

# 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, CHIEF JUSTICE, RETIRED  
INDEPENDENT TRIBAL COURTS REVIEW TEAM  
BEFORE THE HOUSE COMMERCE, JUSTICE, SCIENCE RELATED AGENCIES APPROPRIATIONS  
SUBCOMMITTEE FOR THE FISCAL YEAR 2010  
DEPARTMENT OF JUSTICE – TRIBAL COURTS  
APRIL 2, 2009**

Thank you for the opportunity to testify today and address the serious funding needs that have limited and continue to hinder the operations of Tribal judicial systems in Indian Country. I am the Leader of the Independent Tribal Court Review Team. **I am here today to request funding for Tribal Courts in the Department of Justice, Office of Justice Programs for the Tribal Courts Assistance Program.**

### **Budget Priorities, Request and Recommendations**

1. + \$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 to date)
2. +Increase funding for Tribal Courts by 10%
3. Maintain the set-aside for Tribal Courts

### ***We Support an Increase in Funding for:***

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. **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
3. **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.
4. **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.
5. **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 and 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.)

- 6. 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.

For the past 3 years, the Independent Court Review Team has been traveling throughout Indian Country assessing how Tribal Courts are operating. During this time, we have completed some 50 court reviews. There is no one with more hands-on experience and knowledge regarding the current status of Tribal Courts than our Review Team.

We have come into contact with every imaginable type of Tribe; large and small, urban and rural, wealthy and poor. What we have NOT come into contact with is any Tribe whose Court system is operating with financial resources comparable to other local and State jurisdictions.

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 send additional 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.

Our research indicates Tribal Courts are at a critical stage in terms of need. Nationwide, there are 156 Tribes with Courts that receive Federal funding. These Tribes divide a mere \$11.9 million in Federal funds. It is the strong recommendation of the Independent Tribal Courts Review Team that the Federal Tribal Courts budget be substantially increased in the President's Budget.

Assessments have indicated that the Bureau of Indian Affairs only funds Tribal Courts at 26% of the funding needed to operate. The remainder is funded by the Tribes. Tribes who have economic development general subsidize their Tribal Courts. On the flip side, Tribes who cannot afford to assist in the financial operations of the Court are tasked with doing the best they can with what they have even at the expense of decreasing or eliminating services

elsewhere. This while operating at a disadvantage with already overstrained resources and underserved needs of the Tribal members. The assessment suggests that the smaller Courts are both the busiest and most underfunded.

We thank this Committee for additional funding in FY 2008. These funds were a Godsend to Tribes. Even minimal increases were put to good use:

- In 2006, a fire destroyed the White Mountain Apache Court. A previously condemned building, it went up like a tinder box. An extra \$200,000 bought the White Mountain Apache Tribe a modern digital tape recording machine, a video surveillance security system, a telephone system, new computers and helped restore a building so the Court had somewhere to go. The Chief Judge even did some of the carpentry work in the two newer Courtrooms. **That's what additional funding does.**
- In Fort Yates and the Standing Rock Sioux Tribe, a Tribal official wept when we told her the Tribe would receive an extra \$300,000. Law Enforcement was increased from 7 to perhaps 30. The Court ran every day of the week, including Sunday, to account for the new cases. Law enforcement response time to a phone call for assistance went from five hours, if anyone came at all, to fifteen minutes. Once again there was law and order in Standing Rock. **That's what additional funding does.**

The grant funding in the Department of Justice is intended to be temporary, but instead it is used for permanent needs; such as funding a Drug Court Clerk who then is used as a Court Clerk with Drug Court duties. When the funding runs out, so does the permanent position. We have witnessed many failed Drug Courts, failed Court management software projects (due to training costs) and incomplete Code development projects. When the Justice funding runs out, so does the Project.

As a directive from the Office of Management and Budget, our Reviews specifically examined how Tribes were using Federal funding. In the last three fiscal years (FY 09 is partial) there was only one isolated incident of a 3% questionable expenditure of Federal funds. It is speculated that because of our limited resources, we compromise ones due process and invoke "speedy trials" violations to save Tribal Courts money. Everyone who is processed through the Tribal judicial system is afforded their Constitutional civil liberties and civil rights.

We do not wish to leave an entirely negative impression about Tribal Courts. Tribal Courts need an immediate, sustained and increased level of funding. True. However, there are strong indications that the Courts will put such funding to good use.

The Shoshone-Bannock of Fort Hall, Idaho holds Court in a condemned building, built in 1888, full of so much mice droppings and bat guano that you cannot use the lower floor. They recently had a building closed because of the threat of Hanta Virus. They have been unable to hire a Tribal Prosecutor for two years because of their remoteness and inability to pay a competitive salary. Still, they operate a Court as best they can and dream of the day they will

complete their detention center which, after years of waiting, they are paying for themselves. ***Their need exceeds 100%.***

The Cheyenne River Sioux Tribe in Eagle Butte, South Dakota (like several other places we have reviewed) is fortunate to have dedicated Court Clerks who work for salaries below the poverty level, most at less than \$10 an hour. ***Their need exceeds 100%.***

Turtle Mountain Chippewa Tribe of North Dakota must operate even when the Courts' electricity is periodically turned off because they can't pay their light bill. ***Their need exceeds 100%.***

There are Tribes like the Fort Belknap Tribe of Montana whose Chief Judge manages both offices and holds Court in an old dormitory that can't be used when it rains because water leaks into the building and the mold has consumed one wall. ***Their need exceeds 100%.***

And, there are Tribes like the isolated Havasupai, located in the bottom of the Grand Canyon. They can only afford a Judge one day a month. Their computers only work sporadically because of the fine layer of dust that appears to cover everything. They have a single, underpaid clerk, who remains dedicated to her job, even though her employment experience means she could make twice as much working out of the Canyon away from home. When she goes to pick up her children at school, the Court must close, because she is the only one there. ***Their need exceeds 100%.***

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 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 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.

I come here today to tell Congress these things. We feel it is our duty to come here on behalf of Tribes to advocate for better funding. Tribes ask us to tell their stories. They open their files and records to us and say, "We have nothing to hide". Tell Congress we need better facilities, more law enforcement, more detention facilities, more legal advice, better codes... the list goes on and on. But, as we have indicated, it all involves more funding. This Congress and this new Administration can do something great. Put your money where your promises have been.

**We support the requests and recommendations of the National Congress of American Indians.**

On behalf of the Independent Tribal Court Review Team; Charles D. Robertson Jr., Honorable Philip D. Lujan, Ralph Gonzales, Myrna Rivera and myself, Thank you.