

**TESTIMONY BEFORE
THE INDIAN LAW & ORDER COMMISSION**

**William D. Johnson
Chief Judge, Umatilla Tribal Court
September 7, 2011**

Good afternoon to the members of the Indian Law & Order Commission. Thank you for the opportunity to provide recommendations for changes to Tribal, State, and Federal laws, gaps within tribal justice systems, and juvenile justice issues in Indian Country. I am pleased to assist the Commission in meeting its obligations under the Tribal Law and Order Act.

I am William D. Johnson, Chief Judge of the Umatilla Tribal Court. Am a tribal member Of the Confederated Tribes of the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) and served as chairman of our Board of Trustees, General Council and Chief Judge for the past thirty years. Have a Juris Doctorate from University of Oregon school of law and am a licensed member of the Oregon State Bar Association.

Our reservation is located in the northeastern corner of the state of Oregon. Our land base is about 250,000 acres. This is about half the land base guaranteed us by the 1855 treaty. The area is wheat and forest land.

The tribe is composed of the Cayuse, Umatilla and Walla Walla tribes who were ushered on the reservation pursuant to the treaty of 1855 between our tribes and the United States government. We have a community population between 2500 and 3000 people. This includes persons who are members of other Indian tribes in the region and also non-Indian persons. It has also included some people who are Canadian Indians.

Culturally, we still speak our native language although the elders who teach it are diminishing. In addition to Christian religious denominations we have the seven drums and shaker religious practitioners. We have a tribal longhouse where we have community traditional

ceremonies, traditions, and dancing. We are still dependent on hunting and fishing for subsistence although we work on farms, in factories and mills, and in offices.

Our tribal government is organized under a constitution and by-laws which was adopted in 1949. Our electorate is composed of all tribal members who are at least 18 years old. This is called the General Council and it elects our tribal governing and legislative body in a nine member board called the Board of Trustees. The United States government is represented on reservation by the Bureau of Indian Affairs (B.I.A.) and the Indian Health Services (I.H.S) who help implement federal policy.

My testimony today makes the following recommendations:

- 1) Repeal of Public Law 280 by Congress.
- 2) The Indian Law and Order Commission should recommend that crime data collection and reporting systems be developed at the tribe level to increase the capacity of tribes to maintain and report their own crime data statistics; and
- 3) Funding should be provided, authorized and appropriated to accomplish these goals.
- 4) Require Tribal, Federal and State employees to testify under tribal court subpoena.
- 5) Authorize tribal courts to adjudicate non-Indian defendants who violate Tribal or federal law.
- 6) Licensing of attorneys should include Tribal Bar Association license.
- 7) Traditional forms of justice should be honored. May allow opting out even if have established modern laws and system.

1) Congress Should Repeal Public Law 280

Prior to the mid-1970's law and order on our reservation was administered by federal, state, and county authorities. This was in accord with federal law and policy. Federal policy then turned toward encouragement of tribal self-determination and self-government. Our tribe gladly accepted this opportunity and renewed our exercise of sovereign powers, including the judicial and law enforcement functions. Specifically, we were concerned about the preservation of our people, the land base, and the natural resources of our hunting and fishing areas. We believe that establishing our own law and justice system was an important component of self-determination which would further our goal of self-preservation.

We began by planning and conducting studies, investigations, and compiling information about our reservation. This was called our comprehensive plan and included information about the people, housing, employment, natural resources, health and welfare, education, and law and order as it was on our reservation. We also included in this plan the goals and objectives of our tribe which would allow us to govern ourselves and preserve our land and people.

Our studies concluded we were receiving minimal quality law enforcement services on reservation. This was corroborated by local state and county law enforcement agencies that did not have adequate funding to provide such services to our people. This inadequacy was demonstrated by minimal patrol of the reservation, and slow or no response to emergency calls. Also, enforcement of fish and game laws involving non-Indians was lacking.

Our tribal attorney, in conjunction with our law and order committee, prepared a wildlife management code, criminal code, and general civil code for consideration and enactment by our governing and legislative body, the Board of Trustees. They decided to exercise tribal law enforcement authority by enactment of wildlife code, establishment of a Court of Fish and Game Offenses, and deputization of appropriate law enforcement officers.

We initially utilized Bureau of Indian Affairs (B.I.A.) game officers and trained some of our people at the Indian Police Academy to serve as law officers pursuant to this code. Two of our judges were tribal members who had worked on our law and order committee and received some law enforcement training. Our other judge was a local attorney who was not related to any tribal members and could serve when a potential conflict of interest was presented to our other judges.

