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United States v. Blackfeet Tribal Court, 244 F. Supp. 474 (D. Mont. 1965)

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cover for a back injury in Washington. To require a showing of an "unusual strain" as required in heart cases would place an insurmountable burden on workmen.[46] It is therefore submitted that the result of the *Boeing* case should have been reached in the instant case. The relationship of the *Boeing* case to the instant case is apparent. There the claimant, a typist, suffered a back injury while bending and twisting to lift a telephone.[47] In the instant case claimant, a lumber stacker, sustained a back injury while bending and twisting to lift a block of wood.[48] The instant decision, by applying the "unusual strain" test of cardiac cases, failed to reach a reasonable result. As the *Boeing* case pointed out: "An unthinking or automatic application of the heart rule to the mechanical structures of the body would be unreasonable, illogical, and unwise. Industry must bear the expense of injuries which are caused by the application of force to a mechanical bodily structure."[49]

The major purpose of workmen's compensation is to place the burden for work-injuries upon industry, rather than upon the individual worker, or public or private charity. Such legislation does not have the same function as commercial life insurance. It provides only that the worker shall recover for those injuries caused by his employment. This does not mean that the claimant should be subjected to unwarranted legal technicalities to prevent recovery for a justified claim. The doctrine set forth in the *Murphy* case, requiring liberal construction of the Workmen's Compensation Act, should be revived.[50] The intent of the legislature was to restrict recovery for heart failure and disease not arising out of employment. The language of the new statute is not so restrictive as to exclude back injuries sustained in the course of employment. Judicial fiat should not impose narrow limitations upon humanitarian legislation. The court must act affirmatively to correct this decision. The spirit of workmen's compensation will be lost if future Montana claimants are bound by the holding of the instant case.

WILLIAM W. WERTZ.

FEDERAL DISTRICT COURT HAS NO JURISDICTION OVER A LEASE OF TRIBAL LAND TO A NON-INDIAN.—Petitioners were Canadian citizens and shareholders in co-petitioner, the St. Marys Lake Development Corporation. In 1962, the corporation executed a twenty five year lease[1] of Blackfeet tribal land. In 1964, a member of the Blackfeet Tribe filed a complaint and the defendant Blackfeet Tribal Court ordered the petitioners to

[46] *Ibid.*
[47] *Id.* at 146.
[48] Record, James v. V.K.V. Lumber, 401 P.2d 282 (1965), p.3.
[49] *Boeing v. Fine, supra* note 42, at 147.
[50] *Supra* note 19, at 1097; R.C.M. 1947, § 92-838.

[1] The lease was approved by the Secretary of Interior acting through the area director.

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show cause why they should not be permanently restrained from entering the reservation. On petition for writ of prohibition[2] in federal district court, *held,* denied. The federal district court had no jurisdiction over a lease of tribal land since that was an internal matter over which the Blackfeet Indian Tribe had exclusive jurisdiction. *United States v. Blackfeet Tribal Court,* 244 F. Supp. 474 (D. Mont. 1965).

Traditionally Indian Tribes have been regarded as possessing limited sovereign powers. As early as 1778, the Continental Congress recognized the quasi-sovereign nature of Indian tribes by dealing with them on the basis of treaty rather than legislative enactment.[3] According to Chief Justice Marshall, "The Indian nations had always been considered as distinct, independent, political communities, retaining their original natural rights, as the undisputed possessors of the soil, from time immemorial. . . ."[4] However, these sovereign powers were not unlimited; and by 1831, the United States Supreme Court had made it clear that an Indian tribe was neither a state nor a foreign country within the meaning of the Constitution.[5] In 1871, Congress discontinued the use of its treaty powers in dealing with the Indians and terminated whatever international status the tribes had possessed.[6]

Despite the concept of tribal sovereignty Congress has plenary power to regulate Indian affairs. The constitutional source of this congressional authority emanates from the power to make war and peace,[7] to make treaties,[8] and to regulate commerce.[9] The actual source and scope of this authority, however, is grounded in policy:[10]

> The power of the General Government over these remnants of a race once powerful, now weak and diminished in numbers, is necessary to their protection, as well as to the safety of those among whom they dwell. It must exist in that government because it has never existed anywhere else, because the theatre of its exercise is within the geographical limits of the United States, because it has never been denied, and because it alone can enforce its laws on all the tribes.

