It's the LAW
PRESENTED AS A PUBLIC SERVICE BY THE
WASHINGTON STATE BAR ASSOCIATION

This Legal Column

is offered by the Public Relations Committee of the Washington State Bar Association. Every effort is made to insure that it reflects an accurate interpretation of the law as applicable to the stated facts. The committee requests you to include the final statement which appears in parenthesis at the conclusion of the article in your copy.

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IT'S THE LAW

JURISDICTION OVER INDIANS

The U. S. Supreme Court has to apply the supreme law of the land" - the constitution and the treaties - in real disputes before it.

For example, our treaties with the Indian nations of this country rank with our constitution as the supreme law of the land. The Indians' rights may be set out in some treaty, and will determine whether or not they can be sued, by whom, and before what 'forums."

For example, the U. S. Supreme Court wouldn't let a pale-face store keeper sue in Arizona courts to collect for goods he sold on an Indian reservation.

Under a treaty, the Indians claimed and the U. S. Supreme Court backed them up, that it was their tribal court, and not the Arizona state court, that could decide such claims.

The U. S. Supreme Court held: Unless Congress gives state courts jurisdiction, they have none over Indians on their reservations. Rather under the treaty between the Navajos and the United States the "internal affairs of the Indians remained exclusively within the jurisdiction of whatever tribal government existed."

While Congress favors state control over Indians, the courts noted, the state legislature or the people would have to ask Congress for that jurisdiction - which Arizona had neglected to do.

Regardless of whether the storekeeper was an Indian or not (he wasn't), "He was on the reservation, and the transaction with an Indian took place there." Hence no Arizona court had jurisdiction - yet.

Few countries put their treaties on a par with the supreme law of their land. So instead of a "scrap of paper," a U. S. treaty stands high.

(This column is written to inform, not advise. Facts may change the application of the law.)

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IT'S THE LAW

Tribal Law

American Indians are the only 100 per cent native Americans. Indian matters come under Federal law and the terms of some 3,900 Indian treaties which are also the law of the land.

Thus, long ago Rev. Samuel Worcester, preaching to the Cherokees, refused to take out a license and to swear allegiance to the State of Georgia. When Georgia jailed him for not taking a loyalty oath, the United States Supreme Court freed him. The Court would allow no state to interfere in United States Indian affairs, which our treaties governed.

In 1834, Congress set up the Bureau of Indian Affairs to make and carry out rules made under these treaties.

Until the Civil War, the Federal government regarded Indians as wards and dependent nations---foreign nations, yet under United States control. In 1871, however, Congress declared that Indian nations were no longer independent. Indians still ran their own affairs for the most part, as illustrated in a case titled In Re Crow Dog.

In 1883, Crow Dog killed another Sioux for stealing a friend's wife. Crow Dog made amends under tribal law, and the tribe closed his case. Soon afterwards, federal officers sought to try him for murder, but the Supreme Court said no. Such cases did come under tribal law and this one had been settled.

Shortly afterward Congress gave federal courts jurisdiction over most criminal cases on Indian territories. In recent years, Congress has approved the principle of state courts taking over jurisdiction of some cases, criminal and civil, arising on Indian reservations.

Indian tribal courts still try some criminal cases, and within the tribes, tribal law still holds. For example they can tax and license traders on reservations.

Recently, a tribal adoption ceremony was confirmed even though it took place off the reservation. In another case the federal