

A Survey of State and Tribal Courts



Presented

to

**Conference of Chief Justices
Tribal Relations Committee**

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OVERVIEW

This paper looks at the various tribal court systems present within the states and territories. It also examines the interactions between the state and tribal court systems and provides insight into these relationships. It is based on a survey completed July 2001 to which 45 states responded. The first section includes simple charts of the tribal courts present within the states and the type of tribal courts found there (trial, appellate). The first section also includes the findings of the survey. The second section presents the responses of some of the state courts and their interaction with their tribal courts. The third section is an addendum which includes an address given by Justice Sandra Day O'Connor to the Oklahoma Sovereignty Symposium which meets every year.

Tribal Courts in the State?

Alabama	NR
Alaska	Yes
Arizona	Yes
Arkansas	NR
California	Yes
Colorado	Yes
Connecticut	NR
Delaware	No
District of Columbia	NR
Florida	NR
Georgia	No
Hawaii	No
Idaho	Yes
Illinois	No
Indiana	No
Iowa	No
Kansas	NR
Kentucky	No
Louisiana	Yes
Maine	Yes
Maryland	No
Massachusetts	No
Michigan	Yes
Minnesota	Yes
Mississippi	Yes
Missouri	No
Montana	Yes
Nebraska	Yes
Nevada	Yes
New Hampshire	No
New Jersey	No
New Mexico	Yes
New York	Yes
North Carolina	NR
North Dakota	Yes
Northern Mariana Islands	No
Ohio	No
Oklahoma	Yes
Oregon	Yes
Pennsylvania	No
Puerto Rico	No
Rhode Island	Yes
South Carolina	No
South Dakota	Yes
Tennessee	No
Texas	Yes
Utah	Yes
U.S. Virgin Islands	No
Vermont	No
Virginia	No
Washington	Yes
West Virginia	No

National Center for State Courts
Government Relations Office

Wisconsin	Yes
Wyoming	Yes

Summary

Yes: 24 No: 23 No Response (NR): 7

Types of Tribal Courts

	Trial	Appellate
Alaska	X	
Arizona	X	X
California	X	
Colorado	X	X
Idaho	X	X
Louisiana	X	X
Maine	X	X
Michigan	X	X
Minnesota	X	X
Mississippi	X	X
Montana	X	X
Nebraska	X	
Nevada	X	X
New Mexico	X	X
New York	X	X
North Dakota	X	X
Oklahoma	X	X
Oregon	X	X
South Dakota	X	X
Texas	X	
Utah	X	
Washington	X	X
Wisconsin	X	X
Wyoming	X	X

Total:

24

19

FINDINGS

A LARGE MAJORITY OF STATES WITH TRIBAL COURTS REPORT GOOD RELATIONSHIPS WITH THEIR TRIBES.

Of the 24 states with tribal courts, only 2 reported that they did not have good relationships with the tribes. Many of these 24 states received funding from the State Justice Institute (SJI) in the early 1990s to organize state/tribal forums.

STATE-SPONSORED FORUMS CONTINUE TO BE HELD

Of the 24 states with tribal courts, 17 have held joint state/tribal forums. These are often called consortiums, coordinating committees, task forces, yet they serve the same purpose: to bring together representatives of the state and tribal court system. Some continue to meet regularly such as the very well attended Oklahoma Sovereignty Symposium. Some, but not all of the forums, began because of SJI funding. However, most have continued even though SJI funding has ended. The states that have held these forums in the past appear to have good to very good relationships with their tribes.

VERY FEW STATES HAVE RULES ON RECIPROCITY

Only three of the states with tribal courts report having a rule on reciprocity with tribal governments. State courts will, for example, adopt a court rule providing for recognition of tribal court judgments on a mandatory (full faith and credit) or discretionary (comity) basis. Or states will also adopt a uniform statute providing for reciprocal recognition of certain tribal court judgments. Tribes also approve their own reciprocity rules which makes extradition and other inter-legal processes easier.

