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Justice in Indian Country: A Case Study of the Tulalip Tribes

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by

Leah Catherine Shearer

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The thesis of Leah Catherine Shearer is approved.

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Duane W. Champagne

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Angela R. Riley

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Addie C. Rolnick

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Carole Eudice Goldberg, Committee Chair

University of California, Los Angeles

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## ABSTRACT OF THE THESIS

Justice in Indian Country: A Case Study of the Tulalip Tribes

by

Leah Catherine Shearer

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Professor Carole Eudice Goldberg, Chair

Through legislation, court decisions, and more subtle influences, the United States has coerced tribes to mimic the American punitive criminal justice system and reject traditional criminal justice practices. Since the passage of the Indian Civil Rights Act of 1968, affording tribes affected by Public Law 280 the opportunity to lobby states to carry out retrocession, and the passage of the Indian Self-Determination and Education Assistance Act in 1975, allowing tribes to contract with the Bureau of Indian Affairs to manage programs provided by the federal government, tribes have had more opportunities to control the creation and development of their own justice systems. In particular, these Acts have allowed tribes to take an increased role in how criminal justice is expressed in their territory. While many tribes have been attempting to transform their criminal justice systems to reflect their own cultural worldviews, they are often faced



with serious challenges including securing adequate funding, enduring political resistance from surrounding state and federal governments, developing policies and procedures that are culturally compatible, and administering those new systems effectively. This thesis focuses on the experience of the Tulalip Tribes in developing and refining its justice system.

Existing scholarship suggests that successful tribal justice systems possess certain characteristics. In particular, one framework suggests that tribal justice systems are most successful when they are: fair, effectively managed, culturally compatible, inter-governmentally cooperative, adequately funded, and respectful of tribal control. Relying on this framework, I will explore the Tulalip Justice System, which has gained significant recognition over the last several years. In this thesis, I will investigate: 1. current scholarship surrounding tribal justice systems, 2. the history of the Tulalip Tribes and the formation of the Tulalip Justice System, 3. the Tulalip Justice System's goals and justice methods and their alignment with the framework mentioned above, and 4. the goals and justice methods relevant for other tribes developing tribal justice systems.

## I. INTRODUCTION

In the fall of 2010, I flew from Los Angeles to Seattle to visit the Tulalip Reservation for the first time. It was around eight in the morning, and I was nervously awaiting my introduction to a tribal court employee at nine o'clock. Sitting in the lobby, eating oatmeal out of a styrofoam bowl, with the local news playing in the background, I waited for the minutes to pass by. A hotel employee<sup>1</sup> and I began to talk as she restocked items at the breakfast bar.

"Are you here to shop at the outlet mall?" she asked. "No, actually, I'm here for school research," I replied. "Oh, what for?" she responded. "I'm studying the justice system of the Tulalip Reservation," I said. "This is my first trip here." She stopped filling the cereal container, turned to me, and, after insulting tribal court personnel, said, "They get away with murder over there." I was immediately uncomfortable and responded with "oh, ok" or something of the like. I wished her a good day, dismissed myself from the room, and left the lobby.

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<sup>1</sup> The hotel employee identified herself as a non-Indian.

<sup>2</sup> Kevin K. Washburn, "SYMPOSIUM: INDIAN LAW AT A CROSSROADS: Tribal Self-Determination at the Crossroads," 38 Connecticut Law Review 777 (2006), 782.

Tribal governments, Indian people, and Native history generally are marred with judgment, misunderstanding, and confusion. The truth is the Tulalip Reservation is seen as one of the most noteworthy successes within Indian country over the last decade. Transforming a community once left without support from public safety officials and with few job opportunities, the Tulalip Government successfully lobbied the State of Washington to retrocede from Public Law 280 jurisdiction, developed stable tribal infrastructure that is largely self-funded, created business opportunities on the reservation, and today donates millions of dollars every year to outside state agencies and charities. In this thesis, I explore one element of this transformation: the creation and implementation of the Tulalip Justice System.

The judgment I witnessed on that morning with the hotel employee is relevant to this topic because it illustrates the obstacles facing tribal governments and their justice systems. To successfully act as a stabilizing presence in its community, a justice system has to work effectively as any administrative institution should, but also satisfy its community and have positive interactions with outside agencies. Tribal justice systems are ideally cooperative, and isolation, by choice or circumstance, hinders their ability to operate. More than county, state, or federal justice systems, tribal justice systems must overcome not only ignorant outside individuals but aggressive and racist ones who at times feel threatened by tribal governments and Native people. Even considering these challenges, developing tribal justice systems to serve tribal communities is essential for tribal communities and Native people to be safe and well supported. This thesis is my small contribution to those efforts.

According to Kevin Washburn, “one of the most important ways in which sovereign political communities define and communicate their values and implement them in government is through criminal law.”<sup>2</sup> Justice system codes, policies, and procedures determine which actions are inappropriate and outline processes to resolve disputes within a community. Even more, policies and procedures of a justice system indicate how that institution should interact with community members, as well as outside agencies, in response to crime. Successful policies and procedures have the power to reinforce relationships between a justice system, its community, and potentially outside jurisdictions that are based on trust and community buy-in. However, unsuccessful policies and procedures can compromise those relationships and render a justice system less able to act as the stabilizing presence it is intended to provide for its community. This reality is no different for tribal justice systems. The successful development of tribal justice systems is important not only for the success of that justice system but of the community as a whole.

Very few case studies of tribal justice system goals and methods exist. Even fewer case studies investigate systems that appear to be successfully serving their tribal communities. In order to fill this void, I have chosen to investigate the justice goals and methods of a tribe that in many respects has been identified as successful in its justice system operations in its community: the Tulalip Tribes.

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<sup>2</sup> Kevin K. Washburn, "SYMPOSIUM: INDIAN LAW AT A CROSSROADS: Tribal Self-Determination at the Crossroads," 38 Connecticut Law Review 777 (2006), 782.

Combining fieldwork and secondary source analysis, this paper explores existing scholarship related to needed elements of successful tribal justice systems, investigates the Tulalip Tribes' justice system and its justice methods, and considers how these methods could be of assistance to other tribes creating or altering their justice systems. The fieldwork research contributing to this thesis is largely comprised of interviews with ten Tulalip Justice System employees and participant observations of tribal court proceedings, justice system employee meetings, and the Tulalip Reservation as a whole. Interview subjects were primarily high-level employees of the Tulalip Justice System. For purposes of confidentiality, I refer to all interview subjects as "justice system employees" or "law enforcement employees."

In the first chapter titled "I. Literature Review of the Six-Part Framework," I explore existing scholarship surrounding tribal justice systems and present a framework that details six needed elements of tribal justice systems: fair, effectively managed, culturally compatible, inter-governmentally cooperative, adequately funded, and respectful of tribal control. All six elements are explored, and I propose definitions for each based on this existing scholarship. In the second chapter titled "II. The Tulalip Justice System," I describe a brief history of the Tulalip Tribes and introduce their current justice system. In the third chapter titled "III. Justice Methods," I investigate the goals and justice methods of the Tulalip Justice System and evaluate if they align with the definitions of the six needed elements of successful tribal justice systems outlined in Chapter I. In the fourth chapter titled "IV. Lessons Learned," I identify the goals and methods of the Tulalip Justice System that could be appropriate for other tribal justice

systems. Finally, in the fifth chapter titled “V. Conclusion,” I reiterate the strategies of the Tulalip Tribes when developing and operating its tribal justice system. I also suggest the importance of this type of research and its significance to existing scholarship and other tribal governments.

## II. LITERATURE REVIEW OF THE SIX-PART FRAMEWORK

In recent scholarship evaluating contemporary tribal justice systems and their ability to serve Indian communities, Carole Goldberg and Duane Champagne propose a framework outlining what tribal justice systems need to address in order to be successful. In particular, they suggests that tribal justice systems are most successful when they are: fair, effectively managed, culturally compatible, inter-governmentally cooperative, adequately funded, and respectful of tribal control.<sup>3</sup> According to this scholarship, the presence or absence of these six conditions should predict justice system success. Because all of these conditions are necessary, they are individually insufficient to achieve overall success. Failing to address one condition is enough to seriously compromise the successfulness of the system overall.<sup>4</sup> This six-part framework is designed to be rigid enough to outline the needed characteristics of every tribal justice system as well as flexible enough to address the unique needs and experiences of different tribal communities throughout the United States.

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<sup>3</sup> See Carole E. Goldberg and Duane Champagne, *Captured Justice: Native Nations Under Public Law 280*. Durham, NC: Carolina Academic Press, forthcoming; and Duane Champagne and Carole Goldberg, "Final Report: A Study of the Administration of Justice in Indian Country," U.S. Department of Justice, National Institute of Justice, forthcoming.

<sup>4</sup> Duane Champagne, Angela Riley, and Addie Rolnick, "Improving Juvenile Justice Service Delivery to Reservation Tribal Youth: UCLA Application to the Office of Juvenile Justice and Delinquency Prevention," (February 2011), on file with author.

In this chapter, I will present Goldberg and Champagne's six-part framework that outlines the needed qualities for successful contemporary tribal justice systems. Each characteristic will be explored and defined based on existing scholarship, which will be used to support the investigation of Tulalip Justice System goals and methods in later sections of the thesis.

## **SIX-PART FRAMEWORK**

While there is some scholarship available on successful tribal governance generally,<sup>5</sup> very few scholars have produced works that even briefly address one or two needed characteristics of successful tribal justice systems;<sup>6</sup> and, until recently, none has offered a clear framework to evaluate such systems. Goldberg and Champagne's framework clarifies, expands, and tailors this existing scholarship to be most relevant for understanding Indian country criminal justice. Even with this new framework, the existing scholarship addressing each of these elements remains relevant and essential to investigate each element more thoroughly. Building on this existing scholarship, Goldberg and Champagne's framework presents that a tribal justice system is successful

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<sup>5</sup> See Angela Riley, "Good (Native) Governance," 107 Colum. L. Rev. 1049 (2007); and Stephen Cornell, Catherine Curtis, and Miriam Jorgensen, "The Concept of Governance and Its Implications for First Nations," A Report to the British Columbia Regional Vice-Chief, Assembly of First Nations, Joint Occasional Papers on Native Affairs, No. 2004-02 (2003), 13.

<sup>6</sup> See Heather E. Williams, "Finding Flexibility in the Judicial System: Social Justice and Comprehensive Law Practices: Three Washington State Examples," 5 Seattle J. Soc. Just. 411 (2006).



when it is: effectively managed, fair, culturally compatible, inter-governmentally cooperative, respectful of tribal control, and adequately funded.<sup>7</sup>

According to current scholarship, an *effectively managed* tribal justice systems is clearly understood by its community, ensures that justice system documentation, websites, and other related materials assert that clarity, administratively functions properly, and sufficiently trains justice system employees. A *fair* system distributes its resources fairly, resolves disputes without bias, and responds to crime in ways that match community conceptions of fairness. A *culturally compatible* system incorporates tribal custom and customary law into formalized policies and procedures as well as reflects tribal custom in informal ways. An *inter-governmentally cooperative* system cooperates formally and informally with outside agencies to successfully deliver justice services. A system with *respected tribal control* asserts tribal political control and cultural sovereignty over justice system delivery in its community and outside jurisdictions respect that control. An *adequately funded* system employs the appropriate amount of adequately qualified police, correctional officers, rehabilitation specialists, judges, advocates, attorneys, mentors, or traditional leaders as well as provides the needed equipment and resources for those individuals.

While the sub-sections below will explore each element separately, it is important to note that these elements are interrelated. After reading the following sub-sections, it will be clear that methods used by a justice system to ensure cultural compatibility will

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<sup>7</sup> Carole E. Goldberg and Duane Champagne, *Captured Justice: Native Nations Under Public Law 280*. Durham, NC: Carolina Academic Press, forthcoming.

allow programs to be more effectively managed. If used properly, an adequate supply of resources can support and is often essential to accomplishing any of the other elements of a successful tribal justice system. Additionally, respecting tribal control often works hand-in-hand with elements of cultural compatibility, effective management (through accountability to those served), and inter-governmental cooperation.

It may also be true that these elements could at times be in conflict with each other. Tribal definitions of fairness may conflict with those of the federal or surrounding state justice systems, which can make it difficult for tribes to maintain inter-governmental cooperation. To be more culturally compatible, some tribal communities may seek to minimize inter-governmental cooperation.<sup>8</sup> Furthermore, different tribal communities may seek out different levels of each element in achieving the optimal balance of all six.

#### **A. Effective Management**

Effective management is required for a justice system to successfully provide justice services to its community.<sup>9</sup> An effectively managed tribal justice system is clearly understood by its community, ensures that justice system documentation, websites, and other related materials assert that clarity, administratively functions properly, and sufficiently trains justice system employees.

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<sup>8</sup> Kevin Washburn, “American Indians, Crime, and the Law,” 104 Michigan Law Review 709 (2006), 735. (describing the at times strained relationship between tribes and federal authorities as “the Calvary Effect.”)

<sup>9</sup> Carole E. Goldberg and Duane Champagne, *Captured Justice: Native Nations Under Public Law 280*. Durham, NC: Carolina Academic Press, forthcoming.

To ensure that a justice system is clearly understood by its community is particularly challenging in Indian country, considering the multiple sovereigns possessing jurisdiction simultaneously. Regardless, members of the community, Indians and non-Indians, as well as outsiders must have a strong understanding of how the justice system functions in order for it to be accountable to the individuals it serves.<sup>10</sup> An effectively managed justice system employs responsible police officers, attorneys, and judges who clearly communicate justice system policies, procedures, and decisions to community members. In this context, clarity means, “the legal authorities ... make clear that they have listened to the points made [by members of the community] and then explain why they are making certain decisions.”<sup>11</sup> This definition of clarity requires justice system personnel to treat all individuals encountering that justice system with patience and professionalism.

Along with utilizing justice system employees to clearly articulate justice system procedures to community members, an effectively managed justice system should ensure that forms, pamphlets, websites, automated phone programs, and other related materials are clearly articulating justice system policies and procedures. In particular, these documents should be appropriately labeled and easily navigable. Documentation should

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<sup>10</sup> Stephen Cornell, Catherine Curtis, and Miriam Jorgensen, “The Concept of Governance and Its Implications for First Nations,” A Report to the British Columbia Regional Vice-Chief, Assembly of First Nations, Joint Occasional Papers on Native Affairs, No. 2004-02 (2003), 20. (“the way institutions of government work needs to be clear, predictable, consistent, and understood by citizens, non-citizens, and partner governments.”)

<sup>11</sup> Heather E. Williams, “Finding Flexibility in the Judicial System: Social Justice and Comprehensive Law Practices: Three Washington State Examples,” 5 Seattle J. Soc. Just. 411 (2006), 419.

clearly outline the required procedures to successfully submit the application and resolve the underlying issue.

Scholars suggest that effectively managed justice systems administratively function properly. In particular, effectively managed justice systems need to be able to set goals, identify what needs to be done to reach those goals, and then follow through on those identified tasks or strategies.<sup>12</sup> This responsibility for follow-through involves actualizing system-wide goals as well as processing cases and related paperwork in a timely manner.

Additionally, to administratively function properly, a tribal justice system should encourage formal and informal opportunities to reflect and improve upon current policies and procedures as well as the improve the execution of policies, procedures, and tribal court orders. Many strategies can be used to accomplish this particular goal. A tribe could encourage community critique via a comments drop-box, a monthly meeting with community members, or by simply encouraging staff to observe community member critique during the work-day. Additionally, staff could be encouraged to brainstorm as a group to find appropriate solutions to administrative or programmatic challenges, again utilizing anonymous comments from staff or arranging regular group meetings. Lastly, a tribe could seek evaluations from outside institutions by soliciting an analysis of the justice system.

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<sup>12</sup> Stephen Cornell, Catherine Curtis, and Miriam Jorgensen, “The Concept of Governance and Its Implications for First Nations,” A Report to the British Columbia Regional Vice-Chief, Assembly of First Nations, Joint Occasional Papers on Native Affairs, No. 2004-02 (2003), 20. (“The ultimate test of a governing institution is whether it provides a means for the nation to effectively achieve its goals.”)

The last needed element of effective management of justice systems is to sufficiently train justice system employees. This element is strongly interrelated with the last element of the six-part framework: adequate resources. Trainings can be specific to the needs of tribal justice systems or not. For example, justice system employees could be regularly trained to more effectively use office computers, justice system databases, police radio operations, and filing databases, as well as to ensure employees are sensitive to the unique challenges of the Native community.

Effective management is essential to a successful justice system because it promotes trust in the community it serves, which is achieved through communicating the process of the justice system to the community, hiring accountable employees, and completing the tasks it sets out to accomplish. With this trust comes the power to interact with the community, through dispute resolution, with less resistance.

## **B. Fairness**

In order for a justice system to be successful, it must be fair. Without this quality, justice systems will likely lose support and legitimacy.<sup>13</sup> In a practical sense, community distrust of a justice system can manifest in many ways. Particularly, victims are less likely to report crimes, victims and witnesses are more likely to refuse to testify in trial, and citizens are less likely to comply with tribal law. To garner support from its community, a tribal justice system can develop policies and procedures that are fair. A

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<sup>13</sup> Carole E. Goldberg and Duane Champagne, *Captured Justice: Native Nations Under Public Law 280*. Durham, NC: Carolina Academic Press, forthcoming.

tribal justice system is fair when it distributes its resources fairly, resolves disputes without bias, and responds to crime in ways that match community conceptions of fairness.

A fair justice system should dispense justice system resources fairly. Distributing resources fairly does not require a justice system to provide the same amount of resources for every community member or every acre of its territory, as not all segments of the community require the same resources. However, a justice system that fairly distributes its resources would strive to address the unique needs off all aspects of the reservation community through its allocation of funds, employee attention, technology, etc. Additionally, the police department should provide every aspect of the justice system community sufficient attention.<sup>14</sup> All members of the community should be supported and all physical areas of the reservations should be monitored.

