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SUBSTANCE ABUSE, CRIME AND RECIDIVISM ON  
THE SOUTHERN UTE INDIAN RESERVATION

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## **ABSTRACT**

Native American tribes are considered dependent-sovereign nations within the United States of America. As such, tribes operate governments under independent constitutions and by-laws. Self-government in judicial matters has been severely eroded by the Federal Government over the course of time; however, tribes have reacquired the right to control their judicial functions, albeit with significant limitations. Proponents of Native American Tribal Courts argue that the courts serve as a legitimate venue to resolve issues by those most familiar with tribal laws and customs. Opponents question the legitimacy of these courts and their decisions based on the lack of judicial independence, legally trained judges, and an environment that is more traditional than formal in its proceedings.

This research project studied judicial administration in American Indian Country by evaluating the Southern Ute Tribe's Tribal Court System. This research looked at Federal Indian Policy related to judicial rights of American Indians, crime and control in Indian Country, and the Government and Judiciary of the Southern Ute Tribe. A significant focus was dedicated to how the Tribal Court addresses charges related to substance abuse and the effectiveness of the court in reducing recidivism rates related to these charges by comparing and contrasting the traditional Tribal Court model and the Tribe's TüüÇai (Wellness) Court – a diversionary court which resembles the Anglo-Drug Court model. The intent of the evaluation was to determine whether the Wellness Court, which incorporates tradition and historically based cultural attributes, reduced the rates of recidivism of offenders processed through the Tribal Court system for substance-related charges. The results of the research indicate that participation in the

Southern Ute Tribal Wellness Court did not produce better outcomes than adjudication through the regular Tribal Court process.

## **CHAPTER I: INTRODUCTION TO THE STUDY**

### **FOCUS, PURPOSE AND IMPORTANCE OF THE RESEARCH STUDY**

Over the course of time, extending from prior to the discovery of the Americas by Europeans to today, American Indians have called the lands which now constitute the United States home, living within the confines of their own cultural and traditional ideologies. The lives of American Indians as they knew it would be systematically torn apart with the discovery of the new world, the declaration of independence of a new nation, and the subsequent push across the continent under the notion of manifest destiny.

The specific focus of this research is not to evaluate the complexities of the relationship between American Indian tribes and the Government of the United States, but rather to focus on Federal Indian policy as it relates to the history of law governing these relationships and delineating rights and responsibilities of American Indians as wards of the U.S. Government. This multidisciplinary research focuses on the history of law, specifically criminal law, as it relates to American Indians. It serves as an important opportunity to evaluate Federal Indian policy and its effect on one specific tribe – the Southern Ute Indian Tribe. The ability to look generally at the legal history of American Indians and to evaluate the impact upon a specific tribe – as well as what that tribe has done to regain traditional and culturally relevant methods to resolve conflict and dispute – is an important step toward greater understanding of the impact of Federal Indian policy. This research will look at the Southern Ute Tribal Court and more specifically, one particular diversion court – the Southern Ute Wellness Court,

also known as the TüüÇai Court - and how it has incorporated tradition and customs into the judicial process.

Having worked in the criminal justice field over the course of my professional career, I have seen first-hand the Anglo-American adversarial system of justice. Despite the fact that our model of justice is rather mature by comparison to many other countries throughout the world, and the fact that there are certain Constitutional guarantees regarding the rights of those accused, tried and convicted of crimes in this country, I cannot help but feel that the legal system in the United States is about the process, not the person. There are those who argue that justice can be bought, that our system is discriminatory, and that the current system of corrections has no significant impact on reducing recidivism. While it would be inappropriate to generalize these arguments as definitive truths, significant research points to the fact that the system we operate under is flawed. It also reaffirms my belief that our system of justice is not wholly effective, as advanced as it is. As such, the gnawing question that occupies my mind is, “Is there a better way to administer justice?”

Restorative justice is based on the premise that “justice...whereby all parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implication for the future” (Ross & Gould, 2006, p. 56). The concept of restorative justice primarily emphasizes the person as opposed to the process. While legal scholars and courts in the United States look at practices such as Alternate Dispute Resolution and Mediation, the American Indians utilized these practices prior to the imposition of Anglo-Law upon them and their way

of life. In an effort to “civilize” American Indians, did we in fact take from them one of their strongest cultural attributes?

This research will provide a general review of Federal Indian policy related to judicial administration, crime and social control, and corrections in Indian Country. The ability to understand American Indian judicial practices cannot be accomplished without a general understanding the intricacies of federal Indian policies that have been implemented over the past two centuries. These policies have, for all intents and purposes, destabilized American Indian tribal affairs and impeded the ability of American Indian nations to become self-sufficient through effective tribal governance.

Federal Indian Policy is perhaps the most complex and complicated example of U.S. policy in the history of the United States; the manner by which the U.S. Government dealt with the indigenous population has changed significantly since the birth on the nation. Before 1492, millions of Indians inhabited the Americas in thousands of independent nations and cultural groups. These nations employed their own governments, including judicial functions, and they differed significantly from the systems utilized by the European explorers and those imposed by the government of the United States (Lujan & Adams, 2004).

It is due to these complexities that this research is interdisciplinary in nature; it incorporates both a historical and sociological/criminological approach. The research utilizes a mixed methodological approach, although it relies heavily on quantitative analysis. Data for quantitative analysis was gathered from the Southern Ute Tribal Court’s Full Court Enterprise (FCE) system, which is a comprehensive electronic database that contains all charges and cases brought before the Tribal Court; as well as

through a review of Wellness Court participants' case files. The quantitative data analysis includes an evaluation of 495 individuals who received a substance related charge in the calendar years 2002 through 2009. This data set includes both the traditional Tribal Court and the Wellness Court.

An evaluation of only the Wellness Court participants ( $N = 43$ ), based on the successful completion or unsuccessful termination of the program, was also conducted in an effort to determine whether graduation reduced the offender's propensity to reoffend. Observations of courtroom procedures, which were conducted over a four month period, allowed for an understanding of the two courtroom processes and to validate the intended differences between these two distinct judicial models.

The purpose of these evaluations is to determine whether or not the adaptation of an Anglo-model Drug Court, with the inclusion of a cultural component, has any significant impact on an offender's propensity to commit additional criminal offenses. While this research may indicate whether or not the inclusion of a cultural component in addressing substance use/abuse may have an impact on rates of recidivism, it is not intended to determine the degree that the society as a whole has embraced a return to their cultural heritage and identity of old.

## **CHAPTER II: FEDERAL INDIAN POLICY**

Indian identity is defined differently for different purposes. For the purpose of this research, an “American Indian” will be defined as an individual who is enrolled in a federally recognized American Indian Tribe. If the federal government acknowledges the legitimacy of the tribe, and the tribal government recognizes an individual as an enrolled member of the tribe, the individual will be considered an [American] Indian.

Historians have generally categorized American Indian history post European colonization into six distinct time periods. These periods are Contact (1532-1828), Removal and Relocation (1828-1887), Allotment and Assimilation (1887-1928), Reorganization and Self-Government (1928-1945), Termination (1945-1961), and Self-Determination (1961-present). Each of these time periods are defined by acts, both social and legal, which affected the American Indians’ way of life, although there are differing opinions over the exact start and end years of the periods.

### **CONTACT**

When European explorers and settlers arrived in the Americas, they encountered an indigenous population unlike any they had seen before. According to the Felix Cohen Handbook of Federal Indian Law (1942), the legal history of Native Americans can be traced back to 1532, shortly after the arrival of Spanish explorers. Emperor Charles V of Spain, a devout Catholic monarch, consulted with prominent theologian Francisco de Vitoria on what rights the Spanish had to the new lands. Vitoria determined that the indigenous populaces were the true owners of the land and subsequently the Spanish could not claim ownership through discovery. He continued by stating that only with the concurrence of the natives could Spain justifiably take the

lands. This was the first mention of the “necessity of a civilized nation treating with Indian tribes to secure Indian consent to cessions of land or change of political status” (Cohen, 1988, p. 46). Although the legal advice posited by de Vitoria was not adopted or consistently carried out by the Spanish, it served as a basis for the Spaniards’ recognition of the rights of Indian communities and would become accepted by writers of international law between the sixteenth and eighteenth centuries regarding Indian property rights (Cohen, 1988).

With the birth of a new nation, the need for the United States government to develop policies related to the indigenous population and the government’s interaction with the American Indians became necessary. In 1790, Congress passed the first Trade and Intercourse Act (with multiple renewals until a permanent act was passed). This Act subjected virtually all interaction between Native Americans and non-Indians to federal regulation and control. It did not, however, attempt to regulate interaction between Native Americans in Indian country (Canby, 2004). Less than three decades later, the Supreme Court, under Chief Justice John Marshall, revised the view of Vitoria regarding the rights of the indigenous population of the United States. In the first ruling of what would become known as the Marshall trilogy, the court in *Johnson v. McIntosh* (1823) ruled that Indian tribes could not transfer land to private parties without the consent of the federal government. According to Chief Justice Marshall, who delivered the opinion of the Court:

The rights of the original inhabitants were, in no instance, entirely disregarded; but were necessarily, to a considerable extent, impaired. They were admitted to be the rightful occupants of the soil...but their rights to complete sovereignty, as independent nations, were necessarily diminished, and their powers to dispose of the soil, at their own will, to whomsoever they pleased, was denied by the



original fundamental principle, that discovery gave exclusive title to those who made it.

## **REMOVAL AND RELOCATION**

Shortly after this decision, the United States government shifted to a new policy towards the Native Americans: Removal and Relocation. The third President of the United States was influential on the eventual adoption of an official removal and relocation policy by the United States. During his administration, Thomas Jefferson had proposed the removal of the Cherokee Indians to the lands acquired in the Louisiana Purchase in 1803. Although many in the newly formed United States of America thought that, over time, the natives would assimilate into the mainstream culture, Jefferson believed that Indians and whites would not be able to live peacefully together and felt that removal was the most humane way to resolve the issue (Deloria & Lytle, 1983).

By 1829, the Ohio Valley and northeast tribes had already been removed from their traditional lands. President Andrew Jackson, on December 8, 1829, urged the expansion of Indian removal policies – specifically targeting the five southeastern tribes – to protect both the tribes and states; this led to the passage of the Indian Removal Act of 1830 (Deloria & Lytle, 1983). The Act itself was designed to “...provide for an exchange of lands with the Indians residing in any of the states or territories, and for their removal west of the river Mississippi” (Deloria & Lytle, 1983, pp. 6-7).

