

Good day to each of you and thank you for this opportunity to address you on a subject I have been involved with now for a number of years, "The Tribal Court Perspective in California." While I am aware the TLOA was created to do a comprehensive study of the tribal justice system and law enforcement I must begin with a couple of disclaimers regarding what I have to say. First of all, I am a Judge, not a law enforcement professional – men and women for whom I have the greatest respect - and secondly, my experience is based on having served first in the California State Court System and now for several years as a tribal judge, not as a police officer. My career on the bench spans almost 25 years.

I have a saying to share with you which goes, "If you want to know how the machine works, ask the engineer who designed and built it, but if you really want really want to know how the machine functions on a practical day-to-day basis, ask the person who has to make that machine work on a day-to-day basis in the manner it is most productive....and this is the perspective from which I today approach this hearing and the question of a perspective on tribal courts here in Southern California.

From the beginning, we must keep in mind that the cultural differences and expectations of a Native American man, woman, or child when brought to or forced to appear in a courtroom setting differ greatly than those of the non-native.

My experience has shown me that Indian people do not expected to be treated fairly in court. They usually have no idea as to how the judicial process works and the "law" means little or nothing to them because they know it can, and feel it always will be manipulated against them. While you may think these ideas are not necessarily true, they are in fact true as perceived in Indian Country and the perception is the reality in which our courts must function.

The very phrase "the law" more likely than not, when spoken to a Native American, automatically makes one suspicious of what is happening. For many, "the law," as historically applied, is against them, has always been against them, and will remain that way. In short, Indian people do not trust "the laws" and why should they... "It was the law, valid laws, passed by Congress, enforced by the Executive branch of our government, and held as valid by the state and federal courts that took away the children and the resources, that forbid the people to practice their native religions, forced our grandparents to schools, and more. This historical reality lingers and, when combined with a general lack of understanding of the judicial process as mentioned above, it is the foundation on which we were given to build the tribal courts of today.

You see, Indian people, at least here in California, have had a patchwork of a legal system imposed upon them. As you know we are a PL 280 state and for more than a half century we have been subjected to state law on our reservations. But of course there were, and in some cases remain, giant gaps in the law when applied in Indian Country here in California. For example while PL 280 gives the state criminal and civil jurisdiction on tribal lands, it was never funded. Another example is that in California you can not enforce county codes in Indian Country so the Sheriff has no jurisdiction to enforce a series of offenses, and if there are no tribal codes or tribal courts or tribal law enforcement lawlessness sets in, as it did. Need a place to dump your trash? Take it to Indian Country. County rules don't apply and the Indians have no rules. Add to this the fact that, even if you have tribal codes, you cannot enforce them in state court in a PL 280 state such as California. You need tribal courts to do this. The problems go on, however, I believe the reader understands the situation.

So it is difficult to talk "the law" here in California for many reasons. Instead if you bring all this to the day to day working level it is not "the law" we talk about, or that our people are interested in it is "justice ". Our people want to be treated fairly and they want it done in an environment that culturally sensitive and traditionally aware of the fact that we are operating in Indian Country. Keeping all this and more in mind we have built the Intertribal Court System here in Southern California. We are unique in many ways and for many reasons.

About eight years ago, with the help of a young Native man, Temet Aguilar, who had just graduated from law school, and the Southern California Tribal Chairman's Association, funds were received from a DOJ grant to explore the concept of an intertribal type court. The idea was that here in San Diego County alone there are 18 federally recognized tribes of varying size and population, some rather small such as Jamul, with only about 60 members and a 6-acre parcel of land, and others with a thousand or so population and covering a large land area. The point being that for each of these tribes to have its own tribal court was impractical from a cost perspective. Instead, it was thought a more sensible alternative to establish one court that could service the needs of each tribe. The problem was, however, that each tribe had differing needs, customs, traditions, and more. Some were gaming tribes with financial resources; others were in fact poor. Some were quite remote, while others had felt the pinch of urban sprawl. It also had to be taken into consideration the tribes were spread out over a large land area. The differences continued in that the tribal government structures of many of the tribes differed. The common denominators were, however, that the tribes were interested in establishing a tribal court, their own individual tribal court, and wanted very much to bring a Native style system of justice to their reservations. As one can imagine, there were additional challenges in trying to close the gap in what had become a legal no-man's-land, Indian Country, Southern California. Another factor heretofore

unmentioned, and probably most important, was that, in building a court, the Sovereignty and autonomy of each individual tribe had to be respected in the development of any tribal justice system.

The intertribal court model was created in an effort to cover as many bases as possible. Thus, a court system which attempted to consider all these factors together was developed. In visualizing the Intertribal Court one can picture the hub of a wheel; the hub being the ICSC, consisting of a recording system, a judge, a clerk and, when needed, a bailiff or court security system. The spokes of the wheel then go out to represent each tribe. Each tribe develops its own ordinances and codes. Along with this each tribe has, of course, its own customs and traditions which may well factor into any decisions the court may render. The tribes sign an MOU with the Intertribal Court of Southern California which states the services they expect to be provided as well any other matters or services they may choose to have the court preside over and provide. We are not a court of general jurisdiction unless the tribe says so, which means we only hear cases the tribe or individual tribal members choose to bring before the court. Keep in mind, our primary task is to support the sovereignty and autonomy of the tribe and the individual rights and needs of its members. Thus, when the ICSC sends a judge to a particular tribe to hear cases, that judge is the judge for that tribe. He/she uses that tribe's codes, rules, customs, etc., in reaching a decision. One common factor the tribes do share is the court rules of procedure, and where the procedural rules are lacking, the tribal court rules are supplemented with the federal rules of procedure. The result is that each tribe then has its own court, yet there is only one central system that provides services.