Fairness encompasses the assurance that those who interact with the tribal justice system feel that their disputes are being dealt with without bias. A fair justice system manages cases without being biased along lines of family, race, class, cultural participation in the tribe, enrollment status (member or nonmember), or Indian status (Indian or non-Indian). A fair justice system will also avoid political bias. This means that those who resolve disputes are not influenced by individual political gain or agendas. The Harvard Project's research suggests that when tribal justice systems are not influenced by political bias, "governments achieve greater predictability, clarity, and

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<sup>14</sup> Ibid.

success.”<sup>15</sup> Eliminating political bias is not a challenge unique to tribal governments, though it has been exacerbated in this context because of federal legislation structuring tribal governments and for other reasons.<sup>16</sup>

Last, while some concepts of fairness are universal (such as international human rights), some concepts, including appropriate responses to crime, are community specific. This aspect of fairness is strongly interrelated with cultural compatibility, one of the six themes explored in this section. Heather Williams suggests that fairness also involves providing good, just, and appropriate solutions for opposing parties in a dispute.<sup>17</sup> Williams argues that while all citizens seek this in their justice system, “[Native perspectives on appropriate solutions stand] in stark contrast to the reality that legal training focuses almost exclusively on understanding and interpreting law in the belief that litigants want to win their disputes.”<sup>18</sup> Court procedures, sentencing strategies, and justice system programs should reflect the expectations of the tribal community and their concepts of fair responses to crime or disputes. As an example, some communities may perceive punitive sentencing strategies as unfair responses to crime. Other communities may perceive rehabilitative sentencing strategies as too lenient and, therefore, unfair

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<sup>15</sup> Stephen Cornell, Catherine Curtis, and Miriam Jorgensen, “The Concept of Governance and Its Implications for First Nations,” A Report to the British Columbia Regional Vice-Chief, Assembly of First Nations, Joint Occasional Papers on Native Affairs, No. 2004-02 (2003), 20.

<sup>16</sup> See Paul Spruhan, “A Legal History of Blood Quantum in Federal Indian Law to 1935,” 51 S.D. L. REV. 1, 77 (2006). (exploring the varying federal policies imposed on tribal governments, predominately focusing on legislation defining blood quantum); and Kevin K. Washburn, “Indian Law at a Crossroads: Tribal Self-Determination at the Crossroads,” 38 Conn. L. Rev. 777 (2006), 779. (describing federal laws affecting tribal self-governance, including the Indian Reorganization Act of 1934, the Allotment Period, and the Indian Self-Determination Act of 1975)

<sup>17</sup> Heather E. Williams, “Finding Flexibility in the Judicial System: Social Justice and Comprehensive Law Practices: Three Washington State Examples,” 5 Seattle J. Soc. Just. 411 (2006), 419-421.

<sup>18</sup> Ibid.

justice system methods. Also, tribal communities may have differing perspectives on fair court proceedings. According to Bruce Miller, author of *The Problem of Justice*:

*Tradition and Law in the Coast Salish World:*

A program strictly arranged around the metaphors of healing and restoration appears to be needlessly limiting and to have arisen from the rejection of Western justice. The more incorporative Upper Skagit approach, which allows for restitution and rehabilitation, as well as punishment, creates a wider range of ways to engage the justice system, as is appropriate to a diverse community.<sup>19</sup>

Thus, in order to be fair, a tribal court should develop procedures and methods that reflect the diversity of the community it is intending to serve.<sup>20</sup> Tribal court policies and procedures could reflect the perspectives of tribal members who value traditional or rehabilitative responses to crime and tribal members who are influenced by and value non-Native forms of criminal justice.

Fairness, in all of its forms, is essential to a successful justice system. It is needed in order for a justice system to be trusted by the community it serves to address disruptive conduct in appropriate ways. These appropriate ways involve fairness in how socially disruptive conduct is addressed and in the intentions of individuals involved in these processes.

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<sup>19</sup> Bruce Miller, *The Problem of Justice: Tradition and Law in the Coast Salish World*, Lincoln and London: University of Nebraska Press, (2001), 206.

<sup>20</sup> See Heather E. Williams, "Finding Flexibility in the Judicial System: Social Justice and Comprehensive Law Practices: Three Washington State Examples," 5 Seattle J. Soc. Just. 411(2006). (exploring tribal justice systems that utilize several specialized courts to address particular areas of concern in the community.)



### C. Cultural Compatibility

Cultural compatibility is a needed characteristic of successful tribal justice systems. According to a recent study, when tribal justice systems are not culturally compatible with the communities they serve, community member buy-in to that system will be constrained. Victims will express dissatisfaction with the justice system and its programs, distrust the procedures of that system, and will often be less cooperative in the investigations and prosecutions performed by that justice system.<sup>21</sup>

While cultural compatibility is necessary, the specific definition of that characteristic is largely unique to each tribal community. A true definition must acknowledge the reality that all tribes have unique spiritual, cultural, historical, and institutional dimensions.<sup>22</sup> Furthermore, a culturally compatible justice system incorporates tribal custom and customary law into formalized policies and procedures as well as reflects tribal custom in informal ways.<sup>23</sup>

Customary law can conceivably be incorporated in all aspects of a tribal justice system: documentation (tribal constitutions and codes), the role of individuals involved with the justice system (tribal judges, lawyers, mediators, law enforcement), detention and rehabilitation facilities, and others. It can also influence whether a tribal justice

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<sup>21</sup> Carole E. Goldberg and Duane Champagne, *Captured Justice: Native Nations Under Public Law 280*. Durham, NC: Carolina Academic Press, forthcoming.

<sup>22</sup> Duane Champagne, "Remaking Tribal Constitutions: Meeting the Challenge of Tradition, Colonialism, and Globalization," in *American Indian Constitutional Reform and the Rebuilding of Native Nations* 12 (Eric D. Lemont ed.), Austin: University of Texas Press, 2006.

<sup>23</sup> See Amber Halldin, "Restoring the Victim and the Community: A Look at the Tribal Response to Sexual Violence Committed by Non-Indians in Indian Country Through Non-Criminal Approaches," 84 N. Dak. L. Rev. 1 (2008); Angela Riley, "Good (Native) Governance," 107 Colum. L. Rev. 1049 (2007); and Gloria Valencia-Weber, "Tribal Courts: Custom and Innovative Law," 24 N.M. L. Rev. 225 (1994).

system should be adversarial, non-adversarial, or a hybrid of the two methodologies.<sup>24</sup>

Gloria Valencia-Webber provides a particularly helpful description of a culturally compatible justice system, which she argues must incorporate custom. To explain custom and its incorporation into tribal justice system policies and procedures, Valencia-Webber states:

Custom as a concept must be separated from other cultural elements that imply nonformalized ideas and codes of conduct. To become "enforceable at common law a custom had to be: (1) legal, (2) notorious, (3) ancient or immemorial and continuous, (4) reasonable, (5) certain, (6) universal and obligatory ... a creature of its history." Custom is distinctively a pattern of thought or way of perceiving and feeling about the elements of life. When conduct is affected by this thought process, then usage occurs through the practice or regularity of behavior.<sup>25</sup>

Here, Valencia-Webber articulates that not all customs should be integrated into enforceable codes or formalized procedures of a culturally compatible justice system. Customs that should be incorporated are powerful and foundational to that particular Indian community. For instance, within a tribe, certain families or clans may apply distinctive law that is in conflict with the laws of other clans. While valid, these laws may be inappropriate as enforceable tribal customary law for the tribal justice system.

As stated above, tribal custom and customary law can be integrated in all aspects of a tribal justice system. One important aspect is the role of tribal litigators, judges, mediators, law enforcement, and other individuals involved in the tribal justice system. In particular, custom and customary law can affect who can act in these positions, what

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<sup>24</sup> Heather E. Williams, "Finding Flexibility in the Judicial System: Social Justice and Comprehensive Law Practices: Three Washington State Examples," 5 Seattle J. Soc. Just. 411 (2006), 422.

<sup>25</sup> Gloria Valencia-Weber, "Tribal Courts: Custom and Innovative Law," 24 N.M. L. Rev. 225 (1994), 245.

traditional information is available to those individuals, and what these individuals should do with that information.<sup>26</sup>

When custom and customary law conflict with these positions, the system will struggle to effectively provide justice. This is illustrated by Justin Richland in his book, “Arguing with Tradition: The Language of Law in Hopi Tribal Court,” Hopi tribal elders felt that their traditional roles of resolving disputes were threatened by the tribal court judge of the Hopi Tribal Court. According to Richland, there was a “struggle over questions of authority and the legitimate exercise of legal power.”<sup>27</sup> Richland observed that the tribal judge would interact with witnesses in ways that conflicted with tribal custom. The judge would ask witnesses to explain tribal custom and tradition;<sup>28</sup> however, Hopi custom indicates that only specific individuals should possess traditional knowledge, and this knowledge is extremely powerful for the individuals who have it.<sup>29</sup> As a result, the court was ineffective when witnesses became uncomfortable and aggravated by the tribal judge’s line of questioning.<sup>30</sup> In essence, the role of the tribal judge was in conflict with Hopi custom. While no solution is provided by Richland for this conflict, the challenges facing the Hopi Tribal Court are illustrative in understanding culturally compatible justice systems because they indicate the importance of integrating

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<sup>26</sup> See Justin B. Richland, *Arguing with Tradition: The Language of Law in Hopi Tribal Court* 79 (John M. Conley et al. eds.), Chicago: University of Chicago Press (2008).

<sup>27</sup> Justin B. Richland, *Arguing with Tradition: The Language of Law in Hopi Tribal Court* 79 (John M. Conley et al. eds.), Chicago: University of Chicago Press (2008).

<sup>28</sup> *Ibid.*, 70 (“the judge departed from the normal examination procedures of the Hopi Tribal Court when he took on a central role in questioning tribal elders.... the judge took control of the actual questioning process, translating the parties’ written English questions into Hopi and questioning the witnesses himself”).

<sup>29</sup> *Ibid.*, 82.

<sup>30</sup> *Ibid.*, 86.

tribal custom into tribal justice systems and, particularly, the role of tribal court judges. Additionally, even though Richland was addressing a civil dispute in the example above, the issue at hand – the importance of tradition and the challenges of incorporating tradition – is relevant for tribal justice systems addressing both civil and criminal cases.

Custom and customary law could also guide tribes in determining what traditional information is available when resolving disputes. As mentioned above, one way in which the Hopi Tribal Court was in conflict with Hopi custom was that the tribal judge wanted access to restricted and protected traditional knowledge.<sup>31</sup> Tribal custom often involves spoken or unspoken rules restricting the sharing of traditional knowledge, including oral stories, which can be instrumental in resolving disputes. These restrictions vary drastically by tribe. To appropriately utilize traditional knowledge, tribes must respect these restrictions: who owns the knowledge, who can hear the knowledge, and when is it appropriate to share the knowledge.<sup>32</sup>

Once information on custom and customary law is available, individuals involved with a tribal justice system determine how to use the information. Individuals can use the information as support in resolving disputes. According to Valencia-Webber, “tribal litigators and judges must decide when custom and usage, which do evolve and change in some degree, should be determinative in decisions” to maintain a culturally legitimate

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<sup>31</sup> Ibid., 82.

<sup>32</sup> Donna J. Eder, “Bringing Navajo Storytelling Practices into Schools: the Importance of Maintaining Cultural Integrity,” 38 *Anthropology and Education Quarterly* 278 (2007), 280; and Justin B. Richland, *Arguing with Tradition: The Language of Law in Hopi Tribal Court*, 79 (John M. Conley et al. eds.), Chicago: University of Chicago Press (2008).

justice system.<sup>33</sup> Here, appropriate usage of tribal custom by litigators and judges involves verbal and written expressions. Customary law can also influence how individuals perform their jobs: their actions. This can be seen when custom guides police to appropriately interact with community members:

The police officer working for the Tohono O’odham in southern Arizona who aggressively confronts a suspect will have offended long- standing tribal norms and will have failed to draw on them in the service of obtaining the suspect’s compliance. By contrast, the police officer at Turtle Mountain in North Dakota who fails to confront a suspect is guilty of the same errors.<sup>34</sup>

In this example, tribal custom guides police officers to act appropriately with individuals they encounter. Thus, from tribal judges to tribal police, custom can influence a wide range of actors in a justice system. Additionally, while it is likely that certain strategies can be broadly applicable to tribal communities because of certain shared experiences, this passage reveals the instances where tribally specific training of justice system personnel would be needed.

Detention and rehabilitation programs can also reflect custom and customary law as part of a larger justice system. As an example, on the Duckwater Shoshone Indian Reservation, a BIA detention facility created a successful and culturally compatible drug and alcohol treatment program. The program, named the Eagle Spirit Empowerment Program, integrated traditional Indian teachings and Native American symbolism with contemporary counseling.<sup>35</sup>

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<sup>33</sup> Gloria Valencia-Weber, “Tribal Courts: Custom and Innovative Law,” 24 *N.M. L. Rev.* 225 (1994), 246.

<sup>34</sup> Stewart Wakeling, Miriam Jorgensen, and Susan Michaelson, “Policing on American Indian Reservations,” *National Institute of Justice Journal* (2001), 6.

<sup>35</sup> Ronald Eagleeye Johnny, “The Duckwater Shoshone Drug Court, 1997-2000: Melding Traditional Dispute Resolution with Due Process,” 26 *Am. Indian L. Rev.* 261 (2002), 273.

Last, tribal custom can be incorporated into the day-to-day operations of a justice system in less formal ways. In particular, a culturally compatible justice system could potentially allow more community participation in tribal court hearings, encourage employees to be open to receiving community member comments and criticisms, foster community policing methods and outreach, or may simply employ a staff that is predominately Native.

Overall, it is important to note that culturally compatible justice systems reflect the present state of an Indian community. A tribal justice system would not be considered culturally compatible if it strictly aligned with pre-colonial traditional customs that have not carried into the current state of that community. Joseph Kalt, in his writings about tribal governance generally, addresses this issue. According to Kalt, “the challenge of devising legitimate governing structures today is not a matter of ‘going back’; it is rather the challenge of finding governing structures that match the reality of the contemporary cultures of Native communities.”<sup>36</sup> Indian culture is not stagnant, it transforms over time, and it will continue to transform. Tribal justice systems should be flexible and allow for this change.

One option to provide flexibility for tribal communities with cultural diversity is to have a dual tribal justice system, where defendants can choose to have adversarial justice or a more traditional process to address the disruptive conduct. For example, the Navajo Nation provides the option for defendants to choose to participate in the Navajo

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<sup>36</sup> Joseph Kalt, “Constitutional Rule and the Effective Governance of Native Nations,” in *American Indian Constitutional Reform and the Rebuilding of Native Nations*, 198 (Eric D. Lemont ed.), Austin: University of Texas Press (2006).

Peacemaking process or to rely on the Navajo Tribal Court to address the crime committed. Additionally, cases are sent to the Navajo Tribal Court when they fail to be successfully resolved in Peacemaking.<sup>37</sup>

Tribes will incorporate varying levels of traditional tribal custom depending on the unique needs of each Indian community. Similarly, a tribe may incorporate custom into a system that retains many aspects of the American justice system and the system could still be considered culturally compatible for that Indian community. Expanding on this issue, Valencia-Webber acknowledges that, at times, the outcomes of culturally compatible justice systems may appear indistinguishable from outcomes of state or federal justice systems. She states that in these situations, “the legal reasoning justifying the result may differ” and that difference in reasoning is extremely important to preserve.<sup>38</sup> Regardless of the similarity in outcomes, cultural compatibility remains a necessary condition for tribal justice systems to be effective in the communities they serve.

#### **D. Inter-Governmental Cooperation**

Maintaining inter-governmental cooperation is a needed characteristic of successful tribal justice systems. This cooperation can exist in a more formal capacity, such as cross-deputization or co-governance agreements, or less formally, through increased communication with outside agencies. In all of its forms, good inter-

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<sup>37</sup> James Zion, “The Dynamics of Navajo Peacemaking,” 14 *Journal of Contemporary Criminal Justice* 1, (February 1998), available at [http://www.iirp.org/article\\_detail.php?article\\_id=NDg0](http://www.iirp.org/article_detail.php?article_id=NDg0).

<sup>38</sup> Gloria Valencia-Weber, “Tribal Courts: Custom and Innovative Law,” 24 N.M. L. Rev. 225 (1994), 253.

governmental cooperation requires a lack of antagonism among law enforcement personnel, representatives, and constituents of all involved jurisdictions.<sup>39</sup>

Formally, cooperative policing and court agreements are strategies that allow multi-jurisdictional communities to more cost effectively provide quality justice and police services to tribal communities.<sup>40</sup> For tribes affected and not affected by Public Law 280,<sup>41</sup> tribal-state agreements can help to clarify the jurisdictional maze existing in tribal communities, which helps all jurisdictions function more effectively.<sup>42</sup> For example, without a cross-deputization agreement, tribal and state police forces would both police a reservation community. Among other challenges, tribal officers would rely on state officer participation to successfully manage non-Indian offenders, state officers in non-Public Law 280 jurisdictions would rely on tribal officer participation to successfully manage Indian offenders, and policing on the reservation would be confusing and likely disruptive for community members. However, if tribal police were cross-deputized, they would be able to relieve state officers of their responsibility to monitor the tribal community, tribal police would likely have greater access and trust within the community as compared to state forces, and state governments would maintain their responsibility to

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<sup>39</sup> Carole E. Goldberg and Duane Champagne, *Captured Justice: Native Nations Under Public Law 280*. Durham, NC: Carolina Academic Press, forthcoming.

<sup>40</sup> Ibid.; and "Flandreau Police Department: 2005 High Honors," Harvard Kennedy School Ash Center for Democratic Governance and Innovation, <http://www.innovations.harvard.edu/awards.html?id=16856> (March 25, 2011).

<sup>41</sup> Public Law No. 93-638. States impacted by Public Law 280 are authorized to exercise criminal jurisdiction over Indians and non-Indians in Indian country. The act does not eliminate or limit tribal jurisdiction, but provides concurrent jurisdiction for the affected tribe and state.