Shortly after the Removal Act, the United States Supreme Court, under the leadership of John Marshall, issued the second of what would be called the Marshall trilogy related to Indian affairs. In *Cherokee Nation v. Georgia*, the court was charged

with determining whether or not the Cherokee Tribe could sue the State of Georgia to overturn laws passed by the State that interfered with internal tribal affairs (Bulzomi, 2001). The Court held that it did not have original jurisdiction under Article III of the Constitution and subsequently dismissed the case. The Court referred to the Cherokee Tribe as a “domestic dependent nation,” within the geographic boundaries of the United States with limited sovereignty. The ruling defined the relationship between tribes and the United States as a “trust relationship.” This relationship implied tribal incompetence to handle internal affairs but at the same time set the stage for federal protection from state intrusions (Prygoski, 1995).

The final case in the Marshall trilogy was *Worcester v. Georgia*. The case concerned the State of Georgia’s imposition of criminal penalties against missionaries residing in Cherokee land without having first obtained licensing by the State of Georgia. The missionaries’ convictions were overturned when the court ruled that:

The Cherokee nation...is a distinct community, occupying its own territory, with boundaries accurately described, in which the laws of Georgia have no right to enter, but with the assent of the Cherokees themselves, or in conformity with treaties, and with the acts of Congress...

The Marshall trilogy identified three major principles related to Native American sovereignty and Indian rights:

- 1) Indian Tribes possessed a certain degree of sovereignty as the original inhabitants of the continent.
- 2) The sovereignty is subject to reduction or elimination by the United States, but not individual states.
- 3) With limited sovereignty, a trust responsibility exists as the United States holds responsibility to protect the Indian tribes.

These rulings have guided Indian policy since their inception (Prygoski, 1995) and are considered perhaps the most important concepts related to Indian law.

The Trade and Intercourse Act of 1834, which was the final in a series of laws enacted dating back to 1790 under the same name, defined what constituted Indian Country in the United States and was accompanied by the Report of the Committee of Indian Affairs of the House of Representatives. The report also addressed legal jurisdiction over the Indians. The House extended criminal jurisdiction, although not as a right, but as a *courtesy* to the Indians (emphasis added). It stated:

It will be seen that we cannot, consistently with the provisions of some of our treaties, and of the territorial act, extend our criminal laws to offences committed by or against Indians, of which the tribes have exclusive jurisdiction; and it is rather of courtesy than of right that we undertake to punish crimes committed in that territory by or against our own citizens. And this provision is retained principally on the ground that it may be unsafe to trust Indian law in the early stages of their government (Deloria, 1983, p. 66).

*Ex parte Crow Dog* (1883), the Major Crimes Act (1885), and *United States v. Kagama* (1886) are three inter-related events in American Indian law that led to an erosion of Indian legal self-determination. In *Ex parte Crow Dog*, the Supreme Court ruled that Crow Dog, who had murdered another Indian on federal land and was arrested, tried and convicted by federal agents, was not subject to federal prosecution as he had already been punished in accordance with the local law of the tribe (109 U.S. 556). Within two years of the ruling and spurred by the ruling of the Supreme Court, Congress passed the Major Crimes Act. The act established federal jurisdiction over seven major crimes by Indians in Indian country. The initial crimes included were murder, manslaughter, rape, assault with the intent to kill, arson, burglary, and larceny.

The crimes of kidnapping, incest, assault with a dangerous weapon, assault resulting in serious bodily injury, assault with the intent to commit rape, robbery, and felonious sexual molestation of a minor were added to the list of offenses in subsequent amendments (Bulzomi, 2001).

The validity of the act was brought before the Supreme Court within a year in the case of *United States v. Kagama* (118 U.S. 375, 1886). In that case, two Indians stood accused of murdering another Indian on the Hoopa Valley Reservation in California. With the passage of the Major Crimes Act, the offense fell under federal criminal jurisdiction, which was the point of contention. The U.S. Supreme Court ruled that Congress did have the power to enact the Act and subsequently the Major Crimes Act (18 U.S.C. § 1153) was deemed constitutional. While the Court rejected the idea that the government maintained a right to characterize internal criminal codes of tribes as a means of regulating commerce, it did uphold the Major Crimes Act as an appropriate means for Congress to administer the federal government's guardianship authority over the Indian people and tribes.

*Kagama* is generally associated with validating the plenary power of Congress over Native American tribes. The *Kagama* court stated:

These Indian tribes are the wards of the nation. They are communities dependent of the United States. Dependent largely for their daily food. Dependent for their political rights...From their very weakness and helplessness, so largely due to the course of dealing with the Federal Government with them and the treaties in which it has been promised, there arises the duty of protection, and with it power (118 U.S. 375).

The U.S. government had, since 1778, entered into treaties and used statutes to create the precursor to what would be Indian reservations. Initial efforts by the

government were based on acquisition of land typically held by Indian tribes. The passage of the Indian Reorganization Act in 1830 sought to relocate Indians west of the Mississippi River in an effort to accommodate the expanding white population. As expansion continued to push westward, the government's approach shifted from pushing Indians beyond white settlements to the placement of Indians on specific tracks of land. Around the time that Office of Indian Affairs transferred from the War Department to the Department of Interior, the reservation system became deeply rooted in Department of Indian Affairs and was seen as the main vehicle to promote Indian acculturation (Finkelman & Garrison, 2009).

Another significant event that occurred during the period of Removal and Relocation was the end of treaty-making between the United States and tribal leaders in 1871. It should come as no surprise that the era of Removal and Relocation was a focal point of Andrew Jackson's domestic policy. Prior to Jackson's ascension to the presidency, during the early years of the nation, the United States employed similar techniques in dealing with the Native Americans as their European predecessors; that is, using treaties as the primary method for conducting relations with Indians. The treaty-making authority of the United States government lies in Article II, section 2, of the United States Constitution which states, "He [the President] shall have Power, by and with the Advice and Consent of the Senate to make Treaties, provided two-thirds of the Senators present concur..." President George Washington believed that the federal government should enter into treaties with the Indians in the same manner that the government did with foreign nations. The Senate, after much debate, accepted this view

and the precedent was set that treaties with Indian Nations would require formal approval by the Senate.

This view did not live long though. Leaders of the young nation questioned the appropriateness of entering into treaties with Indian tribes, with skepticism fueled by racism against an uncivilized people. Prior to becoming the nation's seventh President, Andrew Jackson, then a general in the United States Army, wrote to President Monroe in 1817 advising against the practice of entering into treaties with Indian tribes. He wrote,

...The Indians are subjects of the United States, inhabiting its territory and acknowledging its sovereignty. Then is it not absurd for the sovereign to negotiate by treaty with the subject? I have always thought that Congress had as much right to regulate by acts of legislation all Indian concerns... (Duthu 2008, p. 166)

Jackson would continue to argue against treaty-making to the nation's leaders, identifying it as an impediment to civilizing the Indians and calling treaty-making with Indians a "farce" (Duthu 2008, p. 17).

The Relocation and Removal policies of the United States came into force with Jackson's administration and his ardent belief in the rights of the United States over the indigenous population. These beliefs set in force 60 years of policy in which the American Indians were forcibly removed from their lands in an effort to ensure the rights of citizens of the United States to expand the country without impediment. One of the lasting legacies of "Jacksonian" policies was the formal end of treaty-making with the American Indians. As sentiment grew throughout the period of removal and relocation against treaty-making with Indians, it became evident that the policy would no longer be acceptable to the U.S. Government, especially to the members of the

House of Representatives, who believed that they were being excluded from control over Indian affairs. The passage of Indian Appropriation Act of 1871 (16 Stat.L, 566) marked the official end of treaty making between the U.S. Government and American Indians.

### **ALLOTMENT AND ASSIMILATION**

The policies of allotment and assimilation ushered in a period that would last for over four decades and take an immense toll on tribal sovereignty, culture, tradition, and heritage. Perhaps one of the most damning acts to the Indian way of life was the General Allotment Act of 1887 (also known as the Dawes Act). A general dissatisfaction existed among governmental and private organizations regarding the state of Indians and the overall reservation policy. With traditional tribal subsistence no longer feasible on typical reservations, tribal economies virtually non-existent, and individual Indians suffering from extreme poverty, the reservation policy was seen as a causal factor for the lack of progress and continued poverty for American Indians (Canby, 1998).

The Dawes Act was prompted by Indian sympathizers, who believed that if Indians were given private lots of land they would assimilate and prosper as middle-class farmers. Thus, those who sympathized with the Indians felt that the best way to allow for Native Americans to break from a cycle of poverty was to assimilate with mainstream (i.e., white) society. The General Allotment Act was also supported by those felt that Indians were not assimilating into the mainstream culture; those who favored taking lands from the large tracts that the Indians still “owned” for additional

white settlements as supported the Act. The opposing sides joined forces to push the GAA through Congress in 1887 (Pevar, 2004).

The act itself authorized the Secretary of the Interior, through delegated authority from the President of the United States, to allot 160 acres of tribal land to the head of each household and 40 acres to each minor. The land was to remain in trust for 25 years, exempt from state and local property taxes. All “surplus” land became open to non-Indian homesteaders. The result was the reduction of Indian-held land from 138 million acres in 1887 to 52 million acres in 1934. The allotment also separated families and created a checkerboard pattern on the reservation, affecting many aspects of tribal life (Pommersheim, 1995). In addition, those Indians who received ownership of land after the end of the 25-year trust period became subject to state property taxation. The result was that many allotments were subject to forced sale due to non-payment. Others sold property to non-Indians at rates far below fair value. Still others leased trust land to non-Indians, further undermining the intent to turn Indians into farmers (Canby, 1998).

The Assimilative Crimes Act of 1825 was yet another intrusion into tribal affairs that marked the period of assimilation. The act stated that, “whoever...is guilty of an act or omission which, although not made punishable by any enactment of Congress, would be punishable if committed or omitted within the jurisdiction of the State, Territory, Possession, or District in which such a place situated...shall be guilty of a like offense and subject to like punishment” (18 U.S.C. § 13). The act took existing state criminal laws and applied them via federal law to locations under federal jurisdiction, such as Indian reservations. Thus offenses not identified in federal law that



occurred on reservations, but that were violations of state law, would be tried in federal court (Canby, 1998). Although the Act is admittedly restrictive in its applicability, being reserved for cases that are interracial and in which no federal criminal statute exists, it does allow the application of local or state offenses in a federal enclave and by doing so, allows local and state governments to potentially dictate legal policies on federal Indian reservations (Deloria & Lytle, 1983).

