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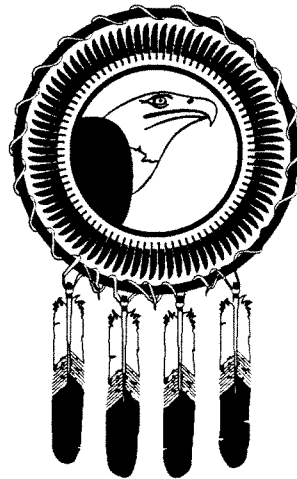
*Crow Tribal Courts in the 21st Century:
Changing Paths—Strengthening the Vision*

by

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CROW TRIBAL COURTS IN THE 21ST CENTURY: CHANGING PATHS – STRENGTHENING THE VISION

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***The Crow Tribe of Indians
Crow Agency, Montana
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Preface and Acknowledgements

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Executive Summary

The Crow Tribe of Indians – the Apsaalooke - is located in the southeastern section of the State of Montana. Numbering close to 10,000 Members, the Crow people operate under a General Council form of government where every Enrolled Member over the age of 18 is a Member of the Tribal Council. If a member is present at a General Council Meetings (s)he is eligible to vote on matters concerning the Tribe. The main sources of revenue for the Tribal Government come from coal, gas, and oil leases. Agricultural land leases also provide another source of income. These industries provide some employment to the tribe. The Tribal and Federal governments, however, provide the majority of jobs.

The Crow Tribe controls over two millions acres of land spread across seven districts and encompassing four towns, Crow Agency serves as the capital. The total acreage, however, is not owned entirely by the Tribe. The Crow Reservation is checker boarded with tribally owed, individual member owned and non-member owned land.

The Apsaalooke maintain their culture and traditions and have adapted to and absorbed many Anglo-Christian practices and belief. As the Crow boast an eighty percent language fluency rate, Crow is the predominant language and is the primary language spoken at public events, including General Council Meetings and during hearings in the Tribal Courts.

Over the last decade momentum for change and transformation have been building from inside as well as outside forces due to the unique, complex and exciting circumstances at Crow. These circumstances affect all aspects of Crow government and livelihood, especially in the contexts of the Tribal Courts. Challenges that have surfaced regarding the Crow Tribal Courts include the difficulties of administering justice when the Court is not a separate and independent branch of government. Complaints about ex parte communications between judges and others complicate the judicial process and contribute to an increased lack of respect for the Court as well. A recent Court Review cites, among other concerns, a backlog of cases and the need for judicial training/experience for Court staff.

This report offers a strategy that harnesses this momentum for change so that it can be guided and directed to strengthening the vision of the Tribal Courts. Through interviews with the Court staff, Crow administration officials, and Crow General Council members, as well as review of documents provided by Crow government, the authors present this strategy as a guide to strengthen the vision. The main recommendations or strategies fall into four main goals and objectives:

- **Create a separate and independent judicial branch of government**

THE IMPORTANCE OF A JUDICIAL BRANCH

- **Element of Nation-Building**
- **Promotes Peace, Respect, and Education**
- **Protects Economic Development**
- **Provides a Forum for Federal Indian Law**

- **Create the Crow Judicial Council to assist the Court with change and improvements, especially in the development of a 'traditional court.'**

DUTIES OF THE JUDICIAL COUNCIL

- **Draft and Implement Separation of Powers Statute**
- **Draft and Implement Constitutional Amendment**
- **Improve Court Procedures**
- **Create Crow Bar and Legal Aid Office**
- **Draft and Implement Judicial Code of Ethics**
- **Establish Traditional Dispute Resolution Court**

- **Improve Court operations/administration**

IMPROVEMENTS TO OPERATIONS OR ADMINISTRATION

- **Hire Permanent Court Administrator**
- **Acquire Computer Network**
- **Implement Training Programs for Entire Staff**
- **Apply for Grants**
- **Assess Funding Base and Need**

- **Improve image and respect of court system**

IMPROVEMENTS TO IMAGE

- **Publish Articles Concerning Court Staff, Court Processes, Tribal Courts**
- **Implement Rituals in Court Proceedings**

The objectives and tasks presented here also incorporate those presented in the Corrective Action Plan created after the Bureau of Indian Affairs' Judicial Review. In addition, this report includes Strategic Action Plans with detailed steps on how to accomplish these goals and objectives.

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VISION FOR THE CROW TRIBAL COURTS

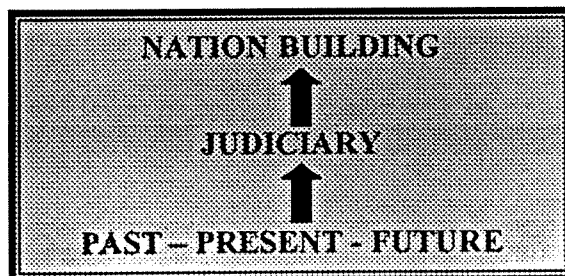
In the 21st Century the Crow Tribe of Indians, and indigenous people all around the world, courageously confront the challenges of community and nation building, or rebuilding. One such challenge the Crow, and others, face is the paramount task of designing and building solid frames and forms of government. In the new millennium, good government includes efficient administration, collaborative law-making, and fair conflict resolution.

Current nation building issues at Crow have been highlighted in recent publications¹ and court cases.² Whether it entails the development of a uniform commercial code for economic development, utility tax questions, or expansive constitutional reform, these matters are presenting themselves in more complex and urgent forms as the 21st century approaches. Crow government must be prepared to address these matters confidently and competently.

The Crow come from a strong and powerful people who have survived a variety of hardships and formidable nation-building tasks over the last century. Crow culture, tradition and language are vital resources with which the Tribe flourishes. This new Century brings the Crow the opportunity to consolidate and strengthen not only their government structure, but their people as well. By moving into the future with the

power of their past and history, this combination creates a more powerful government and union of people that will ultimately strengthen executive, legislative, and the judicial vision.

As tribes move into the 21st Century conflict resolution – deciding matters and settling disputes – is critical to effective governance. At Crow, the Crow Tribal Courts play this important role. As an institution the Crow Tribal Court is faced with the heavy responsibility “to be” good government. That is, the Courts were created in order to serve the Crow people equitably and efficiently. Therefore, the Crow Tribal Courts’ vision is *to strengthen and sustain competent and stable Crow Tribal Courts by fortifying the foundation and bringing together the past, present, and future.*



Strengthening the vision causes a change in path. That is, while the long term goal is still the same – to build strong and stable government – the road in which to get there takes another route. The change in path here includes: the creation of a judicial branch of government and a Judicial Council to assist with judicial development, improved Court operations and administration, and an improved image and respect for the Tribal Courts. These four goals together make-up the path for the Tribal Courts which will lead to the vision of a strong and competent Court.

¹ See Eric Henson and Luxman Nathan, “Tool of Sovereignty: The Crow Commercial Code,” Policy Analysis Exercise, Kennedy School of Government 1998 and Cheryl Powell and Eric Lemont, “Crow Constitutional Development: Empowering the Crow Nation,” Policy Analysis Exercise, Kennedy School of Government, 1999.

² See Big Horn County Electric Cooperative vs. Denis Adams, (1999) CV 98-43-BLG-JDS.

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A JUDICIARY: AN ESSENTIAL ELEMENT OF NATION BUILDING

As Native and Indigenous Americans build and re-build their nations, an essential element of the process is creating a strong judiciary. A court system is a necessary element of any strong nation because it lays a strong foundation for many of the other aspects of nation building. Part of this process is to move away from the thinking of tribal courts as tribal programs and begin seeing the courts as a judicial branch of government.

A judicial branch is an important part of nation building because it promotes peace, generates respect for community ideals, and educates tribal members and non-members.

Furthermore, a judiciary supports economic security and development. Judicial branches are important to all tribal governments because they provide forums for Federal Indian Law. Many cases handled by Tribal Courts are appealed to the Federal Court whose ruling may affect all Indigenous American Nations.

A NATION BUILDING ESSENTIAL: A JUDICIAL BRANCH – NOT A PROGRAM

To be instrumental in nation building, a Tribal Court must be understood as a judicial branch of government, not a tribal program. Although this may seem a matter of semantics, it is an important point nevertheless. Judicial branches are a distinct and separate part of government and are equal to the other branches, or branch of the government.

Unfortunately, the Bureau of Indian Affairs (BIA) administratively identifies tribal courts as programs, instead of branches of government in allocation of funding. When a Tribal

Court is viewed as a program it is perceived as less than it is and its authority and respect diminishes. Without the proper respect, a Court cannot function in its true capacity as a forum for dispute resolution.

An essential aspect of nation building is to build a judicial branch of government, and to promote that image as a significant part of government and not a mere program of the government.

THE JUDICIAL BRANCH: A FORUM FOR PEACE, RESPECT, AND EDUCATION

A judicial system is an essential aspect of nation building because it provides a forum for peace, respect, and education. A judicial system promotes peace by providing a safe and respected forum to resolve difficult problems, immune from politics. A judicial branch protects Tribal Members because Tribal Members can address harms they have suffered. In addition, if the Court is an institution where politics do not influence decisions, it becomes a safe haven for individuals to resolve their differences based upon the facts. Each individual is treated fairly, respectfully, and the difference is resolved. A quick and fair resolution of problems allows the Court to promote peace within the community.

A judiciary also promotes respect inside and outside the community. As the Court treats all individuals with respect and issues fair orders, individuals will come to respect the Court and realize it is a safe forum, where they will

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be treated fairly even if they lose. In addition, the Court sets an example by treating everyone with respect. Because many tribes consist of various factions whose disagreements may end up in Tribal Court, the Court is a forum to resolve these problems peacefully and heal the division that has separated people; which promotes respect for all individuals.

The Court is not only a forum to teach respect, but to educate youth about the consequences of wrongdoing. Many tribes do not have court systems, and as a result some youth do not learn the consequences of committing a crime or hurting someone in their community. These youth grow up lacking respect for others. A judicial branch provides an institution where all members, including youth, are held accountable for their actions. Thus, the youth learn to respect others and realize that their actions have consequences.

THE JUDICIAL BRANCH: A FORUM TO PROTECT AND SUPPORT ECONOMIC DEVELOPMENT

A judicial branch is extremely important to nation building because it supports economic development. Courts sustain economic development because they provide a forum for disinterested and fair dispute resolution. Outside businesses are often reluctant to enter into business partnerships on the reservation because tribes can exercise sovereign immunity and they feel tribal courts will favor their own people. Tribes are more likely to partially waive their sovereign immunity if there is a well-functioning Court that can address disputes. Outside businesses will be more likely to enter business relationships if there is a dispute

resolution system within the reservation that is respected and fair as well.

The impact of a judicial system on economic development has been confirmed by several studies. A study conducted by Kalt and Cornell found that an independent judiciary, combined with a directly elected chief executive, raised employment 19.9% compared to a tribe with no independent judiciary and a general council form of government.³ Thus a judiciary is important to the economic welfare of Tribe and Tribal Members.

THE JUDICIAL BRANCH: A FORUM FOR FEDERAL INDIAN LAW

The Crow Tribal Courts are immensely important to other Native American Nations. The Crow Tribal Court is a forum for federal Indian law because it adjudicates cases that are appealed to Federal Court and ultimately, to the U.S. Supreme Court. When these cases are appealed to the Federal Court, subsequent decisions dictate the law that is applied to all Native American Nations. Thus, not only are the Crow Tribal Courts important to the Crow people, they are important to Indigenous Tribes around the country.

The following are examples of cases that originated in the Crow Tribal Courts and became law applicable to all tribes:

- National Farmers Union Insurance Co. v. Crow Tribe of Indians, 471 U.S. 845 (1985): A Crow minor was struck by a motorcycle within the Crow Reservation

³ Stephen E. Cornell and Joseph P. Kalt, "Successful Economic Development and Heterogeneity of Governmental Form on American Indian Reservations," Getting Good Government. HIID, 1997. 257-296.

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and the minor's family sued for damages in Crow Tribal Court. The Court entered a default judgement for the plaintiff. The defendants filed for an injunctive relief in Federal District Court, and that Court ruled the Tribal Court did not have jurisdiction over non-Indians. The U.S. Supreme Court recognized that tribes retain some of the inherent powers of self-government and that examination of tribal court civil subject matter jurisdiction should begin in the Tribal Court.⁴ Tribes must decide their own matters first!

• Little Horn State Bank v. Crow Tribal Court, 690 F. Supp. 919, (1988): Little Horn State Bank filed a foreclosure proceeding in Federal Court and a default judgement was entered. The plaintiff then filed a complaint for enforcement of the foreclosure in the Crow Tribal Court. The Tribal Court Judge stated she would issue her ruling in five working days. No ruling was ever issued. Two years later, the plaintiff acquired the forklift. Ten days later, the Tribal Court issued an Ex Parte Order mandating the return of the property. The plaintiff attempted to file a motion to set a hearing concerning this matter in Tribal Court. The judge advised the plaintiff that no hearing or motion would be held and the Crow Appellate Court was not functioning.

The plaintiff then filed a motion for a restraining order in the Federal District Court, alleging a violation of the Indian Civil Rights Act (ICRA).⁵ The District Court Judge used this case to

widen a very small exception for Federal Court jurisdiction for ICRA violations, and granted the restraining order.⁶ The Judge also seized this opportunity to disparage tribal courts and stated;

"The Crow Tribal Court, acting as a sort of "kangaroo court", has made no pretense of due process or judicial integrity. Plaintiff was met not only with bias and uncooperativeness, but with a blatantly arbitrary denial of any semblance of due process. The tribal judge's conduct makes a mockery of any orderly system of justice, and renders any attempt to deal with the Tribe in a professional and competent manner a farce."⁷

FEDERAL COURT RULINGS FROM CROW CASES

- Examination of Tribal Court civil jurisdiction should begin in Tribal Court.
- Widening of exception to federal court jurisdiction for violations of ICRA
- Utility's right-of-way falls under Strate and an ad valorem tax is not a legitimate exercise of tribal's authority over non-members despite a consensual relationship

⁴ National Farmers Union Insurance Cos. Et Al. v. Crow Tribe of Indians, (1985) 471 U.S. 845, 851-856.

⁵ The U.S. Supreme Court has held federal court jurisdiction only arises over violations of ICRA through habeas corpus petitions. (Santa Clara Pueblo v. Martinez, 436 U.S. 49 (1978).

⁶ Little Horn State Bank v. Crow Tribal Court, 690 F. Supp. 919, 921-922.

⁷ Little Horn State Bank, *supra* note 5, at 923.

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• **Big Horn County Electric Cooperative vs. Denis Adams**, (1999) CV 98-43-BLG-JDS: The Crow Tribe filed an action in the Crow Tribal Court to enjoin Big Horn County Electric Cooperative from passing a utility tax to its customers, many of whom were Crow Reservation residents. Big Horn counter-claimed that the Crow Tribe's Tax Code could not assess a tax on all of Big Horn's property within the reservation and that the Crow Tribe lacked regulatory authority over Big Horn. The Tribal Court and Crow Court of Appeals ruled in favor of the Crow Tribe.

Big Horn filed an appeal in Federal District Court. The Court expanded *Strate*⁸ and found that Big Horn's right-of-way for utility poles is similar to the right-of-way of an interstate. The Court applied *Montana*'s test for tribal court civil jurisdiction.⁹ But, despite the consensual relationship between the Tribe and Big Horn, the Court stated an ad valorem tax on the property was not a legitimate exercise of the Tribe's sovereign power.¹⁰

It is reasonable to assume that as commercial relationships grow at Crow more cases from the Tribal Court may be appealed. It is important to have competent Courts staffed with well-trained judges who issue sound and well reasoned decisions. Proficient legal writing is necessary to preserve a good record for appeals that makes it harder for Federal Courts to reverse Tribal Court decisions. These decisions may adversely affect the lives of the Crow people and other Native Americans.

A judiciary is essential to strong nations. A judicial branch strengthens nations by promoting peace, respect, and education. It protects economic development and provides a forum for Federal Indian Law. As a judiciary begins to serve these functions it becomes a passport to nation building.

THE IMPORTANCE OF A JUDICIAL BRANCH

- Element of Nation-Building
- Promotes Peace, Respect, and Education
- Protects Economic Development
- Provides a Forum for Federal Indian Law

⁸ *William Strate v. A-1 Contractors*, 520 U.S. 438 (1997). The Court ruled in *Strate* that when an accident occurs on a public highway, granted by a right-of-way over reservation land, absent a statute or treaty granting the tribal the authority to regulate nonmembers' action, the tribal court may not exercise jurisdiction. (*Strate*, at 438.)

