

## INDEPENDENT REVIEW TEAM

8565 W. Granada Road  
Phoenix, AZ 85037  
(602) 418-8937 ⇔ (623) 936-8758 fax ⇔ Email: [ecoochise@msn.com](mailto:ecoochise@msn.com)

**ORAL TESTIMONY OF ELBRIDGE COOCHISE AND RALPH GONZALES, CHIEF JUSTICES, RETIRED  
INDEPENDENT TRIBAL COURTS REVIEW TEAM  
BEFORE THE HOUSE INTERIOR, ENVIRONMENT AND RELATED AGENCIES APPROPRIATIONS  
SUBCOMMITTEE FOR THE FISCAL YEAR 2017  
BUREAU OF INDIAN AFFAIRS APPROPRIATIONS  
March 18, 2016**

Thank you for the opportunity to testify today and to address the serious funding needs that have limited and continue to hinder the operations of Tribal judicial systems in Indian Country. We are representing the Independent Tribal Court Review Team. We thank this Committee for the additional \$10.0 million funding in FY 2010, the last significant increase. These funds were a blessing to Tribes. Even minimal increases are always put to good use. It is the strong recommendation of the Independent Tribal Courts Review Team that the Federal Tribal Courts budget be substantially increased in FY 2017 to support the needs of Tribal judicial systems.

### **BUDGET PRIORITIES, REQUESTS AND RECOMMENDATIONS**

- 1. +\$2.6 Million - Support FY 2017 Proposed Increased for Tribal Courts**
- 2. + \$58.4 Million authorized under the Indian Tribal Justice Act of 1993, P.L. 103-176, 25 USC 3601 and re-authorized in year 2000 P.L. 106-559 (no funds have been appropriated to date)**
- 3. Support the requests and recommendations of the National Congress of American Indians**

#### **The increase will support:**

1. Hiring and Training of Court Personnel
2. Compliance with the Tribal Law and Order Act of 2010
3. Compliance with and implement the VAWA Act of 2013
4. Salary Increases for Existing Judges and Court Personnel
5. State-of-the-Art Technology for Tribal Courts
6. Security and Security Systems to Protect Court Records and Privacy of Case Information
7. Tribal Court Code Development
8. Financial Code Development

**The Independent Tribal Courts Review Team supports the proposed \$2.6 million increase for Tribal courts in the FY 2017 President's Budget.** Tribal Courts need an immediate, sustained and increased level of funding. The lack of funding has delayed implementation of the Tribal Law and Order Act (TLOA) and the Violence Against Women Act (VAWA) to a critical level and the resources that have been appropriated are required to provide Attorneys to represent Non-

Indian defendants which further strain the capacity of the Tribal Judicial System. Tribal systems remain underfunded, understaffed and ill-equipped to function effectively and in a manner comparable to non-Indian government judicial systems. Tribal Courts are at a critical stage in terms of need. The Tiwahe Initiative, as a means to be responsive to Tribal concerns, demonstrates that the Administration and Congress are listening to the Tribes, but there needs to be a greater effort to fund the authority that was enacted in 1993.

Section 402 of TLOA reauthorized the Tribal Justice Act, and Indian Tribal Justice Technical and Legal Assistance Act of 2001. These Acts authorize funding for Tribal court judges, court personnel, public defenders, court facilities, and the development of records management systems and other needs of Tribal court systems. The Tribal Justice Act, originally enacted December 1993, authorized the appropriation of \$58.4 million in Tribal court base funding. Yet, not a single dollar under the Tribal Justice Act has been appropriated in the twenty-two years since it was enacted. Of particular note is the provision of the Tribal Justice Act that states that Federal funds may be used specifically for “training programs and continuing education for Tribal judicial personnel.” Appropriations should finally be made to fulfill the promise of these Acts.<sup>1</sup> **We recommend that the Interdepartmental Tribal Justice, Safety and Wellness Session, of which the Department of the Interior (DOI) is a member, resume outreach to support the efforts of TLOA, VAWA and the Tiwahe Initiative.**

The Tiwahe Initiative was launched in 2015 to address several lagging family welfare and poverty issues in Indian country including a strategy to reduce incarceration in Indian Country. The alternative to incarceration is intended to address underlying causes of repeat offenses, such as substance abuse and the lack of adequate social service support, by utilizing alternative courts to increase treatment opportunities, probation programs, and interagency and intergovernmental partnerships with Tribal, State and Federal stakeholders. In response to the unusual high rates of alcohol and/drug related repeat offenders that are dominating the resources of the justice system, the Bureau of Indian Affairs (BIA) created the Diversion and Re-Entry Division (DRD) within the Tribal Justice Support Directorate. In FY 2016 Tribal Courts received a 4.9% increase, and the budget request for 2017 is \$2.6 million over the enacted 2016 level. There is an even greater need to ensure that Court personnel are trained, equipped and prepared to address these new challenges. **We support the FY 2017 proposed \$21.0 million increase for Tiwahe to expand social services, Indian Child Welfare, housing, Tribal courts and job placement and training.**

***Background:***

The Bureau of Indian Affairs provides funding to Tribal governments to supplement their justice systems including courts. Tribal courts play a "vital role" in Tribal Self-Determination and Self-Governance as cited in long-standing Federal policy and Acts of Congress. Funding levels from BIA to support Tribal justice systems have not met the Federal obligations.