### **REORGANIZATION AND SELF-GOVERNMENT**

The shift of U.S. policy regarding allotment and assimilation was precipitated by the publication of the Merriam Report (United States & United States, 1928). The report highlighted the failures of the governmental policy toward Indian life and culture and led to the passage of the Indian Reorganization Act (IRA) in 1934, which ended allotment and assimilation. The act was a complete change from the previous allotment and assimilation mindset and not only acknowledged that Indian tribes were enduring, but that they should be allowed to (Canby, 1998). The act – which tribes had two years to approve or deny in a one-time tribal vote – allowed tribes to reorganize, adopt written constitutions, increase self-governance, and made tribes that accepted the IRA eligible for special loans for economic development. Of the 258 elections held by tribes on whether to accept or refuse provisions of the IRA, 181 tribes accepted the provisions (Deloria & Lytle, 1983).

The efforts of tribal governments to recover from years of federal intervention and “oversight” were difficult. Traditional forms of government had been inactive for too long. Religious practices and customs had not been seen by a generation of Indians. The IRA’s requirement that accepting tribes adopt a federalist system offset traditional

tribal governance and was counterintuitive to the Native American mindset. Although homogeneous, the system was not practical for individual Indian tribes (Deloria & Lytle, 1983).

In addition, the IRA was often looked at with suspicion by Native Americans, and rightfully so. After over 40 years of attempting to assimilate Indians into mainstream society by breaking the communal way of life that so many Native Americans embraced, the IRA was viewed by many as a continuation of this practice, although perhaps not as blatant as the period that marked assimilation. Despite the fact that well over two-thirds of the tribes that voted on adopting the IRA approved the provisions held within the Act, the requirement that tribal governments adopt the “white man’s way” for tribal elections and rely on the written word appeared a bit unsettling for tribes, even though they were distant from the cultural and traditional methods of self-governance that tribes experienced prior to the arrival of European settlers (Pommersheim, 1995).

## **TERMINATION**

The success of the period of reorganization and self-government was both limited and short-lived. In the 1950s, the Eisenhower administration adopted a policy that had been discussed by the Truman administration; that of termination. The policy of termination was a more modern approach to assimilate the Native Americans into the prevalent white American society (Richland & Deer, 2004). In 1948 the Hoover Commission, having been charged with reviewing federal programs in an effort to reduce expenditures, released its report on Indian programs. The commission strongly recommended transferring responsibility for Indians to the states, especially those states

with a large Indian population (Deloria & Lytle, 1983). The policy officially took root with the passage of House Concurrent Resolution 108 in 1953 which stated:

“Whereas it is the policy of Congress, as rapidly as possible, to make the Indians within the territorial limits of the United States subject to the same laws and entitled to the same privileges and responsibilities as are applicable to other citizens of the United States, to the end their status as wards of the United States, and to grant them all of the rights and prerogatives pertaining to American citizenship” (H.Con.Res. 108, 83<sup>rd</sup> Cong., 1st Sess., 67 Stat. B132).

At the same time that Congress was pressing the termination policy, the Bureau of Indian Affairs was offering assistance to Indians under a relocation program that included the offering of grants to Indians who left the reservation and sought employment in cities (Canby, 1998). The Urban Indian Relocation Program was implemented in 1952 in an effort to lure reservation Indians to seven major urban areas where jobs were considered plentiful and as a means to combat reservation poverty. In 1950, the annual salary for an Indian was just shy of \$1,000, half as much as African-Americans and a quarter as much as Caucasians.

The year 1953 saw the passage of Public Law 83-280, commonly referred to as P.L. 280. This law transferred federal jurisdiction to cover civil and criminal matters committed in Indian country to certain states without negating the inherent trust relationship the U.S. government had established with Indian tribes. The states that were required to accept the jurisdiction were called “mandatory,” while states that had the option and invoked P.L. 280 by assuming civil and criminal jurisdiction were called optional states. The law did not take jurisdiction from the tribes; rather, it gave concurrent jurisdiction to the states affected by P.L. 280 (Garrow & Deer, 2004). Five states were given mandatory status: California, Nebraska, Minnesota, Oregon, and

Wisconsin (Alaska was added in 1958). P.L. 280 optional states were Arizona, Florida, Idaho, Iowa, Montana, Nevada, North Dakota, Utah, and Washington. All other states are considered non-P.L. 280 and the federal government retains criminal jurisdiction (Perry, 2005).

In many states tribes and state governments negotiated to what extent the state would assume control in the absence of tribal capabilities to act. The result in many cases was the elimination of Tribal Court authority and law enforcement, which was replaced by state controls. PL 280 was, for all intents and purposes, the completion of the displacement of tribal authority. Because states were still unable to tax the reservation, they typically failed to provide any law enforcement or court services since there was no additional revenue to offset the increased state expenditures (Deloria & Lytle, 1983).

Those who had pushed for the passage of P.L. 280, which was rushed through Congress with little debate, believed that the states were better apt and more efficient in dealing with the Native Americans who resided within their borders. Indian tribes have continued to call for the repeal of P.L. 280 as a further intrusion by federal and state governments. Since its passage in 1953, the only significant change in the legislation occurred in 1968 when tribal consent was required for states to invoke P.L. 280 responsibility (Deloria & Lytle, 1983). The result of the policy of termination was “the end of the federal government’s trust and guardian-war relationship with 109 Indian nations and bands, abolishing the functions of tribal governments and courts and leaving Indians under the jurisdiction of various states” (Lujan & Adams, 2004, p. 17).

## SELF-DETERMINATION

Once again the efforts of the United States government to assimilate or terminate their relationship with Native Americans ended in failure and it ushered in a renewed interest in self-determination. Under self-determination, tribes were given the opportunity to apply for federal funds in the form of grants to strengthen their governments and establish courts and law enforcement agencies. President Johnson, in a special message to Congress in 1968 stated:

“...I propose a new goal for our Indian programs: A goal that ends the old debate about termination of Indian programs and stresses self-determination...We must affirm the right of the first Americans to remain Indians while exercising their rights as Americans. We must affirm their right to freedom of choice and self-determination.”

Two years later, on July 8, 1970, President Nixon identified the policy of his administration in a special message to Congress. He stated:

“In place of policies which oscillate between the deadly extremes of forced termination and constant paternalism, we suggest a policy in which the Federal government and the Indian community play complementary roles. But most importantly, we have turned from the question of whether the Federal government has a responsibility to Indians to the question of how that responsibility can best be furthered.”

Although Presidents Johnson and Nixon both relayed their intentions to shift Indian policy to self-determination, the realities of the continued erosion of tribal sovereignty continued. Specifically the enactment of the Indian Civil Rights Act of 1968 eroded tribal self-determination and partially undermined the ability of Tribal Courts to administer justice. The ICRA was preceded by the case of *Colliflower v. Garland*. In this case, Colliflower filed a writ of habeas corpus against the Tribal Court in Ft. Belknap Indian Reservation for a conviction related to disobedience to the lawful

orders of the Court. The petition claimed that her confinement was “illegal and a violation of her constitutional rights because she was not afforded right to counsel, was not afforded a trial, was not confronted by any witnesses against her, and because the action of the court was taken summarily and arbitrarily, and without just cause” (NiiSka, 2001).

To the incomprehension of tribal leaders, the U.S. Court of Appeals ruled in favor of Colliflower stating:

“In spite of the theory that for some purposes an Indian tribe is an independent sovereignty, we think that, in light of their history, it is pure fiction to say that the Indian courts functioning in the Fort Belknap Indian community are not in part, at least, arms of the federal government. Originally they were created by federal executive and imposed upon the Indian community, and to this day the federal government still maintains a partial control over them. ... Under these circumstances, we think that these courts function in part as a federal agency and in part as a tribal agency, and that consequently it is competent for a federal court in a habeas corpus proceeding to inquire into the legality of the detention of an Indian pursuant to an order of an Indian court.”

The result was that Tribal Court decisions were no longer immune from review by Federal courts (NiiSka, 2001).

That ruling, coupled with congressional hearings that highlighted abuses by corrupt tribal leaders, set into action Senator Sam Ervin and the Senate Judiciary Committee and led to the proposal of the Indian Civil Rights Act. Indian tribes were not necessarily supportive of the legislation as it placed upon their people Anglo-American judicial concepts that were counter to many traditional Native American beliefs regarding dispute resolution. Senator Ervin attached the ICRA onto a housing bill that after the assassination of Martin Luther King Jr. was certain to pass (Deloria &

Lytle, 1983). The ICRA required tribes to afford their members certain rights found in the U.S. Constitution that previously members were not entitled to; it homogenized Tribal Courts, incorporating certain protections.

Deloria & Lytle (1983) compared the ICRA provisions with equivalent U.S. Constitutional Provisions. According to Deloria the “introduction of Anglo-American doctrine cannot help but restrict the power of Tribal Courts judges and suggests a further erosion of traditional Indian practices” (p. 130). With the passage of the ICRA, tribal members now may view the rulings of Tribal Courts as meaningless, as they can be reviewed and overturned by non-Indian courts. In addition, by limiting the penalties that can be placed on defendants in Tribal Court, initially \$1,000 and six-months in jail and later amended to \$5,000 and one-year in jail, the authority of tribal judicial entities was further undermined (Lujan & Adams, 2004).

Even though the Indian Civil Rights Act seems to require tribes to incorporate provisions similar to those found in the U.S. Constitution into their governance, there have been three significant developments that have limited the extent to which the ICRA has intruded upon tribal self-governance. First, there has been a standardized adoption of the premise that those “wronged” by tribal actions must first “exhaust all tribal remedies” prior to calling upon the federal court system for reprieve. Second, even though federal law may be applicable and warrant intervention by federal courts, there has been a lack of inclination on the part of the courts to enter into situations that are inherently internal tribal matters. The final, and by far most relevant limitation of federal authority under the ICRA, was the 1978 Supreme Court ruling of *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (Canby, 1998).

