William Mitchell Law Review

Volume 4 | Issue 2 Article 7

1978

Indian Law—State Jurisdiction Over Indian Reservations—Red Lake Band of Chippewa Indians v. State, ____ Minn. ____, 248 N.W.2d 722 (1976)

characteristic of the letter of credit.[44]

The application of equitable principles to letter-of-credit controversies where fraud is involved is a welcome event in Minnesota. Under the law developed in *Shaffer,* a holder in due course of drafts drawn under a letter of credit will have an absolute right to demand honor of those drafts. The issuer, furthermore, may honor a draft even after receiving notice from the customer that there may be fraud, forgery, or other defects in the documents presented by the beneficiary or an assignee of the beneficiary as long as the documents appear on their face to be proper. The burden of determining whether a demand document has been fraudulently presented falls upon the court rather than the issuer. Therefore, the issuer faces the possibility of wrongfully honoring a letter of credit only if it fails to exercise reasonableness and care in examining the documents presented to it. Finally, a substantial portion of the desired element of certainty in letter-of-credit transactions is preserved by restricting the availability of injunctive relief to those situations where the beneficiary, or an assignee who is not a holder in due course, has presented fraudulent documents to the issuer in demanding payment under a letter of credit. Payment under the letter of credit will be certain unless the beneficiary wrongfully attempts to evade fulfillment of the conditions of the letter of credit itself. The decision of the Minnesota Supreme Court in *Shaffer* is a reasoned one, which effectively balances both the interests of the customer and the beneficiary while protecting the issuer who must honor the letter of credit it issues.

Indian Law—STATE JURISDICTION OVER INDIAN RESERVATIONS—*Red Lake Band of Chippewa Indians* v. *State*, ___ Minn. ___, 248 N.W.2d 722 (1976).

Indian law in Minnesota is not a relic of the past as it is in some states.[1] The tribal groups of Indian people which inhabit Minnesota's Indian reservations, both as organized bodies and as individual persons, interact on a daily basis with Minnesota's various governmental bodies and non-Indian population. In the course of these interactions, disputes arise which occasionally end in litigation, thus expanding the body of

44. *See* Harfield, *supra* note 2, at 258-59; Kozolchyk, *The Legal Nature of the Irrevocable Commercial Letter of Credit,* 14 AM. J. COMP. L. 395, 421 (1965).

1. As used in the context of this comment, Indian law relates to the interaction between a state and the Indian peoples within that state. The states of Alabama, Arkansas, Delaware, Georgia, Hawaii, Illinois, Indiana, Kentucky, Maryland, Missouri, New Hampshire, New Jersey, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, and West Virginia no longer have recognized federal or state Indian reservations. *See* U.S. DEP'T OF COMMERCE, FEDERAL AND STATE INDIAN RESERVATIONS AND INDIAN TRUST AREAS (1974) (listing all existing Indian reservations in the United States).

Indian law in Minnesota. *Red Lake Band of Chippewa Indians v. State*[2] is a part of this expansion.

The controversy in *Red Lake* arose when the Red Lake Tribal Council promulgated an ordinance providing for the registration and licensing of motor vehicles owned and operated by tribal members.[3] In conformance with federal and tribal laws,[4] the ordinance was submitted to, and approved by, the Secretary of the Interior. After federal approval, the tribal council submitted a request to the State of Minnesota, through the commissioner of public safety, to enter into a reciprocal motor vehicle registration and licensing agreement with the tribe.[5] The state refused to enter into such an agreement and informed the tribal council that any member of the tribe who operated a motor vehicle off the reservation without a proper Minnesota vehicle registration or license would be subject to arrest.[6] Injunctive and declaratory relief from the state's decision was sought, and, after trial court proceedings, judgment was entered for the band. On appeal, the supreme court affirmed the trial court's decision,[7] basing its decision on the special status of the reservation[8] and the effect of interactions between the state and the reservation.[9]

An examination of both state and federal jurisdictional powers over Indian reservations and tribal members is necessary to an understanding of the court's decision in *Red Lake*. Exclusive jurisdiction over all matters involving Indian reservations is retained by the federal govern-

2. ___ Minn. ___, 248 N.W.2d 722 (1976).

3. *See* Red Lake Band of Chippewa Indians, Minn., Ordinance 1-74 (Jan. 16, 1974), *reprinted in* Appellants' Brief and Appendix, at A-25 to -46, Red Lake Band of Chippewa Indians v. State, ___ Minn. ___, 248 N.W.2d 722 (1976).

