

**PREPARED STATEMENT OF THE
NATIONAL AMERICAN INDIAN COURT JUDGES ASSOCIATION
PRESENTED BY
THE HONORABLE JILL E. SHIBLES, PRESIDENT
NATIONAL AMERICAN INDIAN COURT JUDGES ASSOCIATION
CHIEF JUDGE, MASHANTUCKET PEQUOT TRIBAL COURT
P.O. Box 3126
MASHANTUCKET, CT 06339
(860) 396-6156
FAX: (860) 396-6320
E-MAIL: jshibles@mptn.org
naicja@snet.net**

SUBMITTED TO THE
UNITED STATES SENATE COMMITTEE ON INDIAN AFFAIRS
OVERSIGHT HEARING ON THE PRESIDENT'S BUDGET REQUEST
FOR INDIAN PROGRAMS FOR FY2000
WASHINGTON, DC
FEBRUARY 24, 1999

INTRODUCTION

Chairman Campbell, Vice Chairman Inouye and distinguished members of the Committee, my name is Jill E. Shibles. I am a member of the Penobscot Nation of Maine, I am the Chief Judge of the Mashantucket Pequot Tribal Court and I serve as the President of the National American Indian Court Judges Association (“NAICJA”). Thank you for the invitation to address the President’s Budget Request for Indian programs for FY2000, particularly with respect to proposed funding for Tribal Courts. This year NAICJA, a national membership association governed by a sixteen member board of tribal judges representing the over 250 tribal justice systems and Indian Code of Federal Regulation (CFR) courts across the country, celebrates its 30th anniversary. NAICJA’s mission is to strengthen and enhance tribal justice systems nationally. We hope that after thirty years of hard work and struggle to maintain peace in our homelands, that FY2000 will be the year that tribal justice systems receive the funding that is so urgently needed.

TRIBAL JUDICIAL RESPONSE TO VIOLENT VICTIMIZATION

“American Indians are the victims of violent crimes at more than twice the rate of all U.S. residents,” reported the Justice Department’s Bureau of Justice Statistics just ten days ago. What was not a surprising finding to tribal judges is that offender use of alcohol was a major factor in incidents of crime involving American Indians. The BJS found that Native Americans reported that in 46% of all violent victimizations that the offender had been drinking. Approximately 70% of jailed Native Americans convicted of violence reported that they had been drinking at the time they committed the offense. It would not be unreasonable to estimate that close to 90% of all Native Americans charged with offenses in tribal courts were either drinking at the time of the crime or are charged with an alcohol related offense. It is clear that alcohol has had a particularly toxic impact on Native communities. Almost 4 in 10 Native Americans held in local jails had been charged with a public order offense, most commonly, driving while intoxicated.

The BJS study results should come as no surprise to the Committee. These latest statistics simply reaffirm the frighteningly high disproportionate rate of violent crime in Indian Country which triggered the Indian Country Law Enforcement Initiative. Native American communities across the country can look forward to increased law enforcement presence as a result of this Committee and Congress’ commitment to addressing the public safety crisis on our reservations. While we applaud the increase in funding of Indian law enforcement by over 80%, or \$108 million, to pay for new jails, patrol cars and up to 1,000 officers, the tribal courts are alarmed at the lack of corresponding Indian courts funding. Increased law enforcement will inevitably lead to an increase in tribal court caseloads in already overwhelmed systems, yet only \$5 million, or 4.6% of the increase appropriated for law enforcement has been set aside

for tribal courts.¹ Given the more than 250 tribal justice systems, that amount won't stretch very far.² The ability of tribal courts to absorb this new caseload will be seriously jeopardized. Ever since 1993, the year the Indian Tribal Justice Act was enacted, tribal court base funding has decreased. Another factor that compounds the chronic underfunding is the significant number of new tribal courts that have been established.

Tribal justice systems are already inadequately funded and the lack of adequate funding impairs their operation.³ With the addition of 1,000 new police officers, one can only imagine the potential impact on these stressed systems. We support the request of the Bureau of Indian Affairs to increase Tribal Court funding, (albeit in an extremely modest and insufficient amount) as it is an indispensable component to ensuring the success of the Initiative. Without adequately staffed and trained tribal judiciaries to handle the influx of new criminal prosecutions, the goal of providing to 1.4 million Native Americans who live on or near Indian lands the same "protection of their basic rights, a sense of justice, and freedom from fear" enjoyed by Americans at large, will not be attained.⁴

JUSTICE TAKES TIME AND MONEY

¹See NAICJA Resolution 98-13, "Funding of Department of Justice Tribal Court Programs and Indian Tribal Justice Act" (requesting an increase in the funding directed to the Indian court project portion of the Indian Country Law Enforcement Initiative to the amount of \$30 million.) (Copies of all cited NAICJA resolutions are attached.)

