



Hon. Mary Jo B. Hunter

Associate Judge, Ho-Chunk Nation Trial Court

by Schuyler A. Tilson



Schuyler A. Tilson is a staff attorney for the Ho-Chunk Nation Judiciary and a licensed attorney in the state of Minnesota. She is a graduate of William Mitchell College of Law (now Mitchell Hamline School of Law) where she participated in the Indian Law Impact Litigation Clinic and the Tribal Code Drafting Clinic. She earned a Bachelor of Arts degree from Augsburg College in Minneapolis, with a focus on history, American Indian studies, and Spanish.

Hon. Mary Jo B. Hunter began her professional odyssey into the legal world at the age of 4 years old. At that young age, she witnessed her uncle's incarceration and questioned why her "funny and wonderful uncle was behind bars." Judge Hunter is an enrolled member of the Ho-Chunk Nation, formerly known as the Wisconsin Winnebago Nation. She grew up on the ancestral lands of her people in what is now the state of Wisconsin. A family member's incarceration is an old and systemic problem that continues to plague tribal nations and their peoples.¹ Judge Hunter sought to learn more about the systemic issues and imbedded stereotypes that tribal members face. To further her understanding, she enrolled at the University of Wisconsin with a focus in journalism. After earning her undergraduate degree in 1978, Judge Hunter sought to rectify and reverse the high rates of incarcerated tribal members by becoming a lawyer. She continues to ask questions and seek answers for the benefit of her people as an associate judge for the Ho-Chunk Nation Trial Court.

This innate mission to find answers about the legal system culminated with Judge Hunter's enrollment in the UCLA School of Law. She graduated in 1982 and returned to the Midwest to pursue her legal career. Judge Hunter worked for a time right after law school as a legal aid attorney at the nonprofit Neighborhood Justice Center and Southern Minnesota Regional Legal Services. Then her legal career called her to teach. She taught Indian law at the University of North Dakota (UND) School of Law from 1989 until November of 1993. She also directed the Native American Law Project Clinical Program at the UND School of Law. Her teaching experience was further enriched when she taught the Native American law seminar course for Hamline University Law School (now Mitchell Hamline School of Law) in St. Paul, Minn. On the topic of legal clinics in law schools, Judge Hunter said, "To think justly we must understand the perspective of others. Working with Mitchell Hamline's clinical law program gives students the opportunity to experience real-life legal issues, learn how to recognize disparate treatment, and see issues from various personal back-



grounds and experiences." Judge Hunter maintains her status as a clinical professor emerita for Mitchell Hamline School of Law to this day.

Judge Hunter served the greater tribal community as a *guardian ad litem* (GAL) and as a board member for several nonprofit organizations.² As a culture, the Ho-Chunk people have always taken care of vulnerable tribal members: the children, elderly, and others with disabilities. The kinship system runs deep and ingrains in Ho-Chunks their responsibilities to each other. There are now courts, social services, and law enforcement agencies to assist with problems. That's where the GAL plays a role. GALs are the ones who go out to investigate the situation and advocate for the person. Beginning in November 1993, Judge Hunter served as a GAL for Indian children subjected to the Indian Child Welfare Act (ICWA). After her own stint as a GAL, she represented other GALs in cases involving ICWA. She believes strongly in the rights of children and is a leader in the community for issues involving ICWA. Judge Hunter utilized her expertise as a GAL and her legal knowledge to represent the Indian community in St. Paul as an urban representative on Minnesota's Indian Child Welfare Advisory Council. Southern Minnesota Regional Legal Services,

where she acted as a member of the board of directors, also benefited from her knowledge and passion for underrepresented people. In addition, she served on the board of directors for the Minnesota American Indian Bar Association. She further contributed to the Minnesota Indian community by serving as the chair of the St. Paul Public Schools' Indian Education Parent Committee.