This system was modeled after state and federal court and police systems. We decided not to reinvent the wheel but rather to refine it. We had visited other tribal court systems in our region and observed them in operation. We attempted to incorporate the positive provisions of each system when possible.

We operated under this jurisdiction for about five years, from 1975-1980. Caseload activity and police activity was on a part time basis. Funding was provided through the B.I.A. contracting process and was minimal. We decided we wanted exclusive and expanded

jurisdiction in traffic, criminal, and other civil law areas. This would require additional funding for police and court personnel.

Exclusive jurisdiction meant nullifying the effect of federal law (P.L. 280) which authorized state criminal and civil jurisdiction over our reservation. We originally sought federal legislation to accomplish this but the political climate was such that we met with defeat. Subsequently, we document the support of local federal and county law enforcement agencies who saw this effort as a way to provide adequate services to our community. We then requested the Governor of the State of Oregon, in light of this support and after much discussion with our attorneys and theirs, to retrocede or return exclusive criminal jurisdiction to our reservation. A process to accomplish this was provided under federal law. The Governor through executive order made an offer of retrocession in 1980 which was accepted by the federal government and tribe in 1981.

We then enacted our current criminal and traffic codes which established the court and police systems as it now exist. We secured additional funding for expanded police and court personnel operation, equipment, and facilities. We established a new police department and court system as authorized by tribal law including capital equipment, office furnishings, uniforms, guns, and office space. We then began operation of our current system.

Court operations include regularly scheduled arraignments, hearings, and jury trials; court budget/financial management and reporting; personnel management; community relations; regular office hours; and administration of all duties enacted tribal laws.

We operate with a Chief Judge, pro tem judges, tribal prosecutor, tribal public defenders, judicial assistant, and court clerk. All judges are licensed attorneys. Our tribal prosecutor is newly hired and is also a licensed attorney. Our public defender pool consists of licensed attorneys who submit application and qualify as members of our bar association. They are all licensed in Oregon.

The Umatilla Tribal Court currently exercises jurisdiction over the Advisory Committee Code, Board of Trustees Procedures Code, Cemeteries Code, Credit Program Code, Criminal Code, Elders Services Code, Election Code, Enrollment Code, Environmental Health Code, Family Law Code, Financial Responsibility Code, Fire Prevention and Emergency Services

Code Fish and Wildlife Code, Funeral Assistance Code, Gaming Code, Housing Code, Inheritance Code, Juvenile Code, Land Development Code, Landlord-Tenant and Mortgage Code, Liquor Code, Mission Community Water System Code, Non Profit Corporations Code, Right To Work Code, Sex Offender Registration Code, Taxation Code, Tort Claims Code, Tribal Employment Rights Office Code, Water Code, Worker's Benefit Code, CTUIR Constitution and Bylaws, 1855 Treaty between CTUIR and the USA, and any other duly enacted by tribal law. These laws are enacted and administered in accordance with our treaty with the United State, the basic concepts of due process and fundamental fairness incorporated in our constitution and by-laws, and the Indian Civil Rights Act.

Our sentencing authority has recently expanded because of the law and order act to include up to three year prison terms. We use a jail near the reservation that we pay for. We are currently negotiating prison access to federal prisons.

We routinely appoint public defender attorney to represent persons before the court who face possible incarceration. We also, routinely inform any person before the court of their rights before the court, specifically those relating to bail, counsel, remaining silent, and appeal.

We have established a Tribal Court of Appeals which is composed of judges who did not hear the trial proceeding. This appellate tribunal hears both civil and criminal appeals. The appellate procedures are defined by law and court rules.

The Umatilla Tribal Police Department (UTPD) operates on 24 hour daily patrol. Included in the UTPD operations is a Chief of Police, eight patrol officers, five dispatchers, and two substitute dispatchers. They are housed in their own facility. In addition to enforcing our tribal laws they are cross-deputized by the county sheriff. We train our officers at the State of Oregon Police Academy as well as at the United States Indian Police Academy.

When the tribal court and police department were established the Tribes recognized the opportunity to exercise our sovereign powers and administer tribal law as in as fair and objective manner possible. To meet this goal we enacted tribal laws which incorporated principles of non-interference in court and police operations. We also required that the people hired to run these programs, or branch of government, were in high moral, ethical, and educational caliber. We

hoped that a combination of legal checks and balances (e.g. the appeal process) and the personnel involved with the programs would bring positive results. We feel that they have.