In *Santa Clara Pueblo v. Martinez*, Julia Martinez, a Santa Claran, married a Navajo Indian in 1941 and had several children. Because her husband was not a Santa Claran, the tribe excluded her children from tribal membership based on an ordinance passed two years prior to Martinez’s marriage which granted membership to children of men who marry outside of the tribe but not to women who do so. Martinez argued that the decision was discriminatory based on sex and ancestry and as such, violated Article I of the ICRA which, in part, states, “[n]o Indian tribe in exercising powers of self-government shall...deny to any person within its jurisdiction the equal protection of its law.”

**TABLE 2.1**

*Indian Civil Rights Act – U.S. Constitution*

1968 Indian Civil Rights Act Provisions	U.S. Constitutional Provisions
Free speech Free exercise of religion Free press Peaceful assembly and petition Unreasonable search and seizures Double jeopardy Self-incrimination Just compensation Speedy and public trial Right to confront and cross-examination Right to counsel (at defendant’s own expense) Trial by jury (criminal only) No excessive bail Cruel and unusual punishment Equal protection of the laws Due process of law No ex post facto law No bill of attainder	1st Amendment 1st Amendment 1st Amendment 1st Amendment 4th Amendment 5th Amendment 5th Amendment 5th Amendment 6th Amendment 6th Amendment 6th Amendment 6th Amendment 6th Amendment 8th Amendment 8th Amendment 14th Amendment 5th Amendment Art. 1, § 9 Art. 1, § 9
Deloria & Lytle, 1983, p. 129	



The United States District Court for the District of New Mexico denied the dismissal of the case despite the Pueblo's contention that the court lacked jurisdiction to decide "intratribal controversies affecting matters of tribal self-government and sovereignty" and that said authority lied in 28 U.S.C. 1343 (4) and 1302 (8). The District Court, following a full trial, found in favor of the petitioners, stating that the determination of tribal membership was, "no more or less a than a mechanism of social...self-definition," and as such were basic to the tribe's survival as a cultural and economic entity. Upon appeal to the Tenth Circuit Court of Appeals, the court upheld the District Courts determination that the federal court held jurisdiction but differed in the interpretation of the right of the tribe to decline membership based upon sex unless there was a compelling tribal interest. In this case, the Court of Appeals stated that the tribe's interest in the ordinance was not "substantial enough to justify its discriminatory effect."

Upon appeal by the Pueblo to the Supreme Court, the Justices reversed the Court of Appeals decision stating that Indian tribes are "distinct, independent political communities, retaining their original natural rights" in matters of self-governance. The Court continued by stating that although Tribes no longer possess the full attributes of sovereignty, they remain a separate people, with power of regulating their internal social relations. The Justices further addressed the jurisdictional contention affirmed by the District Court under 25 U.S.C. 1303 by stating the provision for federal jurisdiction is for nothing more that relief from habeas corpus (i.e., unlawful detention) by an Indian tribe. The Court stated that Tribal Courts have been recognized as the appropriate

forums for the exclusive adjudications of disputes affecting important personal and property interests of both Indians and Non-Indians.

The court also cited that although the original legislation of the ICRA would have authorized de novo review in federal courts of all convictions obtained in Tribal Courts, they opted for a less intrusive review mechanism as it would impose unimaginable financial burdens on tribal governments and needlessly displaced Tribal Courts; de novo review would deprive the Tribal Courts of jurisdiction in the event of an appeal and would have a harmful effect upon tribal law enforcement. Congress, in the passing of the ICRA, apparently decided that the review by way of habeas corpus would adequately protect the individual interests at stake while avoiding unnecessary intrusion on tribal governments. In addition, the Court held that suits against the tribe under the ICRA were barred by its sovereign immunity from suit, although officers of the tribe were not. The result of *Santa Clara Pueblo v. Martinez* was a clarification of the jurisdictional limitations of federal courts related to the ICRA and the strengthening of tribal self-determination and autonomy.

In 1975, the Self-Determination and Education Act was passed. The act gave a considerable amount of control and funding from the Bureau of Indian Affairs as well as other agencies to the tribes. Title I, the Indian Self-Determination Act, established procedures by which tribes could negotiate contracts with the Bureau of Indian Affairs to administer their own education and social service programs, thereby allowing tribes greater control in decisions regarding their own interests and needs rather than relying on government officials to do so on their behalf (Richland & Deer, 2004).

In 1978, just 16 days after the *Santa Clara Pueblo* decision, the court heard the case of *U.S. v. Wheeler*. In this case, the Court was tasked in deciding whether or not prosecution by Tribal Courts and federal prosecution violated the Double Jeopardy Clause found within the Fifth Amendment. The respondent, a member of the Navajo Tribe, pleaded guilty in Tribal Court to contributing to the delinquency of a minor and was subsequently convicted. The following year, the respondent was indicted by a federal grand jury on statutory rape stemming from the same incident. He contested the legitimacy of the indictment as they stemmed from the same incident and subsequent prosecution would consist of a Double Jeopardy violation. Both the District Court and Court of Appeals affirmed, holding that Tribal Courts and federal courts are not “arms of separate sovereigns,” and as such, the Double Jeopardy Clause of the Fifth Amendment barred the respondent’s federal trial.

The Supreme Court disagreed, ruling that the Double Jeopardy Clause does not bar federal prosecution as an Indian tribe’s power to punish tribal offenders is part of its inherent tribal sovereignty and that power had not been abrogated by Congress. Citing *Talon v. Mayes*, the Justices stated that when a tribe criminally punishes a tribal member for violating tribal law, the tribe acts as an independent sovereign and not as an arm of the Federal Government. The Justices also cited *Moore v. Illinois* by stating that “every citizen of the United States is also a citizen of a State or territory...and may be liable to punishment for an infraction of the laws of either” and that federal prosecution does not bar subsequent state prosecution of the same person for the same acts and vice-versa (*Bartkus v. Illinois; Abbate v. United States*).

The Court recognized that Tribal Courts are “important mechanisms for protecting significant tribal interests” and that “federal preemption of a tribe’s jurisdiction to punish its own members for infractions of tribal law would detract substantially from tribal self-government.” Precluding federal prosecution of cases initially held in Tribal Court cases, in which tribes are restricted to limited punishment and monetary fines, would frustrate “important federal interests in prosecution of major offenses on Indian reservations.”

Another significant ruling related to the administration of justice in Indian Country occurred in 1978. In *Oliphant v. Suquamish Indian Tribe*, the Supreme Court ended tribal jurisdiction over non-Indian defendants by ruling that the removal of authority, while not officially sanctioned by Congress, was in fact, inferred in legislative actions and that the tribal jurisdiction over non-Indian defendants was not a historically practiced power. Petitioner Mark David Oliphant, a non-Indian resident of the Port Madison Reservation who was arrested for assaulting a tribal officer and resisting arrest, and Petitioner Daniel Belgrade, arrested for “recklessly endangering another person” and injuring tribal property during a high-speed race on the Reservation, filed a writ of habeas corpus contesting the Tribal Court’s jurisdiction over non-Indians. The Tribe contended that the jurisdiction is automatic as the “Tribe’s inherent powers of government over the Port Madison Indian Reservation.” The Court of Appeals agreed, stating that, “...though conquered and dependent, [Tribes] retain the powers of autonomous states that are neither inconsistent with their status nor expressly terminated by Congress.” Criminal jurisdiction for offenses occurring on their reservation is a “sine qua non” (i.e., an indispensable element) of such powers.

The Supreme Court reversed the decision, stating “inherent tribal powers could be divested both explicitly and implicitly if found to be inconsistent with their status as domestic dependent nations” (Duthu, 2008, p. 20). The Court stated that:

“Protection of territory within its external political boundaries is, of course, as central to the sovereign interests of the United States as it is to any other sovereign nation. But from the formation of the Union and the adoption of the Bill of Rights, the United States has manifested an equally great solicitude that its citizens be protected by the United States from unwarranted intrusions on their personal liberty. The power of the United States to try and criminally punish is an important manifestation of the power to restrict personal liberty. By submitting to the overriding sovereignty of the United States, Indian tribes therefore necessarily give up their power to try non-Indian citizens of the United States except in a manner acceptable to Congress.”

In their decision, the Justices also reference that in the Trade and Intercourse Act of 1790, Congress extended jurisdiction to federal courts to offenses committed by non-Indians against Indians within Indian Country.

In 1990, the Supreme Court ruled on *Duro v. Reina*. Albert Duro, a non-member Indian residing in the Salt River Pima Maricopa Indian Community, shot and killed an Indian youth on reservation land. The Tribe charged Duro with illegally firing a weapon on the Reservation, which was the most severe charge allowable due to restrictions held within the Major Crimes Act. Duro filed a writ of habeas corpus arguing as a non-member Indian, the Tribal Court lacked jurisdiction to prosecute him, which the Federal District Court granted. The Court of Appeals reversed, stating that *Oliphant*, *Wheeler* and subsequent cases stating that tribes do not possess criminal jurisdiction over non-members was “indiscriminate” and should be given little weight. The court continued by stating that “applicable federal criminal statutes supported the

view that Tribes retain jurisdiction over minor crimes committed by Indians against other Indians” regardless of tribal membership.

The Supreme Court held that an Indian tribe may not assert criminal jurisdiction over a nonmember Indian. The majority opinion stated that tribes, as limited sovereigns, were subject to the overriding authority of the United States, and even though they retained the sovereignty to control their own internal relations and to preserve their own unique customs and social order, to allow them the power to prosecute an outsider would be inconsistent with their status.

Indian leaders across the nation appealed the decision to Congress. In response, Congress enacted 25 U.S.C.A. § 1302 (2), which defined tribal powers of self-government to include “the inherent power of Indian tribes, hereby recognized and affirmed, to exercise criminal jurisdiction over all Indians.” Although the decision appeased those who believed that the Duro decision was adverse to tribal jurisdiction when handling offenses committed by Indians on their reservation, it raised the question regarding whether or not Congress had conferred the power to punish non-member Indians to the tribes or merely recognized the jurisdiction to do so as an inherent tribal power. If it was in fact the former, then the Act would have a significant effect as it relates to Double Jeopardy as it would violate the clause if tribes and the Federal Government prosecuted Indians for crimes in their respective courts (Canby, 1998).