<sup>42</sup> Angela Riley, "Good (Native) Governance," 107 Colum. L. Rev. 1049 (2007), 1092; and The Honorable Korey Wahassuck, "The New Face of Justice: Joint Tribal-State Jurisdiction," 47 Washburn L.J. 733 (2008), 743.



the reservation community.<sup>43</sup> Outside of policing agreements, tribes can also enter into agreements with county jails to have access to incarceration options for their justice systems without having to independently build and manage a tribal jail facility on the reservation.

When proposing and maintaining these agreements, tribal governments have the opportunity to discuss and advise on county and state procedures and duties as well as demonstrate their tribal control as a sovereign entity with jurisdictional responsibility.<sup>44</sup> However, not all state or county jurisdictions are willing to embrace such agreements. As an example, some jurisdictions could perceive cross-deputization agreements as a forfeiture of control and power over policing activities within Indian communities. Additionally, outside jurisdictions may perceive tribal police as ill-equipped to take on greater responsibilities or fear that tribal police will unequally enforce laws based on Indian or non-Indian clientele.

Informally, inter-governmental cooperation can be maintained between tribal and local jurisdictions through professional networking opportunities. Tribal court and law enforcement personnel can independently visit their counterparts in nearby jurisdictions as well as participate in various organizations and conferences.

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<sup>43</sup> Carole E. Goldberg and Duane Champagne, "Final Report: Law Enforcement and Criminal Justice Under Public Law 280," (November 2007), *available at* [http://www.tribal-institute.org/download/pl280\\_study.pdf](http://www.tribal-institute.org/download/pl280_study.pdf)

<sup>44</sup> Carole E. Goldberg and Duane Champagne, *Captured Justice: Native Nations Under Public Law 280*. Durham, NC: Carolina Academic Press, forthcoming.

When good inter-governmental cooperation exists between tribes and surrounding jurisdictions, tribal communities can more successfully be served. Similarly, formal inter-governmental cooperation often results in a more economical allocation of resources and greater accountability and legitimacy for the justice system, which serves the communities of both jurisdictions.<sup>45</sup>

### **E. Tribal Control**

In order for tribal justice systems to be successful, the control of tribal governments must be respected. According to Joseph Kalt and Stephen Cornell, tribal control is essential to healthy tribal government operation and economic pursuits. Even more, tribal control increases the likelihood of strengthened accountability and, as a result, effective management of tribal court operations.<sup>46</sup> The scope of tribal control involves both the control tribal governments have over their own territory as well as outside governments' acknowledgement of that control. Without both of these components, tribal governments, including their justice systems, can be rendered unsuccessful for their respective communities. Joseph Kalt and Joseph Singer write, "Tribal sovereignty is not just a legal fact; it is the life-blood of Indian nations. This is obviously true in the political sense: Without self-rule, tribes do not exist as distinct

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<sup>45</sup> Ibid.

<sup>46</sup> Stephen Cornell and Joseph P. Kalt, "Sovereignty and Nation-Building: The Development Challenge in Indian Country Today," *American Indian Culture and Research Journal*, Joint Occasional Papers on Native Affairs: No. 2003-03 (2003), 209. *See also* Miriam Jorgensen (ed.), *Rebuilding Native Nations: Strategies for Governance and Development*. Tucson, AZ: University of Arizona Press (2007), 25.

political entities within the U.S. federal system."<sup>47</sup> Expanding on this statement, Angela Riley writes, "Without self-rule, tribes will not only disappear as political entities within the United States, they may cease to exist altogether."<sup>48</sup>

To increase tribal control over criminal justice operations, tribes have employed various strategies. One strategy to exert more tribal control over justice system operations in their territory is the use of 638 contracts with the Bureau of Indian Affairs. Since the passage of the Indian Self-Determination and Education Assistance Act in 1975,<sup>49</sup> 638 contracts have provided tribes the opportunity to contract to directly manage programs and services provided by the federal government to their communities. In particular, this Act allows tribes to take increased ownership of how criminal justice is expressed in their territory. Additionally, tribes have been able to exert more tribal control over criminal justice operations by funding justice operations independently or seeking federal grants.<sup>50</sup>

While tribal governments do have agency in increasing their control over criminal justice operations, there are many potential external obstacles as well. For instance, the United States has placed limitations on tribal court sentencing power. According to the Indian Civil Rights Act, tribal justice systems are not allowed to "impose punishment greater than imprisonment for one year and a fine of \$5,000 or both for conviction of any

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<sup>47</sup> Joseph P. Kalt and Joseph William Singer, "Myths and Realities of Tribal Sovereignty: The Law and Economics of Indian Self-Rule," John F. Kennedy Sch. of Gov't Faculty Research Working Paper Series, Paper No. RWP04-016, (2004), 4.

<sup>48</sup> Angela Riley, "Good (Native) Governance," 107 Colum. L. Rev. 1049 (2007), 1063.

<sup>49</sup> 25 U.S.C. 450 to 458bbb-2 (2000).

<sup>50</sup> Carole E. Goldberg and Duane Champagne, *Captured Justice: Native Nations Under Public Law 280*. Durham, NC: Carolina Academic Press, forthcoming.

one offense.”<sup>51</sup> Since the passage of the Tribal Law and Order Act in 2010, tribal sentencing power may be expanded to three years and \$15,000 fine or both per offense if certain congressional requirements are satisfied. Additionally, the United States bars tribal criminal jurisdiction over non-Indians within Indian country.<sup>52</sup> These legal obstacles facing tribes are unyielding and have significant impacts on the exercise of tribal sovereignty, yet they are not the only challenges facing tribes.

Tribal control is also strongly affected by the neighboring state of each tribe, the relationship that state has with the tribe, and the outside legislation affecting each tribe. Tribes affected by Public Law 280 and other similar jurisdictional schemes encounter unique and often more serious obstacles to tribal control. While tribes under Public Law 280 share concurrent jurisdiction with surrounding state and local governments, in practice they are subject to the courts, police departments, and jails of those outside jurisdictions.<sup>53</sup>

One solution available to tribes currently affected by Public Law 280 and wanting to increase tribal control is to transition from Public Law 280 state jurisdiction to federal jurisdiction through retrocession. Retrocession, a process outlined by the Indian Civil Rights Act of 1968, allows for a process undertaken by the state, albeit typically at the behest of tribes.<sup>54</sup> This state-initiated process, also involving Department of Interior

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<sup>51</sup> 25 U.S.C. 1301-1303 (1994)

<sup>52</sup> *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191, 210-11 (1978).

<sup>53</sup> Carole E. Goldberg and Duane Champagne, *Captured Justice: Native Nations Under Public Law 280*. Durham, NC: Carolina Academic Press, forthcoming.

<sup>54</sup> 25 U.S.C. § 1323

review, has historically only occurred in response to tribal lobbying efforts.<sup>55</sup> Challenges facing tribes seeking retrocession often involve both high costs and potential state unwillingness to participate. While some states have been agreeable to accommodate tribes seeking retrocession, others such as California and Alaska have not encouraged or approved retrocession.<sup>56</sup> Even without the burden of Public Law 280, tribes regularly face obstacles from federal, state, and county jurisdictions. Challenges to tribal control in turn affect the delivery of justice in Indian country. Research suggests that the more tribal control is restricted and disrespected, the less successful the tribal justice system will be in the community it serves.<sup>57</sup>

The potential ramifications for a tribe if its tribal control is not respected are great. If tribal control is not supported, it is much more difficult for a tribe to have the needed authority for tribal laws, policies, and procedures to be respected by community members. If tribal control is not respected, a tribe will likely struggle to effectively garner support from outside jurisdictions when a crime requires the response of those outside jurisdictions. Also, it is probable that businesses will be less likely to instigate joint ventures with tribal governments if those businesses believe the tribal police department is not adequately respected as an authority in the community to provide a safe environment for customers.

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<sup>55</sup> Carole E. Goldberg and Duane Champagne, "Final Report: Law Enforcement and Criminal Justice Under Public Law 280," (November 2007), *available at* [http://cdn.law.ucla.edu/SiteCollectionDocuments/centers%20and%20programs/native %20nations/pl280%20study.pdf](http://cdn.law.ucla.edu/SiteCollectionDocuments/centers%20and%20programs/native%20nations/pl280%20study.pdf) (March 25, 2011).

<sup>56</sup> Carole E. Goldberg and Duane Champagne, *Captured Justice: Native Nations Under Public Law 280*. Durham, NC: Carolina Academic Press, forthcoming.

<sup>57</sup> Ibid.

## F. Resources

The final essential characteristic of a successful tribal justice system is adequate resources or funding. The Honorable Korey Wahwassuck explains that, “tribal court weaknesses stem[s] not from pervasive bias or incompetence, but rather from low levels of funding.”<sup>58</sup> Therefore, to successfully provide justice, tribes must employ the appropriate amount of adequately qualified police, judges, advocates, attorneys, mentors, or traditional leaders as well as provide the needed equipment and resources for those individuals.

Supplying adequate resources to tribal justice systems is a challenge for most tribal governments. This challenge is often exacerbated by the unique situations of each tribe. Tribes may be geographically predisposed to struggle with economic development pursuits because they are isolated from non-Indian populations (potential customers of tribal businesses), their land is not rich in natural resources such as oil, gas, coal, or timber, or they are unwilling to exploit such resources. Additionally, tribes affected by Public Law 280 are particularly challenged to provide resources for tribal justice systems. These tribes receive considerably less financial support from the Bureau of Indian Affairs than tribes unaffected by Public Law 280.<sup>59</sup> Ada Pecos Melton writes, “In many Public Law 280 states, the BIA refused to support tribal law enforcement and tribal courts on the grounds that Public Law 280 made tribal criminal jurisdiction unnecessary.”<sup>60</sup> Even more

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<sup>58</sup> The Honorable Korey Wahassuck, “The New Face of Justice: Joint Tribal-State Jurisdiction,” 47 Washburn L.J. 733 (2008), 737.

<sup>59</sup> Ibid.

<sup>60</sup> Ada Pecos Melton, *Indigenous Justice Systems and Tribal Society*, 79 Judicature 126, 127 (1995).

problematic, tribes affected by Public Law 280 also struggled to secure funding from other agencies and organizations due to the prevailing misconception that tribal governments lacked jurisdiction altogether.<sup>61</sup>

Most tribes are dependent on funding from the federal government to operate tribal justice systems and provide other services. Reports undertaken by the federal government suggest, however, that even with federal funding, tribal justice system programs and facilities are severely underfunded. According to a recent “Gap Analysis” launched by the Bureau of Indian Affairs, in 2007 only “48% of BIA funded law enforcement agencies were staffed to the national average of 2.6 officers per 100,000 inhabitants in non-metropolitan communities.”<sup>62</sup> The study also indicates a need for improved technology for justice system employees, “Outdated radios and insufficient radio coverage place officers at risk and have led to a loss of lives in Indian country due to the inability of officers to radio for assistance.”<sup>63</sup>

While this dependency on federal funding is problematic considering it is currently ineffective in providing the sole funds necessary to operate law enforcement agencies, scholars also suggest that accepting this funding could be problematic for tribes designing tribally specific law enforcement policies and programs. Tribes may feel

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<sup>61</sup> Sarah Deer et al., Tribal Law and Policy Institute, Focus Group on Public Law 280 and the Sexual Assault of Native Women (2007), 5.

<sup>62</sup> Patrick Ragsdale, Director of the BIA, “Statement before the Senate Committee on Indian Affairs, Oversight Hearing on Indian Country Law Enforcement,” (May 17, 2007), 2 available at [http://indian.senate.gov/public/\\_files/Ragsdale051707.pdf](http://indian.senate.gov/public/_files/Ragsdale051707.pdf) (last visited May 20, 2010).

<sup>63</sup> Ibid., 3.

pressure to satisfy the varying interests associated with those funds.<sup>64</sup> Additionally, dependency on federal funding is problematic because the funds are unpredictably available and often short-term.

A tribal justice system can more successfully provide police and court services to its community when it is adequately funded.<sup>65</sup> Even more, adequate funding and resources provide the opportunity for tribes to more smoothly attain the other five elements of successful tribal justice systems. Among other things, adequate funding allows tribes to employ the appropriate number of personnel to more effectively manage the administrative needs of tribal justice systems.

## **G. Conclusion**

The conditions explored above are interconnected, occasionally dependent on outside communities to properly accomplish, and at times require community member acknowledgement to be fully realized. Without the support of its community and acknowledgement of success, a justice system will not be successful for its community. While most tribes seek to accomplish each of the six criteria, some are faced with more serious obstacles than others. It is clear, however, that justice system success can bring many advantages to tribal communities.

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<sup>64</sup> Stephen Cornell, Catherine Curtis, and Miriam Jorgensen, "The Concept of Governance and Its Implications for First Nations," A Report to the British Columbia Regional Vice-Chief, Assembly of First Nations, Joint Occasional Papers on Native Affairs, No. 2004-02 (2003), 20; and Addie Caroline Rolnick, "Developing a Tribal Juvenile Justice System: A Case Study in the Native Village of Barrow," University of California, Los Angeles (2007).

<sup>65</sup> Carole E. Goldberg and Duane Champagne, *Captured Justice: Native Nations Under Public Law 280*. Durham, NC: Carolina Academic Press, forthcoming.



When tribal justice systems are successful, public safety efforts are more easily achieved, justice is more fairly distributed, disputes are more successfully resolved, and tribal governments are more respected by community members and outsiders. Successful tribal justice systems provide the stable foundation for improved economic development, strengthened tribal and Indian identities in community members, and good relations with outside governments.

### III. THE TULALIP JUSTICE SYSTEM

On the coast of Washington State, roughly 30 miles north of Seattle, is the Tulalip Reservation. Situated directly on the sheltered Tulalip Bay on the eastern shore of the Puget Sound, this particular area of the country is known for its wet winters, relatively dry summers, abundant resources, particularly vibrant colors, and spectacular beauty.<sup>66</sup> The area is diverse, encompassing marine waters, tidelands, fresh water creeks, lakes, wetlands, and forests.<sup>67</sup> For centuries, tribes in this area have enjoyed access to abundant salmon, shellfish, game, edible plant life, and rich soil.<sup>68</sup> The tribes native to this area are part of a larger Coast Salish community, whose traditional territory encompassed the land surrounding the Puget Sound from just south of Seattle into parts of Canada.<sup>69</sup> The sheltered waterways of the Puget Sound were particularly useful for the Coast Salish, allowing people to connect with one another easily, sustain larger social relations, and trade - utilizing shell money as a form of currency.<sup>70</sup>

The Tulalip Tribes of the Tulalip Reservation is a federally recognized tribe established via the Treaty of Point Elliot on January 22, 1855 and Executive Order of

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<sup>66</sup> Tulalip Tribal Court, "Tulalip Tribes: Law and Justice Brochure," March 2010, [http://www.tulaliptribes-nsn.gov/Portals/0/pdf/departments/tribal\\_court/Justice-Brochure.pdf](http://www.tulaliptribes-nsn.gov/Portals/0/pdf/departments/tribal_court/Justice-Brochure.pdf) (March 25, 2011).

<sup>67</sup> Ibid.

<sup>68</sup> Bruce Miller, *The Problem of Justice: Tradition and Law in the Coast Salish World*, Lincoln and London: University of Nebraska Press, (2001), 1.

<sup>69</sup> Ibid., 6.

<sup>70</sup> Tulalip Tribal Court, "Tulalip Tribes: Law and Justice Brochure," March 2010, [http://www.tulaliptribes-nsn.gov/Portals/0/pdf/departments/tribal\\_court/Justice-Brochure.pdf](http://www.tulaliptribes-nsn.gov/Portals/0/pdf/departments/tribal_court/Justice-Brochure.pdf) (March 25, 2011).

President Ulysses S. Grant, signed on December 23, 1873.<sup>71</sup> The reservation boundary encompasses approximately 22,000 acres.<sup>72</sup> The location of the Tulalip Reservation on the Puget Sound is indeed beneficial to the Tribes; however, other geographical characteristics of the land provide potential resources to the Tulalip Tribes. The Tulalip Reservation is directly off of Interstate 5, which runs directly into Seattle, Washington. While close proximity to the traffic of non-Native individuals is not always beneficial to tribes in the United States, the Tulalip Tribes have utilized their location to support many economic endeavors otherwise challenging to establish. Some of these endeavors include a business park and tribally chartered city named Quil Ceda Village; Tulalip Resort Hotel, Spa, and Casino; a 2,500 person outdoor amphitheater; and a 100-store Seattle Premium Outlet Mall.

The Tulalip Reservation is the home of 15,000 residents, roughly 12,500 of whom are not Tulalip members,<sup>73</sup> which is a disparity largely resulting from the allotment of the Tulalip Reservation between 1883 and 1909.<sup>74</sup> Additionally, the nearly 20,000 to 30,000 people who visit the reservation each day are predominately non-tribal members.<sup>75</sup> The tribal population is currently about 4,000 members with 2,500 of these members residing

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<sup>71</sup> Treaty of Point Elliott, 12 Stat. 927 (1855), 2 Kappler 669.

<sup>72</sup> Tulalip Tribes of Washington Codes and Regulations, Ordinance 80 – Tulalip Zoning, *available at* <http://www.narf.org/nill/Codes/tulalipcode/tulalip80zoning.htm>.

<sup>73</sup> Tulalip Justice System employee #2. Interviewed by Leah Shearer. Hand-written notes, March 11, 2011 at 11:00 AM. Tulalip Reservation.

<sup>74</sup> Kenneth D. Tollefson, “The Political Survival of Landless Puget Sound Indians,” 16 *American Indian Quarterly*, No. 2 (Spring 1992), 222.

<sup>75</sup> “Tribal police gain power to arrest non-Indians on reservation,” *News from Indian Country*, April 2008. [http://indiancountrynews.net/index.php?option=com\\_content&task=view&id=3137&Itemid=109](http://indiancountrynews.net/index.php?option=com_content&task=view&id=3137&Itemid=109) (March 24, 2011).

on the Tulalip Reservation.<sup>76</sup> The members of the Tulalip Tribes come from a range of tribes from the Northwest Region of the United States including the Snohomish, Snoqualmie, Skagit, Suiattle, Samish, and Stillaguamish tribes.