⁹ *Montana v. Crow Tribe of Indians* 523 U.S. 696 (1998).

¹⁰ *Big Horn County Electric Cooperative v. Denis Adams*, CV 98-43-BLG-JDS (1999), 10.

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THE HISTORY: THE CROW TRIBAL COURTS

The history and culture of the Crow people play an important part in empowering their court system. Through the years as the Crow and other tribes struggled with changes in their government, one thing has become clear. Tribal governments function better when they are culturally accordant.¹¹ This undoubtedly applies to tribal government structures, which are essential elements of a well-functioning government. Any attempt to strengthen the Crow Tribal Court must include elements of Crow tradition and culture.

In the past, the Crow utilized several mechanisms to protect their people and resolve disputes. Law enforcement was traditionally done by male soldier societies. The role of a 'judge' traditionally fell to the headmen of bands or clans. The Federal Government attempted to take over this role in 1901 by establishing the Court of Indian Offenses.¹² The Crow re-established their role in dispute resolution by establishing the Crow Tribal Court in the 1950s, which was modeled after the English-American adversarial model of justice.

Today, as the Crow strive to improve the Courts established in the 1950s, they must apply their own culture and traditions from the past in order to make a new judicial system their own. A

¹¹ Stephen E. Cornell and Joseph P. Kalt, "Reloading the Dice: Improving the Chances for Economic Development on American Indian Reservations," What Can Tribes Do? Strategies and Insitutions in American Indian Economic Development, 1992. 1-59.

¹² Frederick E. Hoxie, Parading Through History: The Making of the Crow Nation in America, 1805-1935, Cambridge Univ. Press, 1995.

THE HISTORY

"A basic human right to be treated well" -
Respect is basis of clan system
Teasing was method checks and balances
and discipline
Traditionally Headmen resolved disputes
All male soldier societies - appointed by
village chiefs to police protect
1901 Court of Indian Offenses established
1950's Tribal Court established

long-term goal for the Crow Tribal Courts is to develop a traditional alternative dispute resolution system or traditional court. In this forum, disputes would be discussed as opposed to argued, wounds would be healed more easily, and ideally all parties would leave satisfied.

Fortunately, an important aspect of the Crow culture is respect. Respect is a basic element of the clan system and the Crow believe there is a "basic right to be treated well."¹³ This is extremely important because currently there is a lack of respect for the Tribal Courts.¹⁴ This basic Crow belief must be restored to the Court.

Another important aspect of the Crow culture is teasing. The clan system embraces a method of discipline and checks and balances through teasing.¹⁵ Although it is difficult to implement this practice into a formal courtroom, it could be important to a traditional court setting. Some individuals may no longer use this method and it can be taught in an alternative dispute resolution court to parents who are having difficulty with their children.

¹³ Dr. Lanny Real Bird, "Ashaammaliaxxia", The Apsaalooke Clan System: A Foundation for Learning, Diss. Montana State University, 1997.

¹⁴ Site visit interview.

¹⁵ *Id.*

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THE PRESENT: CROW TRIBAL COURTS

COMPOSITION OF THE COURT

The Crow Tribal Court is empowered by Title 3 of the Crow Law and Order Code. The Code lays a solid foundation for the Court by establishing a Crow Tribal Court, Juvenile Court, and Court of Appeals. The Trial Court is comprised of three judges: one Chief Judge and two Associate Judges. The judges are elected to four-year terms and the Tribal Council determines their salaries. The only qualifications delineated by the Code for judges are that they must be fluent in the Crow language and English and not convicted of a felony or misdemeanor within one year of the Judge's election.

Perhaps in lieu of judge qualifications, the Code allows the appointment of Special Judges. The Court or a party can request the Chief Judge to assign a professional attorney to hear the matter. The attorney must be licensed to practice before the highest court of any state. The Chief Judge must consider the legal complexity of the case, the importance of Crow Tribal custom to the issues in the case, and the family or clan relations of the parties to the Crow Tribal Court judges. A Special Judge cannot be appointed in small claims, divorce, adoption, juvenile proceedings, and criminal or fish and game violations.

Judges may be removed from the bench for cause, which is limited to the abuse of discretion, an offense, or a conviction. The Law and Order Commission receives and investigates all complaints and may submit a resolution for removal to the Tribal Council. The Judge must be provided an opportunity to respond in his or her defense before the Commission and Council.

The Court also consists of Court Clerks and a Court Administrator. The Law and Order Code provides that the Chief Judge shall hire the Clerks and Administrator. In addition, the Code requires the Court Administrator to be a licensed attorney or law school graduate about to take the bar examination. In the past, this was not the practice of the Court. However, the BIA recently required that the Administrator be an attorney or the 638 Tribal Court contract will be affected.¹⁶

CHALLENGES FACING THE CROW TRIBAL COURT

The Crow Tribal Court, like many tribal courts, faces many challenges. While the Law and Order Code lays a solid foundation for the Tribal Courts, it struggles to convert this foundation into a well-rooted institution. The main difficulty the Court faces is a lack of separation of powers. Other problems fall within the general categories of political interference, ex parte communications, lack of respect, backlog of cases, and lack of qualifications and training.¹⁷ Each of these problems manifests themselves through several symptoms discussed below.

¹⁶ Site visit interview.

¹⁷ Bureau Court Review Document.

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1. NO DISTINCT SEPARATION OF POWERS

As stated above, the Crow Tribal Court is empowered by statute. There is no section within the Law and Order Code that addresses a separation of powers between the Tribal Court and the General Council, or legislative body. Instead the Tribal Council has authority over the Tribal Court through the authority it has given to the Chairperson. In addition, Resolution 90-35¹⁸ gives the Chairperson authority to overrule any judicial order or opinion. Although, the Chairwoman is indicated she would not interfere in court cases, a distinct separation of powers does not exist.

Currently, the Chairwoman has delegated authority over the Tribal Court to the Vice-Chairperson. He then delegated this authority to the Law and Order Commission, which now has complete administrative authority over the Court and its employees.¹⁹ Previously, the Law and Order Commission was the administrative body supervising the operation of the Crow Tribal Police Department and the Crow Fish and Game Department. By this delegation of the authority, an elected administrative body, representing the Tribal Council, now supervises the administration of the Court, further blurring any distinction between the legislative and judicial bodies of government. (See Figure 1)

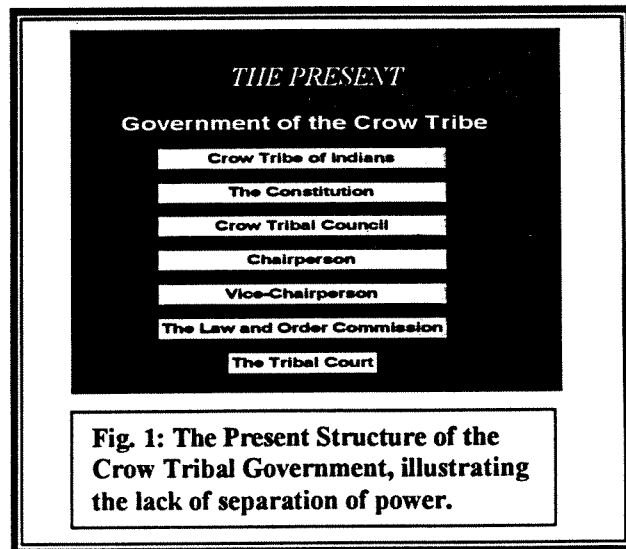


Fig. 1: The Present Structure of the Crow Tribal Government, illustrating the lack of separation of power.

2. POLITICAL INTERFERENCE

Currently, there exists considerable politics surrounding the court system and its administration. Negative politics, however, slows the wheels of justice. In the past, the Law and Order Commission was inactive. Recently, new members of the Commission have taken a more active role in its administration of law enforcement and now the Court. However, their new active role and their placement over the courts create some tension. In addition, some members of the Commission were previous judicial candidates who lost to the current judges in office, which now contributes to this tension.²⁰ Judges feel the Commission is not helping them with procedures, but spends its time telling the judges what a poor job they are doing. This atmosphere is not conducive to accomplishing the Court's work.

¹⁸ Crow Tribe of Indians Resolution # 90-35

¹⁹ Memorandum dated March 3, 1999 from Elected Crow Tribal Officials to the Law and Order Commission.

²⁰ Conversation with Tribal Member during site visit.

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3. EX PARTE COMMUNICATIONS WITH RELATIVES AND ATTORNEYS

An important challenge facing the court is ex parte communications with relatives and attorneys.²¹ Currently, relatives and attorneys will contact judges for assistance on cases. These communications are often without the other party present or occur after an order has been issued. An example of this practice is releasing a defendant from custody after a relative has contacted the judge.

At Crow neither a Judicial Code of Ethics nor an Attorney Code of Ethics exist within the court. Also, most community members have not been educated about how an adversarial court is suppose to work and have become use to the Court allowing relationships to interfere with the judicial process.

Generally, it is difficult to be a judge at Crow, especially an elected judge, in a close community where clan and family relationships are important. It is natural for the judges to want to assist individuals who may contact them about a case. However, it is necessary for the proper functioning of the Court to be able to 'cross' clan lines.

In relationships with attorneys, judges must maintain a formal, professional relationship and conduct all communications while both parties are present. If judges fail to follow these guidelines the Court takes on the appearance of being unfair and favoring certain individuals. A court must be a forum that is impartial and fair to all users.

²¹ The April 6, 1999 B.I.A. Court review states, "Ex parte communications continue to occur. Individuals still attempt to talk to judges and some judges have made themselves more accessible to some people than others."

4. LACK OF RESPECT

Presently the Tribal Court is not receiving the respect that it deserves. Lack of respect is pervasive on and off the reservation. Many individuals on the reservation feel the Court is not fair or impartial. This feeling derives from the lack of separation of powers since individuals fear that the Chairperson will change decisions. Another source of the lack of respect is the belief that some individuals are treated differently, based upon their relationship with the judges.²²

This lack of respect may be stronger off the reservation. Some businesses are reluctant to engage in commercial relationships on the reservation because they do not respect the court system. They cannot respect a court that has the appearance of unfairness. Fortunately, and unknown to most, the Crow Courts are not 'kangaroo courts' as the Federal Court judge in Little Horn State Bank alleged.

²² Site visit interviews.

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5. BACKLOG OF CASES

Another difficulty the Court faces is the large backlog of cases. Fortunately, a Special Judge was recently appointed to help relieve the backlog.²³ However, there is no mechanism in place to ensure the backlog is not a continuing problem. In the past, the selection of special judges has been slow due to lack of funds and politics. For instances, potential special judges are not approved of by the Administration due to political intervention. This is another symptom of the lack of separation of powers. If the Court was a separate and independent body, the Chief Judge could appoint the special judge without requiring approval of the Chairperson.

6. LACK OF QUALIFICATIONS AND TRAINING

Currently there are no legal requirements for judicial candidates. Although a law degree is not necessary to become a good tribal court judge, it can be a problem if the judge does not receive training once he or she takes office. Moreover, the Court does not have any formalized training for judges who do not have a legal background. Due to the complexities of many of the cases in the Crow Tribal Court, the lack of qualifications and training make the position of Special Judges necessary and is one of the reasons for the large backlog of cases. In addition, the lack of qualifications and training leads to other problems, such as not enforcing rules concerning ex parte communications.

CHALLENGES FACING CROW TRIBAL COURTS

- No Distinct Separation of Powers
- Political Interference
- Ex Parte Communications with Relations and Attorneys
- Lack of Respect
- Backlog of Cases
- Lack of Qualifications

²³ Conversation with current Temporary Court Administrator.

CROW TRIBAL COURTS IN THE 21ST CENTURY: CHANGING PATHS – STRENGTHENING THE VISION

THE FUTURE: THE CROW JUDICIAL BRANCH

With a rejuvenated and strengthened vision the Crow greet the 21st Century prepared for adventure and advancement on their new path. While the Crow should be pleased with the progress made over the last hundred years, they should continue to prepare for further and more frequent interactions in this complex and technological world. The future requires not only individual development and education about this world, it also means governmental development and reformation which will contribute to better relations and communications within and outside the Crow Tribe.

Change, however, does not mean that the Crow should simply adopt the 'whiteman's ways as is, or follow directly in their path. The Crows must think deeply about what they want their government to accomplish and how it shall evolve. They must consider custom and tradition and work on developing the best system that combines the best Crow traditions into a construct that is a complete contribution to their people.

There are four strategies that will help the Tribe strengthen its Court and Nation: The first is to create a separate and independent branch of government, constructed first by statute and then by constitutional amendment. This will allow the Court to function as a separate entity, equal to the other branch or branches of government. Second, the creation of a Crow Judicial Council will assist the Court with implementing recommendations and help to insulate judicial matters from political interference.

Also, the strategies suggested here will improve court operations and administration as well as help to better the image of the Crow Tribal Courts.²⁴

RECOMMENDATIONS

- **Create a Separate and Independent Judiciary**
- **Create the Crow Judicial Council to Assist with Change and Improvements**
- **Improve Court Operations and Administration**
- **Improve Court Image**

1. CREATE A SEPARATE & INDEPENDENT BRANCH OF GOVERNMENT

The current Crow Constitution does not empower a separate and independent judicial branch. At Crow there is no separation of powers between any distinct branches of government. The Crow Tribal Court is set up as a "program" within the Tribe's administration, equally at risk to administrative interference as any other tribal program. To improve this inadequacy the Tribe must create a

²⁴ This paper does not directly address issues of the Court of Appeals and only addresses Crow Tribal Courts as a whole.

CROW TRIBAL COURTS IN THE 21ST CENTURY: CHANGING PATHS—STRENGTHENING THE VISION

separate and independent judicial branch of government.

Why separate and independent? What do these words mean? This is not to say that the Judicial Branch of government should be totally isolated and a lone entity of the Tribe. Separate and independent mean that the decisions made by the Court are their own and in no way influenced by the Tribal Administration or other entities, nor are they reviewable by the Administration.

It is prudent for long term planning, however, to determine how much farther judicial independence can extend at Crow. Could this mean that the Courts have their own finance office or personnel office? Is it best to centralize these functions in the Tribal Administration? Do the Courts need to have its own personnel and policy procedures separate from that of the Tribe. In planning and developing the 21st Century Crow Courts, the framers and planners must consider several issues outlined below.

Birthing a Branch of Government

The Crow have a few options in how they can create a separate and independent judicial branch of government. One method is to revise their constitution, another is to adopt a statute/ordinance, and the third is through administrative procedures consistent with current practice. Since constitutions are created in order to outline the general frame and form of government, constitutional reform is the best means to create a judicial branch. However, the process for constitutional reform is long and arduous, therefore, until Constitutional reform is initiated a judicial branch of Crow Government can be constructed through a statute.

ISSUES TO CONSIDER WHEN CREATING A SEPARATE AND INDEPENDENT COURT

- **Adoption of an Ordinance/Statute**
- **Constitutional Reform**
- **Structure of the Branches of Government**

Adoption of Ordinance/Statute

The Crow Tribal Courts currently operate under a very functional Law and Order Code. This Code outlines the powers and duties of the Court. At this time revisions to the code are under review. A Section could be added to this code stipulating that the Court is separate and distinct from the administration and must operate under its own structure and decision making processes and guidelines, with no interference from the administration (see draft of statute appended).

Developing a Statute, or section, and incorporating it into the current Law and Order Code is not too tedious a task. A Committee (Judicial Council) in coordination with all interested parties must draft the language and present it for comment and adoption. The statute should also contain a super majority provision for any subsequent amendments. This immediate action will begin the strengthening of the Courts vision. The best alternative, however, is to initiate constitutional reform and insert an article in a revised constitution.

**CROW TRIBAL COURTS IN THE 21ST CENTURY:
CHANGING PATHS—STRENGTHENING THE VISION**

Constitutional Reform

As a constitution outlines the basis of government and forms the foundation for any nation, the Crow should begin revision of their Constitution to make it a *document of the Crow and for the Crow*. This revised constitution must include an article empowering a judicial branch. Moreover, the Constitution must incorporate the Crow's history of a strong, a powerful and resourceful people. It must allow for Crow custom and tradition to be applied when ever possible in order for the Constitution to be culturally accordant, unique and distinctly Crow.