The election of Hunter as the first chief justice of the Ho-Chunk Nation Supreme Court in 1995 was a momentous achievement in her legal career. She was re-elected in 2002, 2007, and also in 2013. She retired from the chief justice position in 2015 after 20 years of sitting on the Ho-Chunk Nation Supreme Court bench. However, her retirement did not last long; she was elected as an associate judge of the Ho-Chunk Nation Trial Court in March 2015.

After a storied legal career of looking for answers, Judge Hunter attests that the most challenging part of being a judge is being the one who makes the decisions. "You can't make everyone happy!" she quipped. Alternatively, Judge Hunter finds that being a judicial officer is rewarding. The most rewarding part is being able to serve her people. She views her role as a judge as her final act of giving back to her community, saying, "It was my destiny to become a judge for my tribe." The Constitution of the Ho-Chunk Nation requires that the chief trial judge and any associate judges to the trial court be enrolled members of the Ho-Chunk Nation.³ Not every tribal court mandates that the judge be an enrolled member. Some tribal court judges are not enrolled members of the community they serve or are not enrolled in any tribal nation.⁴ Judge Hunter advises those who seek an appointment as a tribal judge, but are not affiliated with that tribal nation, to "know the community if you're not a part of it and be respectful of the culture." Judge Hunter's advice comes from an extensive background. The Ho-Chunk Nation Courts were not the first courts to gain from Judge Hunter's expertise. In the past she served as a justice for the Supreme Court of the Ponca Tribe of Nebraska, the court of appeals for the Winnebago Tribe of Nebraska, the tribal appellate court for the Turtle Mountain Band of Chippewa Indians, and for the appeals court of the Prairie Island Indian Community. These experiences made Judge Hunter an eminent scholar on tribal law throughout Indian country.

The part of working for a tribal judiciary that Judge Hunter enjoys most is the consistent opportunities to learn. That is the beauty and the challenge of tribal law. "There is always something new," she said. Tribal law is an area of law that continually expands as compared to many other practice areas in the American legal system that evolved from English concepts and common law.⁵ Throughout the history of the United States, American Indian peoples suffered genocides and oppression.⁶ Many who were not decimated by massacres or disease were removed to reservations far from their homelands.⁷ The Ho-Chunk people were removed to a reser-

vation in Nebraska after the entirety of their homeland was ceded to the U.S. government through a string of treaties.⁸ However, many Ho-Chunk people continually returned to Wisconsin after being relocated to Nebraska.⁹ Eventually the federal government allowed those Ho-Chunk who returned to stay in Wisconsin.¹⁰ There are now two separate nations of the Ho-Chunk people: the Winnebago Tribe of Nebraska and the Ho-Chunk Nation in Wisconsin.¹¹ For many tribal nations, removal from homelands resulted in significant loss of traditional tribal legal structures.¹² However, tribal nations, including the Ho-Chunk Nation, are implementing sovereignty and self-governance over their people through the revitalization of tribal courts.¹³

The Ho-Chunk Nation Judiciary Branch formed in 1994 when the tribal members enacted the Constitution of the Ho-Chunk Nation, approved by Adá E. Deer, the assistant secretary of Indian Affairs at that time.¹⁴ Initially, Ho-Chunk Nation courts rested the basis of their opinions on federal and Wisconsin laws.¹⁵ Ample Ho-Chunk case law now exists, developing over the 22 years since the formation of the Ho-Chunk Nation Judiciary. The Ho-Chunk Nation enlivens their customs and traditions through its Trial Court, Supreme Court, Traditional Court, Wellness Court, and Family Wellness Court. Judge Hunter presides over the Nation's Family Wellness Court. The goal of this court is to prevent the out-of-home placement of Ho-Chunk children involved in Child in Need of Protection or Services cases that result from a parent's drug or alcohol abuse problems. The Family Wellness Court seeks to actively engage, support, and encourage community members to maintain healthy, spiritual, and sober lifestyles. A collaboration between the county court and funding from a federal grant from the Office of Juvenile Justice and Delinquency Prevention supports the success of the Family Wellness Court participants.