The Tulalip Tribes' constitution and by-laws, under the 1934 Indian Reorganization Act, were approved on January 24, 1936.<sup>77</sup> The Tribes' governing body is a seven-member council, known as the Tulalip Board of Directors.<sup>78</sup> From the late 1950's to 2000, the Tulalip Reservation was subject to Washington State jurisdiction under Public Law 280.<sup>79</sup> During this time, the jurisdictional framework proved to be ineffective for the Tulalip Reservation community. Due to issues of drug abuse, open drug dealing, violent activity, DUI related fatalities, and a high incidence of crime generally, the Tulalip Reservation was viewed as unsafe for its residents.

Under Public Law 280, issues were compounded on the Tulalip Reservation due to three main factors. First, the Snohomish County Police Department, responsible for responding to crime on the reservation, was often neglectful or slow to respond to calls.<sup>80</sup> Second, the community did not trust Snohomish County or Washington State officials to address disruptive behavior; even more, the Tulalip community often perceived the

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<sup>76</sup> Tulalip Tribes, "Tulalip Tribes: Cultural History Powers Today's Progress," <http://www.tulaliptribes-nsn.gov/Portals/0/pdf/TulalipBrochure.pdf> (March 25, 2011).

<sup>77</sup> "Constitution and By-Laws for the Tulalip Tribes," United States Department of the Interior: Office of Indian Affairs, Washington: United States Government Printing Office, (1936).

<sup>78</sup> Ibid.

<sup>79</sup> Carole E. Goldberg and Duane Champagne, "Final Report: Law Enforcement and Criminal Justice Under Public Law 280," (November 2007), *available at* [http://www.tribal-institute.org/download/pl280\\_study.pdf](http://www.tribal-institute.org/download/pl280_study.pdf) (March 25, 2011), 435.

<sup>80</sup> Tulalip Justice System employee #2: Interviewed by Leah Shearer. Hand-written notes, November 10, 2010 at 11:00 AM. Tulalip Reservation.

outside jurisdictions as threatening.<sup>81</sup> As a result, “community members were reluctant to report crimes to the county authorities or to cooperate with investigations.”<sup>82</sup> Third, like other tribes affected by Public Law 280, the Tulalip Reservation was ill-equipped to exercise its concurrent jurisdiction. While the reservation did have a small, limited-operations court and fisheries’ patrol to address tribal fishing regulations violations, evictions, and collections issues since the late 1970s, the Tribes lacked the needed infrastructure to effectively respond to drug abuse, associated violence, and crime on the reservation.<sup>83</sup>

To increase tribal control and responsibility over criminal justice concerns on the reservation, the Tulalip Tribes undertook efforts to lobby Washington State to retrocede from Public Law 280 state jurisdiction beginning in 1996.<sup>84</sup> The Tulalip Tribes enlisted the assistance of three tribal advocates: Stanley G. Jones, Sr, Mike Taylor and John McCoy, a Tulalip Tribal member. Jones, a former chairman of the Tulalip Tribes, spent considerable time garnering community support as well as legislative and executive support for retrocession.<sup>85</sup> Taylor, currently the Reservation Attorney for the Tulalip Tribes, had assisted other tribes within the State of Washington to successfully navigate

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<sup>81</sup> Tulalip Justice System employee #8. Interviewed by Leah Shearer. Audio recording, March 10, 2011 at 9:00 AM. Tulalip Reservation.

<sup>82</sup> Carole E. Goldberg and Duane Champagne, "Final Report: Law Enforcement and Criminal Justice Under Public Law 280," (November 2007), 435, *available at* [http://cdn.law.ucla.edu/SiteCollectionDocuments/centers%20and%20programs/native %20nations/pl280%20study.pdf](http://cdn.law.ucla.edu/SiteCollectionDocuments/centers%20and%20programs/native%20nations/pl280%20study.pdf) (March 25, 2011).

<sup>83</sup> *Ibid.*, 435-6; and Wendy Church, “Resurrection of the Tulalip Tribes’ Law and Justice System and its Socio-Economic Impacts,” May 21, 2006, 5, *available at* [http://www.tulaliptribes-nsn.gov/Portals/0/pdf/departments/tribal\\_court/Tulalip-History-of-Law-&-Justice.pdf](http://www.tulaliptribes-nsn.gov/Portals/0/pdf/departments/tribal_court/Tulalip-History-of-Law-&-Justice.pdf) (March 25, 2011), 5.

<sup>84</sup> Tulalip Tribes, Tulalip Resolution No 96-0167.

<sup>85</sup> Tulalip Justice System employee #1. Interviewed by Leah Shearer. Email correspondence. September 8, 2011 at 1:50 PM.

the retrocession process.<sup>86</sup> John McCoy, who served as the Tulalip Government Affairs Director from 1994 to 2001 and General Manager of Quil Ceda Village from 2001 to 2010, acted as a lobbyist for the Tulalip Tribes.<sup>87</sup> After organizing community gatherings to discuss retrocession, garnering community support, communicating weekly for six months with Snohomish County to amicably prepare for retrocession, lobbying the State of Washington on several occasions, communicating with the U.S. Attorney's Office in Seattle, and submitting petitions to the Secretary of Interior, the Tulalip Tribes achieved retrocession in 2000.<sup>88</sup>

Currently, the Tulalip Justice System is comprised of the Tulalip Police Department and the Tulalip Tribal Court, which includes the Tulalip Tribal Probation Office, The Tulalip Tribal Court Public Defense Clinic, the Tulalip Tribal Prosecutor's Office, and three diversion programs: Wellness Court, Elders' Panel, and Community Accountability Board (juvenile diversion). In many respects, the development and implementation of this system is attributed to the strategy of the Tulalip Tribes to recruit and hire individuals who were strongly respected in their field of Indian law, advocacy, or law enforcement. These individuals have helped to create and transform the Tulalip

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<sup>86</sup> Tulalip Justice System employee #1. Interviewed by Leah Shearer. Audio recording, October 21, 2010 at 9:30 AM. Tulalip Reservation

<sup>87</sup> John Iwasaki, "McCoy set to be fourth Indian legislator," *Seattle Post-Intelligencer* Reporter, (November 5, 2002), *available at* <http://www.seattlepi.com/default/article/McCoy-set-to-be-fourth-Indian-legislator-1100215.php>; and Bill Sheets, "John McCoy, Quil Ceda Village helped Tulalips to prosperity," *HeraldNet.com*, (December 5, 2010), *available at* <http://www.heraldnet.com/article/20101205/NEWS01/712059909/-1/news01>.

<sup>88</sup> Tulalip Justice System employee #1. Interviewed by Leah Shearer. Audio recording, October 21, 2010 at 9:30 AM. Tulalip Reservation; Tulalip Justice System employee #8. Interviewed by Leah Shearer. Audio recording, March 10, 2011 at 9:00 AM. Tulalip Reservation; and United States Department of Interior, Office of the Secretary, to Tulalip Tribal Chairman Jones, November 29, 2000, on file with author ("on behalf of the United States Government, the Department of Interior, at the request of the Tulalip Tribe, accepts from the State of Washington all criminal jurisdiction exercised by the State of Washington...").

Justice System within the last two decades to serve the Tulalip communities in ways that have earned it tremendous recognition considering its rather recent transformation.

### **A. The Tulalip Tribal Court**

The Northwest Intertribal Court System administers the judicial functions of the Tulalip Justice System including the two trial court judges and Appellate Court services. Currently, two trial court judges hear cases arising in Tulalip Tribal Court, one Tulalip probation officer and one probation assistant operate the Tulalip Tribal Probation Office, and two tribal court prosecutors are employed by the Tulalip Tribes to enforce tribal criminal and civil law violations, one being solely responsible for pursuing domestic violence related crimes.<sup>89</sup>

Chief Judge Theresa Pouley and Associate Judge Gary Bass, both members of the Colville Confederated Tribes, are the two trial judges for the Tulalip Tribal Court. Chief Judge Pouley is the Associate Justice of the Colville Court of Appeals and the former Chief Judge of the Lummi Tribal Court. She is the President of the North West Tribal Court Judges Association and formerly served on the Board of Directors for the National American Indian Court Judges Association.<sup>90</sup> Also, in January of 2011, Judge Pouley was appointed by President Obama to serve as a member on the Indian Law and Order

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<sup>89</sup> Tulalip Tribal Court, "Tulalip Tribes: Law and Justice Brochure," March 2010, [http://www.tulaliptribes-nsn.gov/Portals/0/pdf/departments/tribal\\_court/Justice-Brochure.pdf](http://www.tulaliptribes-nsn.gov/Portals/0/pdf/departments/tribal_court/Justice-Brochure.pdf) (March 25, 2011).

<sup>90</sup> Tulalip Tribes, "Tulalip Tribal Court: Judges and Director Bio," <http://www.tulaliptribes-nsn.gov/Home/Government/Departments/TribalCourt/JudgesDirectorBio.aspx> (March 26, 2011).

Commission.<sup>91</sup> Judge Bass is a Justice on the Colville Tribal Court of Appeals and a Justice on the Nevada Inter-Tribal Court of Appeals. He received his J.D. from the University of Washington School of Law in 1965 and passed the Washington State Bar that same year. For 20 years he served as a Pro Tem Court Commissioner in King County Superior Court. Before his appointment to the Tulalip Tribal Court in 2003, he had a general practice in Seattle, Washington.<sup>92</sup>

The Tulalip Tribal Court works very closely with social services programs on and off the Tulalip Reservation. The Tulalip Tribal Court incorporates three diversion programs and alternative sentencing procedures to offer rehabilitative options as appropriate responses to criminal offenses and disputes generally arising within the boundaries of the Tulalip Reservation. Independent of the three diversion programs, the Tulalip Tribal Court has developed alternative sentencing procedures, which are available for the majority of criminal offenders within the Tulalip Justice System. Alternative sentencing takes place while an offender is on probation; however, some offenders on probation will not be eligible.

While on probation, offenders eligible to participate in alternative sentencing options are provided an opportunity to avoid the fines or jail time included in their sentencing order by following all requirements outlined in social service evaluations concerning topics such as drug and alcohol dependency, mental health, education,

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<sup>91</sup> Officer of the Press Secretary, "President Obama Announces More Key Administration Posts," The White House, January 18, 2011, <http://m.whitehouse.gov/the-press-office/2011/01/18/president-obama-announces-more-key-administration-posts> (March 26, 2011).

<sup>92</sup> Tulalip Tribes, "Tulalip Tribal Court: Judges and Director Bio," <http://www.tulaliptribes-nsn.gov/Home/Government/Departments/TribalCourt/JudgesDirectorBio.aspx> (March 26, 2011).



parenting, physical health, domestic violence, dental health, anger and stress management, job training, and family services.<sup>93</sup> If offenders do not comply with probation procedures, including social services appointments, they must begin fulfilling their jail sentence requirements. Offenders found to not be in compliance must serve two days in jail. Each time an offender continues to remain in non-compliance, the jail time will continue to double until he or she has fulfilled the original jail sentence from the Tulalip Tribal Court.<sup>94</sup> One key component of the alternative sentencing program is the Tulalip Tribal Court's use of GPS<sup>95</sup> electronic home monitoring technology to track the location of the offender while on the Tulalip Reservation as well as detect whether that individual has consumed alcohol.<sup>96</sup> Not all alternative sentencing participants wear the GPS ankle bracelets,<sup>97</sup> though; they are a tool used at the discretion of the court to "help offenders stay connected to the community, to remain employed to become employed, to receive treatment and attend counseling as needed, to receive necessary medical care from their regular physicians, and ... ease the burden of high jail costs for the tribe."<sup>98</sup>

While the Tulalip Tribal Court focuses on rehabilitating offenders, it has determined that alternative sentencing will not be available to offenders who commit certain crimes. Differentiating offenses is a common practice of justice systems inside

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<sup>93</sup> Tulalip Tribes, "Tulalip Alternative Sentencing Program: Chapter 28.00.00, Corrections Management," 7, on file with author.

<sup>94</sup> Tulalip Tribes, "Tulalip Tribal Court: Treatment Compliance Report," on file with author.

<sup>95</sup> Global Positioning System

<sup>96</sup> Tulalip Tribes, "Honoring Nations 2006: Tulalip Tribal Court Semifinalist Essay – Alternative Sentencing Program," on file with author.

<sup>97</sup> Tulalip Tribes, "Tulalip Tribes of Washington Codes and Regulations: Ordinance 49 - Law and Order Code Title 3," 2004, 89, <http://www.narf.org/nill/Codes/tulalipcode/tulalip49lawtitle3.htm#t314> (March 25, 2011).

<sup>98</sup> Tulalip Tribes, "Tulalip Tribes GPS/EHM Program," on file with author.

and outside of Indian country. Jurisdictions often categorize crime based on severity, which would also indicate related sentencing guidelines. They also label certain offenses to trigger punitive or rehabilitative responses. Categorizing offenses is unique to each community, however. What types of crimes are worse than others or more indicative of the potential rehabilitative nature of the offender? For the Tulalip Tribal Court, offenders who have been found guilty of manufacturing and possessing a controlled substance with the intent to deliver (dealing drugs), violating exclusion orders from the Tulalip Tribes, sexual assault of a minor, “felony level” assaults, or individuals committing a rapid succession of offenses are not eligible to participate in the three diversion programs or utilize alternative sentencing options.<sup>99</sup> In these instances, a tribal court employee describes, “the goal isn’t necessarily punishment as it is community safety.”<sup>100</sup>

In 2006, the Tulalip Tribal Court received Harvard University’s Honoring Nations Award for its Alternative Sentencing Program.<sup>101</sup> The Honoring Nations Board of Governors and the Harvard Project staff select honorees through a review process of an application, site-visit, and 10-minute presentation to the Board and the public during the annual session of the National Congress of the American Indian. Honorees are evaluated based on five criteria: effectiveness, significance to sovereignty, relevance to the nation’s culture, transferability, and sustainability. As an honoree, the Tulalip Tribal Court

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<sup>99</sup> Tulalip Justice System employee #5. Interviewed by Leah Shearer. Audio recording, November 18, 2010 at 5:00 PM. Tulalip Reservation.

<sup>100</sup> Ibid.

<sup>101</sup> “Honoring Nations: Directory of Honored Programs,” September 2007.  
[http://hpaied.org/images/resources/general/Dir\\_web.pdf](http://hpaied.org/images/resources/general/Dir_web.pdf) (March 25, 2011).

received \$10,000 to be used to share their success story with others and a \$2,000 award.<sup>102</sup>

### **1. The University of Washington's Tribal Court Public Defense Clinic**

The University of Washington's Tribal Court Public Defense Clinic was created by Professor Ron Whitener in 2002 with the support of a charitable donation from the Tulalip Tribes and the efforts of Reservation Attorney, Mike Taylor. The Tulalip Tribes continue to provide an annual donation to the University of Washington's Tribal Court Defense Clinic to offer free defense services to the Tulalip community.<sup>103</sup> This is significant considering free public defense is rare in Indian country, and the Tribes are not required to offer free defense services under the provisions of the Indian Civil Rights Act or under the Tulalip Constitution.<sup>104</sup> The Clinic offers defense counsel for tribal members who have been charged with a crime by the Tulalip Tribal Court and whose household income qualifies under Tulalip law.<sup>105</sup> Along with offering services to the Tulalip Reservation, University of Washington's Tribal Court Defense Clinic also serves the Squaxin Island, Port Gamble S'Klallam, and Puyallup Tribes. The clinic, selected as a semi-finalist for Harvard University's Honoring Nations Award in 2008, is directed by Ron Whitener, Chief Judge for the Confederated Tribes of the Chehalis Indian

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<sup>102</sup> Tulalip Tribes, "Honoring Nations 2006: Tulalip Tribal Court Semifinalist Essay – Alternative Sentencing Program," on file with author.

<sup>103</sup> Tulalip Justice System employee #3. Interviewed by Leah Shearer. Audio recording, November 12, 2010 at 9:30 AM. Seattle, Washington.

<sup>104</sup> 25 U.S.C. §§ 1301-03; *and* Tulalip Tribes of Washington Constitution.

<sup>105</sup> Tulalip Justice System employee #5. Interviewed by Leah Shearer. Audio recording, November 18, 2010 at 5:00 PM. Tulalip Reservation.

Reservation, a member of the Squaxin Island Tribe, and recipient of the M. Shanara Gilbert "Emerging Clinician" Award from the Executive Committee of the Association of American Law Schools (AALS) Section on Clinical Legal Education.<sup>106</sup> As part of the clinic, second and third year law students, who have passed the Tulalip Bar, work in teams with supervisors Molly Cohan and Brenda Williams to represent Tulalip tribal members charged with crimes by the Tulalip Tribes.<sup>107</sup>

## **2. The Wellness Court**

The Wellness Court, created in June of 2006, is a 5-stage program that relies on an atmosphere of intense accountability and the participation of social service professionals to combat drug and alcohol addictions and related criminal activity. Eligible participants have a criminal charge involving drug or alcohol abuse and a maximum penalty of 100 days in jail. The charge must not be a violent offense involving serious bodily injury or sexual misconduct. Participants meet weekly with tribal court judges, probation officers, prosecutors, police officers, defense clinic personnel, and professionals from education, health, mental health, family, drug and alcohol dependency, domestic violence, and employment social services. During these weekly meetings, offenders are expected to provide proof that they have met the requirements of the social service programs during that particular week. In addition, all individuals

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<sup>106</sup> University of Washington School of Law, "Tribal Court Public Defense Clinic," <http://www.law.washington.edu/Clinics/Tribal/Default.aspx> (March 25, 2011).