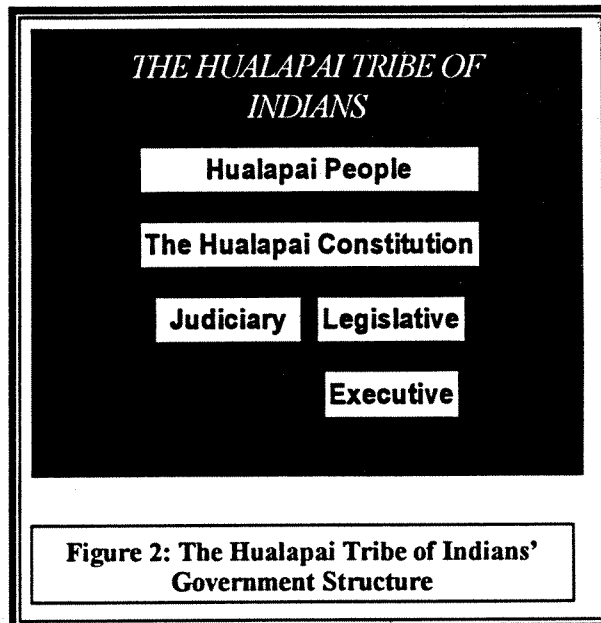
The Crow have initiated efforts in the past, most notably 1988, to reform their Constitution, but these efforts failed for various reasons. By engaging in a widespread and inclusive Constitutional Conference, supported by extensive community education programs, constitutional reform can succeed at Crow that will further Crow's sovereignty and self-determination.

Other Tribal Constitutions provide for a separate and independent branch or provide that a judiciary can be created by statute. Examples of this can be seen in the Wampanoag and Choctaw Nation Constitutions (See Appendix 5 & 6)

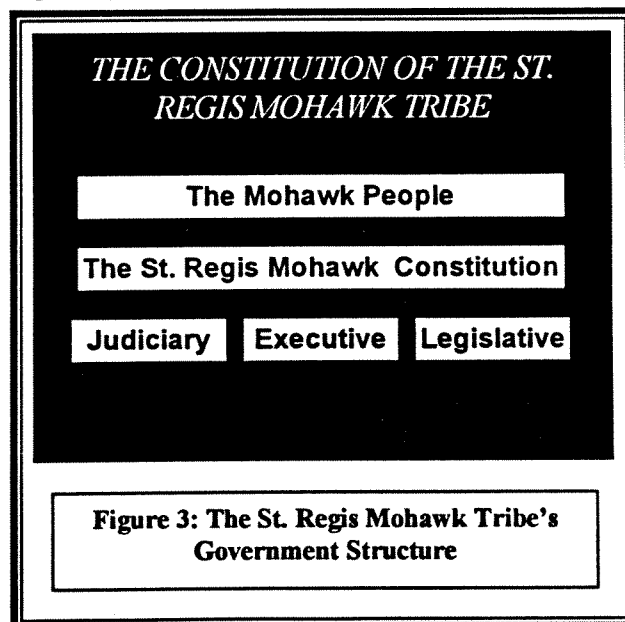
Structure of the Branches of Crow Government

While the Crow have many options of how to design their government, two styles dominate in 'Indian Country,' a two or three branch government. Some tribal governments are divided into two separate branches of government, such as the Hualapai Nation in Arizona. At Hualapai two equal but

separate branches exists: the Legislative and the Judicial Branch (See Figure 2). At Hualapai the Executives and the Administration are under the Legislative Branch.



At St. Regis Mohawk, the tribal government operates under a three-branch government, similar to that of the United States. The three branches being the Executive, Legislative, and Judicial. (See Figure 3.) How the Crow decide to construct their government depends on their preference and vision of what is good government.



CROW TRIBAL COURTS IN THE 21ST CENTURY: CHANGING PATHS—STRENGTHENING THE VISION

2. CREATE CROW JUDICIAL COUNCIL

In order to assist the Court with short-term and long-term changes, the tribal administration should create a Crow Judicial Council. As stated previously, the Law and Order Commission has administrative authority over the Court. However, the Commission cannot continue to oversee the Court when a separation of powers is implemented. The Commission is also responsible for law enforcement bodies, which are not part of the judicial system. In addition, the Commission received their authority over the courts from the Chairwoman, which indicates she has authority over them in this capacity. Thus to ensure a complete separation of powers and to create an entity which is solely focused on improving the Court, the Administration needs to implement a Crow Judicial Council.

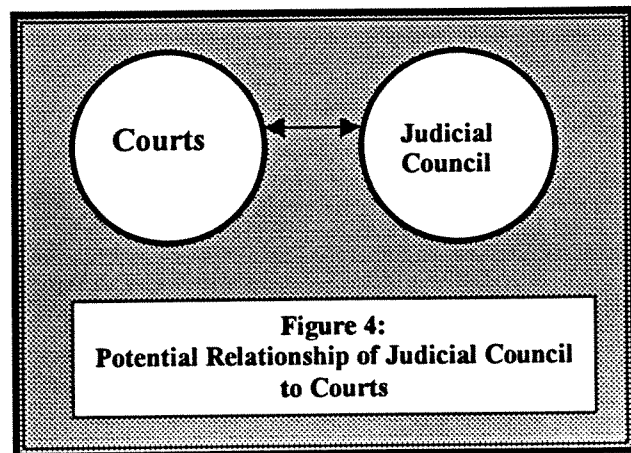
In addition, there appears to be some antagonism between the Commission and the Judges. Thus, any changes initiated by the Commission may be viewed with suspicion. The Judicial Council may be able to work closely with the Judges as they create a separate and independent judicial branch and implement other improvements. (See Figure 4.)

Formation

The formation of the Crow Judicial Council can be based on the method used to convene the Water Compact Negotiation Committee. At the April 1999 General Council Meeting, the Water Committee presented themselves as a successful group of Tribal Members. This group brings together leaders of various tribal factions to focus on an issue important to the Crow people. Although the initial creation of the Committee was difficult politically,

it is clear any initial problems have been outweighed by the benefits. It is our belief that the formation of the Crow Judicial Council could be extremely beneficial to the Court.

Approximately seven members of the Crow Tribe, including leaders from different factions, should be appointed to the Council. Members should be appointed for a period of four years. However, individuals should not be removed except for gross misconduct or commission of a felony or misdemeanors. This is to reinforce the separation of powers and ensure the individuals do not serve at the discretion of the Chairperson.



Duties of the Council

The first duty of the Judicial Council is to draft and submit the statute creating a separate and independent court to the General Council. Any statute drafted by the Judicial Council must be submitted directly to the General Council. This is to further assure the separation of powers. The statute will include a separation of powers clause and repeal, in part, resolution 09-35. It will also establish the Judicial Council as a statutory body (See Appendix 1).

CROW TRIBAL COURTS IN THE 21ST CENTURY: CHANGING PATHS – STRENGTHENING THE VISION

Another duty of the Judicial Council is to draft the constitutional amendment establishing the Court as a separate and independent branch. (See Appendix 2.) The Council must educate the community about the importance of a constitutional amendment to create an independent court. In addition, the Judicial Council must participate in the constitutional conference to educate and lobby tribal members about the importance of having a separate and independent court.

Also, once established the Judicial Council is responsible for improving Court procedures. The Council needs to meet regularly with the judges and Court Administrator to assess the needs of the Court and establish the best procedure for addressing these needs.

In addition, the Judicial Council can assist in setting up the Crow Bar and Legal Aid Office. The Council must choose a President of the Bar and then work with him or her to establish the rules and procedures. The President of the Bar and the Judicial Council can draft and implement the Attorney's Code of Ethics. This will address the problem of unethical conduct of attorneys, especially ex parte communications. The Legal Aid Office will assist defendants in Court who do not have the means to hire an attorney. Once funding is found, the Judicial Council can appoint the head of the Legal Aid Office and assist in setting up the Office.

DUTIES OF THE JUDICIAL COUNCIL

- **Draft and Implement Separation of Powers Statute**
- **Draft and Implement Constitutional Amendment**
- **Improve Court Procedures**
- **Create Crow Bar and Legal Aid Office**
- **Draft and Implement Judicial Code of Ethics**
- **Establish Traditional Dispute Resolution Court**

Another duty of the Judicial Council is to write and implement the Judicial Code of Ethics. These rules and procedures will establish rules of conduct for the Crow Judges. The Code will assist in eliminating the problems of ex parte communications. It will also help with the lack of respect as the community watches the judges treat all individuals the same.

The Council can also work on establishing a traditional dispute resolution court. Although some Crow traditions are currently used in the tribal court, it is important to have a court which is based entirely on Crow traditions. A traditional court can be used to resolve family, neighbor, and even business disputes. Although this is a long-term goal, it is important the Judicial Council begins to work with elders in the community and the judges on how to establish this court.

CROW TRIBAL COURTS IN THE 21ST CENTURY: CHANGING PATHS – STRENGTHENING THE VISION

3. IMPROVE COURT OPERATIONS/ADMINISTRATION

Though “noticeable improvements have been made in the operations of the Tribal Court since the last review,”²⁵ more work is necessary to solidify progress thus far.

Recommendations made in this report to help improve court operations and administration include: timely hiring of a Court Administrator; continued response to the recent Court Review; planning and acquisition of computer technology for document processing and storage; training and education programs for judges and Court staff; and production of grant applications for improvement funds from various funding sources.

These recommendations, and others, outlined in the attached strategic plan, are made in order to address the immediate needs for improved operations and administration of the Court. Since the Tribe adopted the Anglo-style adversarial judicial model, in order to be perceived as a court of competent jurisdiction of that sort, these improvements must be made and supported. Over time, as the Judicial Branch evolves into a more traditional Crow model, the nature and face of the Court will change and its needs altered. Until then, however, these recommendations should be addressed at the earliest convenience.

Court Administrator

The Tribal Court is currently in need of a Court Administrator who not only possesses legal education and experience, but familiarity with the Crow people. The Court Administrator can serve a tremendous role in keeping

the Court in tune with its responsibilities by coordinating the work of the Judges with that of the Clerks and other judicial staff. While the best option would be to have a tribal member in this position, the Tribe may have to go outside the Tribe for this position.

Judicial Clerk

The Court has made plans to hire a judicial clerk to assist the judges in their work and research. Perhaps the Court will be able to find a Tribal Member in law school who is interested in the clerkship and who can eventually assume the role of Administrator.

Technology

Due to the Court’s handling of a large volume of documents, the acquisition of a computer network will contribute greatly to their creation, dispersal, and storage. Computer systems will enable documents to be moved easily from the Clerks to Judges and back again for release to the interested parties. Sharing information and giving instructions to staff will enable the Court to function at a higher level of efficiency. Generally, the link between Court staff and others will promote quicker and more efficient communications and performance.

²⁵ Crow Tribal Court Review, Bureau of Indian Affairs, April 6, 199.

**IMPROVEMENTS TO
OPERATIONS OR
ADMINISTRATION**

- Hire Permanent Court Administrator
- Acquire Computer Network
- Implement Training Programs for Entire Staff
- Apply for Grants
- Assess Funding Base and Need

Training Programs

The B.I.A. Court Review states, “Judges are elected and there are no specific training or educational requirements. This continues to be problematic.”²⁶ All Court staff, not just judges, need to receive on-going training throughout their judicial careers. Training programs and schedules must be developed for the judges and the clerks in all areas of judicial affairs, especially in matters of confidentiality.

While it is not necessary for a judge to have a degree in law, legal reasoning and writing is critical to the judicial process and must be applied adequately and proficiently. Parties in a court proceeding need to understand why a judge made his/her decision and on what basis it was made. Also, clear articulation of precedent builds a body of law that can be applied in subsequent and similar situations.

Judges, clerks and all court staff

must learn to practice discretion, not only in the handling of documents but in keeping confidentiality about cases and controversies. Judicial staff must be able to distinguish when their conduct breaches this requirement, or when it may seem to do so to others. While it is unrealistic to keep Court staff from talking to anyone at Crow, charges of ex parte communications will lessen when the Staff understand and fully grasp these notions of discretion and confidentiality and their importance to fair judicial processes. Training will promote this understanding.

Grant Applications

Various Federal and private agencies have competitive grant programs available for Tribes to apply for funding to develop tribal courts. While Federal funding is not sufficient enough to support the great need in “Indian Country” it is worth the chance for the Crow to apply and potentially be awarded a grant. The Crow Tribe can leverage general fund dollars currently being used for the Court to meet matching-grant requirements.

Funding programs are available in the Department of Justice, Administration for Native Americans and Bureau of Indian Affairs (Small Tribes Program). Other sources can be identified and reviewed by the Court Administrator, Tribal Planning Staff, and Judicial Council then prioritized for the application process.

In particular the Crow Tribal Court may want to apply for a Drug Court Planning Grant from the D.O.J. Drug Court Program Office (See Appendix 8). Planning Grants in this program allows Tribes to begin thinking more precisely on their criminal processes in regards to defendants with

²⁶ Id.

CROW TRIBAL COURTS IN THE 21ST CENTURY: CHANGING PATHS—STRENGTHENING THE VISION

substance abuse problems. The planning process pulls together representatives from various service providers in the community in a coordinated effort to meet the needs of these defendants (adult or juvenile). Tribes around the country have been successful at planning and implementing what they are calling Healing to Wellness Courts.

The grant application process itself can help the Court focus on and review how the Court is approaching its community responsibility. This process enables this reviewing ability because of the required descriptions and planning documents required to submit grant proposals.

Funding Base and Need

Though the Tribe can work diligently on acquiring more funding from various funding sources, it is important to realize that grant dollars do not last long term. Grant dollars are good to initiate a program and for one time program improvements such as buying computers.

The 21st Century Crow Court must be aware of its financial needs and make these needs known to Tribal Administration and the Tribal Council. The Crow Tribe should be applauded for already contributing general fund dollars to the Court. In fact, the amount the Tribe contributes is more than what the B.I.A. contributes. Money matters in the nation building context! How much money is actually needed in order to administer an adequate judicial branch? How many judges are needed, clerks, and staff? How much training dollars must be spent throughout the year to keep the Court Staff up to date on the fast moving legal environment?

The Court Administrator can develop a projection document that

outlines the needs of the Court which reflects the best possible Court composition and circumstance. Using this data and information the Court can then seek more dollars from outside sources and the Tribe to meet the needs of the Court.

4. IMPROVE THE IMAGE OF CROW TRIBAL COURTS

The perception of what the Crow Tribal Court is affects its place in Crow government and purpose for the Crow people. The functional differences between a program, a department, and branch of government are immense. If a Court is seen as a mere program it can be perceived as dispensable and even powerless. If it is appreciated as a department (an entity with many programs) it may have more respect and credibility but nonetheless remain administrative. A judiciary's image, however, is best seen as an independent branch of government where reasonable and equitable decisions are made, honored and enforced.

Unfortunately, over a period of years the image of the Court has not been able to develop the stature it deserves. Regardless of who is at fault for creating this bad image, what is necessary is to improve the image. While image building can be accomplished in the methods proposed below, the primary means to improve this image is for the Court Staff to continue doing good work at the best of their ability. Continued hard work will contribute the most positive image building for the Court.

CROW TRIBAL COURTS IN THE 21ST CENTURY: CHANGING PATHS—STRENGTHENING THE VISION

Efforts that the Court, with assistance from other tribal staff, can initiate include writing articles for the Crow Newsletter about the judicial process, Court staff, tribal members in the law, and Tribal Court work around “Indian Country”. As Tribal Members and outsiders begin to become aware of complicated judicial work, they then can begin to appreciate the challenges the Court faces in its daily work and duties. In turn, the Court’s image improves and its work more respected by all.

Moreover, a few Tribal Members indicated that the court/judicial process lacks “specialness”.²⁷ That is, court hearings have become sterile and routine. There is little respect or a sense of awe for the judicial process. Since ritual and ceremony emphasize the intended respect, and near sacredness, of the judicial process, the lack of it in Court has diminished the high regard required in judicial proceedings.

As the Judges, Clerks, Court Staff, and proposed Judicial Council work together to build the 21st Century Crow Tribal Courts, a consideration might be given on how to create a sense of ceremony in the Court Room so as to nurture and sustain the necessary respect for the judicial process. Simple functional formalities such as standing when the judge enters the courtroom or a formal reading of the case before the Court by the Clerk, can heighten and highlight the judicial experience. Court staff and the Judicial Council can discuss how specialness can be brought back to courtroom.

IMPROVEMENTS TO IMAGE

- **Publish Articles
Concerning Court Staff,
Court Processes, Tribal
Courts**
- **Implement Rituals in
Court Proceedings**

²⁷ Site visit interview.