TOP TWO CHALLENGES: JURISDICTIONAL, INDIAN CHILD WELFARE ACT

Far and away, the most frequent issue identified as a challenge were jurisdictional disputes between tribes and states. Their second most frequent issue cited as a challenge was the questions arising around the Indian Child Welfare Act (ICWA). These two issues were the most frequently mentioned for states with tribal courts. Others included: access to state courts by tribal members, mistrust, hunting/fishing activities and monetary shortfalls.

In Their Own Words

The following responses are from the survey's question #3 which asks for important experiences and interactions the state courts have had with tribal courts:

Arizona

The Arizona Judiciary has had good success working through the Court Forum approach with tribal judges to address issues of concern. We are as inclusive as possible. Any chief judge is welcome to be a member of the Forum and any judge or tribal official is welcome to participate in Forum activities. We have also had success working on some issues with tribal attorneys and with the association of tribes in Arizona, the Intertribal Council of Arizona. -David Withey Chief Counsel

Alaska

We have 217 tribes in Alaska and we do not have a system of reservations. Our tribal courts are unevenly receiving significant federal grant monies to provide training to tribal court judges. We conducted a very successful joint state - tribal judicial training on the issue of child development and the best interest of the child. State court judges also participated or panels in the federally provided training which was coordinated by the state judicial college in Reno. -Dana Fabe dfabe@appellate.courts.state.ak.us

California

The Chief Justice of California led the way by visiting California's tribal courts several years ago. Additionally, the California Judicial Council's Advisory Committee on Access and Fairness, conducted two roundtable discussions on legal issue affecting Native Americans in 1996 and 1998. Invitees included members of Native American communities and others involved in legal advocacy, health and family services issues, and the development of tribal courts. The committee held a third roundtable in August 1999 on the reservation of the Sycuan Band of the Kumeyaay Nation. The participants (1) discussed the present status of Native American in California, (2) explored issues and concerns in establishing tribal courts, (3) discussed the Indian Child Welfare Act, and (4) examined the factors that affect fair access to state courts by Native Americans. This conference led to a number of new initiatives for the committee that are currently in development. -Arlene Tyler, Attorney, California AOC arline.tyler@jud.ca.gov

Colorado

With regard to important experiences I have had with the tribal courts, we have had some issues arise in state court regarding the authority of the States of Colorado to revoke driving privileges of tribal members offenses which occur on the reservation. While this was a source of some dispute in years past, the tribe and states have since enacted some type of compact which addresses these issues, and I have not had to deal

with them in my court for quite some times. The most common interaction between my court and tribal court has occurred in domestic cases where jurisdictional issues have arisen, i.e. an Indian married to a non-Indian, with the Indian party filing for dissolution in tribal party filing for dissolution in state court. I have worked cooperatively with the tribal judges in resolving these jurisdictional disputes, and I believe we have managed to do so respectfully, in the interest of the interest of the parties and in recognition of both governments' sovereignty. Again, I have no similar experiences concerning the Ute Mountain Ute Tribe. -Gregory Lyman Chief Judge, 6th Judicial District

Colorado

I have worked as an interim tribal judge for the UTE MT. UTES Tribe. I have also represented clients in the UTE MT. Tribal courts. As a district court Judge, I frequently encounter jurisdictional issues, involving tribal laws. It would be of personal benefits to strength the relationships between tribes and states to share training and knowledge at joint meetings. -Judge Sharon Hansen Sharon.Hansen@judicial.state.co.us

Idaho

In 1994, Idaho Supreme Court sponsored the formation of a state Court/Tribal Court Forum to facilitate the interaction of state judges and tribal judges. The Forum provides an opportunity for a dialogue and exchange of ideas regarding a variety of issues, including boundary jurisdiction and reciprocity matters. -Fred Gabourie, Chief Tribal Judge, Kootenai Tribal Court whitedeer@srpynet.com

Kansas

My experience with tribal courts is limited. However, I have worked with Judge Peter Beekman, the Kickapoo and Sac and Fox tribal court judges, on the Supreme Court Task Force on Permanency Planning. His participation provides important tribal information to all members of the Task Force and helps define child welfare policy and training for the state. -Dawn Spencer spencer@kscourt.org

