a useful vehicle for developing an understanding of Indian law, but carries an added stimulus which is generally associated with real problems involving real people. Still another benefit is that the results of the students' research and analysis are made available to the person submitting the problem as well as to other persons who might be concerned with the same or similar legal problems.

The grant from the Council on Continuing Legal Education for Professional Responsibility will allow the Law School to increase its summer intern program so that at least one law student can be placed on each of the Indian reservations in Montana. The plan does not simply envision the placement of law students on Indian reservations for the summer, but requires the joint development of meaningful programs which can be pursued by students under the supervision of the faculty. The number of students to be involved in the program and their placement on reservations has not been determined, but we are confident

that sufficient students will be available to all tribes which express a real interest in having law students spend the summer with them.

It seems apparent that all Montana Indians and Montana lawyers are not fully aware of recent developments in Indian law, except for those particular decisions coming from their jurisdictions. For this reason, the Law School is publishing, on an experimental basis, an INDIAN LAW BULLETIN which presents in capsule form, recent decisions of federal and state courts involving Indian law questions. The BULLETIN will be published monthly; it is hoped that Montana Indians and lawyers alike will find it useful.

Perhaps the most exciting new project in which the Law School is involved is the preparation and planning for the Indian Law Conference co-sponsored by the Law School, the Bureau of Indian Affairs and Tri-state Tribes, Inc. This three-day program covers a very broad range of topics including federal, state and Tribal Court jurisdiction, tribal governments, economic development, the responsibility of the federal government, and the plight of the urban or landless Indian. Representatives of all Montana tribes attend this conference, as well as representatives from other tribes and Indian organizations.

CONCLUSION

Part of this program is new; much of it involves the expansion of existing projects. It reflects the Law School's continuing commitment to provide assistance to Montana Indians. There is a new feeling among many Indian leaders. Termination is no longer a threat to self-development as it has, so often in the past, been a "reward" for initiative and success. The time to build for the future is at hand. The University of Montana School of Law wishes to join hands with the entire Montana legal community to insure that Montana Indians have the finest and most comprehensive legal services program in the nation.