<sup>107</sup> Tulalip Tribes, "Tulalip Tribes: Defense Counsel" <http://www.tulaliptribes-nsn.gov/Home/Government/Departments/TribalCourt/Attorneys/DefenseCounsel.aspx> (March 25, 2011).

present are able to speak to the participants, offering advice, encouragement, or questions, to assist in the rehabilitative process of the participant.<sup>108</sup>

While the Tulalip Tribal Court has not maintained consistent recidivism statistics for the Wellness Court, the 2009 Annual Report of the Tulalip Tribal Court indicated that in its first three years of existence, the Wellness Court accepted 35 participants. During this time, participants were sentenced to 13,623 days of jail-time, though they only collectively served 3,505 days. Among those participants, 11 graduated from the program, 4 were current members, and 20 were dismissed.<sup>109</sup> According to the report, “[O]f those dismissed clients, the majority still have not had new criminal charges filed and most have been in or completed treatment and/or are employed.”<sup>110</sup>

### **3. The Elders Panel**

The Elders Panel, also created in 2006, is comprised of six elders from the Tulalip community who volunteer their time to meet once every two weeks with participants who are 18-37 years old, first-time, non-violent offenders who have been charged with minor criminal offenses.<sup>111</sup> The program lasts one year for each participant and, if successfully completed, results in a dismissal of the charges. During each meeting, the elders may

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<sup>108</sup> Tulalip Tribal Court, “Tulalip Tribes: Law and Justice Brochure,” March 2010, [http://www.tulaliptribes-nsn.gov/Portals/0/pdf/departments/tribal\\_court/Justice-Brochure.pdf](http://www.tulaliptribes-nsn.gov/Portals/0/pdf/departments/tribal_court/Justice-Brochure.pdf) (March 25, 2011).

<sup>109</sup> “Tulalip Tribal Court Memorandum: 2009 Annual Report,” January 1, 2010. [http://www.tulaliptribes-nsn.gov/Portals/0/pdf/departments/tribal\\_court/2009-Annual-Report.pdf](http://www.tulaliptribes-nsn.gov/Portals/0/pdf/departments/tribal_court/2009-Annual-Report.pdf) (March 25, 2011).

<sup>110</sup> Ibid.

<sup>111</sup> Tulalip Tribes, “Tulalip Tribes: Tribal Court Elder’s Panel,” <http://www.tulaliptribes-nsn.gov/Home/Government/Departments/TribalCourt/EldersPanel.aspx> (March 25, 2011); and “Tulalip Tribal Court Memorandum: Fourth Quarter Report 2010,” January 21, 2010. [http://www.tulaliptribes-nsn.gov/Portals/0/pdf/departments/tribal\\_court/2010\\_4th\\_Quarter.pdf](http://www.tulaliptribes-nsn.gov/Portals/0/pdf/departments/tribal_court/2010_4th_Quarter.pdf) (March 25, 2011).

require: letters of apology, community service, substance abuse treatment, imposed curfew, regular or sporadic drug testing, research of family history, spiritual activity, anger management classes, mental health evaluations, and no further offenses.<sup>112</sup> Within its first three years of establishment, the Elders Panel accepted more than 40 participants and continues to be a prominent resource for the Tulalip community.<sup>113</sup> While the Tulalip Tribal Court has not initiated a longitudinal study of recidivism for Elders Panel participants, tribal court employees estimate a recidivism rate ranging from 10-20%.<sup>114</sup>

In 2009, the Washington State Bar Association's Board of Governors honored the Tulalip Tribal Court Elders Panel with its Local Hero Award for making noteworthy contributions to the Tulalip community.<sup>115</sup>

#### **4. The Community Accountability Board**

The third diversion program currently serving the Tulalip Reservation and other Native communities in the State of Washington is a juvenile diversion program known as the Community Accountability Board. The program was developed by Judge Gary Bass of the Tulalip Tribal Court in the beginning of 2010 and is housed by the Tulalip Tribal Court. Regulated by the State of Washington, Community Accountability Boards have

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<sup>112</sup> Tulalip Tribes, "Tulalip Tribes: Tribal Court Elder's Panel," <http://www.tulaliptribes-nsn.gov/Home/Government/Departments/TribalCourt/EldersPanel.aspx> (March 25, 2011).

<sup>113</sup> Tulalip Tribal Court, "Tulalip Tribes: Law and Justice Brochure," March 2010, [http://www.tulaliptribes-nsn.gov/Portals/0/pdf/departments/tribal\\_court/Justice-Brochure.pdf](http://www.tulaliptribes-nsn.gov/Portals/0/pdf/departments/tribal_court/Justice-Brochure.pdf) (March 25, 2011).

<sup>114</sup> Tulalip Justice System employee #4. Interviewed by Leah Shearer. Audio recording, March 10, 2011 at 11:30 AM. Tulalip Reservation; and Tulalip Tribal Court, "Tulalip Tribes: Law and Justice Brochure," March 2010, [http://www.tulaliptribes-nsn.gov/Portals/0/pdf/departments/tribal\\_court/Justice-Brochure.pdf](http://www.tulaliptribes-nsn.gov/Portals/0/pdf/departments/tribal_court/Justice-Brochure.pdf) (March 25, 2011).

<sup>115</sup> "Tulalip Tribal Court Elders Panel receives Local Hero Award." *The Marysville Globe*, (August 11, 2009), available at [http://www.pnwlocalnews.com/north\\_sound/mar/lifestyle/52984882.html](http://www.pnwlocalnews.com/north_sound/mar/lifestyle/52984882.html) (March 25, 2011).

existed in Washington since the late 1970s.<sup>116</sup> According to one tribal court employee, the Community Accountability Board is likely the first in the State of Washington to solely address the needs of Native youth. The Community Accountability Board during its monthly meetings strives to hold participants accountable for their behavior, foster a change in attitude, impress upon participants that their community is concerned about their conduct, increase awareness in participants of their own behavior, and maximize opportunities for participants. Eligible participants are Tulalip members or members of neighboring tribes, under the age of 18, charged with minor offenses, and eligible for participation by the Board.<sup>117</sup> The Community Accountability Board accepts roughly two new participants each month and must address the needs of that participant within a 90-day window.<sup>118</sup>

## **B. The Tulalip Police Department**

The creation of the Tulalip Police Department and its successful operations in the Tulalip community is largely credited to the expertise of the Chief of Police, Jay Goss, who has worked with and for the Tribes since the late 1990s. Chief Goss is a member of the Blackfeet Nation who has an extensive law enforcement career including past

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<sup>116</sup> “Juvenile Court Diversion Program: Community Accountability Board,” Snohomish County: Superior Court, [http://www.co.snohomish.wa.us/documents/Departments/Juvenile\\_Services/diversionbrochure.pdf](http://www.co.snohomish.wa.us/documents/Departments/Juvenile_Services/diversionbrochure.pdf) (March 25, 2011).

<sup>117</sup> Tulalip Tribes, “Tulalip Tribes: Tribal Court,” <http://www.tulaliptribes-nsn.gov/Home/Government/Departments/TribalCourt.aspx> (March 25, 2011); *and* Tulalip Justice System employee #4. Interviewed by Leah Shearer. Audio recording, November 17, 2010 at 3:30 PM. Tulalip Reservation.

<sup>118</sup> Tulalip Justice System employee #4. Interviewed by Leah Shearer. Audio recording, March 10, 2011 at 11:30 AM. Tulalip Reservation.

experience as a Military Personnel in the army, a police officer for Mercer Island Police Department, the Chief of Police for various tribes, and the commander of the U.S. Indian Police Academy of the Bureau of Indian Affairs.<sup>119</sup> Before retrocession, the Tribes hired Chief Goss to begin forming the Tulalip Police Department. He authored the policies and procedures of the police force, interacted with the Tulalip Board of Directors to approve the documents, and undertook efforts to hire and train Tulalip tribal police officers.

During the formation of the Tulalip Police Department, both the Washington State and Bureau of Indian Affairs police training facilities were overbooked and only accepted applicants through a waitlist process. Chief Goss, who is a certified instructor for the FBI, federal law enforcement, and Washington State, as well as a specialized firearms, defensive tactics, and criminal investigations instructor, developed a training program for the Tulalip Police Department to ensure officers would be properly trained and prepared for the upcoming retrocession of Washington State, and the resulting policing needs of the Tulalip Reservation. Acting as an instructor himself and relying on the support of outside agencies, Chief Goss arranged for the FBI, U.S. Attorney's Office, and the City of Marysville Police Department to provide individual trainings for the newly hired Tulalip police officers.<sup>120</sup>

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<sup>119</sup> "Tulalip Police Chief Retires," *The Marysville Globe*, (July 4, 2007), available at [http://www.pnwlocalnews.com/north\\_sound/mar/news/27579809.html](http://www.pnwlocalnews.com/north_sound/mar/news/27579809.html) (May 16, 2011). (Chief Goss is rehired by the Tulalip Tribes in September of 2009).

<sup>120</sup> Tulalip Justice System employee #7. Interviewed by Leah Shearer. Audio recording, November 19, 2010 at 1:00 PM. Tulalip Reservation.



As well, Chief Goss was involved with actualizing a cross-deputization agreement between the Tribes and Snohomish County, passed on August 20, 1997.<sup>121</sup> For nearly a year before this agreement was passed, representatives of the Tulalip Tribes, including Chief Goss, the U.S. Attorney's Office, F.B.I., and Snohomish County met weekly to determine the responsibilities of each jurisdiction and create the cross-deputization agreement.<sup>122</sup>

Today, the Tulalip Police Department employs 22 patrol officers, 8 fish and wildlife patrols, 4 administrators, and 11 support staff individuals. Of these 46 employees, 17 are Tulalip tribal members, 16 are Native American but not Tulalip tribal members, and 13 are non-Native.<sup>123</sup> According to law enforcement personnel, the Tulalip Police Department has had a strong positive impact on the Tulalip Reservation community. For example, before retrocession the Tulalip Reservation was in many respects unsafe and DUI related fatalities on the reservation occurred regularly. Since retrocession, there have been no DUI related fatalities.<sup>124</sup>

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<sup>121</sup> Tulalip Tribes, Resolution 97-318.

<sup>122</sup> Tulalip Justice System employee #7. Interviewed by Leah Shearer. Audio recording, November 19, 2010 at 1:00 PM. Tulalip Reservation.

<sup>123</sup> Tulalip Justice System employee #2. Interviewed by Leah Shearer. Hand-written notes, March 11, 2011 at 11:00 AM. Tulalip Reservation.

<sup>124</sup> Tulalip Justice System employee #7. Interviewed by Leah Shearer. Audio recording, November 19, 2010 at 1:00 PM. Tulalip Reservation.

#### IV. JUSTICE METHODS

In this section, supported by existing scholarship and interview data conducted on the Tulalip Reservation with justice system employees, I will investigate if goals and related justice methods of the Tulalip Justice System align with the definitions of the six criteria of successful tribal justice systems outlined in Chapter I. This inquiry is intended to reveal how the Tulalip Justice System, in its day-to-day operations, addresses the six criteria proposed by recent scholarship and to discover if the system is successful.

Through my research, I found that the goals and related methods of the Tulalip Justice System, which has been deemed successful by Harvard University's Honoring Nations Program and the Washington State Bar Association, align with this proposed framework.<sup>125</sup> Furthermore, while I did not conduct an extensive survey to determine the views of the Tulalip community and their potential support of the Tulalip justice system, I did try to develop an understanding of community opinion. Overall, my observations of justice system employees and their interactions with community members suggest that the Tulalip Justice System is respected by the Tulalip community. Interviews conducted with Tulalip Justice System employees indicate that Tulalip community members also

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<sup>125</sup> "Tulalip Tribal Court Elders Panel receives Local Hero Award." *The Marysville Globe*, August 11, 2009. [http://www.pnwlocalnews.com/north\\_sound/mar/lifestyle/52984882.html](http://www.pnwlocalnews.com/north_sound/mar/lifestyle/52984882.html) (March 25, 2011); and "Honoring Nations: Directory of Honored Programs," (September 2007), available at [http://hpaied.org/images/resources/general/Dir\\_web.pdf](http://hpaied.org/images/resources/general/Dir_web.pdf) (March 25, 2011).

feel the system is successfully serving the Tulalip Reservation community.<sup>126</sup> Based on this research, I conclude that the Tulalip Justice System's justice goals and methods align with Goldberg and Champagne's six-part framework, and I also conclude that these goals and methods are designed to successfully address the needs of justice service delivery in the Tulalip Reservation community.

This section will explore the goals of the Tulalip Justice System and the justice methods developed to accomplish those goals while relying on the framework proposed by Carole Goldberg and Duane Champagne and the definitions of each element of their framework presented in Chapter 1 of this thesis.

#### **A. The Tulalip Tribal Court**

The Tulalip Tribal Court and its many departments have the collective mission to “professionally, effectively and fairly administer justice to the Tulalip community as an essential sign of sovereignty.”<sup>127</sup> During interviews conducted with justice system employees, individuals consistently presented goals that not only aligned with this mission statement but also with the needed six characteristics of successful tribal justice systems explored earlier in this thesis. In particular, individuals regularly mentioned that, in their capacity as tribal court employees, they worked to respect the cultural needs of

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<sup>126</sup> Tulalip Justice System employee #4. Interviewed by Leah Shearer. Audio recording, November 17, 2010 at 3:30 PM. Tulalip Reservation; Tulalip Justice System employee #5. Interviewed by Leah Shearer. Audio recording, November 18, 2010 at 5:00 PM. Tulalip Reservation; and Tulalip Justice System employee #7. Interviewed by Leah Shearer. Audio recording, November 19, 2010 at 1:00 PM. Tulalip Reservation.

<sup>127</sup> Tulalip Tribes, “Tulalip Tribes: Tribal Court,” <http://www.tulaliptribes-nsn.gov/Home/Government/Departments/ TribalCourt.aspx> (March 25, 2011).

the Tulalip community, interface smoothly with outside jurisdictions and organizations, encourage internal communication between the departments of the justice system while maintaining fairness, promote Tulalip jurisdiction as well as operate smoothly, professionally, and effectively as an administration.

## **1. Effective Management**

One main goal of the Tulalip Tribal Court is to professionally and effectively administer justice to the Tulalip community.<sup>128</sup> As presented in Chapter I of this thesis, an effectively managed tribal justice systems is clearly understood by its community, ensures that justice system documentation, websites, and other related materials are asserting that clarity, administratively functions properly, and sufficiently trains justice system employees. In many ways, the Tulalip Justice System has developed goals and related justice methods that satisfy that definition.

In order to more effectively administer justice to the Tulalip community, the tribal court has consistently worked to educate community members on tribal court processes and ensure that they clearly understand the justice system. According to one tribal court employee, court systems can be confusing for people without a background in law. As a result, the tribal court strives to educate community members so they can be equipped to easily navigate the tribal court system. One major tool utilized to achieve this goal of transparency is the tribal court website. According to one tribal court employee, community members can navigate the website to learn “how to pay traffic tickets, what it

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<sup>128</sup> Ibid.

means to serve on a jury, what Wellness Court is, information about our Probation Department” and, most importantly, learn about the options available for clients who do not have an attorney.<sup>129</sup> The Tulalip Tribes’ website and Tulalip Tribal Court website, in particular, are very user friendly and informative. They provide specialized descriptions and contact information for each department of the justice system.

The Tulalip Tribal Court also uses its website to post quarterly and annual reports, which provide information on the tribal court’s caseload, number of appeals, accumulated fines and filing fees, participation in the Wellness Court and Elder’s Panel, meetings and trainings attended or led by tribal court employees, probation office statistics, mediation statistics, changes in tribal court policies or procedures as well as a table that lists the number of cases filed, dismissed, and pending by case type (roughly 18 different categories of case type). By providing such a detailed and easily accessible tribal court report online, the Tulalip Tribal Court demonstrates its commitment to transparency and its desire to be clearly understood by the Tulalip community.

To effectively communicate with community members who do not own computers or are less computer literate, most of the information available online is also provided in hard copy form. The tribal court and administration buildings, geographically dispersed on the reservation, display various flyers to describe the justice system as a whole as well as each department of the justice system. Additionally, tribal court front

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<sup>129</sup> Tulalip Justice System employee #8. Interviewed by Leah Shearer. Audio recording, March 10, 2011 at 9:00 AM. Tulalip Reservation.

desk personnel and other administrators are available and willing to answer questions for individuals who call or come into the tribal court building.<sup>130</sup>

Tribal court employees also seek to communicate tribal court procedures to offenders navigating the justice system. According to one tribal court employee, communicating with offenders is particularly challenging considering many of them do not read very well, have not completed high school, and have not had good experiences when encountering justice systems, especially state systems. Offenders also frequently receive sentences when they are currently in jail, are predominately focused on getting out of jail, and likely not prepared to ask the appropriate questions needed to understand sentencing or probation procedures.<sup>131</sup> Considering these obstacles, the judge assigned to hear criminal cases strives to thoroughly explain sentence orders to each offender and asks that individual to repeat back the information to make sure they understand what is expected of them. According to one tribal court employee, “[this method] helps because when people say it, it lodges in their brain. And we have a lot more success with that.”<sup>132</sup>

After initial sentencing, the Tulalip Probation Office is committed to reviewing cases with offenders within two weeks. During the meeting, the probation officer reviews the sentencing order, and explains what that individual needs to accomplish in a certain amount of time and why. As one tribal court employee mentioned:

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<sup>130</sup> Tulalip Justice System employee #5. Interviewed by Leah Shearer. Audio recording, November 18, 2010 at 5:00 PM. Tulalip Reservation.

<sup>131</sup> Tulalip Justice System employee #6. Interviewed by Leah Shearer. Audio recording, November 19, 2010 at 9:00 AM. Tulalip Reservation.

<sup>132</sup> Ibid.

We're able to review them more often. Rather than a 6-month review or even a 45-day review, we review them in two weeks. That's pretty powerful. That helps us keep our violations low and keeps probation in the forefront of their mind.<sup>133</sup>

This is indeed powerful. By simply devising procedures that require more frequent reviews, the Tulalip Justice System is able to reduce the frequency of violations committed on the Tulalip Reservation and help make the community safer.

Other procedures are designed to decrease offender recidivism. For example, offenders are expected to meet monthly for probation reviews with a judge for the first three months of probation; if the offender is in compliance with probation procedures, reviews will be every other month for the next three months, and once every three months for the remainder of the probation sentence.<sup>134</sup> By devising probation policies that involve more immediate reviews and frequent follow-ups with court administrators, the Tulalip Tribal Court is attempting to ensure that offenders clearly understand what is expected of them and increase the likelihood that those individuals will successfully complete their probation sentence without reoffending.