Upon speaking with Judge Hunter, even briefly, it is immediately apparent that she takes pride in being a mother and a grandmother. Her appreciation of family and understanding of children makes her an appropriate judge for the Family Wellness Court.

Judge Hunter spends the majority of her free time with family, advising her two adult children, pampering a great-grandchild, and humoring her 13 grandchildren. As she put it, "My kids are lovers not fighters." This is fortunate for both Judge Hunter and her children since the Nation recently enacted a criminal code to exercise sovereignty and jurisdiction over its members who are involved in criminal matters.¹⁶ "I don't want my children showing up in my courtroom," she avowed.

Judge Hunter has resided in several states and practiced in multiple jurisdictions throughout her career. Despite exposure to lifestyles in other areas of the United States, she returned home to Wisconsin to fulfill the destiny of serving her people as an associate judge for the Ho-Chunk Nation Trial Court. ©

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2015), available at <http://turtletalk.wordpress.com/2015/09/28/ninth-circuit-materials-in-french-v-starr> (last visited Jan. 8, 2017).

⁸³25 U.S.C. § 1302(a)(8).

⁸⁴*States v. Bryant*, 136 S.Ct. 1954, 1966 (2016).

⁸⁵See generally Matthew L.M. Fletcher, *A Unifying Theory of Tribal Civil Jurisdiction*, 46 ARIZ. ST. L.J. 779 (2014).

⁸⁶*Plains Commerce Bank*, 554 U.S. at 338.

⁸⁷Matthew L.M. Fletcher, *Toward a Theory of Intertribal and Intratribal Common Law*, 43 HOUSTON L. REV. 701 (2006).

⁸⁸Matthew L.M. Fletcher, *Indian Courts and Fundamental Fairness: Indian Courts and the Future Revisited*, 84 U. COLO. L. REV. 59 (2013).

⁸⁹*Phillip Morris USA v. Williams*, 549 U.S. 346 (2007).

⁹⁰25 U.S.C. § 1304.

⁹¹The leading article on the federal power over Indian affairs probably

is Gregory Ablavsky, *Beyond the Indian Commerce Clause*, 124 YALE L.J. 1012 (2015).

⁹²*Donovan v. Coeur d'Alene Tribal Farm*, 751 F.2d 1113 (9th Cir. 1985).

⁹³E.g., Ezekiel J.N. Fletcher, *De Facto Judicial Preemption of Tribal Labor and Employment Law*, 2008 MICH. ST. L. REV. 435; Wenona T. Singel, *Labor Relations and Tribal Self-Governance*, 80 N.D. L. REV. 691 (2004); Kaighn Smith Jr., *Tribal Self-Determination and Judicial Restraint: The Problem of Labor and Employment Relations within the Reservations*, 2008 MICH. ST. L. REV. 505.

⁹⁴*NLRB v. Little River Band of Ottawa Indians Tribal Gov't*, 788 F.3d 537, 557-58 (6th Cir. 2015) (McKeague, C.J., dissenting), cert. denied, 136 S.Ct. 2508 (2016).

⁹⁵*NLRB v. Pueblo of San Juan*, 276 F.3d 1186 (10th Cir. 2002).

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Endnotes

¹See e.g., Melissa Leal & Robert Angelo Horse, *Through His Eyes: Life in the South Dakota State Penitentiary*, 40 AM. INDIAN CULT. & RES. J. 93, 93-100 (2016) (asserting that 27 percent of inmates in Sioux Falls State Penitentiary are "Native American").

²A *guardian ad litem* is defined by *Black's Law Dictionary* (10th ed. 2014) as: "a guardian, usu. a lawyer, appointed by the court to appear in a lawsuit on behalf of an incompetent or minor party."

³CONSTITUTION OF THE HO-CHUNK NATION art. VII, § 11, available at <http://www.ho-chunknation.com/government/the-constitution-of-the-ho-chunk-nation.aspx>.