²Another concern is the limiting language placed on the \$5 million which will eventually be distributed among a few tribes on a one-time competitive grant basis. NAICJA's Board of Directors believes that if so little funding is to be provided, (which will obviously not meet the existing need of individual tribal justice systems) that there should be statutory and/or regulatory provisions allowing for the funding of tribal justice enhancement and capacity building projects of a national scope--which could provide a benefit to each and every tribal justice system. Such projects could include: judicial and court staff scholarships to attend relevant training in development and implementation of court rules of procedure and evidence; exploration of prevention strategies for domestic violence, gang violence, child abuse and substance abuse through court intervention; and the development and sharing of model codes, procedures, court forms and benchbooks.

³The 1991 United States Civil Rights Commission found that "the failure of the United States Government to provide proper funding for the operation of tribal judicial systems . . . has continued for more than 20 years." The Indian Civil Rights Act: A Report of the United States Civil Rights Commission, June 1991, p. 71. Moreover, the Commission asserted that "If the United States Government is to live up to its trust obligations, it must assist tribal governments in their development . . ." Eight years ago, the Commission "strongly support[ed] the pending and proposed congressional initiatives to authorize funding of tribal courts in an amount equal to that of an equivalent State court" and was "hopeful that this increased funding will allow for much needed increases in salaries for judges, the retention of law clerks for tribal judges, the funding of public defenders/defense counsel, and increased access to legal authorities."

⁴Final Report of the Executive Committee for Indian Country Law Enforcement Improvements, p. 4.

Substance abuse, particularly abuse of alcohol, has long ranging effects on Native communities. Not only does it manifest itself in dramatically higher rates of both adult and juvenile crime, but it contributes to the destruction of families and most tragically, to the ill health of Native American children suffering from Fetal Alcohol Affect and Syndrome. The BJS study confirms what tribal judges and tribal communities have known all along. While \$400,000 will be insufficient to meet the vast need for sobriety and prevention efforts, we urge you to support the establishment of the Office of Alcohol and Substance Abuse which will provide training and technical assistance for the development of prevention programs.

In the past two years, increasing numbers of tribal courts are beginning to utilize the Drug Court Program of the Department of Justice. The results of these programs are extremely promising. The continued funding of the Drug Court Program is a wise investment.⁵ One component of a successful Drug Court (sometime known as a “Wellness Court” in Indian Country) is the weekly involvement of the tribal judge in the supervision of the offender through regular court appearances. Tribal courts routinely take a significant amount of time and deliberation in considering the entire situation surrounding the commission of a crime on the reservation. The current restorative justice and victim’s rights national movements can find their origins in Native systems. All of these approaches can be highly effective; however, they are extremely time and labor intensive. Add the influx of new criminal cases, most likely involving abuse of alcohol, being filed as a consequence of the Initiative, and the demand on the tribal judge becomes insupportable. It is crucial that all of these components be considered and BIA base funding (TPA) for tribal courts sufficient to increase the number of full time judges and to move part-time judges to full-time status be authorized and appropriated.⁶

⁵See NAICJA Resolution No. 98-15, “Commending to President Clinton the Efforts of the Attorney General Janet Reno and the Department of Justice.”

⁶See NAICJA Resolution No. 98-12, “Increase of Tribal Court Tribal Priority Allocation and Funding of Indian Tribal Justice Act,” (calling for the increase of the TPA appropriation for tribal courts to be increased from \$11.4 million to \$15.5 million and for full funding of the \$58 million authorized by the Tribal Justice Act.)

ECONOMIC POTENTIAL RESTS ON THE TRIBAL JUDICIARY

During the 1990's, America has enjoyed a period of great economic prosperity. Unfortunately as of this date, economic success in Indian Country has not been achieved for the vast majority of tribal nations and their members. Rather, poverty levels for Native Americans have risen while Federal spending has dropped to about half of what it was twenty years ago.⁷ It is widely accepted that economic development is the future of self-sufficiency in Indian Country.