4. *See* 25 U.S.C. §§ 1a, 476 (1976); RED LAKE BAND OF CHIPPEWA INDIANS, MINN., CONST. art. IX, *reprinted in* Appellants' Brief and Appendix, at A-21, Red Lake Band of Chippewa Indians v. State, ___ Minn. ___, 248 N.W.2d 722 (1976).

5. Minnesota statutes provide that the commissioner of public safety may enter into reciprocity agreements with other jurisdictions for reciprocal recognition of vehicle registrations, thereby promoting and encouraging the fullest possible use of Minnesota's highway system. *See* MINN. STAT. §§ 168.181, .187 (1976). Conditions and limitations on any such reciprocity agreements are provided in MINN. STAT. § 168.181 (1976).

6. MINN. STAT. § 168.36(1) (1976) makes it a misdemeanor to use an unregistered or unlicensed vehicle in Minnesota unless the vehicle is exempted from such registration and licensing under MINN. STAT. ch. 168 (1976 & Supp. 1977).

7. The trial court's decision centered on whether an Indian reservation was intended to be included within the definition of "state, territory, or possession," as used in MINN. STAT. §§ 168.181(1), .187(3) (1976). Relying on State v. Storaasli, 180 Minn. 241, 230 N.W. 572 (1930), *aff'd*, 283 U.S. 57 (1931), the trial court in *Red Lake* felt that a reservation did come within the definition and therefore the Red Lake Reservation was entitled to a reciprocity agreement. *See* Appellants' Brief and Appendix, at A-53, A-55, Red Lake Band of Chippewa Indians v. State, ___ Minn. ___, 248 N.W.2d 722 (1976) (memorandum of the court). The Minnesota Supreme Court dismissed this argument by assuming that the legislature never considered this possibility. *See* ___ Minn. at ___, 248 N.W.2d at 727.

8. *See* ___ Minn. at ___, 248 N.W.2d at 725-26.

9. *See id.* at ___, 248 N.W.2d at 727-28.

ment until Congress specifically grants such jurisdiction to the states.[10] In 1953 Congress enacted Public Law 280,[11] thereby granting to Minnesota, among other states, jurisdiction over many civil and criminal actions on most reservations within the state.[12] Jurisdiction over certain items on all Minnesota reservations, however, was reserved by the federal government to the tribal groups.[13] The items which were reserved from the jurisdiction granted to Minnesota are items that generally were the subject of treaties[14] and that are tied to the particular location in which they occur, such as hunting,[15] fishing,[16] trapping,[17] taxation,[18] and other civil regulatory functions.[19] Administration of tribal rights relating to such matters is accomplished through statutes and ordinances passed by the tribal government of each reservation.[20]

Generally, statutes and ordinances passed by a tribal government only control conduct on the reservation, whereas conduct off the reserva-

10. *See* Fisher v. District Court, 424 U.S. 382, 388-89 (1976) (per curiam); Williams v. Lee, 358 U.S. 217 (1959); Worcester v. Georgia, 31 U.S. (6 Pet.) 515, 594-95 (1832); State v. Jackson, 218 Minn. 429, 16 N.W.2d 752 (1944).

11. Act of Aug. 15, 1953, ch. 505, 67 Stat. 588 (current version at 18 U.S.C. § 1162 (1976), 28 U.S.C. § 1360 (1970)).

12. *See* 18 U.S.C. § 1162(a) (1976) (granting criminal jurisdiction over Indian reservations to Alaska, California, Minnesota, Nebraska, Oregon, and Wisconsin); 28 U.S.C. § 1360(a) (1970) (granting civil jurisdiction over Indian reservations to Alaska, California, Minnesota, Nebraska, Oregon, and Wisconsin).

13. *See* 18 U.S.C. § 1162(b) (1976); 28 U.S.C. § 1360(b) (1970). These sections deny states the power to: alienate, encumber, or tax real or personal property of Indians or tribes held in trust by the federal government; interfere with Indian property in manners inconsistent with federal treaties, agreements, or statutes; or deprive Indians of their rights under federal treaties, agreements, or statutes with regard to hunting, fishing, or trapping.

14. *See, e.g.*, C. KAPPLER, INDIAN TREATIES 1778-1883, at 567-70, 839-42, 853-55, 861-62 (1972) (reprinting treaties between the United States and various Minnesota Chippewa Indian tribes).