In other words, governmental concern for tribal welfare has caused the Indian to be treated as a ward of the government.[11]

[2]The All Writs Act, 63 Stat. 102 (1949), 28 U.S.C. § 1651 (1958), gives the federal district courts authority to issue all writs necessary to the exercise of their jurisdiction. However, it "does not operate to confer jurisdiction . . . since it may be invoked by a district court only in aid of jurisdiction which it already has." Stafford v. Superior Court of Cal. in and for County of Los Angeles, 272 F.2d 407, 409 (9th Cir. 1959).

[3]Treaty with the Delaware Indians, 7 Stat. 13 (1778).

[4]Worcester v. Georgia, 31 U.S. (6 Pet.) 515, 559 (1832).

[5]Cherokee Nation v. Georgia, 30 U.S. (5 Pet.) 1, 17 (1831). "They may, more correctly, perhaps be denominated domestic dependent nations. They occupy a territory to which we assert a title independent of their will, which must take effect in point of possession when their right of possession ceases. Meanwhile they are in a state of pupilage. Their relation to the United States resembles that of a ward to his guardian."

[6]16 Stat. 566 (1871), 25 U.S.C. § 71 (1958).

[7]U.S. CONST. art. I, § 8, cl. 11.

[8]U.S. CONST. art. II, § 2, cl. 2.

[9]U.S. CONST. art. I, § 8, cl. 3.

[10]United States v. Kagama, 118 U.S. 375, 384-85 (1886).

[11]The first pronouncement of this doctrine was made in *United States v. Kagama,*

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As guardian of the Indians, the avowed governmental policy has been "to make all Indians full-fledged participants in American society."[12] Through legislation, Congress has sought to implement this policy by alloting the Indian land,[13] by making the Indian a citizen of the United States,[14] and by improving tribal self-government.[15] Such measures as these supercede any "soverign" tribal law to the contrary. But where legislation does not reach, the original tribal laws and customs still govern the internal affairs of Indian tribes, although the tribe may adopt certain federal regulations. These regulations are issued by the Secretary of the Interior; and they become the tribal law of any tribe which chooses to adopt them.[16]

A great many of the Indian tribes' sovereign powers remain intact. The Indian tribe has the power to determine its own membership,[17] regulate its domestic relations,[18] prescribe methods for the devolution of property,[19] tax both members and nonmembers on the reservation,[20] and to set up tribal courts for the administration of justice on the reservation.[21] The instant case illustrates the impact of these sovereign powers upon the jurisdiction of the federal district courts.

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supra note 10. *But see* Cohen, *Indian Rights and the Federal Courts*, 24 MINN. L. REV. 145, 193 (1940). Cohen argues that Indians are not made wards of the government merely because they are subject to federal jurisdiction. In the absence of a federal statute no court would have the right to put an Indian under guardianship. Otherwise any group bearing a special relation to the federal government, *e.g.* beneficiaries of social security legislation, would be in danger of losing many of their liberties.

[12]Williams v. Lee, 358 U.S. 217, 220 (1959). Also see DEP'T OF THE SOLICITOR, U.S. DEP'T OF INTERIOR, FEDERAL INDIAN LAW 252 (1958), quoting Commissioner Francis E. Leupp of the Bureau of Indian Affairs, "it is our duty to set him [the Indian] upon his feet and sever forever the ties which bind him either to his tribe, in the communal sense, or to the Government."

[13]General Allotment Act, 24 Stat. 388 (1887), 25 U.S.C. § 331 (1958).

[14]43 Stat. 253 (1924) as amended, 66 Stat. 235 (1952), 8 U.S.C. § 1401 (1958).

[15]Wheeler-Howard Act, 48 Stat. 984, 987 (1934), 25 U.S.C. § 476 (1958).

> In addition to all powers vested in any Indian tribe or tribal council by existing law, the constitution adopted by said tribe shall also vest in such tribe or its tribal council the following rights and powers: To employ legal counsel, the choice of counsel and fixing of fees to be subject to the approval of the Secretary of the Interior; to prevent the sale, disposition, lease, or encumbrance of tribal lands, interests in lands, or other tribal assets without the consent of the tribe; and to negotiate with the Federal, State and local Governments."