We believe our judicial and law enforcement system enjoys a positive relationship with our community and throughout the local area in which we live. This is attributed to the credentials and qualifications of the staff involved in these operations, as well as the integrity of our tribal leaders who have not politically interfered in their operations.

Our police department coordinates law enforcement efforts with other tribal, county, state, and federal law enforcement agencies. We have an extradition and fresh pursuit agreement with the state of Oregon. In addition we coordinate efforts with state parole and probation and local juvenile and child care agencies.

2) The Indian Law & Order Commission should recommend that crime data collection and reporting systems be developed at the tribal level to increase the capacity of tribes to maintain and report their own crime data statistics

- a) Umatilla's existing judicial case management involves a tailored database. To expand this system, the CTUIR will need to purchase or develop an alternative system. Tribal courts need to have access to affordable case management software systems and the computer and training resources to implement these systems locally. The cost of court case management systems from commercial software designers can rise as high as \$50,000 for a single license and training for a single user. Even if the tribe could afford such software, the software is designed for state courts and the commercial business promise to tailor the software to meet the tribe's needs by taking existing forms and including them into the database. This does not allow for the tribe to develop new procedures without going through the commercial software designer at a great cost.
- b) Tribal law enforcement systems often fall behind in serving warrants and orders due their inability to find the subjects of the orders. This impacts the effectiveness of tribal courts in administering tribal justice.
- c) There are various provisions concerning the authorities of Federal prosecutors to prosecute minor crimes that occur within Indian Country and the authority to do so hinges on issues such as whether the tribal crime rate is higher than national average. That cannot be determined without adequate resources at the tribal level.

d) I recommend that the Tribal Law and Order Act invest in development of tribal justice systems case management software, provide training on that software as well as implementing open source versions to allow tribes to tailor the software locally.

3) The Indian Law & Order Commission should consider expanding the Juvenile Crime Prevention (JCP) Program for tribes nationwide

- a. The CTUIR also uses the Juvenile Crime Prevention (JCP) Intake and Assessment Survey to determine responses and programs for juveniles that intersect with the tribal justice system. The JCP has been used by Oregon tribes for the past 25+ years. The JCP consists of an extensive intake survey administered periodically. The responses to the intake survey are entered into a database which provides a report on the risk and protective factors particular to that youth. This allows for the tribal juvenile officer to recommend specific programs and/or responses to the youth's behavior in an effort to prevent future juvenile status offenses. This program has worked very well for Umatilla youth.
- b. The NIJC is currently providing training on the JCP to tribal court staff pursuant to a grant from the U.S. Dept. of Justice. There is a great deal of interest in developing a national tribal database that will allow for expansion of the JCP beyond Oregon. The program works.

4) Require Tribal, Federal and State employees to testify under tribal court subpoena.

Enhancing tribal court systems and laws to improve protection of Indian families and women is an important goal. To allow our governmental employee to be exempt from testifying under court subpoena flies in the face of this goal.

5) Authorize tribal courts to adjudicate non-Indian defendants who violate Tribal or Federal law.

Family violence on reservations and in our community involves a non-Indian person in some cases. Prosecution in tribal courts would be much more efficient and improve the deliberate speed with which these are dealt. Even with federal prosecutions it takes time and the alleged perpetrator is still in the community.

6) Licensing of attorneys should include Tribal Bar Association license AND

7) Traditional forms of justice should be honored. May allow opting out even if have established modern laws and system.

Recommendations are conclusions and make sense to Tribes and Traditional Tribal governments who have not adopted modern practice.

Generally my comments and recommendations focus on Tribes and their governments providing safety, health and welfare to their community, themselves. We want to accomplish this and believe we are in the best position to do so. There are acceptable standards by which we are judged in this effort. Ultimately we want to be responsible for these efforts and held accountable for them. We will be judged by our communities.

Collaboration with other tribal, state and federal governments is imperative to help accomplish our Law and Order goals. It is not necessary to force tribes or tribal courts to be just like state counterparts. But to establish credibility and trust it is necessary to show we have competent judges, advocates, staff, law and order codes. Requiring license for advocates and judges is imperative. But tribal licensing should be a recognized standard.

For Tribes to acquiesce only to state bar association standards does not take into consideration expertise and standards of practicing in tribal forums. That should be considered.

Instead of funding states or federal activities of law enforcement/prosecution/court on reservation it also should be considered to fund or improve Tribal court systems to perform additional duties or responsibilities we want to do it ourselves.

Ka lo, Thank You.