Louisiana

The Judicial Administrator's Office is unaware of any "important experiences" the Supreme Court has had our state's tribal courts. I am, however, attaching an opinion from the Louisiana Attorney General which may be of interest. In this opinion (No. 90-379A), the Attorney General concludes that Louisiana law allows a city judge to serve as a part-time tribal court judge. In addition, I am attaching three Louisiana intermediate appellate court decision containing discussions of the interplay of state court and tribal court jurisdiction: Owens v. Wilock, 690 So. 2nd 948 (La. App. 2 Cir. 1997); Hampton v. J.A.L., 658 So. 2nd 331 (La. App. Cir. 1995); and Barbary v. Dauzat, 576 Ao. 2nd 1013 (La. App. 3 Cir. 1991). -Richard Robinson, Staff Attorney Rrobinson@lajao.org

Maine

(I served as) Former chief Judge of Pwedsiol Tribal Court & Chairperson-State /Tribal Court Coordinating Committee. -Hon. Andrew W. Mead, Chief Justice, Maine Supreme Court

Michigan

I am enclosing a copy of an article I authored, "Michigan's Story: State and Tribal Courts Try to do the Right Thing," which describes the history and current status of our interaction with tribal courts. Also a listing of tribal courts from our Bar Journal should enable you to contact those courts directly. -Michael F. Cavanagh, Justice, Michigan Supreme Court

Michigan

Convened tribal court/state court forum; Adopted court rule regarding reciprocity; File and distribute tribal court rules/ordinances; Invite tribal court judges to conferences and training offered to state court judges; Provide tribal courts with administrative resources through the State Court Administrative Office. -William H. Newhouse, Assistant Director, Trial Court Services, MI Supreme Court

Minnesota

I am the Chairman of the State Court Committee of the Tribal Court/State Court Forum. The purpose of the Tribal Court/State Court Forum is for state court and tribal judges to work together toward common goals. -Hon. Robert H. Schumacher, MN Court of Appeals carol.okeefe@courts.state.mn.us

Mississippi

Choctaw Nation recently approached us to get advice on how to set up an appellate court. -Rick Patt, Acting Dir., Admin. Office of the Courts

Montana

I am submitting a map of the various tribes found within our state and the boundaries of each. -Chief Justice Karla M. Gray. kgray@state.mt.us

Nebraska

When the Winnebago Tribe set up their court system following retrocession. I was the AOC staff person who consulted with them over a period of months. Fascinating! Have also collaborated with the Omaha and Winnebago tribes on ICWA and other issues of intergovernmental relations. -Janice Walker, NE Administrative Office of the Courts jwalker@nsc.state.ne.us

Nevada

While we have not had any specific experiences with tribal courts we do recognize that there are issues of sovereignty and full faith and credit between state and tribal courts. We have also run into a problem in this State where tribal law enforcement are issuing citations to non-natives on state roads that run through Indian reservations. -Karen Kavanau, State Court Administrator kkavanau@nvcourts.state.nv.us

New Mexico

Included materials describing the New Mexico Tribal - State Judicial Consortium's efforts. -Robert Klein, Project Manager, Admin. Office of the Courts aocrjk@nmcourts.com

North Dakota

The North Dakota Supreme Court participated in the Tribal/State Forum process initiated and supported the Conference of Chief Justices and the National Center of State Courts. Among other things, the North Dakota Forum, comprised of tribal and state judges, recommended to the Supreme Court a proposed rule on recognition and enforcement of tribal court judgments. The rule was adopted as North Dakota Rule of Court 7.2 (copy attached). The North Dakota Forum also recommended to the Supreme Court a proposed administrative rule establishing a Supreme Court Committee on Tribal and State Court Affairs. The rule was adopted as Supreme Court Administrative Rule 37 (copy attached). The Committee on Tribal and State Court Affairs, comprised of state and tribal judges and court representatives and public members, has served as a vehicle for ongoing discussion of issues that are of concern to state and tribal courts. The Committee meets periodically on the state's four reservations. The Committee developed proposed legislation, subsequently enacted, which provides for the off-reservation recognition and enforcement of tribal arrest warrants, in essence an extradition process. See North Dakota Century Code Chapter 29-06.1 (copy attached).