[16]Native American Church v. Navajo Tribal Council, 272 F.2d 131 (10th Cir. 1959). It has been argued that the power of Congress to regulate Indian affairs renders local powers of the Indian tribes, federal powers. The fallacy of such an argument is the failure to recognize that tribal sovereign powers existed before there was a federal government. Consequently federal action has a negative rather than an affirmative affect on tribal powers. Mandatory federal legislation limits or defines existing tribal powers. Talton v. Mayes, 163 U.S. 376, 384 (1896). On the other hand, nonmandatory federal regulations issued by the federal agencies in charge of Indian affairs affect tribal powers only if the tribe chose to adopt such regulations.

[17]Martinez v. Southern Ute Tribe of Southern Ute Res., 249 F.2d 915, 920 (10th Cir. 1957). "In absence of express legislation by Congress to the contrary, a tribe has the complete authority to determine all questions of its own membership as a political entity."

[18]25 C.F.R. § 11.27-30 (1958).

[19]25 C.F.R. § 11.31-32 (1958).

[20]Barta v. Oglala Sioux Tribe of Pine Ridge Res., 259 F.2d 553 (8th Cir. 1958).

[21]48 Stat. 987 (1934), 25 U.S.C. § 476 (1958). Iron Crow v. Oglala Sioux Tribe of Pine Ridge Res., 231 F.2d 89, 96 (8th Cir. 1956). "Indian Tribal Courts have inherent jurisdiction over all matters not taken over by the federal government, but

The lower federal courts are courts of limited jurisdiction.[22] In the absence of a special statute, jurisdiction is dependent upon the existence of a "federal question"[23] or upon diversity of citizenship.[24] A "federal question" is raised whenever the Indian,[25] like the non-Indian, is able to show that his controversy involves the validity, effect, or construction of a federal law.[26] The only aspect of this type of federal jurisdiction which has been affected by tribal sovereignty is that of Constitutional violations. Here it is not sufficient for a person to allege that the tribal government has violated his Constitutional rights. The courts have reasoned that since the Indian tribe has exclusive jurisdiction over its internal affairs, it does not exercise federal powers. Thus, the Indian tribe cannot be bound by the Bill of Rights because it applies only to the actions of the federal government.[27] Nor is the Fourteenth Amendment any limitation on the Indian tribe's actions, since an Indian tribe is not a state within the meaning of that Amendment.[28] And even if these barriers could be overcome, there still remains tribal immunity from suit.[29]

Tribal sovereignty has also affected the diversity of citizenship concept. After the Indians were made citizens of the United States and of the states where they resided, it was possible for an Indian to meet the diversity test of the federal courts.[30] However, difficulty is created by the requirement that federal courts in diversity cases act as adjuncts to the state courts.[31] As a limitation on jurisdiction, this means that when

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that federal legislative action and rules promulgated thereunder support the authority of the Tribal Courts."

[22]Garroutte v. General Motors Corp., 179 F. Supp. 315 (D. Ark. 1959).

[23]36 Stat. 1091 (1911), 28 U.S.C. § 1332 (1958). See Landon, *"Federal Question" Jurisdiction—A Snare and a Delusion*, 57 MICH. L. REV. 835 (1958-1959), for a critical examination of "federal question" jurisdiction.

[24]36 Stat. 1091 (1911), 28 U.S.C. § 1331 (1958).

[25]Although Indians are considered wards of the government, the mere fact that an individual Indian or tribe is a party is not sufficient to invoke federal jurisdiction *Martinez v. Southern Ute Tribe, supra* note 17.

[26]*Supra* note 23. This jurisdictional requirement is not met by showing that the contested right originates in federal law, since, "the federal nature of the right to be established is decisive." Puerto Rico v. Russell and Co., 288 U.S. 476, 483 (1933). The test is whether the plaintiff's claim "involves a dispute or controversy respecting the validity, construction or effect of such a law . . . ." Shulthis v. McDougal, 225 U.S. 561, 569 (1911). *Compare* American Well Works Co. v. Layne and Bowler Co., 241 U.S. 257, 260 (1915): "A suit arises under the law that creates the cause of action."

[27]See *Talton v. Mayes, supra* note 16, where a tribal statute providing for a five man grand jury was held not to violate the Fifth Amendment and *Native American Church v. Navajo Tribal Council, supra* note 16, where tribal council interference with Indian's freedom of religion was held not to violate the First Amendment.