A developer and vendor of court case management computer software, in boasting about his company's international sales success, recently noted that when a developing country seeks to attract businesses to set up shop, the first step it takes is to establish a fair and capable judicial system. Tribes are realizing, just as are the former Soviet Republics, Haiti and many other nations throughout the world, that one cannot do business in a global economy without stability, certainty and efficiency in legal relationships.⁸ Tribal courts, therefore, are an integral part of the emerging economic development of Indian Country.

Effective and efficient resolution of disputes arising from commercial dealings is an essential component of the governance infrastructure which tribes must provide. Businesses are keenly aware of the need to have relative certainty in the outcome of commercial litigation. Such certainty is a part of the risk assessment they do for siting business enterprises. They also take into account the availability of clear and detailed commercial laws which may be interpreted and enforced by competent judiciaries. Tribal courts are, therefore, a focal point in the infrastructure necessary for successful economic development to take place.

The Bureau of Indian Affairs acknowledges that its fundamental responsibilities are: (1) to fulfill the United States' trust obligations to Indian tribes which emanate from treaties, the U.S. Constitution, federal laws, court decisions and other agreements, and (2) to facilitate tribal self-determination.⁹ Its efforts to meet these federal responsibilities are brought up short by Congress' twenty year legacy of failing to provide proper

⁷In 1979, 28% of Native Americans were living below poverty level. During that same year, Indian program spending was a total of \$4.4 billion in 1990 dollars. By 1989, 31% of Native Americans were living in poverty, but Indian program spending dropped to \$2.5 billion. Bureau of Indian Affairs Overview of FY 2000 Budget Request, p. 8, (quoting 1990 U.S. Census data).

⁸Honorable Daniel E. Wathen, Chief Justice, Maine Supreme Court, "The State of the Judiciary: A Report to the Joint Convention of the 117th State of Maine Legislature", February 1995.

⁹ Bureau of Indian Affairs Overview of FY 2000 Budget Request, p. 8. This trust responsibility, however, does extend to every federal department, agency, bureau and office.

funding for the operation of the tribal court systems.¹⁰ To address this serious inequity, Congress authorized in the Indian Tribal Justice Act of 1993 annual funding beginning in fiscal year 1994 and running through fiscal year 2000 in the amount of fifty eight million dollars (\$58,000,000.00) per year. So far Congress has yet to appropriate a single dollar under these authorizations. There are several members of the Committee still remaining from that time who remember all the study and effort that went into the passage of the Act. The Act remains as an unfulfilled promise to tribal justice systems. The time has come for that promise to be honored.

We ask that the Committee support the BIA's request of \$2.6 million to provide initial funding for implementation of the Act. While the funding request falls far short of the authorized \$58 million, if enacted, the funds could be used for planning, development and operation of tribal justice systems, including: training, code, procedure and benchbook development, records and case management and exploration of culturally based innovative prevention programs. Given the current public safety crisis in Indian Country and the long standing financial starvation of tribal justice systems, these funds are essential if we are to start to turn the situation around in Indian Country.

CONCLUSION

Tribal justice systems are the primary and most appropriate institutions for maintaining order in tribal communities. They are the keystone to tribal economic development and self-sufficiency. Any serious attempt to fulfill the federal government's trust responsibility to Indian nations, must include increased funding and enhancement of tribal justice systems.

Woli won for the opportunity to comment on the President's Budget Request for Indian programs for FY2000 with respect to proposed modest funding for Tribal Courts.

¹⁰ The 1991 United States Civil Rights Commission found that "the failure of the United States Government to provide proper funding for the operation of tribal judicial systems . . . has continued for more than 20 years." The Indian Civil Rights Act: A Report of the United States Civil Rights Commission, June 1991, p. 71. The Commission also noted that "[f]unding for tribal judicial systems may be further hampered in some instances by the pressures of competing priorities within a tribe." Moreover, the Commission opined that "If the United States Government is to live up to its trust obligations, it must **assist tribal governments in their development . . .** **Seven years ago, the Commission "strongly support[ed] the pending and proposed congressional initiatives to authorize funding of tribal courts in an amount equal to that of an equivalent State court" and was "hopeful that this increased funding will allow for much needed increases in salaries for judges, the retention of law clerks for tribal judges, the funding of public defenders/defense counsel, and increased access to legal authorities."**