The Committee also developed proposed legislation, subsequently enacted, which provides for the full faith and credit recognition and enforcement of foreign domestic violence protection orders. See North Dakota Century Code Section 14-07.1-02.2 (copy attached). The Supreme Court is also participating in an effort by state, local, and tribal officials to establish a computer-based method of providing the full-text of domestic violence protection orders across jurisdictional lines.

The Supreme Court also recently held oral arguments on the Turtle Mountain Band of Chippewa Reservation. This is part of an ongoing Supreme Court effort to hold oral arguments in area communities. -Jim Ganje, Office of State Court Administrator jaganje@ndcourts.com

Oklahoma

For 14 years the Oklahoma Supreme Court, the Oklahoma Indian Affairs Commission, and the State Arts Council have hosted the Sovereignty Symposium -- a three-day legal

forum which allows Tribal, State and Federal Government officials and lawyers to keep up-to-date on Indian Law issues. I have served as a co-coordinator of the conference since its inception. Also, I am submitting a copy of the proceedings of the 2000 Sovereignty Symposium. -Yvonne Kauger, Justice, Oklahoma Supreme Court
Yvonne.Kauger@oscn.net

Oregon

Oregon's Juvenile Court Improvement Project (JCIP) is actively working with tribal courts and tribal judges to form effective partnerships with the state court system. Each year, the JCIP holds an annual conference for juvenile court judges to provide updates on new law and practices, provided a forum for judges to discuss best practices in child abuse and neglect cases, and to create champions for juvenile court reform. Tribal Judges are invited to the conference and their attendance is funded by the JCIP. Tribal and state judges are discussing the formation of an informal working group to keep the conversation going throughout the year. The JCIP has also provided training for tribal courts on implement of ASFA.

The Citizen Review Board program is working with the Tribes and tribal courts to develop principles and expectations for active efforts findings made by the boards and the courts. While we all agree there should not be a specific definition for active efforts, we do believe, along with our partners in the Tribes, that laying out principles and expectations will help courts and review boards better ensure that our state child welfare agency is meeting active efforts requirements. -Nancy Miller, Director, Juvenile Court Improvement Program
Nancy.B.Miller@ojd.state.or.us

South Dakota

We have had at least 2 joint judicial conferences with the state and tribal court judges. We routinely invite tribal judges to our annual SD in-state judicial training events; similarly we invite tribal probation officers to attend training sessions conducted annually for our court services staff. We have an on-going joint committee of 3 state and 3 tribal judges that meet periodically to discuss issues of mutual concern. We have a standing offer to provide free technical assistance to tribal court clerk and administrative offices. Some of the tribes have utilized that opportunity. In some areas of the state there are formal and informal agreements for sharing of probation supervision services. We are working closely with a committee of tribal court officials to discuss issues that flow from the inconsistencies in ICWA and VAWA, and other similar concerns. We are in the process of planning a joint training session for tribal and state judges on these federal statutes. At our request, the State Bar has included the addresses and phone numbers of all tribal courts in its directory of members and state judicial offices. I invited all tribal chief justices to the opening ceremonies of the 2000 CCJ/COSCA annual meeting in Rapid City. We typically send a delegation of judges to the annual Oklahoma Sovereignty Symposium. -Chief Justice Robert Miller
Robert.Miller@uj.s.state.sd.us

Utah

We have created a tribal/state/federal court forum project by which representatives of the various court systems come together to discuss issues of mutual concern and ways in which those issues can be addressed. In the Navajo Nation courts, we have discussed a project where a state district court judge will serve as a domestic violence commissioner for the Navajo Nation court. This arrangement would give Navajo Nation members better access to courts within the state. We established a process by which domestic violence orders can be sent directly to the state network. We have also discussed projects to ensure diversity on juries in state courts and tribal courts and we have discussed the possibility of assisting the Navajo nation with establishing a court site within the state. With the Ute Tribal court, we have discussed information sharing between the district and juvenile courts. We have also discussed issues of supervising juveniles who cross-county and reservation boundaries. The State Attorney General's Office, the Uintah County Attorney's Office, and the Ute Indian Tribe, also negotiated an agreement in which all the parties agreed that certain misdemeanors would be heard by the Tribal courts, while other misdemeanors would be heard by the district courts. This agreement gave significant recognition to the sovereignty of the Ute tribe. -Brent M. Johnson, Administrative Office of the Courts brentj@emailutcourts.gov