15. *See* Menominee Tribe of Indians v. United States, 391 U.S. 404 (1968); Klamath & Modoc Tribes & Yahooskin Band of Snake Indians v. Maison, 139 F. Supp. 634 (D. Or. 1956); State v. Cooney, 77 Minn. 518, 80 N.W. 696 (1899).

16. *See* Metlakatla Indian Community v. Egan, 369 U.S. 45, 58-59 (1962); State v. Forge, ___ Minn. ___, ___, 262 N.W.2d 341, 346-47 (1977).

17. *See* Klamath & Modoc Tribes & Yahooskin Band of Snake Indians v. Maison, 139 F. Supp. 634 (D. Or. 1956); State v. Cloud, 179 Minn. 180, 228 N.W. 611 (1930); Cohen v. Gould, 177 Minn. 398, 404-06, 225 N.W. 435, 437-38 (1929).

18. *See* Bryan v. Itasca County, 426 U.S. 373 (1976); McClanahan v. Arizona State Tax Comm'n, 411 U.S. 164 (1973); Commissioner of Taxation v. Brun, 286 Minn. 43, 174 N.W.2d 120 (1970).

19. *See* Indian Political Action Comm. v. Tribal Executive Comm., 416 F. Supp. 655 (D. Minn. 1976) (running of elections); Namekagon Dev. Co. v. Bois Forte Reservation Housing Auth., 395 F. Supp. 23 (D. Minn) (establishment of a housing authority), *aff'd*, 517 F.2d 508 (8th Cir. 1974). *See generally* United States v. White, 508 F.2d 453 (8th Cir. 1974) (areas traditionally left to tribal self-government retained by the tribes).

20. *See, e.g.*, RED LAKE BAND OF CHIPPEWA INDIANS, MINN., CONST. art. VI, §§ 3-5, *reprinted in* Appellants' Brief and Appendix, at A-18 to -19, Red Lake Band of Chippewa Indians v. State, ___ Minn. ___, 248 N.W.2d 722 (1976).

tion is controlled by state law.[21] The Minnesota court has recognized, therefore, that in some cases there will be one standard of conduct set by the tribal government for the reservation and a different standard for the same conduct in the rest of the state.[22] Where two different standards covering the same conduct exist, conflicts can arise.[23] In most cases where a conflict arises as a result of these differing standards, the Minnesota court has been able to resolve the conflict by applying one of two principles. The first principle provides that the State of Minnesota has no authority to govern the affairs of persons within the territorial boundaries of a reservation unless specifically authorized to do so by Congress.[24] The second principle recognizes that Minnesota has authority over persons normally under the jurisdiction of the reservation when they are off the reservation but within the state.[25]

These two principles generally are sufficient to resolve conflicts between different standards of conduct when the conduct is tied to a particular location. For example, when fishing, a person is either on the reservation and thus subject to the reservation's regulation under the first principle, or off the reservation, in which case the second principle would apply and the state's regulations would control. The fact that the state has a regulation concerning fishing which is different from the reservation's has no bearing on the reservation's ability to enforce its own regulation and vice versa.[26]

Jurisdictional considerations that apply to other Minnesota reservations do not always apply to the Red Lake Reservation, however. At the time Congress was considering Public Law 280, the Red Lake Band voiced strenuous objection to being included in the bill[27] and the resulting termination of federal jurisdiction.[28] Because the band had an organized court system[29] and because of its objection to termination, Congress was prompted to retain federal jurisdiction over the civil and criminal

21. *See* notes 24-26 *infra* and accompanying text.

22. *See* Rogers v. Cordingley, 212 Minn. 546, 4 N.W.2d 627 (1942) (divorce which would be invalid under state law will be given effect if it conforms with reservation law).

23. *See, e.g.*, State v. Forge, ___ Minn. ___, ___, 262 N.W.2d 341, 348 (1977) (differing license fees for fishing between state and reservation).

24. *See* Red Lake Band of Chippewa Indians v. State, ___ Minn. ___, ___, 248 N.W.2d 722, 726 (1976); notes 10-19 *supra* and accompanying text.

25. Red Lake Band of Chippewa Indians v. State, ___ Minn. at ___, 248 N.W.2d at 726. *Accord,* Mescalero Apache Tribe v. Jones, 411 U.S. 145, 148-49 (1973); *In re* Wolf, 27 F. 606, 610 (W.D. Ark. 1886); Pablo v. People, 23 Colo. 134, 136-37, 46 P. 636, 637 (1896); Voorhees v. Spencer, 89 Nev. 1, 5-6, 504 P.2d 1321, 1323-24 (1973).