Apparently only the Thirteenth Amendment applies to Indian Tribes. *Compare In re* Sah Quah, 31 Fed. 327 (D. Alaska 1886) *with* Colliflower v. Garland, 342 F.2d 369 (9th Cir. 1965) which concluded that a federal district court had jurisdiciton to issue a writ of habeas corpus to release an Indian incarcerated by a tribal court. The case is analyzed in 26 MONT. L. REV. 235 (1965).

[28]Toledo v. Pueblo De Jemez, 119 F. Supp. 429 (D. N.M. 1954).

[29]Dicke v. Cheyenne-Arapaho Tribes Inc., 304 F.2d 113 (10th Cir. 1962). The sovereign immunity of an Indian tribe is similar to that of the United States government. The tribe can be sued by neither Indian nor non-Indian unless consent has been obtained.

[30]*Supra* note 14.

[31]Erie v. Tompkins, 304 U.S. 64 (1938).

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"one is barred from recovery in the state court, he should likewise be barred in the federal court."[32] Since state law, like federal law, is not applicable to those matters within the exclusive jurisdiction of the tribe,[33] diversity jurisdiction cannot be invoked when the contested matter involves internal tribal affairs.[34]

These limitations on federal jurisdiction were extended further by the instant case. The court not only recognized the existence of tribal sovereignty over tribal affairs, but also concluded that Indian tribes in the exercise of these powers had exclusive jurisdiction over non-Indians. In other words, civil causes of actions arising on the reservation between Indians or tribes and non-Indians could not be within the jurisdiction of the federal courts. To reach this conclusion, the court relied heavily on *Littell v. Nakai.*[35]

In the *Littell* case, federal jurisdiction over a contract between an Indian and a non-Indian was denied on the ground that it was within the exclusive jurisdiction of the Navajo Tribal Court. The basis of tribal jurisdiction over the non-Indian was said to be "implicit"[36] in the Navajo Treaty of 1868.[37] The court reasoned that the treaty, by making the reservation the Indians' home and by excluding non-Indians from it, recognized in the Navajo Tribe the exclusive right to govern all activities on the reservation. Moreover, since Congress had not chosen to limit these tribal rights, the Navajo tribal government was vested with exclusive responsibility for its internal affairs. Consequently the non-Indian in his dealings with the Indian could look only to the Navajo tribal courts. Neither the state nor the federal courts had the power to interfere with tribal authority.

An examination of the Navajo Treaty does not support this analysis. Article I expressly retains jurisdiction in the United States over all wrongs committed by non-Indians against the person or property of In-

[32]Woods v. Interstate Realty Co., 337 U.S. 535, 538 (1949).

[33]*Williams v. Lee, supra* note 12.

[34]Littell v. Nakai, 344 F.2d 486, 489 (9th Cir. 1965), *cert. denied* 86 Sup. Ct. 331 (1966). This raises a question of whether the federal courts could apply tribal law in diversity cases. If this were done, then the integrity of the tribal law could be maintained, while at the same time making it feasible to invoke diversity jurisdiction in this area. However, the author has not discovered any case raising this issue.

[35]Instant case at pp. 477-78. In turn *Littell, supra* note 34, at 488, relied on *Williams v. Lee, supra* note 12, at 221. In that case, the plaintiff, a non-Indian, operated a store on the Navajo Reservation. When two Indians refused to pay for goods, the plaintiff brought action in an Arizona state court. After the Supreme Court of Arizona affirmed judgment for the plaintiff, the United States Supreme Court held the state court had no jurisdiction. The Supreme Court after reviewing the history of the Navajo Tribe concluded:

> In return for their promises to keep peace, this treaty "set apart" for "their permanent home" a portion of what had been their native country, and provided that no one, except United States Government personnel, was to enter the reserved area. Implicit in these treaty terms, as it was in the treaties with the Cherokees involved in Worcester v. Georgia [*supra* note 4], was the understanding that the internal affairs of the Indians remained exclusively within the jurisdiction of whatever tribal government existed.

[36]*Littell v. Nakai, supra* note 34, at 488.

[37]15 Stat. 667 (1868).

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dians.[38] Article II permits only agents and officers of the United States Government to enter the reservation.[39] These provisions tend to show that the United States did limit tribal sovereignty over non-Indians. The non-Indian was not only prohibited from entering tribal lands, but in the event he did, his wrongful acts were subject to the jurisdiction of the federal courts. Since the court in the instant case assumed the Blackfeet[40] and Navajo Treaties were substantially the same,[41] it would appear that the basis for the decisions in both the *Littell* and instant cases was questionable.