Washington

This Justice served as a Tribal Court judge for 12 years prior to election to the Supreme Court so my experience is direct. I am also a member of Northwest Tribal Judges Association and participated in national training in that area. -Susan Owens, Justice, Washington Supreme Court S.Owens@courts.wa.gov

Wisconsin

A coordinated effort in Wisconsin has its roots in the National Conference of Chief Justices. The Conference initially wished to address civil jurisdiction issues between state and tribal courts and with the assistance of the National Center for State Courts and the State Justice Institute, established a national 13 member coordinating council to guide these efforts. The purpose of a forum is to seek workable solutions that mitigate intersystem conflicts and reduce or forestall unnecessary and divisive litigation.

In Wisconsin the need to address areas of conflict began with preliminary issue-identification efforts at the 1998 Judicial Conference. Subsequently the Wisconsin Supreme Court established a planning committee comprised of state, tribal and federal court judges and officials to develop the infrastructure for a Wisconsin forum for the purpose of addressing civil and criminal jurisdictional issues relevant to each court system.

The committees' studies and discussions included Public Law 280, concerns about full

faith and credit, comity among court systems and the application of the Indian Child Welfare Act and intergovernmental agreements and other issues of mutual concern.

During the forum conference On Common Ground, over 60 issues and problems for future forum review and action were identified. Subsequent to the conference a subcommittee of forum members and staff was given the task of coordinating the responses to the issues identified at the conference. Upon review and further consideration, the Supreme Court established a small working group to maintain the momentum of the forum. This group, the State/Tribal Federal Court Forum Study Committee, was given the task of reviewing the issues identified during the conference along with any others that should be brought to the full Forum's attention. These issues would be considered as discrete projects and addressed by the full Forum committee for further discussion and resolution.

The Forum facilitates communication and provides an opportunity for the courts to address issues together. The commitment of the Forum to fulfill its goals is evidenced by the interest and continued participation by the Forum members. The committee has worked for over a year to organize a process that will ensure that all of the issues are adequately and eventually addressed in some fashion.

*The importance of moving forward has been underscored by the Wisconsin Supreme Court's decision in Teague v. Bad River Band of Lake Superior Tribe of Chippewa Indians (612 N.W.2d 709) where they state that the development of jurisdictional "protocols between state and tribal courts in Wisconsin is a matter of high priority and should be pursued." (emphasis added). The court further noted "the existence of the state, tribal and federal court forum, jointly sponsored by this court, the Wisconsin Tribal Judges Association and federal judges from Wisconsin" and stated the court's belief "that this is a logical forum for the development of protocols governing the exercise of jurisdiction between the state and tribal courts." (Id. At 718 n.11). These efforts must move forward or stagnate, therefore the continuance of good faith and the expression of comity needs to be punctuated by commitment, mutual respect, and funding. -Patrick Brummond, Deputy Director of State Courts
Patrick.brummond@courts.stat.wi.us*

ADDENDUM 1

INDIAN SOVEREIGNTY SYMPOSIUM IX

Tulsa, Oklahoma

June 4, 1996

By

Sandra Day O'Connor

Associate Justice, Supreme Court of the United States

"Lessons from the Third Sovereign:

Indian Tribal Courts

Today, in the United States, we have three types of sovereign entities--the Federal government, the States, and the Indian tribes. Each of the three sovereigns has its own judicial system, and each plays an important role in the administration of justice in this country. The part played by the tribal courts is expanding. As of 1992, there were about 170 tribal courts, with jurisdiction encompassing a total of perhaps one million Americans.