---

<sup>1</sup> Defining the Indian Civil Rights Act's "Sufficiently Trained" Tribal Court Judge, Jill Elizabeth Tompkins, American Indian Law Journal [Vol. 4:53]

There is a great deal of variation in the types of Tribal courts and how they apply laws. Some Tribal courts resemble Western-style courts in that written laws and court procedures are applied. Others use traditional Native means of resolving disputes, such as peacemaking, elders' councils, and sentencing circles. Some Tribes have both types of courts. The BIA also manages a small number of CFR (Code of Federal Regulations) courts.

Since 1999, Bureau of Justice Assistance (BJA) in the Department of Justice (DOJ) has administered the Tribal Courts Assistance Program, designed to provide funds for Tribes to plan, operate, and enhance Tribal judicial systems. They have made attempts to evaluate Tribal Courts but discovered their means of doing so was insensitive to American Indian and Alaska Native (AI/AN) people and unrealistic in the absence of elements that were key to Indian Country, such as: (1) the importance of Tribal culture and traditions; (2) the inability to apply state and local criminal justice initiatives to Tribal settings; (3) the lack of cooperation from non-Tribal entities; and, (4) the lack of available data on Tribal justice.

The Independent Tribal Court Review Team has had more hands on success in reviewing Tribal Court Systems. For seven years, we traveled throughout Indian Country assessing how Tribal Courts are operating. During this time, we have completed 84 Court Reviews. We also completed 28 Corrective Actions. There is no one with more hands-on experience and knowledge regarding the current status of Tribal Courts than our Review Team.

#### ***Justification for Request:***

- 1. Hiring and Training of Court Personnel** - Tribal Courts make do with underpaid staff, under-experienced staff and minimal training. (We have determined that hiring Tribal members limits the inclination of staff to move away; a poor excuse to underpay staff.)
- 2. Compliance with the Tribal Law & Order Act of 2010** – To provide Judges, Prosecutors, Public Defenders, who are attorneys, who are bared to do “enhanced sentencing” in Tribal courts
- 3. Compliance with the 2013 VAWA Act** – to provide Tribal Courts with the ability to provide non-Indians with all the rights under the U.S. Constitution in domestic violence actions in Tribal courts (12 person juries, provide Licenses attorneys for non-Indians, provide licensed attorneys in court personnel in domestic violence cases as in TLOA, etc.)
- 4. Salary Increases for Existing Judges and Court Personnel** – Salaries should be comparable to local and State Court personnel to keep pace with the non-Tribal judicial systems and be competitive to maintain existing personnel.
- 5. Tribal Courts Need State-of-the-Art Technology** - (software, computers, phone systems, tape recording machines.) Many Tribes cannot afford to purchase or upgrade existing court equipment unless they get a grant. This is accompanied by training expenses and licensing fees which do not last after the grant ends.
- 6. Security and Security Systems to Protect Court Records and Privacy of Case Information** - Most Tribal Courts do not even have a full time Bailiff, much less a State-of-the-Art security system that uses locked doors and camera surveillance. This is a tragedy waiting to happen.
- 7. Tribal Court Code Development** - Tribes cannot afford legal consultation. A small number of Tribes hire on-site staff attorneys. These staff attorneys generally become enmeshed in

economic development so code development does not take priority. Tribes make do with under-developed Codes. The Adam Walsh Act created a hardship for Tribes who were forced to develop codes, without funding, or have the state assume jurisdiction. (States have never properly overseen law enforcement in a Tribal jurisdiction.)

**8. Financial Code Development** - We have rarely seen Tribes with developed financial policies. The process of paying a bond, for example, varies greatly from Tribe to Tribe. The usual process of who collects it, where it is collected and how much it is, is never consistent among Tribes.

There are many positive aspects about Tribal Courts. It is clear that Tribal Courts and justice systems are vital and important to the communities where they are located. Tribes value and want to be proud of their Court systems. Tribes with even modest resources tend to allocate funding to Courts before other costs. After decades of existence, many Tribal Courts, despite minimal funding, have achieved a level of experience and sophistication approaching, and in some cases surpassing, local non-Indian Courts.

Tribal Courts, through the Indian Child Welfare Act, have mostly stopped the wholesale removal of Indian children from their families. Indian and Non-Indian Courts have developed formal and informal agreements regarding jurisdiction. Tribal governments have recognized the benefit of having law-trained Judges, without doing away with Judges who have cultural/traditional experience. Tribal Court systems have Appellate Courts, jury trials, well-cared-for Courthouses (even the poorer Tribes), and Tribal Bar listings and fees. Perhaps most importantly, Tribes recognize the benefit of an independent judiciary and have taken steps to insulate Courts and Judges from political pressure. No longer in Indian country are Judges automatically fired for decisions against the legislature.

Tribal Courts have other serious needs. Tribal Appellate Court Judges are mostly Attorneys who dedicate their services for modest fees that barely cover costs for copying and transcription fees. Tribal Courts do offer Jury Trials. In many Courts, one sustained Jury Trial will deplete the available budget. The only place to minimize expenses is to fire staff. Many Tribal Courts have Defense Advocates. These advocates are generally not law trained and do a good job protecting an individual's rights (including assuring speedy trial limitations are not violated.) However, this is a large item in Court budgets and if the defense advocate, or Prosecutor, should leave, the replacement process is slow.

On behalf of the Independent Tribal Court Review Team, Elbridge Coochise, Ralph Gonzales, Charles Robertson, Philip Lujan and Myrna Rivera, thank you for this opportunity to appear before you today.