The potential confusion related to whether or not prosecutorial power was conferred by Congress or merely recognized as an inherent tribal power came to light in the case of *United States v. Lara* in 2004. Respondent Lara, an Indian who was not a member of the Spirit Lake Tribe, trespassed on tribal property after being prohibited

from entering tribal land and while being arrested, struck one of the federal officers arresting him. After pleading guilty in Tribal Court to crimes of violence against a policeman, he was charged with the federal crime of assaulting a federal officer. Lara claimed that the federal prosecution was a violation of the Double Jeopardy clause of the Fifth Amendment. The Magistrate hearing the case rejected the double jeopardy claim as the tribe was exercising tribal authority, not delegated federal authority. The Eighth Circuit reversed, stating that the Tribal Court was exercising federal prosecutorial power and, as such, Double Jeopardy precluded federal prosecution for the same incident.

The Supreme Court heard the case and held that the Tribe acted in its sovereign authority, and as such, the Double Jeopardy Clause did not prohibit the Federal Government from prosecuting Lara for a federal offense. The ruling validated that the tribal power to prosecute is inherent and its validity is recognized and affirmed by Congress (i.e., 25 U.S.C.A. § 1302 (2)), (Canby 1998, p. 80).

## **CONCLUSION**

The history of Federal Indian Policy has been characterized by frequently changing beliefs and expectations by the Government of the United States regarding the status and rights of Native Americans. From colonial times, where Tribes were recognized as sovereign nations with whom interaction and agreements were to be accomplished through treaty, to their status as dependent sovereign nations; from forced removal and relocation through the process of assimilation; and, from self-government to termination and back to self-determination, Native Americans have experienced a

history that has stripped them of their cultural identity through repeated efforts by the majority population to define what it means to be an American Indian.

This approach has been experienced by every tribe over the course of time and has an effect on every aspect of Indian life. The manner by which tribes engage in self-governance, interact socially, and resolve conflicts and disputes has continually changed, not by choice, but due to the expectations of the majority of how a “civilized person” should be. Despite these efforts, Native Americans have endured, albeit at significant personal and communal expense, and have continued to strive to return to a way of life that reflects the importance of the cultures and traditions that have been defined by their long histories while balancing the realities of the modern society in which they live.



### **CHAPTER III: LAW AND SOCIAL CONTROL**

Despite efforts to understand the historical manner by which Indians resolved their internal conflicts prior to the implementation of an Anglo method of judicial administration, the true methodologies of how this was accomplished may never be factually known. It is generally accepted as fact that American Indians based their approach to conflict and dispute resolution on the concept of healing (Ross & Gould, 2006). As native cultures had no written language at initial contact with European explorers, the details of how they managed their self-governance are lost: “The true nature of aboriginal customs, judicial concerns included, are lost to history since most native groups in America subscribed to a non-literate, oral tradition” (Barker, 1998, pp. 2-3). Despite the fact that there were no written codes in Indian cultures, “strong behavioral norms were enforced and violators sanctioned” (Barker, 1998, p. 3).

#### **TRADITIONAL SOCIAL CONTROL**

According to Brakel (1978) historically the functions of law, order and justice in Indian societies occurred in a variety of ways, each somewhat distinct to the cultures of the tribe. Although they may have differed based on the lifestyle of the tribe in question, quite often resolution of conflicts among a population fell upon the family or clan to resolve. There were no judges or courts to resolve issues; if a public resolution of a matter was required, it fell upon tribal councils, soldiers or hunter societies, secular or religious leaders, respected tribal members, elders or some sort of combination of the aforementioned. There were also no jails, prosecutors, police, written codes nor anything that resembled the Anglo-American ideals of justice.

The very idea that there was a way to resolve a dispute that was adversarial in nature was foreign to the native population. While the adversarial system puts parties in conflict with one another, the Indian sought to restore a sense of balance among the aggrieved parties to restore communal harmony. The idea of ‘harmony ethos’ was the basis of Indian life. This ethos was a complex set of ideals, beliefs and standards which characterized a community. When this balance was disrupted by conflict, the entire community was affected. In order to preserve the community as a whole, deviants needed to be dealt with in a swift and decisive manner (Barker, 1998). Unlike the social contract that had evolved in the European concepts of governance, the indigenous population of North America believed in a “social compact” where no single individual had the right to control the life of another (Ross & Gould, 2006, p. 7).

The simple fact that a band or tribe of Indians needed the cooperation and assistance of all members merely to survive likely had a significant influence on how disputes were resolved and the decisive manner in which action was taken. Members of bands and tribes maintained close relationships with one another based on the need for each to contribute to the good of the group and to ensure survival. If the balance of the group was upset by conflict, the goal of what would be considered aboriginal justice was to “return the tribe, insofar as it was possible, to the original state of social equilibrium” (Barker, 1998, p. 4).

Forms of punishment, like the customs, traditions and social norms of a tribe, were unwritten. Understanding that returning an offender back to the group in a state of harmony with other members was the end goal of tribal sanctions for disrupting the social norms, punishment for an offense would most often be handled privately between

the offender and the victim (or his/her family). There were no methods for incarcerating offenders nor was the idea of utilizing such a method even considered. The most likely method to deal with disruptive behaviors was to publicly scorn an individual for upsetting the balance of the community, to require restitution in the form of property to pacify the aggrieved, or require labor to benefit the tribe as a whole. Only in extremely rare circumstances would a tribal member be subject to banishment or death, neither of which benefited the offender or the tribe. Even when a person was condemned to death, the transparency of Indian justice was evidenced in the fact that the condemned was often released to their family or clan prior to the actual execution (Barker, 1998).

Despite the opinions held by the conquering nation related to the “lawlessness” of Indian tribes, reality was far different. Soldiers, settlers, trappers and clergymen often commented on the “relative lawfulness” of the Indians. Property was often held communally with people feeling free to use other people’s property without social sanction. In the event of an offense in which efforts failed to resolve the problem informally, a more formal method was incorporated, one which utilized mediation by tribal elders, religious figures, or other “respected men.” The venue was often informal, lacking the rigid rules of evidence and protocol found in Anglo court, and was meditative or conciliatory in nature. Third parties were utilized to “separate combatants and make peace between them, to offer an opinion, not a judgment.” If this effort failed, the tribal chief would “mediate in an effort to preserve the peace” (Barker, 1998, pp. 5-6). As tribes were relocated, either voluntarily or by force, these traditional

methods lost their significance, sometimes disappearing entirely, as the Federal government imposed its will upon the native population.

### **EARLY LAW ENFORCEMENT EFFORTS**

As the Bureau of Indian Affairs began its existence under the U.S. Department of War in 1824, initial law and order functions fell upon the U.S. Army, or more specifically, the U.S. cavalry (Barker, 1998). These Federal troops enforced the U.S. policy of ensuring that the Indian population remained within their prescribed borders and did not interfere with the expansion of white settlers and their economic pursuits. In addition, these troops were responsible for enforcing the moral standards that had been prescribed as a means of civilizing the native population (USDOJ, 2001).

When responsibilities for Indian affairs transferred over to the newly-created Department of the Interior in 1849, efforts began immediately to end the policing function by the military as many executives felt that military personnel were “unnecessarily harsh in the control of Indians and that the presence of drunken soldiery only exacerbated morality problems amongst demoralized and restless warriors” (Baker, 1998, p. 13). Although the Army still provided certain enforcement services, the magnitude and relevance quickly diminished. The void left by the removal of military assets for tribal law enforcement left Indian agents few options for maintaining control over their wards. The only asset available to these agents was federal deputy marshals who were not only in short supply, but also had a poor reputation among tribes (Baker, 1998).

In the 1860s, the U.S. Government authorized the use of American Indians in the policing of their reservations (USDOJ, 2001). The creation of a reservation police

force was intended to have three primary outcomes: 1) Indians would more readily accept the loss of tribally controlled policing; 2) Federal policing requirements would only be carried out when required; and 3) the BIA could use both Indians and non-Indian officers as opposed to having to rely on federal troops to maintain order (Barker, 1998). The idea of increased legitimacy by utilizing Indian police officers was not one that would come to fruition. The communities saw Indian police officers as agents of the U.S. Government, required to “set an example by wearing white man’s attire, cutting their hair, practicing monogamy, and taking an allotment” (USDOJ, 2001). In addition, they were to determine whether their tribal members were working sufficiently enough to warrant their rations of sugar, coffee and tobacco. Despite an outward appearance of greater emphasis on self-governance through enforcement, Indian officers were perceived as a “common foe” to the tribal members, regardless of whether or not they were progressive or traditional in their views. The U.S. Government saw them as a necessity in order to maintain an orderly reservation system (USDOJ, 2001).

The first true Indian Police forces came into existence around 1869. The plains and western Indians began to receive police services from the BIA. The function of the police was to “provide Anglicized law enforcement and order maintenance services at the discretion of the BIA agent” (Barker, 1998, p. 16). The first congressionally approved and funded Indian Police force came to be in 1874 at the San Carlos Agency in eastern Arizona. In 1878, Congress appropriated \$300,000 for a total of 480 police privates and officers. Within five years, that number had grown to 1,100 police privates and officers, the most ever appropriated by Congress (Barker, 1998).

## **EFFORTS TO EXPAND U.S. LAW INTO INDIAN COUNTRY**

Two specific rulings of the U.S. Supreme Court would solidify the plenary power of Congress over American Indian affairs. These rulings would show that Congress had the ability to abrogate treaties; if Congress passed a statute that was inconsistent to the terms held within the treaty, the statute would overrule treaty provisions that were inconsistent. The plenary power of Congress was first evidenced in *The Cherokee Tobacco* (78 U.S., 11 Wall, 616, 1870). Cherokee Tobacco farmers contested federal taxation on tobacco based on Article 10 of the 1866 Cherokee Treaty. This article stipulated that every Cherokee in the Cherokee Nation shall have the right to sell any product of his farm without restraint and payment of tax. Two years following the Cherokee Treaty, the Internal Revenue Act of July 20, 1868 was enacted. The 107<sup>th</sup> section of the Act imposed taxes on alcohol and tobacco products produced within the external boundaries of the United States. The Supreme Court upheld the taxation of tobacco citing the Internal Revenue Act as superseding the prior treaty.