Most of the tribal courts that exist today date from the Indian Reorganization Act of 1934. Before the Act, tribal judicial systems were based around the Courts of Indian Offenses, which were set up in the 1880's by the federal Office of Indian Affairs. Passage of the Indian Reorganization Act allowed the tribes to organize their governments, by drafting their own constitutions, adopting their own laws through tribal councils, and setting up their own court systems. By that time, however, enormous disruptions in customary Native American life had been wrought by factors such as forced migration, settlement on the reservations, the allotment system, and the imposition of unfamiliar Anglo-American institutions. Consequently, in 1934, most tribes had only a dim memory of traditional dispute resolution systems and were not in a position to recreate historical forms of justice. Swift replacement of the current systems by traditional dispute-settling institutions was not possible. Therefore, while a few tribes, such as the New Mexico Pueblos, have "traditional courts" based on Indian custom, most modern reservation judicial systems do not trace their roots to traditional Indian fora for dispute resolution. Rather, because the tribes were familiar with the regulations and procedures of the Bureau of Affairs, that model provided the framework for most of the tribal courts. Nevertheless, many tribes today attempt to incorporate traditional tribal values, symbols, and customs into their courtrooms and decisions. Some tribal courts, in proceedings that otherwise differ little from what would be seen in State or Federal court, have incorporated traditional features of Indian dispute-resolution to infuse the proceedings with value of consensus and community.

For example, the placement of litigants and court personnel in a circle aspires to minimize the appearance of hierarchy and highlight the participation and needs of the entire group in place of any one individual.

The tribal courts, while relatively young, are developing in leaps and bounds. For example, many tribes are working to revise their tribal constitutions and to codify their civil, regulatory, and criminal laws to provide greater guidance and predictability in tribal justice. At the same time, tribes have expanded the use of traditional law. Many tribal codes now combine unique tribal law with adapted State and Federal law principles. The number of law-trained Native Americans has increased. Both State and Federal courts continue to recognize the tribal courts as important fora for resolution of reservation-based claims involving both Indians and non-Indians.

Tribal courts today face significant challenges. They must work to satisfy the sometimes-competing demands of those inside and outside the tribal communities. But while the challenges are great, the effective operation of tribal courts are essential to promote the sovereignty and self-governance of the Indian tribes. As the Court on which I serve has recognized, "Tribal courts play a vital role in tribal self-government, and the Federal Government has consistently encouraged their development." *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9 (1987).

To fulfill their role as an essential branch of tribal government, the tribal courts must provide a forum that commands the respect of both the tribal community and of non-tribal courts, governments, and litigants. To do so, these courts need to be perceived as both fair and principled. And at the same time the courts seek to satisfy these conditions, they strive to embody tribal values—values that, at times, suggest the use of different methods than those used in the Anglo-American, adversarial, common-law tradition.

While tribal courts now include within their jurisdiction a broad range of issues, they naturally take a particular interest in the issues which are most pressing to the population which they serve. Issues related to the family, and the control of natural resources such as land, water, oil fish, and timber, are of particular interest to the tribal courts, both because important tribal tradition are implicated and because these issues have a vital and recurring impact on the welfare of the community.

In addressing the matters that come before them, the decision-making process by tribal courts need not, and does not always, replicate the process undertaken in State and Federal courts. Tribal courts often act more quickly, and more informally, than do their counterparts. The factors considered to reach a decision, the procedures used, and the punishment or resolution arrived at, may differ in reflection of tribal values.

Tribal court judges frequently are tribal members who seek to infuse cultural values into the process.

While tribal customs and beliefs vary, of course, from tribe to tribe, some general patterns emerge. In place of the Anglo-American system's emphasis on punishment and deterrence, with a "win-lose" approach that often drives parties to adopt extreme adversarial positions, some tribal judicial seek to achieve a restorative justice, with emphasis on restitution rather than retribution and on keeping harmonious relations among the members of the community. To further these traditional Native American values, tribal courts may employ inclusive discussion and creative problem-solving. The focus on traditional values in contemporary circumstances has permitted tribal courts to conceive of alternatives to conventional adversarial processes.