CROW TRIBAL COURTS IN THE 21ST CENTURY: CHANGING PATHS – STRENGTHENING THE VISION

CONCLUSION

On September 17, 1986 in the Crow Tribal Mission Statement, the Crow Tribe of Indians stated, “The Crow Tribe is a sovereign nation expressed in inherent God-given rights, and treaty rights, and by reserving unto itself our Crow Tribal Government, Tribal Courts System, and Law and Order. The Crow has always resided in “Crow Country” since time immemorial, according to ancient legends, history, knowledge, and experiences. The survival of the Crow Tribe depends on the protection and preservation of our land and natural resources, while maintaining our language, morals, and cultural values; and by strengthening and improving our Crow Tribal Government.”

The Mission, or Vision, of the Crow Tribe remains the same as its been for the life of the Crow – to be a strong nation and people. Preparing for the 21st Century means strengthening this vision and realigning the ends with the means. How the Tribe moves closer to a stable and solid government structure depends on the path the Crow take. Their progress also depends on their pace, their stride and strategy. Do the Crow want to move fast or slow? Are there any short cuts to reaching this vision? Do a few people lead while others follow, or is every member empowered to determine the direction of the Tribe? And what is the best method to resolve disputes and controversies?

These and many other questions must be addressed and answered by the Crow themselves. It is their journey, it is their path. It is their vision. The foregoing is presented to the Crow in order to help move them forward on a more strategic path, specifically in regards to the Crow Tribal Courts.

The primary and most critical recommendation made in this report is to create a separate and independent judiciary. While the best means to do this is by constitutional amendment, it is suggested here that the Crow create a judicial branch of government through an ordinance until constitutional reform is engaged. This separation does not mean to divide the nation in two, but allow for independent development and expression by the Court so that they can continue contributing to the Crow people by providing fair, equitable and culturally accordant decision making.

By empowering a group such as the Judicial Council to work with Court staff to help implement improvements as well as plan for the next century, progress can be made more efficiently. Judicial Council Members must be courageous, concerned, and committed in order to make the best contribution to this effort. Strengthening the Tribal vision sometimes means letting go of pieces of one’s personal vision and aspiration that do not align with the tribal vision. If the Judicial Council is composed of this type of Crow, their work will be powerful and productive.

Improving the operations and administration of the Crow Tribal Courts depend a great deal on the amount of financial and human resources it is provided. By proper placement of these resources the judicial process at Crow can be strengthened tremendously. Working together, the judges, court administrator, clerks, and other Court staff, along with the proposed Judicial Council can develop an awesome and highly regarded center for conflict resolution.

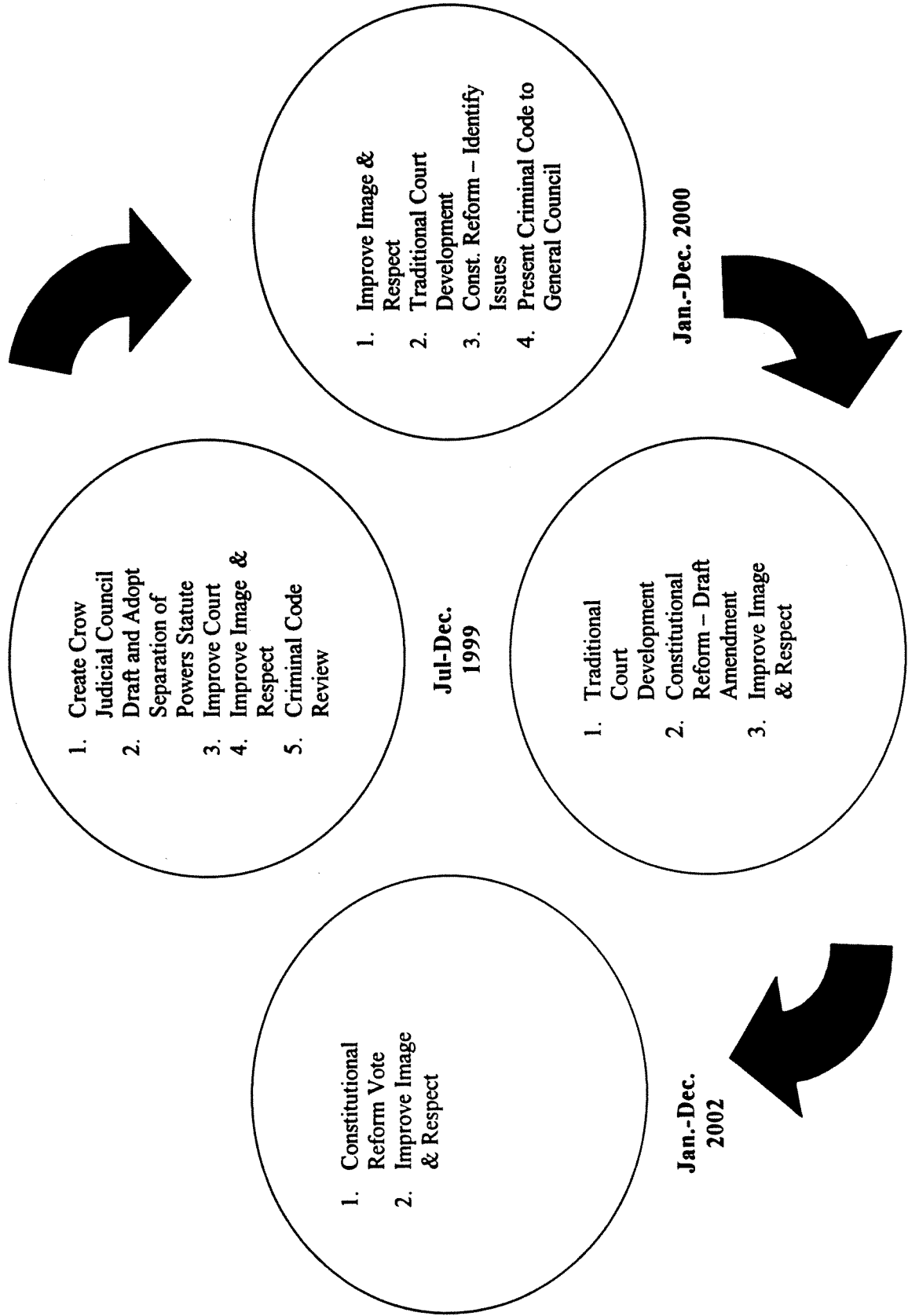
CROW TRIBAL COURTS IN THE 21ST CENTURY: CHANGING PATHS – STRENGTHENING THE VISION

Respect for the Court and its image will naturally be improved when the Court is working with the necessary resources it needs to do its work. Over time, as the Crow people become more aware of the functions, purposes, and processes of the Court, a better understanding and appreciation for it will develop. And, as the Tribe endeavors to design a traditional means of conflict resolution, not only will respect be generated, so will a *specialness*, or reverence; a sense combining all that is good from Crow past to the power awaiting them in the future.

Changing Paths, Strengthening the Vision is what awaits the Crow in the 21st Century. While this document emphasizes the role of the Tribal Courts in this new millenium, the same notion is prominent for all aspects of Crow society and culture, and Crow government. Right now, the Crow Nation is unfolding and evolving at every breath and heartbeat. The Crow are thinking hard about their prospects and potential. The future, as mysterious as it is apparent, awaits the Apsaalooke as much as their history and past empowers and pushes them on.

**CROW TRIBAL COURTS IN THE 21ST CENTURY:
CHANGING PATHS – STRENGTHENING THE VISION**

Strategic Action Plan



CROW TRIBAL COURTS IN THE 21ST CENTURY: CHANGING PATHS – STRENGTHENING THE VISION

STRATEGIC WORKPLAN

Objective 1: CREATE SEPARATE AND INDEPENDENT JUDICIAL BRANCH OF CROW TRIBAL GOVERNMENT

ACTIVITY/TASK	RESPONSIBILITY OF:	START	STOP	Spec. Assst.- tasks	Days assigned
Appoint and Charge Judicial Council	Administration/Tribal Council	Jul./99	Jul./99	July General Council Mtg	
Judicial Council initial meetings Member Education/Reading (further Judicial Council Meetings tba)	Council Members	Jul. 15	Aug. 31/99	Tribal Secretary Research and reading	Meetings as scheduled by Council
Solicit Council Members opinions regarding Tribal Courts	Council Member	Jul. 15	Oct. 31/99	Tribal Staff	80
Judicial Council Meeting Discussion (min. 3 hr.)	Tribal Council/Commission	Aug. Gen. Council Mtg.	Tribal Administration		1
Summarize Judicial Council Meeting Discussion	Judicial Council	7 days after Meeting			7
Publish Summary in Crow Tribal Newspaper	Judicial Council/Tribal Newspaper	next issue-Sep. 30/99	Office of Public Affairs		5
Judicial Council Meeting with Community (4)	Judicial Council	Aug/Sep/Oct/Nov-'99	Tribal Staff		4 hours min./meeting
I -Announcement Meeting/Crow Court in the 21 st Century		August	Office of Chairperson		2 days prep/meeting
II -The Meaning of Separate and Independent		September	College Staff/Elders		
III -More Meanings in the Crow Language		October			
IV -Writing down the policy		November			
Draft Statute	Judicial Council	Nov. 15	Dec. 15/99	all interested parties	30
Publish Statement in Tribal Newspaper	Judicial Council/Newspaper	2 nd issue - December			1
Final Comment Period/revisions	Judicial Council/Newspaper	Dec. 15 to Dec. 31/99			15
Adopt Statute at Council Meeting	Tribal Council	Jan. 1	Jan 15/2000	Judicial Council	15

CROW TRIBAL COURTS IN THE 21ST CENTURY: CHANGING PATHS – STRENGTHENING THE VISION

STRATEGIC WORKPLAN

Objective I-A: TO CONVENE A CONSTITUTIONAL CONVOCATION TO AMEND VARIOUS ARTICLES OF THE CONSTITUTION¹

ACTIVITY	RESPONSIBILITY OF:	START	STOP	Spec. Asslt. tasks	Days assigned
Begin Translation of Constitution into the Crow Language ²	Tribal Members for Change	Jan '00	Dec. 00	Bilingual Program Little Big Horn College Staff Tribal Elders/107 Committee	365
Call for Constitutional Conference	Council/Tribal Members	January - 2000		Concerned Members	1
Review 1989 Constitutional Draft and other proposed amendments	Council Members/Judicial Council	Jan. 00.	Mar. 00	original drafters	90
Appoint Conference Council (composition to be determined by Council)	Tribal Council	January - 2000		Judicial Council	January Gen. Council Meeting
Solicit recommendations for change/revision	Conference Council	Jul.-Dec. 2000		research from other Tribes who have revised Their constitutions	180
Community Meetings August September October November	Conference Council exact topics to be developed at later date	Aug/Sep/Oct/Nov 2000			day long meetings
Publish list of recommended changes	Tribal Newsletter	Dec. 2000			5
Develop consensus about what to change	Tribal Members for Change	Jan. to Jun./2001			180
First draft	Judicial Council/Interested parties	Jun. 01	May 02	Tribal Council Members Consultant/Tribal Attorney	365
Vote on recommended changes	Election Board	December 2002			

¹ A more precise strategic plan must be created once the Tribe decides it desires to revise its constitution.

² If the decision is made to go ahead with a Constitutional Conference then translation may be delayed until writing of the new constitution begins.

**CROW TRIBAL COURTS IN THE 21ST CENTURY:
CHANGING PATHS – STRENGTHENING THE VISION**

STRATEGIC WORKPLAN

Objective 2: CREATE AND CHARGE JUDICIAL COUNCIL WITH NATION BUILDING DUTIES and TASKS

ACTIVITY	RESPONSIBILITY OF:	START	STOP	Spec. Assist. tasks	Days assigned
Meeting with Chairwoman, Judges, Administrative Staff, Tribal Attorney to discuss creation and appointment of Judicial Council	Madam Chairwoman	end of June, 1999		Tribal Staff	1 day meeting
Appoint and Charge Judicial Council	Administration/Tribal Council	Jul./99	Jul./99	Tribal Secretary	15
Draft statute for separation of powers for Court	Judicial Council	Jul/99	Sep/99	Judges	60
Create Bar Association	Judicial Council	Sep/99	Sep/00	Attorneys/advocates	40 +
1. Appoint Bar President					
2. Assist in draft of membership by-laws					
3. Charge Bar President with drafting of Attorney Code of Ethics					
4. Review Attorney Code of Ethics					
Create Legal Aid Panel or Advocates	Judicial Council	Nov/99	Nov/00	Advocates/defense counsel	open
Draft and Adopt Judicial Code of Ethics	Judicial Council	Aug/99	Aug/00	Judges/Local Attorneys consultant	
Review Judicial Qualifications	Judicial Council	Sep/99		Judges/Tribal & Community open Members	
Draft Constitutional Amendment	Judicial Council	Dec/99	Jan/00	all interested parties	1 + years
Educate Community about Constitutional Amendment	Judicial Council	Feb/00	Const. Amend. Passed		On-going
Create Traditional Dispute Resolution Court	Judicial Council	Dec/99	open	all interested parties	open

NOTE: The Judicial Council once convened should coordinate their calendars and reset schedule dates most suitable to them. The timelines given here are recommendations. Also, each activity/task involves many other sub-tasks which will need to be planned.

**CROW TRIBAL COURTS IN THE 21ST CENTURY:
CHANGING PATHS – STRENGTHENING THE VISION**

STRATEGIC WORKPLAN

Objective 3: IMPROVE COURT OPERATIONS/ADMINISTRATION

ACTIVITY	RESPONSIBILITY OF:	START	STOP	Spec. Assist. tasks	Days assigned
Hire a permanent Court Administrator	Chief Judge	ASAP		Tribe	open until complete
Continue responding to B.I.A. Review	Court Administrator	until complete		Court Staff	until complete
Apply for Grants	Court Administrator	Aug. 99 to Jul. 99		Judicial Council Tribal Staff	throughout year
1. Identify applicable grant programs	Ct. Admin./Jud. Council/	Aug. 99 – Oct. 99		funding sources/contacts	90
2. Identify due dates and prioritize grant schedule	Ct. Admin.	Oct. 99 – Nov. 99		Court Staff	30
3. Request all information from grant sources	Ct. Admin.	Dec. 99 – Jan. 00		Court Staff	30
4. Schedule planning meetings with staff and Judicial Council	Ct. Admin.	Nov. 99 – Nov. 99		Court Staff	20
Develop funding base and needs statement	Court Administrator	Aug. 99	Oct. 99	Court Staff	70
Develop training plan for staff	Court Administrator	Jul. 99	Aug. 99	Court Staff	45
1. In house training				consultant	
2. Outside training				Judges	45
Develop training plan for judges	Court Administrator	Jul. 99	Aug. 99	consultant	
3. In house training					
4. Outside training				other Tribal Court staff	90
Research and Procure technology	Court Administrator/Clerks	Jul. 99	Sep. 99		
Research					
Compile cost data					
purchase					

**CROW TRIBAL COURTS IN THE 21ST CENTURY:
CHANGING PATHS – STRENGTHENING THE VISION**

STRATEGIC WORKPLAN

Objective 4: IMPROVE IMAGE AND RESPECT FOR CROW TRIBAL COURTS

ACTIVITY	RESPONSIBILITY OF:	START	STOP	Spec. Assist. tasks	Days assigned
Publish article concerning plans for Court	Office of Public Affairs/ Court Administrator	July '99		Little Big Horn College or consultant	30
Publish article concerning the importance of a stable judicial system	Office of Public Affairs	Aug. '99		Little Big Horn College	30
Publish articles profiling the judges in tribal newspaper	Office of Public Affairs	Sep.-Nov. '99		Little Big Horn College	15 per judge
Publish article concerning Court procedures, illustrating the life of a complaint	Office of Public Affairs	Dec. '99		Little Big Horn College	30
Publish article profiling the Crow cases appealed to the U.S. Supreme Court and the impact of these cases	Office of Public Affairs	Jan. '00		Little Big Horn College	30
Publish articles profiling the court staff in tribal Newspaper	Office of Public Affairs	Feb. – June '00		Little Big Horn College	15 per staff member
Publish article profiling Crow lawyers	Office of Public Affairs	July '00		Little Big Horn College	30
Publish article concerning tribal courts around the country, illustrating their similarities and differences	Office of Public Affairs	Aug. '00		Little Big Horn College	30

PROPOSED SEPARATION OF POWERS STATUTE

Amendment to Crow Law and Order Code Title 3, Chapter I

3-1-100. Separation of Powers

- (1) It is hereby established that the Crow Tribal Court shall be renamed the Crow Judicial Branch. All references within the Law and Order Code to the Crow Tribal Court, shall be changed to the Crow Judicial Branch
- (2) It is hereby established that the Crow Judicial Branch is a separate and independent branch of Crow Tribal Government. Any law, resolution, or order concerning the Judicial Branch's independent status is superceded by this amendment.
 - (a) The definition of separation and independent means: The Crow Judicial Branch shall have sole authority over cases filed, pending, and resolved within the Crow court system.
- (3) Removal of Judges: Judges may only be removed through a recall petition and hearing. The recall petition, with at least 10% of the General Council members, must be signed and submitted to the Chairperson 30 days prior to a General Council Meeting. The Judge must be allowed to respond to the petition at the council meeting. Subsequent to the judge's respond, the recall petition can only be passed by a 2/3 majority vote by the Crow General Council.