⁴Mary Jo B. Hunter, *Tribal Court Opinions: Justice and Legitimacy*, 8 KAN. J.L. & PUB. POL'Y 142, 143 (1999).

⁵Justin B. Richland & Sarah Deer, *INTRODUCTION TO TRIBAL LEGAL STUDIES* 43 (4th ed. 2016) (explaining the difference between the American legal system and tribal judiciaries).

⁶See *id.* at 2.

⁷See *id.* at 84.

⁸Treaty of land cessions, concluded at Prairie du Chien, Territory of Michigan, 7 Stat. 323 (1830); Treaty of cessions, concluded at Fort Armstrong, Rock Island, Illinois, 7 Stat. 370 (1833); Treaty of cessions, concluded in the City of Washington, 7 Stat. 544 (1838); Treaty of cessions, and intended acquisition of lands west of the Mississippi River for a new homeland, concluded in the City of Washington, 9 Stat. 878 (1847); Treaty of land cessions, and provisions for establishment of a homeland in the Territory of Minnesota, concluded in the City of Washington, 10 Stat. 1172 (1855); Treaty of relinquishment of western portion of Blue Earth reserve, and land assignments, concluded in the City of Washington, 12 Stat. 1101 (1861); Treaty of land cessions in the Territory of Dakota, with additional land grant in the Territory of Nebraska, concluded in the City of Washington, 14 Stat., 671 (1866).

⁹TOM JONES, MICHAEL SCHMUDLACH, MATTHEW DANIEL MASON, AMY LONETREE & GEORGE A. GREENDEER, *PEOPLE OF THE BIG VOICE: PHOTOGRAPHS OF HO-CHUNK FAMILIES* BY CHARLES VAN SHAICK, 1879-1942 vii-viii (2011).

¹⁰See *id.*

¹¹LANCE M. FOSTER, *THE INDIANS OF IOWA* 85-86 (2014). The two separate nations use different terminology as explained by Foster:

Winnebago was the name given to this tribe by Algonquian-speaking tribes, neighbors of the Winnebago, who lived near Green Bay, Wisconsin. Winnebago, from *winnepeko*, means something like "Stinking Water," referring to the fishy-smelling shores of Green Bay on Lake Michigan. The "Winnebago" actually call themselves the Hochunkara, which mean[s] something like "People of the Great Language" or "People of the Big Voice," "big" meaning originating in the earliest times... Today, some branches of the Hochunkara have decided to reject the foreign term "Winnebago" in favor of variations from their own language, Ho-Chunk. In Wisconsin, they are known as the Ho-Chunk; in Nebraska, they are the Winnebago.

¹²Richland & Deer, *supra* note 5, at 2.

¹³See e.g., Christine Zuni, *Strengthening What Remains*, 7 KAN. J.L. & PUB. POL'Y 18 (1997). Zuni explains the relationship between the federal government and tribal self-governance as follows: A central proposition in federal Indian law governing tribal nations, and hence tribal judicial systems, is that Indian nations retain vestiges of their original sovereignty and therefore have residual authority to govern their own affairs. Their sovereign qualities were initially recognized by the federal government when it negotiated treaties with Indian nations as it did with other foreign nations. Thus, the power to establish and maintain tribal judicial systems is an inherent, retained power that was never surrendered.

¹⁴See *supra* note 3.

¹⁵See *Ho-Chunk Nation Legislature v. Chloris A. Lowe Jr. & Jo Deen B. Lowe*, CV 95-28 (HCN Tr. Ct., Jan. 30, 1997) at 7 (discussing how federal law is merely persuasive authority and not binding authority on cases in tribal courts unless a federal statute specifically mentions Indians).

¹⁶Ho-Chunk Nation Criminal Code, 9 HCC §§ 900-961 (May 5, 2015), available at <http://www.ho-chunknation.com/government/judiciary/index-of-laws.aspx>.