The development of different methods of solving disputes in tribal legal systems provided the tribal courts with a way both to incorporate traditional values *and* to hold up an example to the nation about the possibilities of alternative dispute resolution. New methods have much to offer to the tribal communities, and much to teach the other court systems operating in the United States. For about the last fifteen years, in recognition of the plain fact that the adversarial process is often not the best means to a fair outcome, both the State and Federal systems have turned with increasing interest to the possibilities offered by mediation, arbitration, and other forms of alternative dispute resolution. In many situations, alternative methods offer a quicker, more personal, and more efficient way of arriving at an answer for the parties' difficulties.

The special strengths of the tribal courts-their proximity to the people served, the closeness of the relations among the parties and the court, their often greater flexibility and informality-give tribal courts special opportunities to develop alternative methods of dispute resolution. Many of the issues which come most frequently to tribal courts lend themselves to alternative methods of resolution. For example, vital issues touching on domestic relations, child custody, probate, tort, and criminal prosecutions, may be solved more satisfactorily using a non-adversarial method. A cooperative process is particularly useful where family issues, particularly related to children, are involved, because the process helps the parties to work together to arrive at a fair and workable solution. An adversarial process, in contrast, may worsen the strains between members of the family, and create new conflicts to fuel the old. Too, family problems lend themselves to methods of resolution shaped by the particular character of individual tribal courts, because family issues-involving child custody, juvenile crimes, marriage, and inheritance-are ones where tradition provides a critical guidance for social behavior.

Many tribal courts have already developed methods that meet the needs of their communities and use the underlying traditions and values to the extent possible. A good example is the Navajo Peacemaker Court, which was formed in 1982 by the Judicial Conference of the Navajo Nation to provide a forum for traditional mediation. The Navajo Peacemaker Court is now an active, modern legal institution which incorporates traditional Navajo concepts into a judicial process for dispute resolution. The process is directed by a mediator, who acts to guide and encourage parties to resolve their dispute. The process relies on parties' participation and commitment to reaching a solution, rather than on the imposition of a judgment by an impersonal decisionmaker. The Navajo Peacemaker Court successfully blends beneficial aspects of both Anglo-American and Indian traditions.

The Northwest Intertribal Court System, a consortium of 15 tribes in the Pacific Northwest, was set up in 1979 to provide court services and personnel to the individual tribal courts of member tribes. Several of the member tribes have supplemented their formal tribal court system with Peacemaker programs- programs that are based on traditional values of consensus and respectful attention to individuals.

The Indian communities' interest in the development of alternatives for dispute resolution has led to the development of the Indian Dispute Resolution Services, a group formed about six years ago to provide training in conflict resolution. That organization is helping Indian communities to settle unresolved disputes around the county and to provide fair and timely outcomes for parties.

Mediation can be effective not only within a tribal community, but also between the tribe and other groups. The Native American Heritage Commission and the Community Relations Service of the United States Department of Justice have collaborated on several mediation cases involving the repatriation of Indian remains. Some mediations took place between tribes and developers who had discovered remains at construction sites; others took place between tribes and universities that wanted the remains for academic research. Mediation worked to settle successfully the many conflicts that arose over the proper treatment and assignment of such ancestral remains and funerary objects.

The development of methods of alternative dispute resolution may help tribal courts to expand the exercise of their authority over more civil cases. Historically, the great majority of cases heard in tribal courts involves criminal matters, with relatively few civil disputes decided. This might reflect the time and expense required for civil cases, the courts' reluctance to handle civil cases because of a lack of familiarity or advanced legal training, or perhaps because tribal courts serve a less litigious community. Development of alternative methods of dispute resolution allows the tribal courts to take advantage of their strengths in order to provide efficient and fair resolution of such conflicts.

It is to be hoped that the tribal courts will continue to explore additional possibilities for alternative methods of dispute resolution. These methods need not be limited in scope to dispute within a tribe, but could be used also to resolve conflicts between one tribe and another, and between a tribe and the State and Federal government, political units, private investors, or contractors. At its best, such a method would provide a cooperative, relaxed forum for the conclusion of disputes, with use of a process that would include all interested parties to ensure their involvement and their consent; and, at the same time, offer important practical advantages by accomplishing its tasks more agreeably, more quickly, and less expensively than the adversarial mode. By expanding such techniques, the tribal courts may set out the paradigm for other courts to follow.