3-1-100a. The Crow Judicial Council

- (1) The Crow Judicial Council is hereby established as an administrative body to assist with the administration and development of the Court. This statute supercedes any previous authority delegated by Chairperson, Tribal Officers, resolution or statute to other administrative bodies.
- (2) Appointment: The Crow Judicial Council shall consist of seven members appointed by the Chairperson for a four year period.
- (3) Removal: Judicial Council members may only be removed for good cause. The member must receive in writing notification of intent to remove. The member has a right to a hearing to respond to the intent to remove before the Crow General Council. The member may only be removed by a 2/3 vote of the Crow General Council.
- (4) Duties:
 - (a) Develop and implement constitutional amendment
 - (b) Develop and improve court procedures
 - (c) Develop a Traditional Alternative Dispute Resolution Court
 - (d) And other matters related to the smooth administration of justice

PROPOSED CONSTITUTIONAL AMENDMENT

Article X – The Crow Judicial Branch

- (1) The Judicial authority of the Crow Tribe shall be vested in the Crow Judicial Branch. The Crow Judicial Branch is a separate and independent branch of government.
 - (a) The definition of separation and independent means: The Crow Judicial Branch shall have sole authority over cases filed, pending, and resolved within the Crow court system.
- (2) The Crow Judicial Branch shall consist of an Appeals Court, Trial Court, Juvenile Court, and a Traditional Dispute Resolution Court.
- (3) All judges must meet the qualifications set by the Law and Order Code.
- (4) The Trial Court shall consist of three elected judges, one Chief Judge and two Associate Judges.
- (5) The Appeals Court shall consist of three appellate judges, including two judges of the Crow Tribal Court who did not preside over the action being appealed and a professional attorney or judge appointed by the Chief Judge.
- (6) (Provision describing the Traditional Dispute Resolution Court)

- (b) Any member of the Hualapai Tribe who becomes a member of any other Indian Tribe shall automatically forfeit his membership in the Hualapai Tribe. Any person adversely affected by this section shall have a right to appeal to the Tribal Court in accordance with the appeal procedures established by the Tribal Council.
- (c) Any person who has lost his membership in the Hualapai Tribe may apply for reinstatement after a period of two (2) years has elapsed from the date of removal from the membership roll, Provided, That the person in question submits adequate proof to the Tribal Council that he has given up his membership in the other tribe involved.

Section 5. Honorary Membership. The title of "honorary member" of the Hualapai Tribe may be granted to any person by the Tribal Council. Honorary membership does not qualify a person for any benefits, assets, the right to vote, or any other rights or privileges.

Section 6. Enforcement. The Tribal Council shall enforce this Article by ordinance, Provided, That the Tribal Council shall have no power to establish substantive requirements for membership in addition to those established in Section 1 of this Article nor to waive or alter any of those requirements in Article II, or deny an applicant the right to appeal an adverse decision to Tribal Court.

ARTICLE III - ORGANIZATION OF THE GOVERNMENT

The Hualapai tribal government shall be divided into two separate and independent branches of government: the Legislative Department, consisting of the Tribal Council and the Tribal Administration, and the Judicial Department. The Tribal Administration shall be subordinate to the Tribal Council and shall operate in accordance with Article VII.

ARTICLE IV - THE TRIBAL COUNCIL

Section 1. Legislative Body. The legislative body of the Hualapai Tribe shall be known as the Hualapai Tribal Council and shall consist of nine (9) members.

Section 2. Terms of Office. The terms of office for all Tribal Council members including the Chairperson and Vice Chairperson shall be four (4) years except as provided in Section 3 of this article. All Tribal Council members, including Chairperson and Vice Chairperson, shall be eligible to serve two (2) consecutive terms, whether full

employees not otherwise provided for in this constitution, and to prescribe their salaries, tenure, duties, policies and procedures;

- (x) to establish and to regulate subordinate organizations for economic and other purposes;
- (y) to issue and to regulate motor vehicle license plates;
- (z) to accept grants or donations from any person, organization, State or the United States;
- (aa) to enact laws, ordinances and resolutions necessary or incidental to the exercise of its legislative powers;
- (bb) to determine all terms and conditions of employment for all persons employed by the tribe through the adoption of appropriate ordinances;
- (cc) to appoint a Junior Tribal Council comprised of members of the Tribe age twenty-five (25) or younger designed to make advisory recommendations to the Tribal Council on matters affecting youth;
- (dd) to take any and all actions necessary and proper for the exercise of the foregoing powers and duties, including those powers and duties not enumerated above, and all other powers and duties now or hereafter delegated to the Tribal Council, or vested in the Tribal Council through its inherent sovereignty.

ARTICLE VI - THE JUDICIAL DEPARTMENT

Section 1. The Judicial Department. The judicial power of the Hualapai Tribe shall be vested in the judiciary which shall consist of a Tribal Court and a Court of Appeals and such other lower courts as deemed necessary by the Tribal Council.

Section 2. Jurisdiction of the Court. The tribal courts shall exercise jurisdiction over all cases and controversies within the jurisdiction of the Tribe, in law and equity, whether civil or criminal in nature, that arise under this document, the laws of and customs of the Tribe, by virtue of the Tribe's inherent sovereignty, or which is vested in the tribal courts by Federal law.

Section 3. Power of the Courts. The Hualapai Judiciary shall have the power to:

- (a) interpret, construe and apply the laws of, or applicable to, the Hualapai Tribe;
- (b) declare the laws of the Hualapai Tribe void if such laws are not in agreement with this constitution;
- (c) issue injunctions, attachments, writs of mandamus, quo warranto, review, certiorari and prohibition, and writs of habeas corpus to any part of the Hualapai Tribe upon petition by, or on behalf of, any person held in actual custody;
- (d) establish court procedures for the Hualapai judiciary, except that the Tribal Council may by ordinance alter such procedures consistent with this constitution.

Section 4. Composition of the Court. The Hualapai Tribal Court shall be composed of one Chief Judge and such Associate Judges as may be determined necessary by the Tribal Council.

Section 5. Appointment of Judges. The Chief Judge and Associate Judges shall be appointed by the Tribal Council. Should a vacancy occur through death, resignation, or otherwise, for the position of Chief Judge or Associate Judge(s), the Tribal Council shall appoint a person or persons to fill such vacancy or vacancies.

Section 6. Term of Office. Each Judge shall hold office for a period of two (2) years, unless sooner removed under section 11, or by reason of abandonment of the office; however, the Chief Judge or Associate Judge shall be eligible for reappointment.

Section 7. Court of Appeals. The Hualapai Tribal Court of Appeals shall consist of one or more Judges selected in sequential order from a list of available Court of Appeals Judges compiled by the Tribal Council. The list of Court of Appeals Judges shall be renewed every two (2) years and shall include at least three (3) names. The Court of Appeals shall always consist of an odd number of judges. No Judge shall sit on a Court of Appeals if he presided over the original proceedings or if disqualified under Article VI, Section 10.

Section 8. Qualifications of Judges. The qualifications for tribal Judges shall be established by ordinance enacted by the Tribal Council, but no additional requirements may be added during the tenure of a Judge already in office, unless the additions or changes exempt the present Judges during their term.

Section 9. Compensation. The Judge(s) shall receive for their services reasonable

compensation. The Tribal Council shall not diminish the compensation of a Tribal Judge during his term in office.

Section 10. Disqualification to Act. No Judge shall be qualified to act in any case wherein he has any direct interest or wherein any relatives by marriage or blood in the first degree are a party.

Section 11. Removal of Judges.

- (a) Any Judge of the Tribal Court may be suspended, dismissed, or removed by the Tribal Council for any of the following reasons:
1. conviction of a felony in any Tribal, Federal or State Court;
 2. conviction of any two misdemeanors in any Tribal, Federal or State Court;
 3. performing his official duties while under the influence of alcoholic beverages;
 4. conviction, in any Tribal, Federal or State Court, of driving under the influence of alcohol, or the equivalent crime;
 5. failure to disqualify himself under Article VI, Section 10;
 6. unnecessary and repeated lengthy delays in hearing and adjudicating matters filed in the Tribal Court;
 7. violating Article VIII, Section 13, of this constitution;
 8. for good cause by at least seven (7) members of the Tribal Council;
- (b) A Judge shall be given full and fair opportunity to reply to any and all charges for which he may be suspended, dismissed or removed from judicial office;
- (c) A Judge suspended, dismissed or removed under Article VI, Section 11(a) (1-7) may appeal directly to the Tribal Court of Appeals which shall have jurisdiction over such matters. Removal of a Judge under Article VI, Section 11 (a) (8), shall be determined solely by the Tribal Council.

Section 12. Right to Appeal. Any party to a civil action, or a defendant in a criminal action, who is dissatisfied with the judgment or verdict may appeal therefrom to the .

Tribal Court of Appeals. All matters of law and procedure may be decided by the Court of Appeals. Findings of fact shall be made by the Trial Court and shall be reviewable only when arbitrary or capricious.

Section 13. Rights of Defendants. The Hualapai Tribe, in exercising its powers of self-government, shall not:

- (a) subject any person for the same offense to be twice put in jeopardy;
- (b) compel any person in any criminal case to be a witness against himself;
- (c) deny to any person in a criminal proceeding the right to a speedy trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the assistance of an advocate for his defense admitted to practice before the Tribal Courts;
- (d) require excessive bail, impose excessive fines, or inflict cruel and unusual punishments;
- (e) pass any bill of attainder or ex post facto law; or (f) deny to any person accused of an offense punishable by imprisonment the right, upon request, to a tribal jury of not less than six persons.

Section 14. Court Rules. The duties and procedures of the tribal court system, and all other court matters not enumerated in this article of the constitution, shall be established by the Hualapai Judiciary, except that the Tribal Council may by ordinance alter such procedures consistent with this constitution.

ARTICLE VII - THE TRIBAL ADMINISTRATION

Section 1. Executives. The tribal administration shall consist of the Chairperson, Vice Chairperson, Secretary and Treasurer of the Tribal Council and such other persons as the Tribal Council or their designee may find necessary for conducting tribal business. The Chairperson shall be in charge of the tribal administration in accordance with Section 2 of this article.

Section 2. Duties. The tribal administration shall oversee the administration of tribal business and shall exercise those authorities delegated to it by the Tribal Council.

Section 6. Election of Officers. Elections of the Saint Regis Mohawk Tribe shall be held annually on the first Saturday in June. At the initial election held following the adoption of this Constitution, (June, 1996) qualified voters of the Saint Regis Mohawk Tribe shall by secret ballot elect two (2) members to the Tribal Council, a Tribal Chief, a Tribal Vice-Chief. Eligible voters must be duly enrolled members of the Saint Regis Mohawk Tribe and be at least eighteen (18) years of age. Enrolled members of the Saint Regis Mohawk Tribe are entitled to vote in Tribal elections by Absentee Ballot in accord with the Tribal Election Laws. The Tribal Chief and Vice Chief shall be elected for four year terms. The Tribal Clerk shall be elected to a three year term. The members of the Tribal Council shall be elected to staggered terms. The initial Tribal Council shall consist of not less than five (5) members but may be enlarged to seven (7) members as provided in Section 7 of this Article.

Section 7. Enlargement of the Tribal Council. The Tribal Council may enlarge its membership from five (5) to as many as seven (7) members through enactment of a tribal resolution and referendum of the community to enlarge the number of council members. Such enlargement of the Tribal Council shall not become effective during the current term of the elected tribal council.

Section 8. Transition Provisions. Upon adoption of this Constitution, the Chiefs shall continue to serve their terms in office as members of the Tribal Council. The incumbent Head Chief shall serve as the interim Tribal Chief and exercise the powers conferred by Article VII until the expiration of his term of office. The office of Sub-Chief is abolished upon the adoption of this Constitution but the Sub-Chiefs shall serve as interim members of the Tribal Council until term expires.

Section 9. Vacancies. Should a vacancy occur in any elected office due to death, resignation, removal from office or recall, the vacancy shall be filled by appointment until the next annual election. The authority to fill vacancies in office through temporary appointment shall be vested in the Tribal Council. At the next annual election, elections held due to vacancies shall be for the unexpired term of the predecessor in office.

Section 10. Qualifications For Office. All candidates for tribal elected office must be validly enrolled members on the American side of the Mohawk Reservation. All candidates for tribal office who have, within the past five years been convicted of a felony under the Major Crimes Act shall not be eligible to hold office. Candidates for the office of Tribal Chief must be thirty (30) years old to run for Tribal Chief. Candidates for the Tribal Council and Tribal Clerk must be at least twenty five (25) years old to run for these offices.

ARTICLE VI DIVISION OF THE POWERS OF TRIBAL GOVERNMENT

Section 1. Three Branches of Government. The Saint Regis Mohawk Tribal government shall be divided into three (3) separate and independent branches of government consisting of the Legislative, Executive and Judicial Departments. No person or group of persons charged with the exercise of powers properly belonging to one of these departments shall exercise any of the powers properly belonging to either of the others, except as this Constitution may otherwise expressly direct or permit.

ARTICLE VII EXECUTIVE AUTHORITY

Section 1. Chiefs of the Tribe. The executive power of the Saint Regis Tribal government shall be vested in the Chief of the Saint Regis Mohawk Tribe. The Chief and Vice Chief shall be elected for a term of four years.

Section 2. Non-Partisan Office. The Tribal Clerk is hereby declared to be a non-partisan Constitutional Officer of the Mohawk Tribe. The Tribal Clerk shall run for office on a non-partisan basis. The Tribal Clerk may not participate in a partisan tribal political campaign while elected to office as Tribal Clerk. A Tribal Clerk may run for the Tribal Council or as Tribal Chief but must resign the office of Tribal Clerk office within 10 days of announcing candidacy for Chief or the Tribal Council.

Section 3. Deputy Clerks. The Tribal council may by ordinance provide for the appointment of one or more Deputy Clerks to assist the Tribal Clerk.

ARTICLE X JUDICIAL AUTHORITY

Section 1. The Judiciary. The judicial power of the Saint Regis Mohawk Tribe shall be vested in the judicial branch of tribal government which shall consist of a Tribal Court, a Court of Appeals and such other lower courts as deemed necessary by the Tribal Council.

Section 2. Jurisdiction.

- (a) Tribal Court. The Tribal Court shall have original jurisdiction extending to all cases, matters or controversies arising under this Constitution and the laws, ordinances, regulations, customs and judicial decisions of the Saint Regis Mohawk Tribe.
- (b) Court of Appeals. The Court of Appeals shall have both original and appellate jurisdiction. The Court of Appeals shall have jurisdiction to hear all appeals from the Tribal Court. Decisions of the Court of Appeals on all matters within its appellate jurisdiction shall be final.
- (c) Peacemaker Court. The Peacemaker Court shall have such original and subject matter jurisdiction as may be authorized by the Saint Regis Mohawk Tribe Judiciary Act.

Section 3. Power of the Courts. The Courts of the Saint Regis Mohawk Tribe shall have the power to:

- (a) Interpret, construe and apply the Constitution, laws and regulations of the Tribe.
- (b) Declare the laws and regulations of the Saint Regis Mohawk Tribe void if such laws or regulations conflict with the Constitution.
- (c) Issue injunctions, attachments, writs of mandamus, quo warranto, review, extradition, certiorari and prohibition, and to issue writs of habeas corpus upon petition by, or on behalf of any person held in actual custody.
- (d) Establish court rules, forms and procedures for the Saint Regis Mohawk Tribal Courts except that the Tribal Council may enact a judiciary ordinance consistent with this Constitution.

Section 4. Composition of the Judiciary. The Tribal Court shall consist of a Chief Judge and two Associate Judges elected by the eligible voters of the Mohawk Community for a term of seven (7) years. The Court of Appeals shall consist of a Chief Judge and two Associate Justices. Two of the three Tribal Court Judges may sit as members of the Court of Appeals. The future composition of the Tribal Courts may be changed through amendments to the tribal Judiciary Code.