To administratively function properly, the Tulalip Justice System has designed methods to actualize administrative tasks and goals. In particular, the tribal court trains tribal court administrators to offer timely and effective court services, including supporting judges, creating court calendars, processing paperwork, organizing files, and conveying tribal court procedures to community members.

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<sup>133</sup> Ibid.

<sup>134</sup> Tulalip Tribes, "Tulalip Alternative Sentencing Program: Chapter 28.00.00, Corrections Management," 2, on file with author.

The Tulalip Tribal Court has also invested in offering formal and informal training opportunities for tribal court administrators. The Tribal Court Director provides training opportunities for tribal court clerks. Also, in 2010, the Tulalip Tribal Court hired a tribal court management consultant to provide a weeklong training opportunity for the court clerks of the Tulalip Tribal Court. During this training session, court clerks were trained in multiple areas including customer services, professional responsibilities and ethics, case and records management, case flow management, calendaring and dockets, and appeal procedures.<sup>135</sup> To ensure that future clerks have access to the training, the sessions were filmed and will be provided to incoming court clerks in the future.<sup>136</sup>

Finally, the Tulalip Tribal Court seeks to improve tribal court procedures by organizing regular meetings with all departments of the justice system and related organizations. These meetings provide opportunities for reflection and improvements in justice system policies and procedures. Since 2001, monthly Law and Justice meetings have provided opportunities for Tulalip Tribal Court personnel and representatives of social service providers, law enforcement, corrections, the Northwest Intertribal Court System, and other relevant organizations to discuss the administration of justice on the Tulalip Reservation. These meetings are designed to promote ongoing communication and coordination concerning the efforts of service providers and the justice system. Also,

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<sup>135</sup> Tulalip Justice System employee #8. Interviewed by Leah Shearer. Audio recording, March 10, 2011 at 9:00 AM. Tulalip Reservation; *and* Tulalip Justice System employee #10. Interviewed by Leah Shearer. Audio recording, March 11, 2010 at 1:30 PM. Tulalip Reservation.

<sup>136</sup> Tulalip Justice System employee #8. Interviewed by Leah Shearer. Audio recording, March 10, 2011 at 9:00 AM. Tulalip Reservation.



later supported by a resolution from the Tulalip Board of Directors in January of 2005,<sup>137</sup> Tulalip justice system and social service employees began meeting regularly to develop tribal court programs and procedures to promote alternative sentencing initiatives and develop a drug court.<sup>138</sup> This particular justice method is significant. While this type of meeting helps justice systems avoid duplication of tasks and resources, ensures system-wide consistency, and supports employee cooperation, it is not a method regularly adopted by justice systems within the United States.

## **2. Fairness**

According to existing scholarship, a fair justice system distributes its resources fairly, resolves disputes without bias, and responds to crime in ways that match community conceptions of fairness. While fairness is a goal of the Tulalip Justice System, the tribal court relies on its own employees, the University of Washington Tribal Defense Clinic, and tribal court-affiliated organizations, such as the Tulalip Bar, to accomplish it.

To promote fairness, employees of the tribal justice system strive to “treat people equally,” which in many aspects satisfies the definition of fairness.<sup>139</sup> Tribal court employees describe that when handling cases, prosecutors pursue cases based on the availability of evidence and not an assumption of guilt or belief within the community of

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<sup>137</sup> The Tulalip Tribes, Resolution No. 05-030, on file with author.

<sup>138</sup> Tulalip Tribes, “Tulalip Tribal Police Services,” on file with author.

<sup>139</sup> Tulalip Justice System employee #9. Interviewed by Leah Shearer. Hand-written notes, March 11, 2011 at 9:00 AM. Tulalip Reservation.

past criminal behavior.<sup>140</sup> By using this strategy to evaluate whether a case can be proven in court according to the available evidence, prosecution in tribal court achieves greater fairness. In addition, sentencing procedures for criminal charges are consistent in order to achieve fairness within the justice system.<sup>141</sup> Abiding by the Tulalip Law and Order Code, judges render sentences for criminal charges based on sentencing guidelines, which outline appropriate fine and jail sentence ranges for Class A through E offenses.<sup>142</sup>

Another strategy used to maintain fairness and to “treat people equally” is for tribal court employees to restrict communication in situations that would be harmful for clients of the justice system. For instance, one tribal court employee described that there is a particular effort on the part of tribal judges and prosecutors to not discuss cases during trial. This method is informally accomplished through the discretion of both judges and prosecutors and is intended to reduce prejudice against defendants during trial, which could be cultivated by conversations between judges and prosecutors, and to help to ensure that offenders will be treated equally within the justice system.<sup>143</sup>

Finally, the Tulalip Tribal Court strives to maintain fairness through its funding and use of the University of Washington’s Tribal Court Public Defense Clinic (TCPD) since July of 2002. Thus, the tribal court can ensure that individuals will have access to effective counsel regardless of their income by offering free public defense counsel.

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<sup>140</sup> Ibid.

<sup>141</sup> Tulalip Justice System employee #5. Interviewed by Leah Shearer. Audio recording, November 18, 2010 at 5:00 PM. Tulalip Reservation.

<sup>142</sup> Tulalip Tribes, “Tulalip Tribes of Washington Codes and Regulations: Ordinance 49 - Law and Order Code Title 3,” (2004), *available at* <http://www.narf.org/nill/Codes/tulalipcode/tulalip49lawtitle3.htm#t314> (March 25, 2011).

<sup>143</sup> Tulalip Justice System employee #9. Interviewed by Leah Shearer. Hand-written notes, March 11, 2011 at 9:00 AM. Tulalip Reservation.

Another aspect of fairness supported by the Tulalip Justice System is maintaining political fairness. Although the Tulalip Tribes have not codified a separation of powers provision, tribal court personnel did indicate that the Tulalip Board of Directors have in practice respected the independence of the Tulalip Justice System. As one tribal court employee stated, “It impresses me greatly that [the Board of Directors] recognize[s] that in order for senior staff to exercise their professional judgment, they have to be able to act independently.”<sup>144</sup> In particular, the Board of Directors employs several tribal justice system employees, is regularly provided updates from various departments of the Tulalip Justice System, though, according to justice system employees, chooses to not interfere with Tulalip Tribal Court decision-making.<sup>145</sup> Additionally, while there is no formal complaint process within the Tulalip Tribal Court that is independent of its appeals process, individuals may present concerns through the formal complaint process provided by the Board of Directors. However, these informal methods do not ensure political fairness as a separation of powers provision would. It still remains true that the Board of Director possesses significant power over the operation and existence of the Tulalip Justice System, even if that power is not exercised.

The Tulalip Tribal Court has also devised certain justice methods to ensure that disputes will be resolved in ways that match community conceptions of fairness. One main strategy to achieve this aspect of fairness is to provide a wide range of ways for

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<sup>144</sup> Tulalip Justice System employee #9. Interviewed by Leah Shearer. Hand-written notes, May 26, 2011 at 4:30 PM. Phone interview – Tulalip Reservation and Los Angeles.

<sup>145</sup> Tulalip Justice System employee #5. Interviewed by Leah Shearer. Audio recording, November 18, 2010 at 5:00 PM. Tulalip Reservation: *and* Tulalip Justice System employee #9. Interviewed by Leah Shearer. Hand-written notes, May 26, 2011 at 4:30 PM. Phone interview – Tulalip Reservation and Los Angeles.

individuals to approach the system. Offenders can seek adversarial, non-adversarial, or rehabilitative responses to crimes occurring on the Tulalip Reservation. According to many tribal court employees, offering solely harsh, punitive, and/or adversarial based justice for the Tulalip community would not only ineffectively address crime, but would also not be fair for offenders in need of treatment.<sup>146</sup> By offering alternative sentencing procedures as an option for offenders in probation who are not participating in Tulalip diversion programs, the Tulalip Tribal Court allows more individuals the opportunity to experience the rehabilitative nature of the justice system regardless of age or past criminal record, which can exclude a person from diversion programs.

### **3. Cultural Compatibility**

A culturally compatible system incorporates tribal custom and customary law into formalized policies and procedures as well as reflects tribal custom in informal ways. Aligning with this definition, the Tulalip Tribal Court strives to reflect the values of the Tulalip community and culture in its delivery of justice on the Tulalip Reservation. In particular, the tribal court aims to accomplish four main goals: to act as a healing and rehabilitative court, to support community participation, to develop justice system procedures to support the integration of Tulalip tradition, and to support the diverse nature of the reservation community.<sup>147</sup>

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<sup>146</sup> “CEDAR Meeting.” Hand-written notes, October 19, 2010 at 9:00 AM. Tulalip Reservation.

<sup>147</sup> Tulalip Justice System employee #8. Interviewed by Leah Shearer. Audio recording, March 10, 2011 at 9:00 AM. Tulalip Reservation, Tulalip Justice System employee #5. Interviewed by Leah Shearer. Audio recording, November 18, 2010 at 5:00 PM. Tulalip Reservation; *and* Tulalip Justice System employee #5. Interviewed by Leah Shearer. Audio recording, November 18, 2010 at 5:00 PM. Tulalip Reservation.

The first goal of the Tulalip Tribal Court is to support and respect the members of the Tulalip community by encouraging community member participation in the justice system and by offering tribal court services to the Tulalip community as a means to heal offenders and the community generally. According to one tribal court employee, this rehabilitation focus is desired by the Tulalip community:

There is a great concern in the [Tulalip] community about the use and abuse of drugs, which is a major epidemic on the reservation. Right now, it's heroin. So, I think they think the court is valuable in that manner where we can get our clients healthy even though it's through a criminal justice mechanism.<sup>148</sup>

Another tribal court employee asserts, "the purpose is not to punish people," further explaining that the Tulalip Tribal Court strives to provide support for the underlying problems facing community members who offend and that simply sentencing offenders to jail will not solve those problems.<sup>149</sup>

The goal of the Tulalip Tribal Court, to heal and rehabilitate offenders, is a way for the justice system to give back to the community, "to see what we can do to change lives," and "help people with their addictions."<sup>150</sup> In reaction to observing that roughly 60-70% of the tribal court caseload involved drug and alcohol abuse, the tribal court devised procedures to "address the issues that bring people to court" and provide them

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<sup>148</sup> Tulalip Justice System employee #8. Interviewed by Leah Shearer. Audio recording, March 10, 2011 at 9:00 AM. Tulalip Reservation.

<sup>149</sup> "CEDAR Meeting." Hand-written notes, October 19, 2010 at 9:00 AM. Tulalip Reservation.

<sup>150</sup> Tulalip Justice System employee #2: Interviewed by Leah Shearer. Hand-written notes, November 10, 2010 at 11:00 AM. Tulalip Reservation; *and* Tulalip Justice System employee #7. Interviewed by Leah Shearer. Audio recording, November 19, 2010 at 1:00 PM. Tulalip Reservation.

the tools to heal themselves.<sup>151</sup> By addressing offenses in this manner, the tribal court hopes to achieve long-term healing for families.<sup>152</sup>

To achieve this goal, the tribal court has adopted alternative sentencing procedures that rely on the expertise of service providers on and off the Tulalip Reservation. These procedures provide offenders the opportunity to abide by the requirements of drug and alcohol, mental health, domestic violence, chemical dependency, family, education, and job skill professionals as an alternative to paying fines and completing jail time.<sup>153</sup> Additionally, the three diversion programs, two regulated by the Tribes and one regulated by the State of Washington, offer opportunities for rehabilitation and healing for participants.

The second major goal designed to achieve cultural compatibility is to support community participation in tribal court proceedings. Community participation is encouraged in both formal and informal aspects of tribal court operations. During court proceedings individuals in the audience are permitted to stand and speak, as I describe below. This is significant considering state and federal court systems would not permit unofficial testimony. To achieve this goal, the court strives to communicate at the local level with community members. Tribal court clerks are prepared and expected to clearly

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<sup>151</sup> “CEDAR Meeting.” Hand-written notes, October 19, 2010 at 9:00 AM. Tulalip Reservation.

<sup>152</sup> Ibid.

<sup>153</sup> Tulalip Justice System employee #4. Interviewed by Leah Shearer. Audio recording, November 17, 2010 at 3:30 PM. Tulalip Reservation.

communicate court procedures and schedules to family and community members who hope to witness court proceedings.<sup>154</sup>

To facilitate community participation in formal aspects of tribal court procedures, judges allow community members opinions to be heard during tribal court proceedings. According to one tribal court employee, “If an elder in your community wants to speak and raises their hand to speak, we will absolutely allow them to be heard.”<sup>155</sup> If a family or community member wants to speak, the judge will acknowledge that person, ask their name, allow them to stand and speak. Overall, tribal court employees expressed that family and community members have a right to be heard during tribal court proceedings, even when that participation is critical of the tribal court process.<sup>156</sup>

Outside of tribal court proceedings, the Tulalip Tribal Court maintains its goal of allowing community participation. Tribal court administrators are available to answer questions and simply listen to community member concerns and frustrations.<sup>157</sup> When family and loved ones seek clarification from the probation office of the justice system, employees offer coffee and a private space to put the community members at ease and to demonstrate that community participation is valued.<sup>158</sup> Tribal court personnel encourage

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<sup>154</sup> Tulalip Justice System employee #5. Interviewed by Leah Shearer. Audio recording, November 18, 2010 at 5:00 PM. Tulalip Reservation.

<sup>155</sup> Ibid.

<sup>156</sup> Ibid.

<sup>157</sup> Ibid.

<sup>158</sup> Tulalip Justice System employee #6. Interviewed by Leah Shearer. Audio recording, November 19, 2010 at 9:00 AM. Tulalip Reservation.

family participation and view that participation as important in the rehabilitation process of offenders.<sup>159</sup>

The third goal designed by the Tulalip Tribal Court to accomplish cultural compatibility is to develop justice system procedures to support the integration of Tulalip tradition. By utilizing ankle bracelets to provide offenders an alternative to serving jail time, the Tulalip tribal court supports a process that allows offenders to stay connected to the Tulalip community and the opportunity for that community to rehabilitate the offender through traditional social mechanisms, such as anger, shame, embarrassment, or encouragement.<sup>160</sup>

Similarly, the Elders Panel is a culturally compatible diversion program within the Tulalip Justice System. Along with requiring offenders to regularly meet with the elders on the Elders Panel, certain tasks that are assigned to offenders intend to reconnect Tulalip young offenders with their culture and community. For example, one regularly required task for young offenders to complete is a family tree that is as extensive as the elders understand it could possibly be. Youth are not allowed to utilize the enrollment office of the Tulalip government. Instead, they must communicate with family and community members to complete the project. Tribal court employees describe this task as exceptionally powerful in re-connecting young offenders to their tribe and exposing them

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<sup>159</sup> Ibid.

<sup>160</sup> William C. Bradford, "Reclaiming Indigenous Legal Autonomy on the Path to Peaceful Coexistence: The Theory, Practice and Limitations of Tribal Peacemaking in Indian Dispute Resolutions," 76 N. Dak. L. Rev. 551 (2000), 580.



to Tulalip community members who want their behavior to improve.<sup>161</sup> Finally, the Tulalip Tribal Court strives to support the diverse nature of the reservation community by offering a wide range of ways to for individuals to approach the system, including adversarial, non-adversarial, or rehabilitative methods.<sup>162</sup>

Many Tulalip member tribal court employees indicated that the justice system is compatible with Tulalip culture. While I did not conduct a study to explore Tulalip community opinion, the Tulalip Tribal Court appears to incorporate tribal custom into formal and informal manifestations of the justice system. However, determining if the Tulalip Justice System satisfies this element is impossible to prove and is extremely subjective even for Tulalip community members.

#### **4. Inter-Governmental Cooperation**

As presented in Chapter I of this thesis, an inter-governmentally cooperative justice system cooperates formally and informally with outside agencies to successfully deliver justice services. One goal of the Tulalip Tribal Court is to cooperate with outside jurisdictions as a way to indirectly and directly provide support to the Tulalip community. Many Tulalip justice system employees describe this goal as requiring three main components: educating outsiders about the Tulalip Tribal Court, solidifying professional relationships with outside jurisdictions, and relying on those relationships to cooperate

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<sup>161</sup> Tulalip Justice System employee #10. Interviewed by Leah Shearer. Audio recording, March 11, 2010 at 1:30 PM. Tulalip Reservation

<sup>162</sup> Bruce Miller, *The Problem of Justice: Tradition and Law in the Coast Salish World*, Lincoln and London: University of Nebraska Press, (2001), 206.

with outside jurisdictions to more effectively administer justice in the Tulalip community. Overall, these methods involve both formal and informal aspects of cooperation with outside agencies and, thus, strongly align with the definition above.

In order to educate the outside community about the Tulalip Tribal Court, tribal court employees have regularly sought to communicate with as many outside agencies, law and justice conferences, and organizations as possible since retrocession. Tribal court employees explain that at the time of retrocession, it was important to simply explain to individuals that the Tulalip Tribal Court existed, that tribal court judges were legally trained and professional, and that the institution overall was professional. During these initial introductions, many individuals were not aware that the Tulalip Tribes had their own justice system, had no understanding of what a tribal court was, and wanted to be reassured that the Tulalip Tribal Court would resolve cases according to the laws that existed.<sup>163</sup> According to tribal court personnel, these interactions slowly provided a foundation of trust and understanding between the Tulalip Tribal Court and outside agencies. Today, Tulalip Tribal Court judges regularly meet with nearby Snohomish County and Marysville judges, present in continuing education Indian law seminars within the State of Washington, and participate in state and federal Indian law conferences, judges conventions, and law and justice conferences.