While tribal courts seek to incorporate the best elements of their own customs into the court's procedures and decision, the tribal courts have also sought to include useful aspects of the Anglo-American tradition. For example, more and more tribal judicial systems have established mechanisms to ensure the effective appealability of decisions to higher courts. Too, some tribes have sought to provide tribal judiciaries with the authority to conduct review of regulations and ordinances promulgated by the tribal council. And one of the most important initiatives is the move to ensure judicial independence for tribal judges. Tribal courts are often subject to the complete control of the tribal councils, whose powers often include the ability to select and remove judges. Therefore, the courts may be perceived as a subordinate arm of the councils rather than as a separate and equal branch of government. The existence of such control is not conducive to neutral adjudication on the merits and can threaten the integrity of the tribal judiciary. Some tribes, like the Cheyenne River Sioux Tribe in South Dakota, have amended their constitutions to provide for formal separation of powers.

A vital improvement made by tribal judicial systems is the growing number of law-trained, well-prepared people participating in the system, both as lawyers and judges. Many tribal judges have taken steps to craft ethical guidelines and to institute tribal bar requirements for the lawyers who practice before them, and have participated themselves in further training for the task of judging. Both lawyers and judges must be knowledgeable and principled if the tribal judicial systems are to engender confidence in the fairness and integrity of their courts. Whether in tribal court, state court, or federal court, the exercise of a court's jurisdiction is a serious matter, and all persons – Indian and non-Indian-who come before a court are entitled to just and reasoned proceedings.

The judicial systems of the three sovereigns—the Indian tribes, the federal government, and the States—have much to teach one another. While each system will develop along different lines, each can take the best from the others. Just as “a single courageous State may, if its citizens choose, serve as a

laboratory," *New Sate Ice Co. v. Liebmann*, 285 U.S. 310, 311 (1931) (Brandeis, J., dissenting), for the development of laws, the experiments and examples provided by the various Indian tribes and their courts may offer models for the entire nation of follow. To give but one example, the Navajo Peacemaker Court has been studied not only by officials within this country, but also from Australia, New Zealand, Canada, and South Africa, for possible use. The Indian tribal courts; development of further methods of dispute resolution will provide a model from which the Federal and State courts can benefit as they seek to encompass alternatives to the Anglo-American adversarial model. And, while tribal courts currently seek to expand the role of traditional law in their judicial systems, they may well choose to incorporate some of the features of the Anglo-American system, such as access to an effective appeal and the independence of the judiciary.

The role of tribal courts continues to expand, and these courts have an increasingly important role to play in the administration of the laws of our nation. The three sovereigns can learn from each other, and the strengths and weaknesses of the different systems provide models for courts to consider. When tribal court, state court, or federal court, we must all strive to make the dispensation of justice in this country as fair, efficient, and principled as we can.

ADDENDUM 2

QUESTIONNAIRE FOR THE CONFERENCE OF CHIEF JUSTICES

Survey of Tribal Relations within the States

1. Are there any tribal courts in your state? Yes or No

If yes, can you provide a description (trial, appellate)?

2. Are there any written materials that describe the tribal courts (e.g. tribal court constitutions, treaties and processes)? Yes or No

If yes, where are they available?

3. Describe a few of the important experiences that you have had with tribal courts.

4. Additional comments.

State: _____
Name of Respondent: _____
Address: _____

Phone: _____
Email: _____

NCSC RESOURCES

The NCSC library has an extensive collection of materials dealing with tribal courts. These include how to guides, proceedings of tribal-state conferences, various state bar handbooks outlining the state tribal courts, tribal court history books and other materials.

The NCSC collection of tribal court materials is by no means comprehensive and we encourage you to submit publications that you think would be useful. For more information, contact Mary Grace Hune at the Knowledge Management Division of NCSC at 757/259-1512 or Jose Dimas at 703/841-5610.