26. *See generally* State v. Forge, ___ Minn. ___, 262 N.W.2d 341 (1977).

27. *See* Note, *Minnesota's Chippewas: Treaties and Trends,* 39 MINN. L. REV. 853, 867 (1955).

28. "Termination" is the term used to describe the federal Indian policy of the early 1950's under which federal supervision and wardship of Indians was relinquished to the states and Indian people were to be absorbed into the dominant culture. *See generally* D. MCNICKLE, NATIVE AMERICAN TRIBALISM 103-12 (1973).

29. *See* Note, *supra* note 27, at 866 n.73.

matters of the reservation when it passed Public Law 280.[30] Consistent with this retention of jurisdiction by the federal government, the Minnesota Supreme Court has not allowed the state to assert jurisdiction over the Red Lake Reservation.[31]

All other Indian reservations in Minnesota only have authority to control conduct relating to the limited matters reserved to them by the federal government under Public Law 280.[32] While the Red Lake Band has this authority as well, its authority does not end with these matters but extends to all civil and criminal conduct on the reservation.[33] Under this broader authority, the Red Lake Tribal Council has jurisdiction over conduct on the reservation and, in addition, control over some conduct off the reservation.[34]

The conflict in *Red Lake* was caused by an exercise of this broader authority of the Red Lake Band. While motor vehicle registration and licensing ordinances initially control conduct on the reservation, much like a fishing regulation, the effect of such motor vehicle ordinances is not intended to end at the boundaries of the reservation any more than the vehicles affected are expected to stop at those boundaries. Noting the size of the reservation and the total length of the roads in it,[35] the

30. *See* 18 U.S.C. § 1162 (1976); 28 U.S.C. § 1360 (1970); S. REP. No. 699, 83d Cong., 1st Sess. 1, *reprinted in* [1953] U.S. CODE CONG. & AD. NEWS 2409.

31. Holding that the State of Minnesota had no jurisdiction over an automobile collision on the Red Lake Reservation, the court in Sigana v. Bailey, 282 Minn. 367, 369, 164 N.W.2d 886, 888 (1969) stated: "The law is clear that until the federal government by act of Congress or otherwise transfers its exclusive jurisdiction over Indians residing within a reservation to the state, the state has no jurisdiction over criminal or civil actions arising between Indians residing in the reservation." *Accord,* Commissioner of Taxation v. Brun, 286 Minn. 43, 49, 53, 174 N.W.2d 120, 124, 126 (1970) (no state authority to impose taxes on income earned on the reservation where person being taxed resides on the reservation); State v. Lussier, 269 Minn. 176, 182, 130 N.W.2d 484, 488 (1964) (no state jurisdiction over burglary by Indians on the Red Lake Reservation); *In re* Beaulieu, 264 Minn. 406, 416, 119 N.W.2d 25, 32 (1963) (residency on Red Lake Reservation not considered "settlement" for purposes of Minnesota's poor-relief laws).

32. *See* notes 10-19 *supra* and accompanying text.

33. *Compare* text accompanying notes 10-12 *supra with* text accompanying notes 27-30 *supra.* The court in Iron Crow v. Oglala Sioux Tribe, 231 F.2d 89, 94 (8th Cir. 1956) held that Indian tribes retained all the inherent rights of sovereignty except where restricted by the United States. After the passage of Public Law 280, other reservations in Minnesota lost civil and criminal jurisdiction to the state. *See* Note, *supra* note 27, at 865. The Red Lake Reservation was excepted, however, and did not lose this jurisdiction. *See In re* Beaulieu, 264 Minn. 406, 413-14, 119 N.W.2d 25, 30 (1963).

34. *See* notes 39-43 *infra* and accompanying text. All Minnesota reservations may control hunting, fishing, trapping, and other items reserved by treaty, agreement, and statute; however, only the Red Lake Reservation has general civil and criminal jurisdiction. Although criminal jurisdiction is tied to the location where the criminal act occurs, the Red Lake Reservation's civil jurisdiction may extend beyond its borders. An example of such jurisdiction would be a tax on all income of reservation residents, no matter where the income was earned. Such a tax would be a valid use of the civil jurisdiction of the reservation, yet it would have an effect on conduct outside the reservation.