Section 5: Election and Qualification of Judges.

Tribal judges shall be elected for seven (7) year terms. Judges shall be at least twenty five (25) years old, of good moral character and not have been convicted of a felony within the past ten (10) years. Judges who run for office shall meet one or more of the following professional qualifications to be eligible to serve as a tribal judge:

- (a) Graduation from an American law school accredited under the American Bar Association;
- (b) Admission to practice law before any State or Federal Court;
- (c) Previous experience as a magistrate or lay judge in any local or tribal court;
- (d) Possession of an advanced degree with substantial law-related experience.

The Tribal Council in consultation with the Chief Judge of the Tribal Court shall implement the requirements of this section through a tribal ordinance.

**ARTICLE XI
COUNCIL MEETINGS AND OFFICIAL ACTS**

Section 1: Meetings of the Tribal Council Community Meetings. The Saint Regis Mohawk Tribal Council is authorized by this Constitution to establish its own procedures but shall meet in regular, special or emergency session as follows:

- (a) **Regular Meetings.** The Tribal Council shall meet in official session at least twelve (12) times a year, at monthly intervals, at such time and place as shall be established by resolution to conduct council business and meet with the community membership.
- (b) **Special Meetings.** Special Meetings of the Tribal Council:
 - 1. May be called by the chairperson of the Tribal Council at his or her discretion,
 - 2. Shall be called by the chairperson of the Tribal Council upon the written request of any three (3) Council Members or,
 - 3. Shall be called upon the petition of ten percent (10%) of the eligible tribal voters;
- (c) **Emergency Meetings.** An emergency meeting of the Tribal Council may be called upon less than seventy-two (72) hours written notice, notwithstanding Section 1(b) of this Article, if such meeting is necessary for the preservation or protection of the health, welfare, peace, safety, or property of the Tribe. Efforts shall be made to give notice to each Tribal Council member. The emergency meeting notice shall state the purpose, time, and place of such a meeting. No business other than that stated in the notice shall be transacted at the emergency meeting.

Chairperson as proposed. The secretary shall ensure that the notice requirements of this Article are complied with.

Section 2. Validity: Prior to taking action at any meeting of the Tribal Council which is held at a date at variance with the dates established in Article XI Section 1. of this Article and at any special meeting of the Tribal Council, the secretary shall certify that the notice requirements of this Article have been complied with. In the absence of this certification, no action taken by the Tribal Council at that meeting shall have any validity.

Section 3. Emergency Special Meetings: The notice provisions of this section may be waived if immediate action by the Tribal Council is deemed necessary by the Chairperson, provided that at least eight members of the Tribal Council agree and Provided further that any action taken in emergency session is later ratified at the next regular meeting of the Tribal-Council.

Section 4. Quorum: A majority of voting officers and members shall constitute a quorum for the conduct of business at any special meeting of members of the Tribal Council.

Section 5. Action Without a Meeting: All business of the Tribal Council may be accomplished by mail, telegraph, cable and facsimile machine or telephone provided that a verbal consent of at least eight (8) voting members of the Tribal Council of the proposed manner of taking action.

ARTICLE XIII

JUDICIARY

Section 1. Authority to Establish: The tribe may establish by tribal ordinance a judicial branch of government.

Section 2. Procedure to Establish: The ordinance establishing the judicial branch of government must be approved at a regularly scheduled annual tribal membership meeting held pursuant to Article V of this constitution.

Section 3. Jurisdiction: The judicial power of the courts of the tribe shall extend to all cases and matters in law and equity arising under the settlement act, this constitution, and the ordinances of the tribe, subject only to the limitations, restrictions or exceptions imposed by or under authority of the laws of the United States.

ARTICLE XIV

CONTINUITY OF ACTION

Section 1. Ratification of Prior Tribal Action: All: action, including but not limited to ordinances, resolutions, enactments, staffing decisions-or any other action taken on behalf of the tribe by the Wampanoag Tribal Council of Gay Head, Inc. adopted before the effective date of this constitution shall continue in effect to the extent that they are consistent with this constitution.

5. Reports of Committees
6. New business (Comments from Members)
7. Prayer and adjournment

Provided; however, this order of business may be suspended by the Tribal Council for any meeting.

ARTICLE XII - JUDICIAL DEPARTMENT

Section 1. The judicial authority of the Choctaw Nation shall be vested in a Tribal Court which shall consist of three (3)-member Court appointed by the Chief with the advice and consent of the Tribal Council. One (1) such member, the presiding judge, shall be a lawyer duly licensed to practice before the Supreme Court of Oklahoma. Two (2) members may be non-lawyers.

Sec. 2. Members of the Judicial Department must be residents of the Choctaw Nation and must remain residents of the Choctaw Nation during the tenure of their office. The non-lawyer members must be qualified electors of the Choctaw Nation.

Sec. 3. Tribal Court members shall be appointed for a term of three (3) years; provided that initially one (1) member shall be appointed for one (1) year, one (1) member shall be appointed for two (2) years and one (1) member, who is the presiding judge, shall be appointed for three (3) years to establish staggered terms of office.

Sec. 4. Judges shall not be subject to removal except as provided in Article XV, Section 1.

Sec. 5. Decisions finally determining each cause of action decided by the Tribal Court shall be recorded in journals kept for that purpose.

ARTICLE XIII - PRIVILEGES, DUTIES AND POWERS OF JUDICIAL DEPARTMENT

Section 1. The Tribal Court shall have exclusive jurisdiction to decide disputes, by vote of two (2) members, arising under any provision of this Constitution or any rule or regulation enacted by the Tribal Council.

Sec. 2. Rules of procedure for the Tribal Court shall be prescribed by the Tribal Council and shall insure the members due process of law.

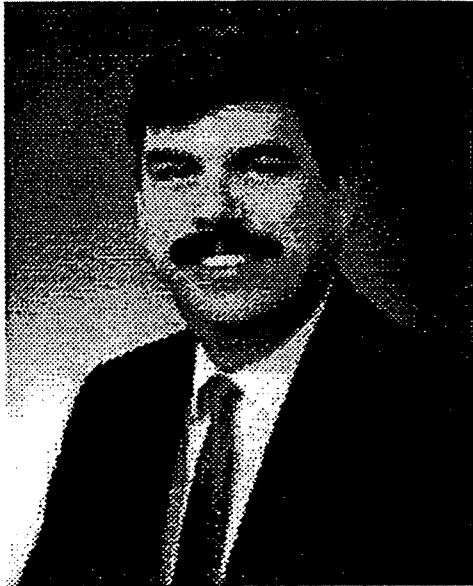
Sec. 3. The decision of the Tribal Court shall be final.

ARTICLE XIV - FILLING VACANCIES

Section 1. In case of the death, resignation or removal of the Chief, the Assistant Chief shall immediately become Chief for the remainder of the unexpired term. In the event the Assistant Chief shall succeed to the office of Chief, he shall appoint a successor Assistant Chief with the advice and consent of the Tribal Council.



Office of Tribal Justice



Tom LeClaire, Director

Attorney General Janet Reno established the Office of Tribal Justice (OTJ) in January of 1995 to coordinate tribal issues for the Department of Justice. Intended to increase the responsiveness of the Department to Indian tribes and American Indian citizens, the Office of Tribal Justice has ensured better communication by serving as a permanent point of contact between the Department and federally recognized Indian tribes. The Office of Tribal Justice represents the Department in its dealing with Indian tribes, federal agencies, Congress, state and local governments, professional associations, and public interest groups.

Director:	Tom LeClaire	<p>Please contact us at the following location:</p> <p>Office of Tribal Justice Room 2229A DOJ Main Building 950 Pennsylvania Avenue, N.W. Washington, D.C. 20530</p> <p>Telephone:(202) 514-8812 Fax:(202) 514-9078</p>
Deputy Directors:	Mark Van Norman Soo C. Song Tim Joranko	
Secretary:	Veronica Bush	

- [Office of Tribal Justice Mission Statement](#)
- [Department of Justice Sovereignty Policy](#)
- [Remarks by Attorney General Janet Reno](#)
- [Presidential Statements](#)
- [Congressional Testimony](#)
- [Indian Country Law Enforcement](#)
- [Press Releases](#)
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- [Upcoming Events](#)
- [Career and Intern Opportunities](#)



U. S. Department of Justice

Office of Tribal Justice

Washington, D.C. 20530

OFFICE OF TRIBAL JUSTICE

Thomas L. LeClaire: Director

Craig Alexander, Mark Van Norman, and Soo Song:

Deputy Directors

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The Office of Tribal Justice (OTJ), originally established within the Office of the Deputy Attorney General, serves as a coordination center for all Department of Justice activities relating to federally recognized Indian tribes.

At the May 1994 Listening Conference in Albuquerque, New Mexico, tribal leaders conveyed to the Department the need to establish a permanent channel for tribes to communicate their concerns to the Department. The Office of Tribal Justice was created in January 1995, to provide such a point of contact within the Department for Indian tribes. This office has ensured better communication between the Department and Indian tribes.

I. MISSION OF THE OFFICE OF TRIBAL JUSTICE

The mission of the Office of Tribal Justice is to advise the Attorney General on matters that impact Indian tribes, to coordinate the Department's policies and positions on tribal issues, to consult with federally recognized Indian tribes, and to cooperate with appropriate federal, state, and local governmental institutions. The major functions of the Office of Tribal Justice are to:

Communicate and consult with tribal representatives on Department of Justice issues and policies of concern to Indian tribes;

Maintain liaison between the Department and tribal, state, and federal justice systems, including law enforcement;

Promote internal uniformity among divisions of the Department regarding policies, funding, and litigating positions relating to Indian Country; and,

Coordinate, together with the Office of Legislative Affairs, the Department's legislative agenda relating to Indian Country.

Within the Department, the Office coordinates the on-going work of Justice Divisions responsible for Indian issues. This coordination will allow the Department to ensure consistency in Indian policy, maximize limited resources, and better leverage expertise and experience in Indian legal issues.

Outside of the Department, the Office plays a major role in coordinating with federal agencies with responsibilities in Indian Country, such as the Department of the Interior, the Indian Health Service at the Department of Health and Human Services, the Departments of Housing and Urban Development, Agriculture, Education, and the Environmental Protection Agency. OTJ will serve as the primary means within the Department of coordinating federal Indian policy.

The Office of Tribal Justice is responsible for maintaining relations with elected tribal officials. OTJ serves as the clearinghouse for much of the correspondence relating to Indian matters and communicates the Department's efforts and actions on behalf of federally recognized tribes.

II. FUNCTIONS OF THE OFFICE OF TRIBAL JUSTICE

Below is a representative list of some current Department of Justice activities for Indian Country for which OTJ has coordination and liaison responsibilities.

- A. Religious Freedom and the Protection of Sacred Sites and Resources
- B. Environmental Enforcement in Indian Country
- C. IGRA and Tribal Gaming Issues
- D. Funding to Indian Country and other Indian Grant Programs
- E. Tribal Justice Systems, Law Enforcement, Public Law 280 Policy
- F. State and Federal Taxation of Indian Tribes
- G. International Indigenous Peoples Rights

The Office of Tribal Justice enables the Department to address issues that are of

Provided; however, this order of business may be suspended by the Tribal Council for any meeting.

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Section 1. The judicial authority of the Choctaw Nation shall be vested in a Tribal Court which shall consist of three (3)-member Court appointed by the Chief with the advice and consent of the Tribal Council. One (1) such member, the presiding judge, shall be a lawyer duly licensed to practice before the Supreme Court of Oklahoma. Two (2) members may be non-lawyers.

Sec. 2. Members of the Judicial Department must be residents of the Choctaw Nation and must remain residents of the Choctaw Nation during the tenure of their office. The non-lawyer members must be qualified electors of the Choctaw Nation.

Sec. 3. Tribal Court members shall be appointed for a term of three (3) years; provided that initially one (1) member shall be appointed for one (1) year, one (1) member shall be appointed for two (2) years and one (1) member, who is the presiding judge, shall be appointed for three (3) years to establish staggered terms of office.

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ARTICLE XIII - PRIVILEGES, DUTIES AND POWERS OF JUDICIAL DEPARTMENT

Section 1. The Tribal Court shall have exclusive jurisdiction to decide disputes, by vote of two (2) members, arising under any provision of this Constitution or any rule or regulation enacted by the Tribal Council.

Sec. 2. Rules of procedure for the Tribal Court shall be prescribed by the Tribal Council and shall insure the members due process of law.

Sec. 3. The decision of the Tribal Court shall be final.

ARTICLE XIV - FILLING VACANCIES

Section 1. In case of the death, resignation or removal of the Chief, the Assistant Chief shall immediately become Chief for the remainder of the unexpired term. In the event the Assistant Chief shall succeed to the office of Chief, he shall appoint a successor Assistant Chief with the advice and consent of the Tribal Council.

Sec. 2. The Chief shall have power within sixty (60) days after a vacancy occurs in the Tribal Council to fill such vacancy for the remainder of the unexpired term. Such appointee shall meet the same

Healing to Wellness Courts: A Preliminary Overview of Tribal Drug Courts

**Prepared by the
The Tribal Law & Policy Institute**

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Office of Justice Programs, U.S. Department of Justice**

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Background

The drug court movement began in the late 1980s in response to the growing number of drug-related court cases and the resulting overcrowded jails and prisons. The standard law enforcement and corrections policies alone were not having the impact on drug supply and demand that the proponents of the "War Against Drugs" had hoped. The drug court approach departed from the standard court approach by systematically bringing drug treatment to the criminal justice population entering the court system. In the past, courts had referred selected offenders "out" to treatment as a condition of probation. In the drug court, however, treatment is anchored in the authority of the judge who holds the defendant or offender personally and publicly accountable for treatment progress.

Beginning as a grassroots initiative, drug courts have spread across the nation. Local teams of judges, prosecutors, attorneys, treatment providers, law enforcement officials, and others are using the coercive power of the court to force abstinence and alter behavior with a combination of intensive judicial supervision, escalating sanctions, mandatory drug testing, treatment, and strong aftercare programs.

Native American and Alaska Native tribal courts expressed an interest in the drug court approach and have made significant progress in recent years. There are now at least a dozen operational tribal drug courts and at least 26 more are being planned (A listing of these tribal drug courts is provided in Appendix A). Tribal drug courts, however, face critical issues and challenges not generally encountered by state drug court systems.

The U. S. Department of Justice, Office of Justice Programs, Drug Courts Program Office (DCPO) determined early on that the drug court concept would need to be adapted significantly in order to meet the specific needs of Indian Nations. Consequently, in 1997, the DCPO developed a special program to assist Indian Nations that were federally funded to plan or implement drug courts within tribal governments. DCPO charged the National Association of Drug Court Professionals (NADCP) with the task of creating a culturally sensitive training program that would meet the needs of the initial twenty-two Indian Nations who had been awarded drug court grants through the DCPO.

NADCP, in collaboration with DCPO, identified a group of people with expertise concerning tribal courts and/or substance abuse in August 1997 to help design an adapted curriculum for tribal drug court training sessions. These professionals served as an informal advisory committee and as facilitators at the tribal drug court training sessions. The first of a series of tribal specific training sessions was held in Stillwater, Oklahoma in September 1997. These tribal drug court training sessions have served a vital role in explaining the drug court concept and in working with the tribal representatives from each community to adapt the drug court concept to meet the needs of their individual communities. At each session, representatives from tribal courts, law enforcement, treatment providers, tribal government, Native communities, and others come together to develop an action plan for drug court development in their individual community.

In September 1998, DCPO awarded two cooperative agreements in order to provide training and technical assistance for Indian tribes who are planning or implementing Tribal Healing to Wellness Courts. The National Association of Drug Court Professionals (NADCP) is responsible for providing training programs. The Tribal Law and Policy Institute (TLPI) is responsible for providing on-site technical assistance and the development of tribal court specific resource materials. The Drug Court Clearinghouse and Technical Assistance Project at American University compiles and disseminates operational materials developed by both tribal and state drug court programs and compiles and publishes information on drug court activity on an on-going basis.

In December 1998, a formal Tribal Advisory Committee (TAC) was formed (A listing of the Tribal Advisory Committee members is provided in Appendix B). The purpose of the Tribal Advisory Committee is to take an active role in the development of a more comprehensive training and technical assistance program for the tribal drug courts.