Although it is arguable that the treaty has been misinterpreted by the court, the Indian tribes do possess all those sovereign powers which Congress has not expressly denied.[42] Consequently original tribal powers would have subjected all non-Indians on the reservation to tribal jurisdiction. The question, then, is whether either the Blackfeet or Navajo Treaty expressly deprived the tribes of their sovereign powers over non-Indians.

The treaties do not provide a ready answer. It is not clear whether Article I applies only to crimes against Indians or whether it also includes civil wrongs against Indians.[43] Since any doubt in the construction of an Indian treaty is to be resolved in favor of the tribe,[44] it may be assumed that the treaties left intact the original tribal jurisdiction over non-Indians. Nevertheless, this interpretation did not require the results obtained in either the instant case or the *Littell* case.

Both Blackfeet and Navajo Tribes have adopted the "Law and Order Code" promulgated by the Secretary of the Interior.[45] The preamble to the Code provides: "It is the purpose of the regulations in this part to provide adequate machinery of law enforcement for those Indian tribes in which traditional agencies for the enforcement of tribal law and custom have broken down for which no adequate substitute has been provided under Federal or State law."[46]

[38]*Ibid.*

> If bad men among the whites, or among other people subject to the authority of the United States, shall commit any wrong upon the person or property of the Indians, the United States will, upon proof made to the agent and forwarded to the Commissioner of Indian Affairs at Washington City, proceed at once to cause the offender to be arrested and punished according to the laws of the United States, and also to reimburse the injured persons for the loss sustained.

[39]*Id.* at 668.

> This reservation . . . is hereby, set apart for the use and occupation of the Navajo tribe of Indians, and for such other friendly tribes or individual Indians as from time to time they may be willing, with the consent of the United States, to admit among them; and the United States agrees that no person except those herein so authorized to do, and except such officers, soldiers, agents, and employes of the government, or of the Indians, as may be authorized to enter upon Indian reservations, in discharge of duties imposed by law, or the orders of the President, shall ever be permitted to pass over, settle upon, or reside in, the territory described in this article.

[40]Treaty with the Sioux Indians (including the Blackfeet Tribe), 15 Stat. 635 (1869).

[41]Instant case at 478.

[42]*Talton v. Mayes, supra* note 16.

[43]There has apparently been no interpretation of this section. The confusion arises from the use of the words "wrong" and "reimburse." *Supra* note 38. Wrongs against persons and property generally refers to criminal action. However, "reimbursement" implies damages.

[44]Winters v. United States, 207 U.S. 564 (1908).

[45]Instant case at 478; *Williams v. Lee, supra* note 12, at 255.

[46]25 C.F.R. § 11.1(b) (1958).

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This provision indicates a governmental concern for the traditional tribal judicial systems, by offering a federally approved substitute. This substitute expressly limits the civil jurisdiction of the Indian tribes over non-Indians: "The Courts of Indian Offenses shall have jurisdiction of all suits wherein the defendant is a member of the tribe or tribes within their jurisdiction, and of all other suits between members and nonmembers which are brought before the courts by stipulation of both parties."[47] Under a literal construction of this provision, neither the Blackfeet nor the Navajo tribal courts should have had jurisdiction over the petitioners, since there was no showing that the petitioners submitted to this jurisdiction.[48]

These provisions are not mandatory, but once they are adopted by the Indian tribes, they are considered tribal law.[49] Therefore by adopting a regulation expressly limiting tribal jurisdiction, the tribes relinquished certain of their sovereign powers. Although a non-Indian may not be able to enforce this relinquishment against the tribe, still it has important implications for federal court jurisdiction. The federal courts could no longer say that tribal sovereignty barred jurisdiction, since the tribes by voluntarily limiting their jurisdiction over the non-Indian, have indicated a willingness to abdicate their exclusive jurisdiction. Consequently, it could be argued that this abdication, at the very least, gave the federal courts concurrent jurisdiction.[50]

Nonetheless, it is recognized that the court in the instant case was not facing an easy problem. It was confronted with the concept of inherent sovereign powers. Whatever the meaning of that concept, it is clear that it would include a lease of tribal land. Moreover, any distinction the court might have made between an Indian lessee and a non-Indian lessee was precluded by the *Littell* case. Thus, the result of the instant case is not at all surprising.