35. "The territory now comprising the reservation consists of only 882 square miles.

court in *Red Lake* concluded that to restrict the applicability of the registration and licensing ordinance only to land within the reservation would, because of the necessity for the residents of the Red Lake Reservation to make regular use of state highways off the reservation, make such an ordinance of little value except for "the symbolism involved"[36] and would "undermine the effectiveness of the band's efforts to achieve effective self-government."[37] If the court would have applied the two principles under which the place of the act is determinative of jurisdiction, the Red Lake Band's broad right of self-government would have been rendered meaningless.[38]

Because application of the two principles was insufficient to protect the Red Lake Band's right of self-government, the court articulated a third principle for the first time.[39] This third principle requires that the state follow a policy of comity with the Red Lake Reservation in the same way the state observes comity with other states. A two-part test is used to implement this third principle. As enumerated by the court, the test requires: (1) that actions by the state which adversely affect the Red Lake Band's right of self-government be subordinated to the band's regulation in the same area,[40] unless (2) the state has a compelling reason for its action.[41] Application of this principle extends to the Red Lake Band's regulations and ordinances the same deference which Minnesota extends to a neighboring state's laws in cases where Minnesota's interests are less than compelling.[42] But, where a compelling state interest is involved, the Red Lake Band's laws will be affected in the same

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Roads maintained by the Red Lake Band traverse only 275 miles." ___ Minn. at ___, 248 N.W.2d at 727.

36. *Id.*

37. *Id.*

38. Application of the two principles alone would make the Red Lake registration and licensing ordinance valid only on the reservation, where the Red Lake Band is in control, and would make it invalid off the reservation. As the court noted: "Persons required to obtain motor vehicle licenses from the Red Lake Band pursuant to the ordinance can be expected, almost without exception, to make regular use of Minnesota's highways." *Id.* If only the two principles could be applied, therefore, regular use of nonreservation highways would require Red Lake residents to obtain two licenses and titles.

39. *See id.* In the past, conflicts over whether the state or the reservation had jurisdiction have arisen in fact situations where the act being controlled was tied to a particular location. *See, e.g.*, Commissioner of Taxation v. Brun, 286 Minn. 43, 174 N.W.2d 120 (1970) (taxation); Sigana v. Bailey, 282 Minn. 367, 164 N.W.2d 886 (1969) (traffic accident); *In re* Beaulieu, 264 Minn. 406, 119 N.W.2d 25 (1963) (residency). In each of these cases, the conduct involved was represented by a single instance and therefore a single location rather than a continuing course of conduct that may involve a series of locations.

40. *See* ___ Minn. at ___, 248 N.W.2d at 727.

41. *See id.*

42. *Compare* Anderson v. State Farm Mut. Auto. Ins. Co., 222 Minn. 428, 24 N.W.2d 836 (1946) (substantive rights acquired in Wisconsin under Wisconsin insurance law enforced in Minnesota) *with* Seamans v. Christian Bros. Mill Co., 66 Minn. 205, 68 N.W. 1065 (1896) (insurance corporation organized under Wisconsin law barred from recovery in Minnesota because of failure to comply with Minnesota law).

manner as the laws of any of Minnesota's neighboring states, with the result that Minnesota's laws will control.[43]

Applying this third principle to the facts in *Red Lake,* the court determined that the state's denial of reciprocity would be detrimental to the Red Lake Band's right of self-government.[44] Thus, the determination of whether the denial of reciprocity could be approved rested upon a showing of a compelling state interest in such denial. Examining the record before it, the court found no evidence that a compelling state interest would be served by the state's refusal to enter into a reciprocity agreement.[45] In fact, the court determined that the state's interest actually would be served by such a reciprocity agreement.[46] Because Minnesota Statutes section 168.187(1) specifically states that the policy of Minnesota is to promote and encourage the fullest possible use of the state's highways through reciprocal recognition of vehicle registrations in other jurisdictions,[47] the court found that section 168.187(1) required recognition of the validity of registrations and licenses issued by the reservation.[48] Further, the court felt that the burden on Minnesota's highways from use by Red Lake Reservation residents was no more than that from use by residents of other states and that the advantages of a reciprocity agreement between the state and the reservation were at least as great as the advantages of such an agreement between Minnesota and another state.[49]

This new principle thus sets up a balance whereby the sovereignty of both the state and the reservation are preserved to the greatest extent possible. This does not imply that the first two principles are no longer valid, for they remain the proper standards to apply when conduct is related to a particular location. The new third principle is to be applied when the conduct being regulated is not tied to a particular location.

