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Santa Clara Superior Court (Ret.)

Improving State Court-Tribal Court Relations

Two separate court systems operate in California. One is the state court system which includes trial and appellate courts headed by the California Supreme Court. The other is a collection of tribal courts, operating in a number of tribal reservations within the state. These court systems are separate, yet they have a number of issues which cross over, one to the other.

For example, will a state court recognize a tribal court order? If a state court issues a domestic violence restraining order, will a tribal court give full faith and credit to that order? Will law enforcement outside of Indian Country enforce a restraining order issued by a tribal court judge?¹

Will the case of an Indian child in a state court delinquency or dependency proceeding be transferred to a tribal court?

These are but a few of the many relationship issues that state and tribal courts encounter on a daily basis. While some state courts and tribal courts have developed protocols for the management of these issues, many have not. My proposal is that the tribal and state courts that have over-lapping jurisdictions form a local Tribal Court – State Court Council. The

Council would be comprised of representatives from both courts and include members from each community, including judges, law enforcement, attorneys, social service representatives, probation, court clerks, and others. The council would meet from time to time and would develop protocols and procedures that address legal and other issues where the two court systems interact. There are several existing models for collaboration between state courts and tribal courts in California. My suggestion is not intended to change any of these collaborations, but to encourage the development of new ones.

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The issues outlined above would be reasonably easy to address effectively as several model protocols have been developed by tribal and state courts including the Hoopa Valley Tribe and the Humboldt County Superior Court, the Shingle Springs Tribal Court and Superior Court of El Dorado County, and the Riverside Alliance.²

This idea comes from an article I wrote many years ago suggesting the creation of a Domestic Violence Council in every community in the United States³. The spread of domestic violence councils in California and around the country has been impressive. The establishment of a council gives credence to the notion that creating a problem solving atmosphere can produce positive changes in a community.

Moreover, there is technical assistance available for the start-up of a Tribal Court-State Court Council from the Judicial Council of California's Tribal/State Programs. And there is judicial expertise and leadership that can be tapped through the Tribal Court – State Court Forum, a coalition of the various tribal court and state court leaders who come together as equal partners to address areas of mutual concern. Jennifer Walter, supervising attorney of the Tribal/State Programs and counsel to the Forum, can provide materials and facilitate site visits by experts in tribal court – state court relations.

I urge state and tribal court judges to reach out to one another and start to work together. Creating such a Council will serve all persons involved.

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APPENDIX A – SUGGESTIONS FOR STARTING A COUNCIL

1. Who should take the lead in organizing the Council? Is either a Superior Court Judge or a tribal judge ready to contact the other and suggest creating a Council?
2. Where should meetings take place and how should they be run?
 - a. Explore the logistics that create a safe, welcoming environment that promotes a positive government-to-government relationship, a sustainable partnership, and dialogue about areas of mutual concern.
 - b. Consider having rotating locations for the meetings both in the county and on the reservation.
 - c. Explore creating infrastructure so that partnerships forged go beyond the individual relationships and are sustained as turnover occurs.
 - d. Who should be invited (are there representatives from all stakeholders)?
3. What are the barriers facing Native victims of domestic violence in the community?
 - a. Explore why native victims may not report domestic violence.
 - b. Explore why county law enforcement may not enforce protective orders in tribal communities?
 - c. Explore why native victims may not go to court for protection in either tribal or state courts.
 - d. What are the available services for native victims of domestic violence in the county and on reservations?
4. What are the procedures in place for ensuring that protective orders (whether issued by the tribal court or state court) are recognized and enforced? These would include procedures developed by law enforcement (city, county sheriff, state highway patrol, federal, and tribal police).
 - a. What protocols for collaboration regarding enforcement have been developed by these agencies?
 - b. Are there Inter-Court collaborative protocols/rules of court or other procedures between the state and tribal courts?

- c. What is the role of each stakeholder in protocol implementation?
 - d. Do the protocols in fact work to protect victims of domestic violence?
5. What education is provided in the county?
 - a. About the tribal communities in the county?
 - b. About tribal courts in the county?
 - c. About inter-jurisdictional legal issues?
 - d. About culturally competent resources?
 - e. Is education provided for specific audiences such as for judges, attorneys, service providers, law enforcement, probation, social services and others?
6. How can tribal representatives assist state courts in the implementation of the Indian Child Welfare Act (ICWA)?
 - a. Are tribal representatives regularly noticed of cases involving Indian children?
 - b. How do the new Bureau of Indian Affairs (BIA) Guidelines impact tribal court/state court relations?
 - c. Will county social services provide services to Indian children living on the reservation?

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Endnotes

- 1 Appendix A contains a list of issues that the Council might discuss as well as suggestions for establishing a Council.
- 2 <http://www.riverside.courts.ca.gov/juvenile/triballiance.shtml>
- 3 “Reducing Family Violence: The Role of the Family Violence Council,” *Juvenile and Family Court Journal*, Vol. 43, No. 3, 1992, 1-18. It can be found in the publications blog at judgeleonardedwards.com. 📄

Books for Those Who Work in Juvenile Court

Somebody Else’s Children by John Hubner and Jill Wolfson, Three Rivers Press, N.Y., 2006

The Boy Who Was Raised as a Dog, by Bruce Perry and Maia Szalavitz, Basic Books, N.Y., 2006

Three Little Words, by Ashley Rhodes-Courter, Atheneum, N.Y., 2008

Finding Fish, by Antwone Fisher, HarperCollins, N.Y., 2001

Hope’s Boy, by Andrew Bridge, Hyperion, N.Y., 2008

Beyond the Best Interests of the Child, by Joseph Goldstein, Anna Freud, Albert J. Solnit, The Free Press, N.Y., 1973

I Speak for This Child, by Gay Courter, iUniverse.com, Inc., Lincoln, NE, 1995

Child Protection in America: Past, Present, and Future, by John E.B. Myers, Oxford U. Press, 2006

Handbook on Questioning Children, (2nd Edition) by Ann Graffam Walker, ABA Center on Children and the Law, Washington, D.C., 1999.

There Are No Children Here: The Story of Two Boys Growing Up in the Other America, by Alex Kotlowitz, 1992.

Walk to Beautiful, by Jimmy Wayne, 2014

Born for Love: Why Empathy is Essential - and Endangered, by Bruce Perry (2011)

Creative Interventions with Traumatized Children (Creative Arts and Play Therapy), by Bruce Perry (2014)

GDog and the Homeboys: Father Greg Boyle and the Gangs of East Los Angeles by Celeste Fremon, (2004).

No Matter How Loud I Shout: A Year in the Life of Juvenile Court, by Edward Humes (1997) 📄