The most frequently cited case which affirmed Congress' plenary power is *Lone Wolf v. Hitchcock* (187 U.S. 553, 1903). The case involved the Medicine Lodge Treaty of 1867 between the U.S. and the Comanche and Kiowas in which land was set aside to be held communally by the tribes. Any further cession of the lands required the consent of three-quarters of the male population. After the passage of the Dawes Act and the eventual allotment of the reservation in severalty, Congress approved the sale of excess tribal lands without the previously mandated three-quarter tribal approval. In 1902, Kiowa Chief Lone Wolf sued to stop the allotment of the Reservation. Lone Wolf argued that the allotment was a denial of due process and a violation of the consent

requirement in the Medicine Lodge treaty. The Supreme Court would rule to the contrary, stating:

Congress has always exercised plenary authority over the tribal relations of the Indians and the power has always been deemed a political one not subject to be controlled by the courts. In view of the legislative power possessed by Congress over treaties with the Indians and Indian tribal property, even if a subsequent agreement or treaty purporting to be signed by three-fourths of all the male Indians was not signed and amendments to such subsequent treaty were not submitted to the Indians, as all these matters were solely within the domain of the legislative authority, the action of Congress is conclusive upon the courts.

One of the first noteworthy references by federal government officials related to “lawlessness” on Indian lands can be found in *Annual Report of the Board of Indian Commissioners* in 1869 (pp. 5-11). This board consisted of a body of unpaid philanthropists appointed by President Grant under the Act of Congress of April 16, 1869 as part of the President’s peace policy (Prucha, 2000). The report, released on November 23 of the same year, was critical of the government’s interactions with Indian tribes, calling it a “shameful record of broken treaties and unfulfilled promises.”

The Committee identified the skewed perception of rampant crime on and around Indian lands as being instigated by the Indians. The Commission stated that “the border white man’s connection with the Indians is a sickening record of murder, outrage, robbery and wrongs committed by the former as the rule, and occasional savage outbreaks and unspeakably barbarous deeds of retaliation by the latter as the exception...The testimony of some of the highest military officers of the United States is on record to the effect that, in our Indian wars, almost without exception, the first aggressions have been made by the white man, and the assertion is supported by every civilian of reputation who has studied the subject.” The Commission found many of

the Indians “suspicious, revengeful, and cruel in their retaliation” – due to no other fact than the necessity to be so based on the treatment received from whites.

The Commission proceeded to recommend that, “There should be some judicial tribunal within the Indian territory competent to the prompt punishment of crime, whether committed by white man, Indian, or Negro. The agent upon the reservation in which the offense is committed, the agent of the next nearest reservation, and the nearest post commander might constitute a court, all the agents being clothed with the necessary powers.”

In the absence of action regarding the Board of Indian Commissioners’ recommendation regarding rule of law, the United States continued to utilize the military to control the “roving tribes dangerous to [our] frontier population and obstructing our industrial progress...” (*House Executive Document* no. 1, 42d Cong., 3d sess., serial 1560, pp. 391-99).

On November 1, 1874, Indian Commissioner Edward P. Smith, in his *Annual Report of the Commissioner of Indian Affairs*, stated that the civilization of the Indians was in fact feasible to accomplish and that the “difficulty of its problem is not so inherent in the race-character and disposition of the Indian – great as these obstacles are – as in his anomalous relation to the Government, and in his surroundings affected by the influence and interest in the white people.” (*House Executive Document* no. 1, 43d Cong., 2d sess., serial 1639, pp. 327-28).

Commissioner Smith further identified the fact that “no officer of the Government has authority by law for punishing an Indian for a crime, or restraining him in any degree; [and] that the only means of enforcing law and order among the tribes is



found in the use of the bayonet by the military, or such arbitrary force as the agent may command.” The governments of the tribes themselves had deteriorated by contact with the U.S. Government and, as such, the influence of the chiefs of the tribes had lost much of their traditional strength and stature. In addition to identifying issues related to granting U.S. citizenship to Indians versus the “fiction of sovereignty,” Commissioner Smith requested legislation that addressed avenues for individual improvement, but what he identified as “suitable government[s].” In order to create said governments, Smith identified six specific recommendations:

- 1) ...that the criminal laws shall be in force upon Indian reservations, and shall apply to all offenses, including offenses of Indians against Indians, and extending the jurisdiction of the United States courts to enforce the same.
- 2) ...declaring Indians amenable to the police laws of the State or Territory for any acts committed outside a reservation.
- 3) ...conferring upon the President authority, at his discretion, to extend the jurisdiction of the State courts, or any portion of them, to any reservation, whenever, in his judgment, any tribe is prepared for such control.
- 4) ...providing a sufficient force of deputy marshals to enforce law and order both among and in behalf of Indians.
- 5) ...giving authority to the Secretary of the Interior to prescribe for all tribes prepared, in his judgment, to adopt the same, an elective government, through which shall be administered all necessary police regulations on a reservation.

- 6) ...providing a district territorial government, or United States court, wherever Indians are in numbers sufficient to justify it.

Although the recommendations did not come to fruition at the time, the report indicated the identification of a need, according to U.S. Government officials within the Indian Bureau, to address criminal jurisdiction with Indian country and territories. Two years after Commissioner Edward Smith's report, Indian Commissioner John Q. Smith, in his *Annual Report of the Commissioner of Indian Affairs*, echoed his predecessors' thoughts regarding law in Indian lands (Prucha, 1986). He stated that within the boundaries of the United States, there are 275,000 Indians, identified as "the least intelligent portion of our population," for which the Government has failed to provide the rule of law for, either for their protection or as punishment.

Commissioner Smith called upon Congress "at once to extend over Indian reservations the jurisdiction of United States courts, and to declare that each Indian in the United States shall occupy the same relation to law that a white man does." Smith believed that civilization could not exist without the rule of law and to civilize the Indians without holding them responsible to the rule of law was in fact the greatest impediment to their progression and assimilation into mainstream society. For Smith, adherence to the laws of the United States needed to be absolute, with Indians being advised that "no ancient custom, no tribal regulation, will shield him from just punishment for a crime; and also that he will be effectively protected, by the authority and power of the Government, in his life, liberty, property, and character, as certainly as if he were a white man."

Once again, Congress failed to act upon the recommendations by the Commissioner of Indian Affairs, yet the efforts to establish the rule of law in among Indian tribes remained at the forefront of U.S. Indian policy. On November 1, 1880, Secretary of the Interior Carl Schurz, in his annual report, again addressed the failures of Congress to move forward on the establishment of the rule of law on Indian lands. The Secretary took interest in the state of Indian affairs, perhaps more so than his predecessors had, and had worked diligently to end the notorious corruption within the Indian office (Prucha, 2000). He believed that placing the Indians and the whites on equal legal footing would be beneficial to tribal progression. Identifying the failed previous efforts to expand the State and territorial rules of law over the Indians and their territories, Schurz implored Congress "...not [to] adjourn again without having taken action upon these important measures, so essential to the progress and security of our Indian wards..." (*House Executive Document no. 1*, 46th Cong., 3d sess., serial 1959, pp. 11-14). It would not be acted upon by Congress, but at the discretion of Schurz's replacement as Secretary of the Interior, Henry Teller.

### **COURTS OF INDIAN OFFENSES**

Courts of Indian Offenses did not originate by legislation; rather they came into existence at the discretion of Secretary of the Interior Henry M. Teller on December 2, 1882 and as reported in his Annual Report of the Secretary of Interior on November 1 the following year (*House Executive Document no. 1*, 48<sup>th</sup> Cong., 1<sup>st</sup> sess., serial 2190, pp. x-xiii.). In his annual report, Teller defended these courts as a method to end the "heathenish practices" among the Indian tribes in the United States and its territories.

Of specific concern to Secretary Teller was the relationship between "savage rites" and "heathenish practices," which he believed impeded the process of civilizing

American Indians. In December 1882, Secretary Teller addressed his concerns to the Commissioner of Indian Affairs, specifically those that impeded on the efforts to civilize the Indians. Those concerns included “heathenish dances,” marriage, the influence of medicine men, and property.

Secretary Teller felt that dances, such as sun dance and the scalp dance impeded the efforts of the Government to civilize Indians, specifically those younger members of the tribes. Teller saw these dances as invoking “warlike passions of the young warriors of the tribe.” These dances were considered a way for tribal elders to share stories of past glory – to include tales of “falsehood, deceit, theft, murder and rape” – and to instill upon the young listeners that those actions were what secured “an enduring and deserved fame among their people,” regardless of whether or not these actions violated any laws. As such, Secretary Teller stated that the Commissioner of Indian Affairs should employ active measures to discourage all feasts and dances that exhibited the degradations he had mentioned.

According to Felix Cohen (1988, pp. 137-38), tribes have been “accorded the widest possible latitude in regulating the domestic relations of their members” with the tribe maintaining exclusive authority barring Congressional legislation that would alter that authority. At the time of the Secretary’s report, there were no statutes related to Indians that dealt with bigamy, polygamy, incest, adultery or fornication; these activities were left to tribal customs and laws. Despite this fact, Secretary Teller identified marriage relations as an item “requiring the immediate attention of the [Indian] agents” (*House Executive Document no. 1*). In a more nomadic life, Indians typically did not have the opportunity to take multiple wives, as they were too poor to

support more than one wife. But with Government support, specifically a more geographically limited area with the provision of rations; Indians were more capable of taking multiple spouses. The institution of marriage was seen by Anglos as a legal union with certain responsibilities, which was not the case with Indians. Marriages and divorces were considered “lax” among the Indians, who did not understand the importance of the institution of marriage. If both parties consented, they were married; if one party departed, the marriage was dissolved with the male having no obligation to support or care for his children.

Although Secretary Teller advised not interfering with existing plural marriages, he implored Indian agents to discourage any future marriage of this sort. Indians should be “compelled to continue that relation [marriage], unless dissolved by some recognized tribunal reservation or by the courts” (Cohen, 1988, pp. 137-38). Teller also recommended that “some system of marriage” should be created and conformed to with the male understanding that he has an obligation to care for and support his wife and children; a failure to do so should lead to punishment which should consist of “confinement in the guard-house or agency prison, or by a reduction of rations” (Cohen, 1988, p. 138).