Development of tribal drug courts is proving to be a complex task. Tribal drug courts face many critical issues and challenges. Many of these critical issues and challenges are unique to tribal drug courts. Other issues and challenges are problems which are faced by all drug courts, but often present more substantial problems for tribal drug courts

These issues and challenges include the following:

- Tribal courts must address the specific cultural needs of their individual communities, including the challenge of incorporating tribal custom and tradition into the tribal drug court.
- The nature and high volume of alcohol abuse cases in most tribal courts present unique adaptation issues.
- Tribal courts face jurisdictional barriers which complicate their ability to implement an effective drug court process.
- Tribes seeking to establish drug court systems often face a broad range of other issues and challenges, including isolated rural locations, small community issues, lack of resources and services, and lack of funding.

The development of tribal drug courts has, therefore, required special strategies to address these and other issues that have emerged during the course of program planning and implementation. Because tribal drug courts are relatively new and evolving, they are continually adapting to meet the needs of their target populations and their communities.

Congressional Findings Concerning Tribal Justice Systems

In order to understand the critical issues and challenges facing tribal drug courts, it is critical to have a general understanding of the unique role and importance of tribal courts generally. There are approximately 300 tribal justice systems serving the more than 550 federally recognized Indian Nations. These tribal justice systems are the most important visible manifestation of tribal sovereignty.

The United States Congress has repeatedly recognized the unique role and importance of tribal justice systems - most recently when Congress enacted the Indian Tribal Justice Act of 1993 (Public Law 103-176). The Indian Tribal Justice Act included the following specific Congressional findings:

- (1) there is a government-to-government relationship between the United States and each Indian tribe;
- (2) the United States has a trust responsibility to each tribal government that includes the protection of the sovereignty of each tribal government;
- (3) Congress, through statutes, treaties, and the exercise of administrative authorities, has recognized the self-determination, self-reliance, and inherent sovereignty of Indian tribes;
- (4) Indian tribes possess the inherent authority to establish their own form of government, including tribal justice systems;
- (5) tribal justice systems are an essential part of tribal governments and serve as important forums for ensuring public health and safety and the political integrity of tribal governments;
- (6) Congress and the Federal courts have repeatedly recognized tribal justice systems as the appropriate forums for the adjudication of disputes affecting personal and property rights;
- (7) traditional tribal justice practices are essential to the maintenance of the culture and identity of Indian tribes and to the goals of this Act;
- (8) tribal justice systems are inadequately funded, and the lack of adequate funding impairs their operation; and
- (9) tribal government involvement in and commitment to improving tribal justice systems is essential to the accomplishment of the goals of this Act.

Adapting “Drug Court” Term for Tribal Justice Systems

As the tribal drug court programs began developing, there was a need to use a term other than “drug court” to describe the tribal drug court program. It is important that the term used (1) clearly incorporates alcohol abuse cases since alcohol abuse is the predominant drug problem in most Native American and Alaska Native communities, and (2) allows the community to take ownership of the drug court concept.

Individual tribal courts have adopted various terms for their programs. These terms have included “Wellness Court”, “Healing Court”, “Treatment Court”, and “Alternative Court”. Initially, the tribal drug courts were referred to generally as Tribal Wellness Courts. Some tribal drug court personnel, however, were concerned that the term “wellness” might imply that the participants had achieved wellness instead of still striving to achieve it. Ultimately, a tribal advisory group developed the idea of calling the tribal drug courts “Healing to Wellness Courts” since it (1) incorporates two important Native concepts - both Healing and Wellness and (2) promotes the program’s efforts to achieve wellness for the participants.

Although the names “Healing to Wellness Courts” or “Tribal Healing to Wellness Courts” are used as the generic terms for tribal drug courts, individual courts continue to develop individual names for their programs to address the specific needs of their individual communities. In fact, tribal courts are now increasingly using words from their Native languages for their drug courts. These words often mean healing, wellness, or other appropriate Native concepts in their Native language. The use of a Native language name allows the community to take ownership of the drug court concept as adapted to meet the individual needs of their communities.

Defining Drug Courts

The drug court concept involves leveraging the coercive power of the criminal justice system to achieve abstinence and alter criminal behavior through the combination of judicial supervision, treatment, drug testing, incentives, sanctions, and case management. A drug court is a special court docket given the responsibility to handle cases involving drug-using offenders through an extensive supervision and treatment program. Drug court programs bring the full weight of all intervenors (judge, prosecutor, defense counsel, substance abuse treatment specialists, probation officer, law enforcement and correctional personnel, educational and vocational experts, community leaders and others) to bear, forcing the offender to confront their substance abuse problem.

The design and structure of drug court programs are developed at the local level, to reflect the unique strengths, circumstances and capacities of each community. Many sectors of the community are integrally involved in the planning and implementation process of a drug court system, including: criminal justice, substance abuse treatment, law enforcement, educational and vocational entities and community anti-drug organizations.

Drug courts across the country rely on the capability to provide immediate responses to participant progress or lack of progress. If a participant does not comply with program requirements (for example, the participant continues to use alcohol or drugs), sanctions are immediately applied. The most common sanctions typically include increased drug testing, increased court appearances, increased frequency of contact with the treatment provider, community service assignments, and/or short term incarceration. When a participant shows progress in becoming and maintaining sobriety, on the other hand, their accomplishment is also immediately recognized - with praise from the drug court judge and often accolades from others in the drug court program.

The following is a listing of the ten key components identified for state adult drug court programs. A complete analysis of each of these components is provided in *Drug Courts: The Key Components* (OJP Drug Courts Program Office, January 1997). A committee of officials involved in the development of tribal drug courts are currently working to examine these "key components" to determine which might be adapted by Tribal Healing to Wellness Courts as well as what additional components should be added.

Key Component #1: Drug courts integrate alcohol and other drug treatment services with justice system case processing.

Key Component #2: Using a nonadversarial approach, prosecution and defense counsel promote public safety while protecting participants' due process rights.

Key Component #3: Eligible participants are identified early and promptly placed in the drug court program.

Key Component #4: Drug courts provide access to a continuum of alcohol, drug,

and other related treatment and rehabilitation services.

Key Component #5: Abstinence is monitored by frequent alcohol and other drug testing.

Key Component #6: A coordinated strategy governs drug court responses to participants' compliance.

Key Component #7: Ongoing judicial interaction with each drug court participant is essential.

Key Component #8: Monitoring and evaluation measure the achievement of program goals and gauge effectiveness.

Key Component #9: Continuing interdisciplinary education promotes effective drug court planning, implementation, and operations.

Key Component #10: Forging partnerships among drug courts, public agencies, and community-based organizations generates local support and enhances drug court effectiveness.

Defining Tribal Healing to Wellness Courts

Tribal Healing to Wellness Courts are not simply tribal courts which handle drug and/or alcohol cases. Instead, Tribal Healing to Wellness Courts are tribal justice systems which incorporate and adapt the drug court concept to meet the specific needs of their individual communities. Some Indian Nations are establishing adult drug courts. Other Indian Nations are establishing juvenile or family drug courts. Many Indian Nations are planning to ultimately establish both adult and juvenile drug courts.

The following are a series of definitions and descriptions of Tribal Healing to Wellness Courts provided by officials who have been involved in the training and development of Tribal Healing to Wellness Courts:

“The story goes that around the turn of the century a coalition of Hopi elders sent a young Hopi volunteer to the white man’s boarding school as a spy to discover the white man’s weaknesses and report back on how these leaders might wage war on the intruder. The young man went away for several years. He learned to read and write in English, he saw industrialized cities for the first time, and he saw many amazing modern things. When he returned home his message to his elders was that there were so many white people, and many of them were good people with good things to offer, and that the best strategy would be to pick and choose what could better the Hopi world and leave the rest behind. The elders were angry and banished the young man from the village. Over time, and amidst much controversy younger Hopis have begun to pick and choose from the offerings of the outside world to build the Hopi Nation. Despite colonization, piece by piece, generation by generation, Indian people have taken control of their futures as a people by merging the old with the new, by finding the common human threads across cultures and using what works. It has never been easy. It has always been controversial, and the outcomes are never certain. However, the Indian people who engage in these efforts are dedicated to making their communities better. They are willing to be creative, to work hard, to take risks and to keep moving forward in the face of many obstacles. This is true for Indian people that are involved in the tribal drug court movement, and slowly but surely, they are making their communities well.” Pat Sekaquaptewa, Associate Director, Tribal Law and Policy Institute.

“Our tribal leaders are currently engaged in the process of nation building as well as fulfilling their traditional roles as wayshowers. As such, our leaders face enormous responsibilities and obligations in a time when reservations are undergoing rapid cultural, social, economic, and demographic changes. Modern nation-building necessarily entails incorporation of traditional concepts, and careful consideration and importation of successful modern tools which will move tribes forward in their efforts to ensure safe, healthy, tribal communities. At Hualapai, the Jiway Gwavo, or “fight talk”, is a way of positioning the Tribe’s efforts and offensively fighting social problems - instead of simply responding to them once they manifest. At Hualapai, planning, developing, and implementing the drug court model utilizes the Jiway Gwavo by adjudicating alcohol and

drug related cases in a way which requires individual, family, community accountability, and responsibility for the wellness of individual community members. By tailoring and adapting the drug court model for tribal communities, our leaders are creating governmental forms that fight for the health and safety of our people.” Judge Joseph Flies-Away, Hualapai Tribal Court.

“For the Northern Paiute tribes whose traditional dispute resolution systems were destroyed in the late 1800’s and early 1900’s, I think the Drug Court grants project provided my tribe and others with the funding necessary to return, as nearly as possible, to a traditional way of resolving matters which come before their courts. Before non-law trained Indian Agents created what they believed were mirror images of state court systems in the late 1800’s in Nevada, called Court of Indian Offenses, Northern Paiute medicine men resolved not only the disputes at hand, but treated all individuals affected by the dispute. Those Indian Agents, in writing the Commissioner of Indian Affairs, repeatedly said that our medicine men were much more than mere “Indian doctors”, that they were “judges of civil and political disputes of the tribe and family disturbances.” How splendid it is that mainstream society now not only embraces the concept of medication, but the federal government now provides Drug Court funding to tribes to re-establish, in a general sort of way, the traditional means our medicine men used to resolve disputes and re-established harmony in our communities.” Judge Ronald Eagleye Johnny, Chief Judge - Tribal Court, Duckwater Shoshone

“A Drug Court is a council of responsible professional elders and their warriors of both genders coming together in harmony to do battle against both a visible and an invisible enemy - “the disease of alcohol and drug abuse and dependence”. The tactic that this team/council/war party takes is to act as a legal and culturally sanctioned authority that meets the patient/client/tribal member where he/she is at in relation to his/her abusive relationship with mood and behavior altering chemicals. It is understood that the relative has come before the Drug Court Council because it has been determined that the individual will continue to abuse without some sort of holistic intervention. The “Drug Court” basically uses the circle of helpers in assisting the chemically abusing/dependent relative to consider a path of health rather than a path of self-destruction.” Wilbur Woodis, Management Analysis, Indian Health Services Headquarters West

“A Drug Court is an opportunity ... It is an opportunity for offenders, the courts, support services, and the community, to develop a coordinated and responsive partnership for addressing drug related crime.” Michelle Chino, Director of Research and Development, American Indian Development Center

“Drug Court is a partnership between all the professionals in a community who deal with drug/alcohol offenders, judges, law enforcement, prosecutors, defense attorneys, probation officers, treatment providers, etc. This team is developed by bringing together community resources, structured to meet the needs of the individual community, strengthened by communication and cooperation of the team members and maintained by a common goal. It gives a community the opportunity to address the devastation of

drug/alcohol abuse by providing drug/alcohol offenders with a much needed structure and higher level of accountability through education, treatment, case management, and supervision. This is accomplished with a judge or other official who monitors participants' progress and imposes appropriate sanctions and incentives." Janna Cooper Walker, Program Manager - National Association of Drug Court Professionals (NADCP)

"A Drug Court or a Wellness Court - is a system for bringing together the court, service providers and the community to address alcohol and other drug related offenses in a coordinated manner which provides intensive treatment and supervision for offenders. In many ways, it involves using a child protection team type of approach for alcohol and drug related offenses. The drug court concept is a flexible approach, which can be adapted to incorporate tribal customs/traditions and to meet the needs of an individual Indian community." Jerry Gardner, Executive Director, Tribal Law and Policy Institute (TLPI) and Administrator, National American Indian Court Judges Association (NAICJA).

The Role of the Native Community and Tribal Custom and Tradition

For Tribal Healing to Wellness Courts to succeed, the program must be designed to meet the specific cultural needs of the individual Native community to be served. This process requires the involvement of the Native community and the incorporation of tribal custom and tradition into the Tribal Healing to Wellness Court development and implementation process. The process varies substantially from community to community depending upon many factors such as individual historical issues, the land base and economy of each community, whether the community primarily consists of one tribe or is a confederated reservation involving more than one tribe, the specific customs and traditions of the individual tribe or tribes in the community, and the type of available resources.

It is important to note that the drug court approach is a flexible one generally consistent with traditional Native justice concepts and methods. The Tribal Healing to Wellness Courts return to a more traditional method of justice for Indian people by (1) creating an environment that focuses on the problems underlying the criminal act rather than the act itself and (2) stressing family, extended family, and community involvement in the healing process. In traditional Native societies, accountability to the community was a responsibility that was kept in balance through cultural norms and values. The Tribal Healing to Wellness Courts are a modern revitalization of guiding Native principles such as truth, honor, respect, harmony, balance, healing, wellness, apology or contrition, restitution, rehabilitation, and holistic approach. The Tribal Healing to Wellness Court concept can be adapted by a Native community to restore harmony and balance to both the individuals and the community which have been devastated by alcohol and drug abuse.

Tribal Healing to Wellness Courts are addressing community and traditional issues in all aspects of development and implementation. Among the specific methods being utilized are the following:

- 1. Involving Traditional People in the Planning and Development Process.** Many Tribal Healing to Wellness Court programs are involving tribal elders or people with traditional knowledge in all aspects of planning and development in order to ensure that traditional values are respected and included in all aspects of the Tribal Healing to Wellness Court program.
- 2. Establishing a Broad Based Community Development Process.** Tribal Healing to Wellness Court programs are establishing a broad based community development process - including not just the court and treatment providers, but also tribal council, schools, community agencies, community resources, and community representatives - in order to ensure that the program builds the community support needed to succeed.
- 3. Adopting a Traditional Name.** Many Tribal Healing to Wellness Courts are using words in their Native language to name their drug court program, often

involving tribal elders in the identification of an appropriate term. The use of a Native language name allows the community to take ownership of the drug court concept as adapted to meet the needs of their individual communities.

5. **Traditional Healing Processes and Treatment Modalities.** Tribal Healing to Wellness Courts are incorporating a wide range of traditional treatment components into their treatment programs. Traditional healing practices have proven particularly effective in addressing Native alcohol and substance abuse problems. Involvement in traditional, cultural heritage and/or community activities has also proven effective in providing a productive focus in the lives of Native people who have been devastated by alcohol and substance abuse. These traditional treatment components may include traditional healing ceremonies, talking circles, peacemaking, sweats, sweat lodge, visits with a medicine man, sun dance, and vision quest. The specific traditional healing practices, traditional ceremonies, and cultural activities vary substantially from tribe to tribe depending upon the traditional practices of the individual Native community.
6. **Traditional or Community Based Sanctions.** Tribal Healing to Wellness Courts are incorporating community based or traditional sanctions into their drug court programs. Some of these community based or traditional sanctions include community service requirements, spending time with elders or storytellers, and required appearances before traditional forums.
7. **Traditional or Community Based Incentives.** Tribal Healing to Wellness Courts are incorporating community based or traditional incentives into their drug court programs. Most of these community based or traditional incentives include involvement in community and cultural activities and community recognition of participant success in the program (for example, one program is planning to award Pendelton blankets to program graduates in a community ceremony).
8. **Involving Extended Family and Community.** Many Tribal Healing to Wellness Courts are attempting to involve the participant's family, extended family, and the community in all aspects of the program, including the decision to enter the program, the healing practices and ceremonies, the cultural activities, graduation, and aftercare.
9. **Traditional Dispute Resolution Mechanisms.** Many Tribal Healing to Wellness Court programs are incorporating traditional dispute resolution mechanisms. These dispute resolution mechanisms include peacemaking, family conferences, elders panels, appearances before traditional or religious leaders, and other traditional or community based dispute resolution mechanisms. Usually, the traditional dispute resolution mechanism is utilized as a program treatment component. Some tribes have been considering using the traditional

dispute resolution mechanisms as the Tribal Healing to Wellness Court itself, but this has presented problems in that most of these traditional mechanisms function in more of a mediation role without the full coercive judicial authority required under the drug court approach. Other tribes are examining the possibility of using a traditional community leader or a panel of elders - This approach is based on a view that drug court participants may be more likely to conform their behavior to avoid failure in front of a more traditional or community based forum.