We also created a Tribal Judicial Council (TJC). The TJC consist of one member from each tribe participating in the tribal court system. It can be a tribal council person or anyone else

as appointed by the tribe. The TJC is the policy making body for the ICSC. They hire the staff, administrator and judges and oversee the general operation of the ICSC. The court administrator is the chief executive officer and runs the court's day-to-day operation of the ICSC.

While this may seem like a complete system other serious issues had to be addressed. Keep in mind that this is all happening in a PL280 jurisdiction which means, in short, we share both criminal and civil jurisdiction in most if not all cases with the State of California and in our case the County of San Diego. The result being that several other stakeholders had to be considered and factored into the equation. Other agencies such as the County Sheriff, the District Attorney, child support services, and a host of other organizations had to be approached. For example, how would we get our tribal court orders enforced, or who might we turn to in child custody cases? Thus a host of other concerns had to be addressed. A note here, as of this writing none of our tribes has assumed criminal jurisdiction over indians as of yet, however, it is seriously being considered by some as a future move.

One by one we have approached these state and county agencies and to date we have been fortunate in our efforts. We have what can only be described as an excellent relationship with both our county District Attorney and our Sheriff's department. The truth of the matter is that everyone has come to the realization that to bring law and order to our reservations, tribal courts must work with these agencies and they must work with us. It is an accepted fact that local law enforcement working alone cannot succeed alone, and history has proven this true over the last half century. They need to rely in part on our tribal justice system, i.e., our courts, to supplement and assist them as much as we need them. Our local courts have also gotten on board. We have and continue to develop a methodology to transfer cases between the state and our tribal court. All of this has come to the attention of the Chief Justice of the California

Supreme Court and our State Attorney General and they have pledged their support and continue to work with us.

When we began, we started with three tribes as part of our Tribal Court System. We now have 12 that we serve directly. Additionally we serve 6 more tribes and or tribal agencies serving as their court in areas such as ICWA, housing, tort claims, mediation and arbitration, and more. The ICSC also has its own bar association consisting of approximately 80 attorneys. But again we do more. We put on 2 to 3 seminar programs per year for our tribes, tribal members, and others; programs such as law for seniors, cultural sensitivity classes for local and state agencies, search and seizure workshops for law enforcement, PL 280 programs for tribal members... just to name a few. We have a free lawyer referral program for tribal members, a free paralegal program, a free notary service and many other programs we offer our tribes and tribal members that are either free or provided at a very minimal cost.

Experience has taught us the key to building a successful tribal court/justice system is, first and foremost, a trust building exercise. Remember, with good cause Indian people, for the most part, do not trust the courts. In building our tribal court we first had to lay a foundation by letting our people know, by slowly convincing them, we are there to help... in taking what we like to think is the best of the tribal world and non-tribal systems and blending them together, we have worked hard at simplifying the system and process. Our judges and our staff take great care to speak in terms our people can understand. We treat the courtroom as a learning environment and bring people together in a non-threatening atmosphere.

We have worked hard to accomplish what we have over the last seven years, yet we know there is still much to be done. While our particular perspective of what a tribal court is and how it should be run differs from most it appears not to be just working but, more importantly, it

is now trusted and relied upon. Our level of operation and need continues to grow. Yet as we go about our day-to-day functions there is that constant cloud that seems to overshadow everything... funding. When and where will our next dollar come from? If it were not for the commitment and dedication of our staff and judges none of what we have done or do would be possible. There is no doubt the need is there.

And yes, we have a goal and we are counting on this Commission to assist us in accomplishing that goal. We cannot rest on our laurels. We want to build a Tribal Justice Center. We want, for our people, a tribal justice center where we can continue to work and develop the model we have begun, a place we can bring together and serve, in a professional, culturally aware manner, the people of Indian Country here in Southern California. And to do this again and again, we need funding. However, as a PL 280 court in a PL 280 state, we have been consistently passed over. We have developed and maintained a true native-oriented court system serving the true needs of our people on a local level. We operate now out of the old Indian Health Clinic located on the Rincon reservation. We share this building with Tribal law enforcement. The facility, while at one time adequate, has been outgrown. Funding to build a Tribal Justice Center would allow us to continue to grow and provide the many services we have found our people are so in need of. "There is no greater compliment to the sovereignty and autonomy of any tribe than an independent tribal judiciary."

Respectfully Submitted,

Honorable Anthony J. Brandenburg
Chief Judge
Intertribal Court of Southern California
49002 Golsh Road
Valley Center, CA 92082
Phone: 760-751-4142
Fax: 760-751-3078