Currently, these relationships are used to promote cooperation between the Tulalip Justice System and outside jurisdictions. One tribal court employee explained that

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<sup>163</sup> Tulalip Justice System employee #4. Interviewed by Leah Shearer. Audio recording, November 17, 2010 at 3:30 PM. Tulalip Reservation; *and* Tulalip Justice System employee #5. Interviewed by Leah Shearer. Audio recording, November 18, 2010 at 5:00 PM. Tulalip Reservation.

if a person files for divorce at the Tulalip Tribal Court and Snohomish County, the presiding tribal court judge would call the judge at Snohomish County to discuss the case and determine an appropriate solution. According to this employee, the Tulalip Tribal Court maintains a level of cooperation with outside courts and is against fighting over jurisdiction.<sup>164</sup>

Finally, the Tulalip Tribal Court demonstrates its commitment to maintain good cooperation with outside jurisdictions and agencies in its formal interactions with the State of Washington. For example, the Tulalip Tribal Court created the Community Accountability Board, a Native juvenile diversion program housed on the Tulalip Reservation, through mechanisms already established by the State of Washington and, in doing so, demonstrated the Tulalip Tribes' willingness to cooperate with the Washington State government. The Tulalip Tribal Court<sup>165</sup> and Washington State courts<sup>166</sup> have adopted rules and procedures to maintain a relationship based on full faith and credit for court judgments, which is typically not the experience for other states and tribes. Also, the Tulalip Tribes have entered into a contract with the Snohomish County Jail to have access to detention facilities. This agreement has allowed the Tribes to operate a justice

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<sup>164</sup> Tulalip Justice System employee #4. Interviewed by Leah Shearer. Audio recording, November 17, 2010 at 3:30 PM. Tulalip Reservation.

<sup>165</sup> Tulalip Justice System employee #5. Interviewed by Leah Shearer. Audio recording, November 18, 2010 at 5:00 PM. Tulalip Reservation.

<sup>166</sup> Robert J. McCarthy, "Native Justice: A Look at Tribal Court Jurisdiction in Washington State," Northwest Justice Project, (August 1999), *available at* <http://www.wsba.org/media/publications/barnews/archives/1999/aug-99-native.htm> (March 25, 2011).

system without needing to build and maintain a tribal detention facility on the reservation.<sup>167</sup>

By utilizing the methods above, the Tulalip Tribal Court acknowledges the importance of maintaining healthy communication and cooperation with outside agencies as well as the importance of building those relationships with less formal interactions.

## **5. Tribal Control**

According to existing scholarship, a justice system with respected tribal control asserts tribal political control and cultural sovereignty over justice system delivery in its community and outside jurisdictions respect that control. The most significant method used by the Tulalip Tribes to increase tribal control over justice system operations was retrocession from Public Law 280 state jurisdiction. However, Tulalip Justice System employees do utilize formal and informal methods to support Tulalip tribal control on a daily basis, many of which were already presented in earlier sections of this paper.

The creation of the Tulalip Bar, Wellness Court, Elders Panel, Community Accountability Board, University of Washington Tribal Court Public Defense Clinic, and other programs, are all formal expressions of tribal control in the delivery of justice services on the Tulalip Reservation, and reflect the Tulalip Tribal Court's vision of how its justice system should operate. Moreover, in all of its day-to-day operations, the tribal

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<sup>167</sup> Tulalip Tribal Court, "Tulalip Tribes: Law and Justice Brochure," March 2010, [http://www.tulaliptribes-nsn.gov/Portals/0/pdf/departments/tribal\\_court/Justice-Brochure.pdf](http://www.tulaliptribes-nsn.gov/Portals/0/pdf/departments/tribal_court/Justice-Brochure.pdf) (March 25, 2011); and Wendy Church, "Resurrection of the Tulalip Tribes' Law and Justice System and its Socio-Economic Impacts," (May 21, 2006), *available at* [http://www.tulaliptribes-nsn.gov/Portals/0/pdf/departments/tribal\\_court/Tulalip-History-of-Law-&-Justice.pdf](http://www.tulaliptribes-nsn.gov/Portals/0/pdf/departments/tribal_court/Tulalip-History-of-Law-&-Justice.pdf).

court demonstrates its control over justice system operations; every sentencing order, jury summons, probation hearing, and other tribal court proceeding illustrates tribal control.

The Tulalip Tribal Court also demonstrates tribal control by initiating an agreement with the county jail to house Tulalip offenders.<sup>168</sup> Simply initiating the contract with the jail is an example of Tulalip tribal control over justice systems operations. Similarly, the justice system goal to not focus on incarceration as a solution to crime on the reservation asserts tribal control. Additionally, while the Tulalip Tribal Court is unable to prosecute non-Indian offenders who commit crimes within the Tulalip Reservation, Tulalip police officers are able to arrest those offenders because of the cross-deputization agreement between the Tulalip Tribes and Snohomish County.<sup>169</sup> This agreement will be explored in more detail in later sections of this chapter.

Tribal court employees also use informal methods to assert or support tribal control. In particular, one tribal court employee described that prosecutors of surrounding state jurisdictions are not always aware of Tulalip criminal jurisdiction over on-reservation misdemeanor crimes committed by tribal members. If tribal court personnel discover a case is incorrectly being processed by Snohomish County, a Tulalip Tribal Court employee will ask for the case to be sent to the Tulalip Tribal Court instead. According to one employee, those interactions have taken place in the past and have gone very smoothly due to the good cooperative relationship established between the Tulalip

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<sup>168</sup> Tulalip Tribal Court, "Tulalip Tribes: Law and Justice Brochure," (March 2010), *available at* [http://www.tulaliptribes-nsn.gov/Portals/0/pdf/departments/tribal\\_court/Justice-Brochure.pdf](http://www.tulaliptribes-nsn.gov/Portals/0/pdf/departments/tribal_court/Justice-Brochure.pdf) (March 25, 2011).

<sup>169</sup> "Memorandum of Understanding Between Snohomish County Sheriff and Tulalip Tribes," June 27, 1997, on file with author.

Tribal Court and nearby county court systems.<sup>170</sup> Similarly, tribal court employee participation in trainings, conferences, and lectures, all provide opportunities for those employees to educate others about Tulalip tribal control and the Tulalip Justice System generally.

## **6. Resources**

As presented in Chapter I, an adequately funded justice system employs the appropriate amount of adequately qualified police, judges, advocates, attorneys, mentors, or traditional leaders as well as provides the needed equipment and resources for those individuals. While the Tulalip Tribes have sought grant support for certain tribal operations, the majority of funding provided to the Tulalip Tribal Court and related departments is internal. In fact, the tribes provide roughly 90% of the Tulalip Tribal Court budget each year. According to tribal court personnel, the annual Tulalip Tribal Court budget is just over 1 million dollars and has been at that level since 2008.<sup>171</sup> The Tribal Court currently manages three grants, which provide assistance for tribal court operations: a criminal conflict counsel grant for \$80,000 lasting two years, a domestic violence grant for \$50,000 lasting two years, and a tribal court assistance program grant lasting two years.<sup>172</sup> While tribal court employees do have hopes to transition to a new

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<sup>170</sup> Tulalip Justice System employee #9. Interviewed by Leah Shearer. Hand-written notes, March 11, 2011 at 9:00 AM. Tulalip Reservation.

<sup>171</sup> Tulalip Justice System employee #8. February 24, 2011, e-mail message to author.

<sup>172</sup> Ibid.

tribal court building in the future and hire more employees during its expansion, they also indicate that funding is sufficient for the current scope of the justice system.<sup>173</sup>

## **B. The Tulalip Police Department**

According to the Tulalip Police Department's website, "The Tulalip Tribal Police Services is dedicated to providing quality police services, emphasizing trust, integrity and respect for tribal culture and customs."<sup>174</sup> When asked to describe the goals of the Tulalip Police Department, law enforcement employees consistently presented certain goals aligning with this mission statement but also with the needed six characteristics of successful tribal justice systems explored earlier in this paper: to keep the Tulalip Reservation community safe, to be community oriented, to support the justice system in its efforts to heal offenders, to interact professionally with outside jurisdictions, to be fair, to reduce crime, and to support the needs of the Tulalip Reservation as a tribal community.

### **1. Effective Management**

Existing scholarship suggests that an effectively managed justice system is clearly understood by its community, ensures that justice system documentation, websites, and other related materials are asserting that clarity, administratively functions properly, and

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<sup>173</sup> Tulalip Justice System employee #8. Interviewed by Leah Shearer. Audio recording, March 10, 2011 at 9:00 AM. Tulalip Reservation; Tulalip Justice System employee #10. Interviewed by Leah Shearer. Audio recording, March 11, 2010 at 1:30 PM. Tulalip Reservation.

<sup>174</sup> Tulalip Tribes, "Tulalip Tribes: Police Department" <http://www.tulaliptribes-nsn.gov/Home/Government/Departments/PoliceDepartment.aspx> (March 25, 2011).

sufficiently trains justice system employees. One main goal of the Tulalip Police Department is to provide quality police services to the Tulalip community and the strategies used by the department to accomplish this goal align with this definition of effective management.

Utilizing methods more thoroughly explained in the upcoming Cultural Compatibility section, the Tulalip Police Department uses proactive community policing methods to ensure that community members clearly understand the department: officers are required to regularly visit children in school and the Boys and Girls Club as well as visit every residential area of the reservation. These interactions provide opportunities for Tulalip Reservation residents to better understand Tulalip police officers as well as the justice system overall.

In its efforts to administer police functions properly, the Tulalip Police Department has devised policies and procedures to ensure expediency, thoroughness, and follow-through in its day-to-day operations. In particular, the police department is actively working to promote effective policing efforts throughout the entire investigation process: from initial complaint to closing a case. According to interviews conducted with law enforcement personnel, Tulalip is known for successfully conducting thorough investigations to support tribal, state, or federal prosecutions.<sup>175</sup> According to law enforcement personnel, maintaining effective dispatch and administrative support is essential to providing quality policing for the Tulalip community. To achieve this, the

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<sup>175</sup> Tulalip Justice System employee #2. Interviewed by Leah Shearer. Hand-written notes, March 11, 2011 at 11:00 AM. Tulalip Reservation.



department relies on a computer-aided dispatch (CAD) program developed by InterAct, which assists dispatch personnel in prioritizing service calls, assigning officers to incidents, updating incidents, and compiling statistical reports - even location specific reports.

The Tulalip Police Department is committed to conducting thorough investigations, regardless whether the case is expected to move forward, which aligns with the expectation that effectively managed justice systems administer their functions properly. Officers are trained to decipher between reasonable suspicion and probable cause as well as effectively articulate that information in police reports. During investigations, officers are expected to ask thorough questions, take adequate pictures, and provide thorough reports to support further investigations. In addition, the police force strives to process investigations and related paperwork in a timely manner, having a department wide goal of closing every case 90 days after the first report or statement is received.

The police force has utilized various technologies in their efforts to actualize their quality policing goals. Since the creation of the Tulalip Police Department, all officers on duty drive patrol cars equipped with a video camera, and every officer on duty wears audio recording equipment. According to law enforcement personnel, this technology has been useful for many reasons. First, the technology is a constant reminder to officers to be professional. Furthermore, the technology creates a safety net for the police department by providing a record of police interactions. According to one law enforcement employee, the Tulalip Police Department makes 15-16,000 patrol contacts a

year and receives on average 11 complaints a year about their officers in total.<sup>176</sup> This low complaint rate is in part attributed to the use of technology: “It has been a tremendous tool because we have not been sued once and not many departments have that record.”<sup>177</sup> Indeed, this is significant. Using the prevalence of lawsuits as a barometer of success, the Tulalip Police Department is more successful than outside police forces.

The Tulalip Police Department provides many opportunities for formal and informal trainings to ensure that the Tulalip police officers successfully respond to, investigate, and process cases. Tulalip officers on average complete 850 hours of training when other officers in the State of Washington receive 720 hours. Even more, Tulalip officers are polygraphed, profiled, and undergo thorough background checks. According to Chief Goss, many of the Tulalip police officers are over-trained, having attended sergeants and command schools.<sup>178</sup> Officers are trained to handle evidence with care by properly labeling, bagging, and storing relevant materials. Also, the Chief of Police, who is a certified instructor at the federal and state levels, reviews all materials and reports related to investigations.<sup>179</sup> According to one law enforcement employee, the Chief of Police uses these review sessions to provide continuous training opportunities for officers.

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<sup>176</sup> Tulalip Justice System employee #7. Interviewed by Leah Shearer. Audio recording, November 19, 2010 at 1:00 PM. Tulalip Reservation.

<sup>177</sup> Ibid.

<sup>178</sup> “Tulalip Police Chief Retires,” *The Marysville Globe*, (July 4, 2007), available at [http://www.pnwlocalnews.com/north\\_sound/mar/news/27579809.html](http://www.pnwlocalnews.com/north_sound/mar/news/27579809.html) (May 16, 2011).

<sup>179</sup> Tulalip Justice System employee #2. Interviewed by Leah Shearer. Hand-written notes, March 11, 2011 at 11:00 AM. Tulalip Reservation.

## **2. Fairness**

According to existing scholarship, a fair system distributes its resources fairly, resolves disputes without bias, and responds to crime in community appropriate ways. Aligning with this definition, the Tulalip Police Department strives to fairly administer police services to the Tulalip community. This goal relates to its mission statement of providing “quality police services” to the Tulalip community.

To fairly distribute Tulalip police services to the reservation community, the Tulalip Police Department relies on community policing techniques briefly discussed in the previous section. By assigning officers to every residential area of the reservation, the department demonstrates its commitment to distribute resources evenly to all residents of the Tulalip Reservation. Also, by supporting children attending school or after-school programs on the reservation, the Tulalip Police Department attempts to offer support to all native youth on the Reservation.

While there are many dimensions to fairness, the police department is committed to demonstrating its goal of fairness by offering the same quality of service to all individuals it encounters and by resolving disputes arising on the reservation without bias. One aspect of fairness, the avoidance of political bias, was presented as an important goal to the police force.<sup>180</sup> It is clear that judges and police officers continuously strive to work with the justice system generally to more effectively serve the Tulalip community while simultaneously maintaining a fair independence from other

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<sup>180</sup> Ibid.

departments.<sup>181</sup> According to one law enforcement employee, the police department strives “to allow the process to be followed regardless of who is involved.”<sup>182</sup> This goal is meant to have no exceptions. The police department is dedicated to treating all individuals the same regardless of the family political dynamic or occupation. Even more, the police department is committed to following the same process for everyone, including police officers: “officers could get an infraction for off duty speeding.”<sup>183</sup>

Additionally, the Tulalip Police Department uses video and audio-recording devices, mentioned earlier as supporting effectively managed police practices, to serve the Tulalip community more fairly. First, the presence of the technology should have the same effect of perpetuating fairness as it did effective program management in the actions of law enforcement personnel while on duty. These technologies allow the police department to ensure consistency among officer performances. The recordings could be used to support community complaints against particular officers on the basis of fairness.

The last aspect of fairness, responding to crimes in culturally appropriate ways, is strongly supported by the Tulalip Police Department. The Tulalip Police Department utilizes several strategies to proactively interact with community members without the instigation of a service call. These interactions allow Tulalip community member to be more trusting of patrol officers and likely more compliant during investigations.

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<sup>181</sup> Tulalip Justice System employee #9. Interviewed by Leah Shearer. Hand-written notes, March 11, 2011 at 9:00 AM. Tulalip Reservation; Tulalip Justice System employee #2. Interviewed by Leah Shearer. Hand-written notes, March 11, 2011 at 11:00 AM. Tulalip Reservation; *and* Tulalip Justice System employee #5. Interviewed by Leah Shearer. Audio recording, November 18, 2010 at 5:00 PM. Tulalip Reservation.

<sup>182</sup> Tulalip Justice System employee #2. Interviewed by Leah Shearer. Hand-written notes, March 11, 2011 at 11:00 AM. Tulalip Reservation.

<sup>183</sup> Ibid.

Moreover, law enforcement personnel perceive the police department as one aspect of a healing-based justice system. According to Tribal Court employees, police reports regularly express empathy for offenders and suggest rehabilitative responses to crime, which is seen as the Tulalip approach to resolving disputes.<sup>184</sup>

### **3. Cultural Compatibility**

A culturally compatible justice system incorporates tribal custom and customary law into formalized policies and procedures as well as reflects tribal custom in informal ways. The Tulalip Police Department strives to achieve legitimacy in the community it serves by proactively as well as reactively interacting with all of its community members in supportive ways. Officers describe this goal as “more community oriented” or working “to be next to the folks that you police for. And rather than policing somebody, you’re policing for somebody.”<sup>185</sup> Many of these goals involve fostering trust and respect with community members as well as complementing and supporting Tulalip culture, which also provides stability in the Tulalip Reservation community.<sup>186</sup>

To accomplish its goal of being community oriented, the Tulalip police force utilizes methods to connect officers with every member of the Tulalip Reservation community. One goal of the Tulalip Police Department is to develop positive interactions

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<sup>184</sup> Tulalip Justice System employee #4. Interviewed by Leah Shearer. Audio recording, March 10, 2011 at 11:30 AM. Tulalip Reservation; *and* Tulalip Justice System employee #5. Interviewed by Leah Shearer. Audio recording, November 18, 2010 at 5:00 PM. Tulalip Reservation.

<sup>185</sup> Tulalip Justice System employee #7. Interviewed by Leah Shearer. Audio recording, November 19, 2010 at 1:00 PM. Tulalip Reservation.

<sup>186</sup> Tulalip Justice System employee #2. Interviewed by Leah Shearer. Hand-written notes, March 11, 2011 at 11:00 AM. Tulalip Reservation.

with young community members. These interactions fall into three main categories: officers regularly visiting students while they are attending school or after school programs, officers offering their time to children as a reward for good behavior in school, and officers acting as a dependable community member for children in need of support. While these interactions allow the officers the opportunity to support children in the community, they also provide the opportunity for children to learn more about the Tulalip Police Department and the justice system generally. Children are provided a safe space to ask officers questions and express their expectations of the justice system.<sup>187</sup>

In order to provide more regular interactions between officers and children (grades k through 12) living on the Tulalip Reservation, the Tulalip Police Department requires all officers to stop by and visit children at the local Boys and Girls Club two times a shift. During this time, officers play sports with the kids, help them with their homework, or simply say hello. Officers also regularly interact with children while they are in school by offering “Pop Corn Fridays.”<sup>188</sup> These methods of interaction are significant because they are offered regularly and are not dependent on the behavior of the children. Ultimately, the visiting officers demonstrate to children that they are valuable and deserving of support from officers regardless of their attendance record or current grades. Children are not required to perform in any particular way to earn the support of police. They are supported for being themselves.