In *Red Lake,* the Minnesota Supreme Court again recognized that the Red Lake Reservation is indeed a community separate from the state

43. *See, e.g.,* Seamans v. Christian Bros. Mill Co., 66 Minn. 205, 208, 68 N.W. 1065, 1066 (1896) ("[T]he laws and public policy of the state may be such as to completely stamp out this comity . . . .").

44. *See* ___ Minn. at ___, ___, 248 N.W.2d at 725, 727-28; note 38 *supra* and accompanying text.

45. *See* ___ Minn. at ___, 248 N.W.2d at 728.

46. *See id.*

47. MINN. STAT. § 168.187(1) (1976) states:

> It is the policy of this state to promote and encourage the fullest possible use of its highway system by authorizing the making of agreements, arrangements, and declarations with other jurisdictions, for reciprocal recognition of vehicle registrations and/or for proportional registration, with respect to vehicles registered in this state and such other jurisdictions, thus contributing to the economic and social development and growth of this state. It is the policy of this state to agree with other states that no vehicle shall pay more than the equivalent of one full registration fee per annum.

48. *See* ___ Minn. at ___, 248 N.W.2d at 728-29.

49. *See id.* at ___, 248 N.W.2d at 728.

as a whole. This decision was mandated by the special status of the reservation and by the court's recognition that where a people have been given the right of self-government they must be allowed to exercise that right to the fullest extent possible, provided they do not infringe upon compelling state interests. The *Red Lake* decision indicates that the Minnesota court will continue to limit severely the state's interference with the self-government of the Red Lake Band of Chippewa Indians.

Juvenile Law—REFERRAL FOR PROSECUTION—*In re Welfare of I.Q.S.*, ___ Minn. ___, 244 N.W.2d 30 (1976).

Minnesota, like most other states,[1] has a procedure for determining whether a juvenile accused of a crime should be tried as an adult instead of given special treatment because of age. These reference procedures have been the subject of an "ever-increasing number of challenges."[2] With *In re Welfare of I.Q.S.*,[3] the Minnesota Supreme Court consolidated and reviewed nine appeals from orders of state juvenile courts either referring or refusing to refer nine juveniles for prosecution as adults.

Reference for prosecution is the waiver of jurisdiction by a juvenile court over an alleged criminal offense.[4] Reference means that the juvenile may be tried as an adult in a municipal or district court on the referred offense. In making the reference decision the court balances the welfare and interests of the juvenile against the state interest in protecting members of society.[5] Reference for prosecution normally occurs when

1. *See, e.g.*, MICH. COMP. LAWS ANN. § 712A.4 (Cum. Supp. 1978); MO. ANN. STAT. § 211.071 (Vernon 1962); OR. REV. STAT. § 419.533 (1977); WIS. STAT. ANN. § 48.18 (West Cum. Supp. 1977).

2. *In re* Welfare of I.Q.S., ___ Minn. ___, ___, 244 N.W.2d 30, 34 (1976).

3. ___ Minn. ___, 244 N.W.2d 30 (1976).

4. Under many state statutes the process of removing a juvenile or an alleged violation by a juvenile from the jurisdiction of the juvenile court to a municipal or district court so that the juvenile may be prosecuted as an adult is termed "waiver of jurisdiction," *see, e.g.*, D.C. CODE ENCYCL. § 11-1553 (West 1966); TEX. FAM. CODE ANN. tit. 3, § 54.02 (Vernon 1975 & Cum. Supp. 1978), or "transfer," *see, e.g.*, GA. CODE ANN. § 24A-2501 (1976); N.D. CENT. CODE ANN. § 27-20-34 (1974 & Cum. Supp. 1977). In Minnesota it is termed "reference for prosecution." *See* MINN. STAT. § 260.125 (1976). As of 1974 all states except New York and Vermont had some procedural mechanism for waiver or transfer. *See* Note, *Sending the Accused Juvenile to Adult Criminal Court: A Due Process Analysis*, 42 BROOKLYN L. REV. 309, 309 n.3 (1975).

The procedure established by the Minnesota reference statute differs from that of most other states. In Minnesota the case is referred to the prosecuting authority which then decides whether to prosecute. If the prosecuting authority decides not to prosecute, the juvenile court retains jurisdiction over the case and must proceed with it. *See* MINN. STAT. § 260.125(1) (1976), *quoted in* note 11 *infra*.

5. The balancing of interests required is described in the statement of the purpose of the Minnesota Juvenile Act:

> The purpose of the laws relating to juvenile courts is to secure for each minor under the jurisdiction of the court the care and guidance, preferably in his own