Secretary Teller identified traditional medicine men as another “great hindrance” to the civilization of Indians. The men were typically found in the traditionalist camps, that is, those who resisted the efforts of the Government to impede on tribal customs and life. These men were considered by Teller to be “conjurers” who relied on “heathenish rites and customs” to keep people under the influence of traditional tribal customs. As the Government supplied skilled physicians to Indian

agencies, the presence of the medicine man was not only seen as deceptive, it was thought to be detrimental to the health of the Indians themselves as medicine men utilized simple remedies that were not effective. Teller therefore instructed the Indian agents to “compel the imposters to abandon this deception and discontinue their practices.”

Another key to attempts at “civilizing” the Indians was to instill upon them the value of personal property. For a group of people who held a deep-rooted belief that they are part of the land, taking only what was necessary for their survival, changing the mindset would be a difficult task. Even for those who had bought into the acquisition of property, challenges remained regarding the distribution of property upon the death of the property owner. As per tribal customs, the death of an important family member would oftentimes lead to the destruction of property or items being taken by “mourners.” Despite contrary wishes of the head of the family, the taking or destruction of property has an adverse effect on the future property ownership, thus impeding the efforts of the Government to civilize the Indians.

Based on the identification of the issues by Secretary Teller to the Commissioner of Indian Affairs, tribunals were established in 1883 at all agencies under the Code of Indian Offenses. The Code of Indian Offenses established, at each Indian Agency, a tribunal of three Indians who would serve on a Court of Indian Offenses; the three members of the court would be called judges of the Court of Indian Offenses. The three Indians of each court’s first iteration would be the three senior ranking officers of the agency’s Indian police force, subject to the approval of the servicing Indian Agent. If the Indian Agent felt that any of the three ranking officers

were unfit for serving as a judge, the Agent would appoint a member of the tribe of intelligence and good moral character and integrity to serve as a judge. Initial terms for Indian judges were set at one year and with a requirement that the court would meet at least twice per month each and every month. Judges served at the discretion of the Commissioner of Indian Affairs and were subject to removal at any time.

The Indian judges, by majority, were charged with ruling on cases presented to the panel by the Indian Agent with the Agent empowered to force attendance of witnesses, by force if necessary. All judgments, orders and/or decrees passed by the tribunal of judges were subject to the Indian Agents' final determination; it was the agent who determined the legitimacy of the ruling.

The Code of Indian Offenses also outlawed what were considered heathenish practices such as the Sun Dance, the Scalp Dance, the War Dance and polygamy. Penalties ranged from the withholding of rations to fines and/or hard labor. Other traditions practices, such as those of the Medicine Man, communal "sharing" of property, and paying a dowry to take a bride, were seen as counterproductive to civilizing American Indians and were outlawed as well. Perhaps one of the more grievous offenses identified in the Code of Indian Offenses dealt with the use and/or sale of alcohol. Punishments for alcohol use or sales mandated thirty to ninety days in jail; this penalty exceeded all other identified offenses in the original code of 1883.

It is important to note that, despite the top-driven nature of the creation of Courts of Indian Offenses, the actual catalyst may have come from disputing tribal chiefs themselves. Traditional chiefs, whose authorities had been deliberately undercut by Indian agents, no longer possessed the strength and influence once inherent to their

positions; they were no longer able to resolve problems in traditional ways and looked to the Indian agent to serve as an arbitrator to resolve disagreements. The General Allotment Act of 1887 also served as a significant catalyst to the reliance on Courts of Indian Offenses. As tribal members were spread across reservation lands in an effort to break the communal lifestyle once so prevalent in the Indian culture, typical methods of resolving conflicts and disputes became more and more difficult to rely upon due to this dispersion. In addition, the opening of “surplus” reservation land to white settlers also necessitated the use of these courts to adjudicate cases (Richland & Deer, 2004).

While Secretary Teller stated that creating a tribunal consisting of three Indians would be “less objectionable to Indians” (*House Executive Document no. 1, 52d Cong., 2d sess., serial 3088, pp. 28-31*), in reality the Indian agent had significant influence in the composition of the tribunal. Specifically, Indian judges tended to be appointed as a reward for embracing the assimilative desires of the Government and served at the inclination of the agent, not the tribal members they had been appointed to serve. In the end, the agent was the true power behind a tribunal’s composition and decisions (Richland & Deer, 2004).

The sole legal challenge related to the jurisdiction and, in fact, the existence of Courts of Indian Offenses came in 1888 in *United States v. Clapox* (35 F.575, 577, 1888). This case, originating out of the federal district of Oregon, was centered on a Umatilla Indian woman by the name of Minnie, who had been arrested by the Indian police and charged with adultery. While in custody at the reservation jail, a number of her friends, including an Indian named Clapox, “unlawfully and with the force of arms” freed her from custody. The Indians claimed that adultery was not a crime as stipulated



by the Major Crimes Act or any other federal law, but was in fact forced upon the Umatilla by the Bureau of Indian Affairs and enforced by its agent. Minnie's arrest and confinement was subsequently illegal. Those individuals who freed Minnie were arrested and immediately challenged the legality of the courts as they were "not constitutional courts provided for in Section 1 Article 3 [of the Constitution] which only Congress has the power to establish."

On July 18, 1888, Oregon federal judge Matthew Deady ruled that the Umatilla Indian Tribe had, by treaty, agreed to submit to rules set by the United States government, to include "the power to organize and maintain this Indian court and police, and to specify the acts or conduct concerning which it shall have jurisdiction." He went on further to state that the courts were not Constitutional in nature, rather "...mere educational and disciplinary instrumentalities by which the government of the United States endeavor[s] to improve and elevate the condition of the dependent tribes to whom it sustains the relation of guardian." He extended this to refer to the reservation as a whole as existing "for the purpose of acquiring the habits, ideas and aspirations that distinguish the civilized from the noncivilized man" under the supervision of BIA agent (Harring, 1994, p. 187). With this decision, the Courts of Indian Offenses were validated under federal law, with no further challenge to their legitimacy being brought before any court.

In 1892, Commissioner of Indian Affairs Thomas J. Morgan reissued the rules for Courts of Indian Offenses, modifying the initial rules created nine years prior. While most of the original rules carried over, modifications regarding the penalties for non-compliance were included and clarification provided. Additions to the rules for

Indian Courts included the districting/redistricting of reservations, solemnization of marriage, and compelling attendance of witnesses and enforcement of the orders of the courts. Other previously identified rules were merely expanded upon. One significant addition to the Code of Indian Offenses was the insertion of a misdemeanor for vagrancy. An Indian who refused or neglected to engage in employment or other activities that were deemed to be civilized in nature, to include idleness or loafing, was subject to fines and incarceration. It also served as a means to ensure that Indians remained on their assigned reservations; vagrancy laws restricted Indians to a specific location without due process.

Although these Courts of Indian Offenses were created with the intention of invoking some sort of law in Indian country and to, in effect, facilitate the civilization of the Indians, the creation and rules that governed them were contrary to the traditional methods of the Indian. Certain practices and tribal customs were now considered to be an “offense,” and punishable under the rules that governed the courts. Although certain practices remained and procedurally these courts took into account the unique situations of the Indians, anything that was perceived to inhibit their progression towards civilization was, for all intents and purposes, outlawed.

### **THE MERIAM REPORT AND LEGAL ASPECTS OF THE INDIAN PROBLEM**

The period of allotment and assimilation came to a close shortly after the publication of the Meriam Report. The report highlighted the failures of the governmental policy toward Indian life and culture and led to the eventual passage of the Indian Reorganization Act in 1934. The Institute for Government Research published a report entitled, “*The Problem of Indian Administration,*” also known as the

*Meriam Report*, after the director of the report of survey, Lewis Meriam, in 1928.

Meriam, at the direction of Secretary of Interior Hubert Work, led a staff of surveyors who addressed eight significant aspects of Indian life based on the Government's previous policies and the 847-page document would become the guide for U.S. Federal Indian policy over the next two decades (Prucha, 2000).

In the report, Meriam addressed crucial issues related to the previous policies of the Federal Government as well as the current state of the Indians surveyed, addressed issues such as the general policy for Indian affairs, health, education, economic conditions, family and community life, and missionary activities among the Indians. Included in the report was a 69-page section entitled, "Legal Aspects of the Indian Problem." Meriam almost immediately identified the present situation of the reservation Indian as "unsatisfactory." Drawing upon an Idaho judge's perception, Meriam identified the state of law among the Indian as "government in spots" based on the convoluted quagmire of jurisdiction or its absence. Despite his contention, Meriam acknowledged that due to significant differences in the specific jurisdictions based on "advancement" of the Indians, it would be impractical for Congress to place Indians either under the jurisdiction of state courts or U.S. Courts as a general practice. Meriam instead recommended that Congress delegate its legislative authority "through a general act to an appropriate agency, giving that agency [the] power to classify the several jurisdictions and to provide for each class so established an appropriate body of law and a suitable court system." It would be left to the Secretary of the Interior or the President of the United States to disseminate the decision (Meriam Report, 1928, pp. 743-744).

The class to which Meriam referred is related to the degree of advancement and civilization. The first class of Indians consisted of those who were considered to be advanced. Those tribes were considered to be capable of being “safely” made subject to the local and State laws in the jurisdiction where they reside. These courts, in so long as they were considered to be “impartial, open to Indians, and easily accessible,” should administer justice to the Indian population. The report did identify problems encountered during their survey in regards to placing this class of civilized Indian under state court jurisdiction. The survey found that there were instances where the state was not willing to assume the responsibility, where the court was located too far from the Indian population to make it convenient or useful to employ its service, and where the local population was either hostile or indifferent to the Indian population, thereby calling into question the fairness of the judicial process if administered in these locations. In cases such as these, Meriam recommended that cases should be heard either at the U.S. Court servicing that location or special “inferior courts,” to be created by whomever Congress delegated its authority to (e.g., Indian Courts or special justices appointed by the U.S. Court), handle minor cases (Cohen, 1998, p. 744).

The second class of Indians identified in the *Meriam Report* consisted of those Indians who had not advanced enough to fall under state jurisdiction. In these cases Courts of Indian Offenses should remain as the primary venue for minor civil or criminal issues, although the Superintendent or the Indian should have the right to transfer the case to either the U.S. Court or the state court, being subject to the law governing that court. Regardless which class of Indians a tribal member fell into the

report also recommended that legal aid should be provided in the form of payment of court costs and attorney fees for those who were unable to afford these costs.