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<sup>187</sup> Tulalip Justice System employee #7. Interviewed by Leah Shearer. Audio recording, November 19, 2010 at 1:00 PM. Tulalip Reservation.

<sup>188</sup> Ibid.

Officer interactions with children are also provided as a reward for good behavior. Once a month, the Chief of Police brings children to the Tulalip Resort Casino for lunch as a reward for good grades and attendance, or recent improvements in grades or attendance.<sup>189</sup> The police department provides these incentive based interactions to inspire children to value their education. By offering these incentive opportunities once a month, the department is acknowledging students for their accomplishments in school as well as their persistence and dedication to school throughout the year.

Outside of school or afterschool programs on the reservations, officers seek to proactively provide support for students in a capacity similar to a responsible community member, mentor, or guardian. While these particular strategies vary, one law enforcement employee described that officers were available to take students to their school dances if their expected ride fell through.<sup>190</sup> These less predictable offerings of support and the methods mentioned above all indicate the Tulalip Police Department's dedication to supporting children on the reservation. More, the methods provide opportunities for officers to lead by example. In these ways, officers demonstrate the importance of individual responsibility and responsibility to your community.

Along with supporting children residing on the Tulalip Reservation, officers regularly interact with elders within the community. Once a month, officers attend an elders' breakfast where they present monthly and annual statistics, answer questions, and allow the elders to get to know the police force. According to one law enforcement

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<sup>189</sup> Tulalip Justice System employee #2: Interviewed by Leah Shearer. Hand-written notes, November 10, 2010 at 11:00 AM. Tulalip Reservation.

<sup>190</sup> Ibid.

employee, these presentations intend to demonstrate the open-door nature of the police report to the elders of the community.<sup>191</sup> While it is significant that the police force demonstrates transparency by regularly offering information to the members of the community and seeking their guidance, it is perhaps more significant that the police force chooses to relay this information during a gathering of elders. This choice of venue and audience signifies the police force's respect of community values by acknowledging elders as an authority separate from the justice system itself, and openness to receive community opinion and insights.

The Tulalip Police Department also seeks to serve the community as a whole by visiting community members at their homes. The department has developed a program where each officer is assigned to a housing area of the Tulalip Reservation and is expected to visit with the community members residing in that area. The goal of these interactions is strictly to foster community trust. To ensure this goal, officers are expected to ignore general misdemeanor warrants and simply get to know the community.<sup>192</sup> While the other methods mentioned above likely indirectly impact most of the Tulalip community, this particular program is intended to ensure that the police force reaches out to the entire community. According to law enforcement personnel, police officers are expected to offer support to community members on a daily basis, "If you see a tribal member in a rain storm carrying groceries, you pull over and you give them a ride

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<sup>191</sup> Ibid.

<sup>192</sup> Tulalip Justice System employee #7. Interviewed by Leah Shearer. Audio recording, November 19, 2010 at 1:00 PM. Tulalip Reservation.



home.”<sup>193</sup> The police force offers support to the community in times of grief by providing police escorts during funeral proceedings of community members. Through specific policing methods, the Tulalip Police Department not only supports community members but acts as an integral part of the community itself.

The Tulalip Police Department strives to maintain positive interactions with the community even when reacting to crime and interacting with offenders. According to tribal court personnel, police reports indicate that officers want to help heal the offenders who are arrested. Officers see interactions with offenders as opportunities for the justice system to help offending community members address the issues that lead them to offend in the first place.<sup>194</sup> One law enforcement employee explained that crime on the reservation is nearly always influenced by a drug addiction.<sup>195</sup> In light of this, the Tulalip Police Department has determined that officers are more effective when they are empathetic with offenders rather than being disconnected or judgmental. As a result, officer interactions with offenders in the community are based on empathy and not focused on ostracism, hate, or judgment.

While I did not conduct a survey of Tulalip community members to determine if the Tulalip Police Department is culturally compatible with the Tulalip community, the Tulalip Department appears to successfully serve Tulalip community members in culturally compatible ways.

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<sup>193</sup> Ibid.

<sup>194</sup> “CEDAR Meeting.” Hand-written notes, October 19, 2010 at 9:00 AM. Tulalip Reservation.

<sup>195</sup> Tulalip Justice System employee #7. Interviewed by Leah Shearer. Audio recording, November 19, 2010 at 1:00 PM. Tulalip Reservation.

#### **4. Inter-Governmental Cooperation**

Developing and maintaining successful inter-governmental cooperation in informal and formal capacities has been a major goal of the Tulalip Police Department. Based on my interviews, the Tulalip Police Department recognizes its unique role in representing itself, the Tulalip Reservation, and the justice system to individuals off the reservation and has developed particular strategies to cooperate with outside governments.

To maintain healthy inter-governmental cooperation and achieve external legitimacy for itself and the justice system overall, the Tulalip Police Department communicates regularly with outside jurisdictions through interactions with individuals and organizations. Some of these interactions help other jurisdictions more successfully provide justice on the Tulalip Reservation. For example, the police force strives to maintain a good relationship with United States Attorneys and Federal Agents.<sup>196</sup> In addition, the Tulalip Police Department belongs to the local police chiefs and sheriffs association for Snohomish County and the Northwest Association of Tribal Law Enforcement Officers. Informally, the Tulalip Police Chief maintains a professional relationship with nearby police departments by going to lunch with the local police chiefs on a regular basis.<sup>197</sup> According to law enforcement personnel, the most important strategy to achieve external legitimacy is to “Just to be professional in everything that we do and

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<sup>196</sup> Tulalip Justice System employee #2: Interviewed by Leah Shearer. Hand-written notes, November 10, 2010 at 11:00 AM. Tulalip Reservation.

<sup>197</sup> Tulalip Justice System employee #7. Interviewed by Leah Shearer. Audio recording, November 19, 2010 at 1:00 PM. Tulalip Reservation.

demonstrate that professionalism on a daily basis in the way we operate.”<sup>198</sup> While these interactions vary in scope and frequency, they are all methods that facilitate understanding and respect between the Tulalip and outside jurisdictions.

Formally, the Tulalip Police Department regularly cooperates with the surrounding Snohomish County as part of their cross-commissioning agreement, enacted in August 20, 1997. This agreement, authorizing Tulalip police officers to be deputized by Snohomish County, allows Tulalip police officers to more successfully police on the Tulalip Reservation. Tulalip police officers respond to all complaints on the reservation and, when needed, deliver non-Indian offenders to county authorities. Tulalip officers also monitor traffic and issue citations within the boundaries of the reservation.

Along with commissioning with Snohomish County, many Tulalip police officers hold federal law enforcement commissions. This type of commissioning provides specialized training for officers and reduces barriers between federal agents and Tulalip officers. According to one Tulalip Justice System employee, when Tulalip officers are federally commissioned, “[The] quality [of policing] is better, information is more effectively shared, and there is a better outcome in the end.”<sup>199</sup> Other formal expressions of inter-governmental cooperation is the Tulalip Police Department’s access to both the National Crime Information Center database and criminal history database for the State of Washington.

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<sup>198</sup> Ibid.

<sup>199</sup> Tulalip Justice System employee #9. Interviewed by Leah Shearer. Hand-written notes, May 26, 2011 at 4:30 PM. Phone interview – Tulalip Reservation and Los Angeles.

## **5. Tribal Control**

While the most significant method used by the Tulalip Tribes to support tribal control in policing operations on the Tulalip Reservation was likely successfully lobbying the State of Washington to retrocede from Public Law 280 state jurisdiction discussed earlier in this paper, there are other methods used by law enforcement personnel to increase tribal control. Every time a Tulalip police officer responds to a call, issues a citation, conducts an investigation, arrests an offender, or simply patrols on the reservation, that officer is expressing and supporting Tulalip tribal control.

Formal cooperative agreements between the Tulalip Police Department and outside agencies and organizations are expressions of tribal control, such as the Tulalip Tribes and Snohomish County's cross-commissioning agreement. By entering into this agreement, the Tulalip Police Department demonstrated the control it possessed over Tulalip policing efforts and its willingness to cooperate with Snohomish County. Even without the ability to prosecute non-Indian criminal offenders, the Tulalip Police Department, reflected in this cross-commission agreement, was designated to be the trusted authority to police on the reservation. Similarly, by commissioning Tulalip officers, the federal government demonstrates its support of the Tulalip Police Department as a professional and legitimate presence on the Tulalip Reservation.

Informally, the Tulalip Police Department displays tribal control for community members when tribal police officers visit schools, after school programs, and community gatherings. By participating in trainings, conferences, lectures, and meetings with nearby

counties, the Tulalip Police Department demonstrates Tulalip tribal control over policing operations on the Tulalip Reservation.

## **6. Resources**

According to Chapter I, an adequately funded system employs the appropriate amount of adequately qualified police, judges, advocates, attorneys, mentors, or traditional leaders as well as provides the needed equipment and resources for those individuals. While the Tulalip Police Department did not wish to share their annual budget, there is a strong indication that the department is sufficiently funded. One major reason to suggest this is the availability of technology and resources to law enforcement personnel. For instance, each patrol officer drives new Tulalip patrol vehicles fitted with video cameras and is equipped with personal audio recording devices and in ear monitors to retrieve radio contact. Dispatch employees are also supported by a computer-aided dispatch system.

Additionally, information regarding a past annual budget of the Tulalip Police Department is available to the public. In July of 2008, Chief Judge Theresa Pouley presented at an oversight hearing before the United States Senate Committee on Indian Affairs and described the current budget of the Tulalip Police Department: “For the Tulalip police department, the annual budget is now 4.3 million, with only \$212,000

coming from federal funds (5%).”<sup>200</sup> While the Tulalip Police Department is predominately funded by the Tulalip Tribes, it has sought to secure grant funding to supplement its budget. In 2009, the Tulalip Police Department was the recipient of the Justice Department’s Community Oriented Policing Services Grant. The grant provided \$423,170 to employ two additional tribal police officers for three years.<sup>201</sup> The police force also received \$289,500 under this same grant in 2006.<sup>202</sup> While it is unclear what the current budget is for the Tulalip Police Department, one law enforcement employee indicates that the police department currently possesses adequate funding to perform the needed policing operations on the reservation.<sup>203</sup>

### **C. Conclusion**

Considering its relatively short existence, the Tulalip Justice System has achieved significant recognition. While there are many factors supporting these accomplishments, there are a few that have stood out as particularly significant; recruiting experts in the field to act as leaders within the justice system, facilitating opportunities for Tulalip Justice System employees to work together to more efficiently administer justice, supporting cooperative agreements with Snohomish County, and developing justice

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<sup>200</sup> U.S. Senate. Committee on Indian Affairs. Oversight Hearing on Tribal Courts & the Administration of Justice in Indian Country. Testimony of Honorable Theresa M. Pouley, Tulalip Tribal Court Judge, President, Northwest Tribal Court Judges Association. 110<sup>th</sup> Cong., 2<sup>nd</sup> sess., 2008, 12.

<sup>201</sup> Department of Justice, Office of Public Affairs, “More Than \$5 Million in Awards to Washington Tribal Communities,” (Wednesday, August 26, 2009), *available at* <http://www.justice.gov/opa/pr/2009/August/09-odag-870.html>.

<sup>202</sup> “COPS Tribal Resources Grant Program: 2006 Award Announcement,” (August 3, 2006), *available at* [http://www.cops.usdoj.gov/pdf/TRGP\\_Grant\\_List.pdf](http://www.cops.usdoj.gov/pdf/TRGP_Grant_List.pdf).

<sup>203</sup> Tulalip Justice System employee #2. Interviewed by Leah Shearer. Hand-written notes, March 11, 2011 at 11:00 AM. Tulalip Reservation.

system policies and procedures to foster community interaction and participation rank high. However, to determine the applicability of these strategies to other tribal justice systems is difficult. The following chapter will explore further the transferability of Tulalip Justice System strategies to other tribal systems.

In this chapter, supported by existing scholarship and interview data, I have sought to investigate how the goals and methods of the Tulalip Justice System align with a new theory that proposes a six-part framework outlining needed characteristics in successful tribal justice systems. I found that the Tulalip Tribes have developed departmentally specific and system wide goals that align with the six-part framework. More importantly, however, I have found that the methods utilized by the Tulalip Tribes to actualize those goals are also in alignment with the six characteristics. Thus, based on the six-part framework of successful tribal justice systems, the Tulalip Justice System has developed justice goals and methods that successfully address the unique needs of a tribal community.

## **V. LESSONS LEARNED**

When embarking on this thesis project, I had two main goals. First, to investigate the experience of the Tulalip Tribes when they created and implemented their current justice system and determine the strategies utilized by the Tribes to accomplish that transition. Second, I sought to deduct the strategies that would be useful to other tribes struggling to provide effective justice services to their community. However, to accomplish this second goal is challenging.

How transferable is the Tulalip Tribes' experience to another tribe developing its justice system? The strategies used by the Tulalip Tribes are largely dependent on factors unique to that tribal community and may be incompatible for other tribes. Particularly, the success of the Tulalip Justice System cannot truly be separated from the economic success of the Tulalip Tribes in the recent past. In fact, these two major accomplishments are strongly interrelated. The Tulalip Tribes, using revenue acquired from several creative and ambitious economic endeavors, provide the majority of the funding for the Tulalip Justice System. Conversely, Tulalip Justice System success has helped foster the growth of these economic endeavors, which are predominately dependent on the reliance of non-Indian clientele for the Quil Ceda Village shopping center and the Tulalip Resort and Casino. Also, without a prime location on a major interstate, near both the Canadian border and Seattle, Washington, these economic pursuits would likely be less successful.



Thus, a tribe located on land that is not conducive to economic endeavors like these or others would struggle to independently provide the needed funds to operate a successful tribal justice system that is “adequately funded.”

It also may be challenging for tribes to develop a justice system that successfully cooperates with outside agencies similar to the example of the Tulalip Tribes, satisfying the “inter-governmental cooperation” element of Goldberg and Champagne’s framework, if the surrounding state or county jurisdictions are particularly uncooperative. Even though the Tulalip community at times distrusted and struggled to cooperate with outside jurisdictions while under Public Law 280, today, Washington State is a relatively sympathetic state for tribes. It is safe to assume that without the cooperative nature of Washington, the Tulalip Tribes’ goals to retrocede from state jurisdiction and later embark on a cross-deputization agreement with the State of Washington may not have been possible.

Tribes with similar circumstances and characteristics as the Tulalip Tribes may welcome a similar transition. However, even with the needed factors to accomplish the goals above, tribal communities may still feel unwilling to undertake them. For example, tribes located on lands conducive to economic pursuits like a shopping mall or casino may not want non-Indian customers to regularly come into their communities. Also, tribes may not be willing to undertake cross-deputization agreements because they involve acknowledging the authority of state agencies within Indian country.

On the other hand, it is possible for tribes within relatively uncooperative states and situated in areas unfavorable to economic development pursuits to learn from the

example of the Tulalip Tribes. One major strategy utilized by the Tribes and likely transferable to other tribal governments is to recruit experts in the field to help develop and implement tribal goals, policies, and procedures. These recruits could become full-time employees. However, tribes could also recruit individuals to come temporarily to provide specialized trainings for justice system employees. Tribes can also mimic the successful strategies of the Tulalip Justice System by providing formal and informal opportunities for justice system employees to communicate between departments. Finally, tribes could develop policies and procedures similar to those of the Tulalip Justice System that encourage community critique and participation. Ultimately, tribes must decide for themselves if Tulalip Justice System methods are relevant to their tribal communities.

## VI. CONCLUSION

In this thesis, supported by existing scholarship, I chose a new framework detailing the needed elements of successful tribal justice systems and suggest that systems satisfying this framework would be most able to provide justice system services in Indian country. I provided further content for that framework that has not been previously given based on existing scholarship and my own analysis. I introduced the Tulalip Tribes and the justice system of the Tulalip Reservation. I presented and evaluated the goals and methods of the Tulalip Justice System to operationalize that framework. Also, I made these goals and methods relevant for other tribes seeking to create or improve justice system delivery in their communities.

Overall, the task of developing a successful tribal justice system is great. Many different strategies exist to develop such a system. For example, tribes can select one or many individuals to develop policies and procedures.<sup>204</sup> These individuals could themselves be experts in the field or gain information through summits, conventions, and conversations with community members and other experts.<sup>205</sup> Tribes can also utilize other

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<sup>204</sup> Eric Lemont, *Realizing Constitutional Change Through Citizen Participation*, in American Indian Constitutional Reform and the Rebuilding of Native Nations 243, Eric D. Lemont ed., University of Texas Press: Austin (2006); and Ronald Eagleye Johnny, "The Duckwater Shoshone Drug Court, 1997-2000: Melding Traditional Dispute Resolution with Due Process," 26 Am. Indian L. Rev. 261 (2002), 265.

<sup>205</sup> Eric Lemont, *Realizing Constitutional Change Through Citizen Participation*, in American Indian Constitutional Reform and the Rebuilding of Native Nations 242-243, Eric D. Lemont ed., University of Texas Press: Austin (2006).

outside sources of information including the justice methods of neighboring tribes or tribes of common ancestral histories with similar world-views of social order and justice.<sup>206</sup>

In order to support the efforts of tribal governments seeking to culturally legitimize their justice systems as well as support scholarship generally on effective justice systems, more research must be done. Specifically, more research is needed to discover the challenges tribes face when developing, implementing, and maintaining culturally legitimate justice systems and solutions to these challenges. This research can involve larger studies of multiple tribes as well as individual case studies like this one. When more scholarship is available on this topic, tribes will have more opportunities to learn, through scholarship, about the experiences of other tribes and their efforts to improve their tribal justice systems. Aided by this research, tribes will be able to maneuver common internal and external challenges more successfully.

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<sup>206</sup> Ronald Eagleye Johnny, “The Duckwater Shoshone Drug Court, 1997-2000: Melding Traditional Dispute Resolution with Due Process,” 26 *Am. Indian L. Rev.* 261 (2002), 264.

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