However, it is submitted that a more realistic approach is needed in the area of Indian law. The vague concept of tribal sovereignty should not preclude a federal court from examining into the merits of any controversy between an Indian and a non-Indian. To affirm the propositions set forth in the *Littell* and instant cases would have the effect of forcing

[47]25 C.F.R. § 11.22 (1958).

[48]In the instant case only one of the petitioners was served with process by the Blackfeet Tribal Court. However, both appeared specially and objected to its jurisdiction.

[49]*Native American Church v. Navajo Tribal Council, supra* note 16.

[50]Another possible approach to this problem is illustrated by *Colliflower v. Garland, supra* note 27, at 379. In that case a Fort Belknap Indian, after being incarcerated by the tribal authorities, was able to obtain a writ of habeas corpus in a federal district court. The Ninth Circuit held that because of extensive federal control over the Fort Belknap tribal government, the tribal courts "function in part as a federal agency and in part as a tribal agency". Consequently it was competent to inquire into the tribal activities by writ of habeas corpus. *Quare:* Does this mean that Indians are now to be accorded complete constitutional protection; and if so, will this result in requiring the tribes to recognize the constitutional rights of non-Indians? The instant case said that the *Colliflower* case had no affect on its decision.

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the non-Indian to deal with the Indian at his peril. This would neither benefit the Indian nor serve the government's purpose to make the Indians responsible citizens of this society.

SIDNEY J. STRONG.

CRIMINAL LAW: EXTENSIVE PUBLICITY MAY PREVENT A FAIR TRIAL.—Defendant, convicted of the first degree murder of his daughter, contended he was denied a fair trial because of inflammatory news coverage of the crime. *Held:* Although the news coverage exhibited inflammatory qualities, it was possible to select an impartial jury because the circulation of the newspaper was limited. Therefore, defendant was not denied a fair trial. *People v. Jacobson,* 46 Cal. Rptr. 515, 405 P.2d 555 (1965).

The publicity surrounding a crime raises questions concerning the accused's right to a trial before an impartial jury. The Sixth Amendment to the United States Constitution guarantees the accused in federal courts the right to a speedy and public trial by an *impartial jury.* The Due Process clause of the Fourteenth Amendment guarantees the right to an impartial jury in state courts.[1] The guarantee of an impartial jury is also embodied in the constitutions of thirty nine states and can be implied from the guarantee of trial by jury in the other eleven states.[2] Montana is one of the thirty nine states that constitutionally guarantees an impartial jury.[3] The California courts have held that a fair trial requires an impartial jury.[4]

The news media publicize crimes, investigations, arrests, and trials. They also publish confessions or the fact of confessions, past criminal records, and other matter that may be inadmissible at trial. Such publicity may prejudice prospective jurors, destroy the presumption of innocence, subvert the court's control over the admissibility of evidence, and emphasize certain portions of the evidence. However, the public has a right to be informed about the acvitity of its servants and institutions. Publicizing criminal cases may act as a deterrent to further crime, and it may assist in the solution of crimes.[5] The conflict between these two

[1]Rideau v. Louisiana, 373 U.S. 723 (1963); Turner v. Louisiana, 379 U.S. 466 (1965); Estes v. Texas, 381 U.S. 532 (1965); Irvin v. Dowd, 366 U.S. 717 (1961). Whether the impartial jury guaranteed by the Sixth Amendment and that guaranteed by due process are the same has never been decided by the Supreme Court. It is arguable that the impartial jury guaranteed by the Sixth Amendment espouses the more rigid requirements owing to the federal supervisory control over lower federal courts. See, Note, 60 COLUM. L. REV. 349 (1960).

[2]COLUMBIA UNIVERSITY LEGISLATIVE DRAFTING RESEARCH FUND, INDEX DIGEST OF STATE CONSTITUTIONS 579 (1959).

[3]MONT. CONST. art. III, § 16. MONT. CONST. art. III, § 27 provides "No person shall be deprived of life, liberty, or property without due process of law." State v. Dryman, 127 Mont. 579, 269 P.2d 796.

[4]*Ex parte* Wallace 24 Cal. 2d 933, 152 P.2d 1 (1944); *Ex parte* Winchester, 53 Cal. 2d 528, 348 P.2d 904, *cert. denied* 363 U.S. 852 (1960).

[5]For a general discussion of this area, see, SULLIVAN, "TRIAL BY NEWSPAPER,"