11. **Traditional or Spiritual Component.** Tribal Healing to Wellness Courts are incorporating traditional or spiritual components in all aspects of their programs. Many programs, for example, are including invocations at all drug court hearings and group treatment components. Spirituality is central to Native life and a critical component of the healing to wellness process.

Addressing Alcohol and Drug Issues

Tribal Healing to Wellness Courts must face a number of specific alcohol and drug issues which are often more complex and intractable than the issues faced by state drug courts. Some of the most important alcohol and drug issues Tribal Healing to Wellness Courts must address include:

1. **Prevalence of Alcohol Abuse.** Alcohol and/or substance abuse is involved in more than 90% of the criminal cases in most tribal courts. Alcohol abuse is the predominant problem in most Native American and Alaska Native communities. Although many of the current state drug courts address alcohol abuse, it is not the primary focus of most state drug courts. Handling alcohol abuse cases through a drug court approach requires the program to adopt different strategies such as creative approaches to alcohol testing programs and the need to address medical concerns related to alcohol detoxification. The drug court concept, however, presents a potentially effective mechanism for Native American and Alaska Native communities to address the devastating problem of alcohol abuse.
2. **Dealing with Alcohol Prohibition.** Alcohol abuse issues in Native communities have an added dimension in many Native American and Alaska Native communities which are “dry” (the sale of alcohol and often mere possession is prohibited). In these communities, alcohol issues are more closely analogous to other drug issues where mere possession is illegal along with alcohol dealing or bootlegging. Programs in these communities must develop strategies for determining the difference between mere possession of alcohol and alcohol abuse which requires drug court processing. Furthermore, program staff on completely dry reservations are required to abstain from all alcohol use.
3. **Fetal Alcohol Syndrome (FAS) and Fetal Alcohol Effects (FAE).** In many communities, the significant number of drug court participants with fetal alcohol syndrome (FAS) or fetal alcohol effects (FAE) is an issue which must be addressed. Drug court participants suffering from FAS or FAE may not fully understand and comprehend the consequences of their actions. These participants may have added difficulties dealing with their substance abuse problem and conforming to the program expectations and requirements. Consequently, the court and program staff must be provided with training concerning FAS and FAE and develop an appropriate treatment strategy to force abstinence and alter the behavior of FAS and FAE participants.
4. **Dealing with Abuse of Other Drugs.** Most Native communities must deal with abuse of other drugs beyond alcohol. These problems are usually more serious in Native communities which are near major urban centers and/or near the borders with Mexico where smuggling problems are greater. In these

communities, the issues related to specific drugs are more similar to those issues which the state drug courts must confront.

6. **Inhalant Abuse.** There is at least one additional drug abuse issue which presents special challenges for many Native communities. Many Native communities have substantial problems with toxic inhalants. In these communities, the program must develop an appropriate treatment strategy, strategies for dealing with the risk of permanent brain damage, and develop creative approaches to drug screening.

Addressing Jurisdiction and Resource Issues

Tribal Healing to Wellness Courts must face a number of jurisdiction and resource issues which are often more complex and intractable than the issues faced by state drug courts. The following are some of the most critical jurisdiction and resource issues:

1. **Lack of Criminal Jurisdiction over Non-Indians.** The United States Supreme Court has ruled that tribal courts do not have criminal jurisdiction over non-Indians (*Oliphant v. Suquamish Tribe*, 435 U.S. 313, 1978). This ruling greatly limits the ability of tribal justice systems to address criminal offenses involving alcohol or substance abuse which are committed by non-Indians living on Indian reservations, including non-Indian family members. Many Indian Nations, however, have developed alternative methods of handling these cases, including the use of civil court processing, civil forfeiture, and exclusion. Tribal Healing to Wellness Courts must also use these alternative methods in order to handle alcohol and drug abuse cases involving non-Indians.
2. **Public Law 280.** Public Law 83-280 provided concurrent state jurisdiction over many criminal and civil actions on Indian reservations in selected states. As a practical matter, it has also inhibited the development of tribal criminal justice systems on many reservations in Public Law 280 states. Consequently, many Indian Nations in Public Law 280 states face additional jurisdictional problems, including the necessity of processing criminal offenses involving alcohol and drug abuse as civil offenses and the risk that the offender may be subject to proceedings in both tribal and state court. These Public Law 280 issues can be addressed through strategies such as the development and enhancement of tribal criminal justice systems and improved coordination and cooperation between tribal and state court systems.
3. **Sentencing Limitation in the Indian Civil Rights Act.** The Indian Civil Rights Act limits tribal court sentencing authority to “in no event impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of one year or a fine of \$5,000 or both” (25 U.S.C. 1302(7)). This sentencing limitation significantly limits the coercive power of tribal courts, especially when it comes to requiring drug court participants to complete a phased treatment program which may last more than one year. (Note: The more serious criminal charges are generally handled in the federal court system.) Tribal Healing to Wellness Courts have been developing creative procedures such as suspended imposition of sentences, consecutive sentencing, and the reliance upon community pressures to ensure participant completion of the treatment program.
4. **Historically Strained Relationship with State Courts and State Agencies.**

Although it varies from reservation to reservation, many Tribal Healing to Wellness Courts have to address an historically strained relationship with nearby state courts and state agencies. Some of the Tribal Healing to Wellness Courts have already had success, however, in working together with state entities on drug court issues. For example, tribal drug courts have already successfully established cross deputization agreements with nearby state jurisdictions. There is even one community in which the tribal and state drug courts are being developed together in a closely coordinated manner.

6. **Tribal Members Charged with Off-Reservation Crimes.** In many communities, especially those with a limited land base, tribal members are often charged with criminal offenses involving alcohol or drug abuse in off-reservation state court systems. Some Tribal Healing to Wellness Courts, however, have already had success in reaching agreements with the state courts which allow the Tribal Healing to Wellness Courts to handle these cases.
7. **Lack of Funding for Tribal Justice Systems.** When Congress enacted the Indian Tribal Justice Act in 1993 (Public Law 103-176), it included specific findings that “tribal justice systems are inadequately funded, and that the lack of adequate funding impairs their operation”. The Act promised \$58 million in additional funding annually for tribal justice systems, but Congress has yet to appropriate funds under the Act. In fact, tribal justice systems currently receive less Bureau of Indian Affairs funding than they received in 1993 (approximately \$14 million annually for 300 tribal justice systems). The Drug Courts Program Office implementation grants, however, are providing significantly increased funding for Indian Nations who are implementing Tribal Healing to Wellness programs.
8. **Lack of Staff, Resources, and often Jail Facilities.** This lack of funding also results in a substantial lack of staff and resources. Many tribal justice systems also have no access to jail facilities, or have to pay state jails at a daily rate to confine tribal offenders. Consequently, Tribal Healing to Wellness Courts must often rely on creative strategies, such as community pressure and sanctions, to encourage offenders to enroll in the program and to sanction non-compliance.
9. **High Juvenile Population.** Many American Indian and Alaska Native communities have high juvenile populations, often more than 50% of the reservation population is under the age of 18. As a result, many Tribal Healing to Wellness Courts are choosing to establish juvenile drug courts first. These juvenile Tribal Healing to Wellness Courts are already having significant success in establishing innovative programs to address the specific needs of tribal juvenile participants.

- 10. Addressing Rural and Small Community Issues.** Most Tribal Healing to Wellness Courts are in small communities situated in isolated rural locations. Generally, these courts must address issues similar to other small and rural drug courts concerning lack of accessible resources and other increased barriers to coordination and collaboration. Strategies to address these issues are generally similar to those of other small and rural drug courts, including resource sharing and multiple roles for program staff.
- 11. Violent Offender Prohibition Problems.** Many of the jurisdiction and resource issues identified above work together to present uniquely difficult problems for Tribal Healing to Wellness Courts in complying with the prohibition on handling violent offenders with federal drug court funds. Many Tribal Healing to Wellness Courts find that most defendants with alcohol and substance abuse problems come to the court's attention as the result of a violent act, especially domestic violence. Furthermore, tribal courts do not have the coercive authority of a state court system where many of the participants may be facing long jail terms if they fail to comply with the drug court program requirements. The Drug Courts Program Office, the National Association of Drug Court Professionals, and the Tribal Law and Policy Institute are working with other federal agencies to develop possible strategies to address these issues.

Conclusion

The Justice Programs Office at American University reports that approximately 140,000 drug-using offenders have participated in drug court programs since their inception in 1989. In 1997, the Government Accounting Office (GAO) reported that 71% of all offenders entering drug courts since 1989 have either successfully completed their drug court program or are at the present time actively participating in the program. The Columbia University Center on Addiction and Substance Abuse (CASA, 1998) has concluded a definitive study of drug court research, evaluations, and literature, finding that drug courts provide the most comprehensive and effective control of the drug-using offenders' criminality and drug usage while under the court's jurisdiction.

Alcohol and/or substance abuse is involved in more than 90% of the criminal cases in most tribal courts. These cases have always been very difficult to handle. Often, the same people appear before the tribal court over and over again, and the court has very limited options and resources to effectively address these cases. Because the standard court process does not generally subject either the adult or juvenile substance abuser to intervention measures that provide the sanctions and services necessary to change their behavior, most of these people repeatedly cycle through the system.

The drug court concept, however, has proven effective in addressing these difficult drug and alcohol cases. The drug court approach is a flexible concept which is consistent with traditional Native justice concepts and methods. Moreover, it can readily be adapted to meet the specific needs of individual Native communities.

Tribal courts have only recently adapted and implemented the drug court concept, but the Tribal Healing to Wellness Courts are already achieving positive results. The dozen operation Tribal Healing to Wellness Courts are reporting successful results consistent with the state drug court findings (see the attached results of the Tribal Drug Court Survey). With adequate support and assistance, the drug court concept is proving to be an effective tool for addressing criminal justice issues in Indian Country.

Where Do I Find More Information?

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Appendix A - Tribal Healing to Wellness Courts

Appendix B - Tribal Advisory Committee for Tribal Healing to Wellness
Courts

Appendix A
Tribal Healing to Wellness Courts

Alabama

1. Poarch Band of Creek Indians, Atmore - 97 Planning, 98 Implementation*

Alaska

1. Chevak Traditional Council, Chevak - 97 Implementation
2. Organized Village of Kwethluk, Kwethluk - 97 Implementation

Arizona

1. Salt River Pima-Maricopa Indian Community, Scottsdale - 95 Planning, 99 Implementation
2. Hualapai Tribe, Peach Springs - 97 Planning, 99 Implementation*
3. Gila River Indian Community, Sacaton - 97 Planning
4. Pascua Yaqui Tribe, Tucson - 97 Implementation*
5. Yavapai-Apache Nation, Camp Verde - 98 Planning
6. Navajo Nation, Window Rock - 98 Implementation

Idaho

1. Shoshone Bannock Tribes, Fort Hall - 97 Implementation*

Maine

1. Passamaquoddy Tribe, Indian Township - 97 Implementation
2. Penobscot Nation, Old Town - 98 Planning

Michigan

1. Sault Saint Marie, Sault Saint Marie - 98 Planning

Montana

1. Blackfeet Tribe, Browning - 97 Planning, 98 Implementation*
2. Fort Belknap Community Council, Harlem - 97 Implementation*
3. Fort Peck Assiniboine & Sioux Tribal Court, Popular - 97 Implementation*
4. Northern Cheyenne Tribe, Cheyenne - 98 Planning

Nebraska

1. Omaha Tribe of Nebraska, Marcy - 98 Planning

Nevada

1. Duckwater Shoshone (not funded under federal drug courts grant)*

New Mexico

1. Pueblo of Taos, Taos - 98 Implementation
2. Mescalero-Apache Tribe, Mescalero - 98 Planning
3. San Juan Pueblo Tribe, San Juan - 98 Planning

North Carolina

1. Eastern Band of Cherokee, Cherokee - 97 Planning, 98 Implementation*

North Dakota

1. Turtle Mountain Band of the Chippewa - 97 Planning, 98 Planning, 98 Implementation*
2. Spirit Lake Sioux Tribe, Spirit Lake - 98 Planning

Oklahoma

1. Muscogee (Creek) Nation, Okmulgee - 95 Planning, 98 Implementation
2. Iowa Tribe of Oklahoma, Perkins - 98 Planning

Oregon

1. Confederated Tribes of the Umatilla Indian Reservation, Pendelton - Planning 97*

South Dakota

1. Flandreau Santee Sioux Tribe, Flandreau - 97 Planning, 99 Implementation
2. Lower Brule Sioux Tribe, Lower Brule - 97 Planning
3. Oglala Sioux Tribal Public Safety, Pine Ridge - 97 Planning
4. Sisseton Wahpeton Sioux Tribal Court, Agency Village - 97 Implementation*
5. Yankton Sioux Tribal Court, Wagner - 97 Implementation
6. Rosebud Sioux Tribe, Rosebud - 98 Planning

Washington

1. Makah Tribal Council, Neah Bay - 97 Planning, 98 Implementation*
2. Spokane Tribe of Washington - 99 Implementation*

Wisconsin

1. Stockbridge-Munsee Tribe, Bowler - 98 Planning
2. Menominee Indian Tribe of Wisconsin, Keshena - 98 Planning

Total Native American Jurisdictions: 38

Total Operational Tribal Drug Courts: 14

*Indicates Operational Drug Court

Appendix B
Tribal Advisory Committee (TAC)
for
Tribal Healing to Wellness Courts

Donna Arch, Court Counselor, Eastern Band of Cherokee Indians (North Carolina)

Caroline Cooper, Director, Drug Court Clearinghouse, American University
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Brenda C. Desmond, Special Master, Missoula County Judicial District (Montana)

James Edwards, Caseworker/Consultant, Cook County Social Casework Department
(Illinois)

Reba Elders, Treatment Specialist, Eastern Band of Cherokee Indians (North Carolina)

Hon. Joseph Flies-Away, Associate Judge, Hualapai Tribal Court (Arizona)

Herman (Chico) Gallegos, Defense Attorney, Las Cruces Juvenile Drug Court (New
Mexico)

Jerry Gardner, Executive Director, Tribal Law and Policy Institute (California)

Hon. Ronald E. Johnny, Chief Judge, Duckwater Shoshone Tribal Court (Nevada)

Dionne Johnson, Program Manager, Drug Courts Program Office (Washington, D.C.)

Hon. B.J. Jones, Chief Judge, Sisseton-Wahpeton Tribal Court (North Dakota)

Kimberly Martus, Tribal Justice Consultant, Chevak Tribal Drug Court (Alaska)

Ada Pecos Melton, President, American Indian Development Associates (New Mexico)

Edward Reina, Chief of Police, Reno-Sparks Indian Community (Nevada)

Marilyn Roberts, Director, Drug Courts Program Office (Washington, D.C.)

Dr. Kenneth Robinson, President, Correctional Counseling, Inc. (Tennessee)

Pat Sekaquaptewa, Associate Director, Tribal Law and Policy Institute (California)

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Hon. Don Sollars, Tribal Judge Emeritus (Montana)

Susan Spotted Bear, Program Director, Blackfeet Tribal Alternative Court (Montana)

Hon. Irene Toledo, District Judge, Navajo District Court (New Mexico)

Edward Vance, Tribal Court Prosecutor (Arizona)

Rita Weeks, Court Administrator, Fort Peck Tribal Court (Montana)

Wayne Weston, Treatment Specialist, Cangleska (South Dakota)

Donna White, Court Administrator, Poarch Creek Tribal Court (Alabama)

Hon. Earnest White, Judge, Poarch Creek Tribal Court (Alabama)

L Winnemucca, Substance Abuse Counselor, 16th Judicial Circuit Court (Florida)

Wilbur Woodis, Data Manager/Counselor, Indian Health Service (New Mexico)

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Jerry Gardner – Tribal Law and Policy Center

Judge Gros Ventre – Crow Tribal Courts

Dale Old Horn – Crow Studies Instructor Little Big Horn College

Melissa Schlichting – Crow Tribal Courts Administrator

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Kenny Shane – Crow Tribe Juvenile Prosecutor

Steve Stevens – Crow Tribe Administration Advisor

Tyrone Ten Bears – Crow Tribe Administration Advisor

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