At the time of the report, Meriam summarized the present method of administering justice as “The division of jurisdiction between state and United States courts whereby certain offenses committed away from the Indian lands are punishable in the state courts, certain other offenses committed on Indian lands are punishable in the United States courts, and still other offenses committed on reservations or restricted allotments are unpunishable by either state or federal authorities, is uncertain and demoralizing” (p. 768). The problem was only exacerbated by the fact that states would either, without jurisdiction or warrant, attempt to assume jurisdiction or would decline to take jurisdiction as the Indian was exempt from state taxation.

In regards to the Courts of Indian Offenses, the report identified the usual cases consisting of drunkenness, sexual offenses, minor assaults, domestic troubles, and small-value personal property disputes. The report identified the Indian judge as “...one of the higher type of Indian, usually one of the older men, who, though he may lack the formal education of the younger people, still possesses a high degree of integrity and a native intelligence and shrewdness which secure for him a position of standing in his tribe” (p. 770). The report identified that the common practice was for the superintendent to appoint the judge, who would often serve for many years, but the appointment was often problematic due to factions within the tribe. For this reason, most Indian courts consisted of multiple judges and the concept of popular elections for tribal judges was frowned upon as the faction within the tribe would have the ability to elect judges sympathetic to their specific concerns.

These courts were far more informal than their Anglo-American counterparts. If a conflict existed or a crime was alleged to have occurred, both parties were advised to appear on a certain prescribed day and to bring their witnesses. The report cited an example where two Indian judges met at the agency office, along with a policeman and an agency employee. One judge interrogated the witnesses separately while the other judge made an abstract of the testimony. Although this was done in their native language, the record was made in English. The two judges discussed the case and pronounced the sentence. The process appeared to be more customary in nature rather than mirroring the Anglo system. Meriam cautioned not to be alarmed about the informality of the proceedings as “a formal, complicated, or technical system of procedural and substantive law could not be administered by Indian judges, and even if it could, would not result in a higher type of justice” (p. 770-771). Although the report noted that there were jails on Indian lands, they were typically used for temporary confinement and were frequently kept unlocked. Most sentences resulted in terms of labor, often at the benefit of the tribe.

The *Meriam Report* made numerous suggestions to improve the administration of justice in Indian country. Understanding that there was significant inconsistency among the different tribes in the United States, order and justice needed to be based on a tribe’s “economic, intellectual and moral status.” In the end, understanding that assimilation into mainstream Anglo-America was the goal of Federal Indian policy, steps needed to be taken for the eventual application of Anglo-Saxon jurisprudence. The report recommended the following (pp. 775-79):

*Certain Classes of Indians Should Be Under State Law:* Those tribes, like the California Indians, who are widely scattered, could not

effectively be managed under Indian agents and should fall under State jurisdiction. Tribes considered to be “advanced,” should likewise fall under the state’s jurisdiction.

*United States Courts or State Courts to Apply State Law:* U.S. courts, already administering justice to certain felonies and being less susceptible to local influence, provide a greater measure of justice to Indians. The inherent problem is that U.S. courts are typically remote from the location where most Indians reside. In addition, for federal judges to assume all petty crimes committed on Indian reservations would be burdensome. In this case, state courts should assume civil actions and misdemeanors, with Federal courts handling felonies and large civil actions.

*Necessity for Organized Effort and Legal Aid Where State Law Is Applied:* Organized efforts needed to be undertaken with governors, attorneys general, judges, and county attorneys to take a more “lively” interest in the interests of the Indians. In an effort to minimize the potential for misunderstanding, abuse, and oppression, legal aid should be provided for “the ignorant and needy among them...No Indian should be brought before a court for a criminal offense without capable and honest counsel to defend him.”

*Among Other Classes of Indians the Court of Indian Offenses Still Needed:* Among those tribes that are remote and less advanced, Courts of Indian Offenses needed to be preserved in order to handle misdemeanors, small civil cases, and family disputes. In these remote areas, white men of sufficient character, training and ability were thought to be absent to administer justice. In addition, Indian judges were still thought to be the best apt to administer justice based on the complicated nature of Indian affairs.

*Transfer of Cases from Court of Indian Offenses:* In those cases where the Court of Indian Offenses is found to be unsuitable, jurisdiction should be assumed by the U.S. Courts or, with the approval of the superintendent, to the state courts. Cases that involve offenders who are disorderly, not amenable to ordinary discipline, or who are outright vicious, should have cases transferred, regardless if they are misdemeanors as the Indian courts are “quasi-paternal” in nature.

*The Need for an Institution for Delinquents:* The survey found a lack of adequate means to deal with Indian children who were maladjusted or delinquents. The Courts of Indian Offenses had no option but to leave these children on the reservation in the same environment that contributed to their delinquency. As such, it was recommended that the government should “seriously consider the necessity of proper training schools for the care of such unfortunate delinquents.”

The *Meriam Report*, having identified failures in the desired outcome of the U.S. government policy as it related to the Indian wards, identified multiple issues, with the administration of justice in Indian country. The deficiencies would lead to perhaps the greatest turnabout in Federal Indian policy to date; the Indian Reorganization Act.

## **THE COLLIER BILL AND THE INDIAN REORGANIZATION ACT**

John Collier was appointed as the Commissioner of Indian Affairs in 1933 following the election of Franklin D. Roosevelt. Along with Harold Ickes, who was appointed Secretary of the Interior, Collier was committed to reform the state of Indian affairs in the United States. Over the next 12 years Collier, who would end up being the longest serving Commissioner of Indian Affairs upon his retirement in 1945, changed



the face of Federal policies as they related to the Indian wards of the Federal government (Champagne, 2001). Beginning with the *Meriam Report* of 1928, which had highlighted the abysmal state of Indian Affairs, the first progressive Commissioner of Indian Affairs set out to change the direction of Federal Indian policy. One of his first acts was the abolishment of the conservative Board of Indian Commissioners, which had initiated the policy of allotment and the use of strict boarding schools (French, 2003). In addition, Collier immediately put an end to the criminalization of traditional ceremonies and announced that Indian religious freedom would be guaranteed without “harassment from the bureau [of Indian Affairs]” (Deloria & Lytle, 1998, p. 62).

In early January 1934, Collier held a conference at the Cosmos Club in Washington, D.C. in order to begin his effort to reform Federal Indian policy. In attendance were representatives from the American Indian Defense Association, the National Association of Indian Affairs, the Indian Rights Association, the American Civil Liberties Union, and the National Council of American Indians, among others. This conference and subsequent discussions centered on the information held within the *Meriam Report*. It served as a means for Collier to engage those political allies he had as he sought to reform policy, and to ensure buy-in.

The issues addressed at the conference were, for the most part, incorporated into the Collier Bill, which would result in the passage of the Indian Reorganization Act (IRA; aka, the Wheeler – Howard Act) later that year. Immediately following what Collier saw as a swing in momentum, he issued a memo to superintendents, tribal councils, and individual Indians which outlined his plan to reorganize the Indian

Service. This memo, entitled “Indian Self-Government,” outlined plans and sought comments related to alternatives to the allotment policy and ways by which tribal self-government could be expanded. Despite overwhelming criticism from agents who feared losing their jobs, assimilated Indians who opposed any change - and tribes who were hesitant to return to their old traditional ways - Collier proceeded to push what would be known as the Indian Reorganization Act to the Congress. The bill was sponsored Congressman Howard of Nebraska under H.R. 7902 and by Senator Wheeler of Montana under S. 2755 on February 12, 1934.

As the IRA made its way through Congress, another bill related to Indian affairs was under review. In order to address the deficiencies of Indian education, medical and other services, Collier contributed strongly to the writing and eventual passage of the Johnson – O’Malley Act of 1934. This Act authorized the Secretary of the Interior to enter into contracts with states and territories “for the education, medical attention, agricultural assistance, and social welfare, including relief of distress, of Indians in such State or Territory, and to expend under such contract or contracts moneys appropriated by Congress [thereof]...” (*United States Statutes at Large*, 48:596). The bill was ratified on April 16, 1934 and the reformation of Indian policy began its legislative record.

The initial Collier Bill was a 48-page document and was by far the largest piece of legislation put before the Congress relating to Indian affairs. The bill consisted of four sections: Indian self-government, special education for Indians, Indian lands, and a Court of Indian Offenses. Collier proposed to guarantee civil liberties that mirrored the Anglo beliefs of freedom of conscience, worship, speech, press, assembly, and

association. The proposal also sought to extend powers of self-government upon demonstrated ability of governance. The overall intent of the bill relating to self-government was, as Indian tribes gained more experience and aptitude for self-government, the powers of the Federal Government related to the supervision of tribes would diminish (Deloria & Lytle, 1998).

The Wheeler – Howard Act (the Indian Reorganization Act) was enacted on June 18, 1934 based on the efforts put forth by John Collier. Although the passage of the Act was significantly different than the contents in the original Collier Bill, it did mark a significant change in Federal Indian policy. The major push to end the period of allotment was achieved, as was the effort to return surplus lands to tribes. Monies were put aside to charter Indian corporations and to provide educational opportunities to Indians. Section 16 of the Act dealt specifically with self-governance and stated:

“Any Indian tribe, or tribes, residing on the same reservation, shall have the right to organize for its common welfare, and may adopt an appropriate constitution and bylaws, which shall become effective when ratified by a majority vote of the adult members of the tribe, or the adult Indians residing on such reservation, as the case may be, at a special election authorized and called by the Secretary of the Interior under such rules and regulations as he may prescribe. Such Constitution and bylaws when ratified as foresaid and approved by the Secretary of the Interior shall be revocable by an election open to the same voters and conducted in the same manner as the original constitution and bylaws.

In addition to all powers vested in any Indian tribe or tribal council by existing law, the constitution adopted by said tribe shall also vest in such tribe or tribal council the following rights and powers: To employ legal counsel, the choice of counsel and fixing fees to be subject to the

Secretary of the Interior; to prevent the sale, disposition, lease, or encumbrance of tribal lands, interest in lands, or other tribal assets without the consent of the tribe; and to negotiate with the Federal, State, and local governments.”

The Act also stated that the Secretary of the Interior, upon petition of at least one-third of adult Indians, may issue a charter of incorporation of a tribe in so long as a majority of Indians living on that specific reservation ratify the charter through a special election. Those tribes that, through a majority in a special election, vote against the application of the Reorganization Act were to be exempted from its application (*U.S. Statutes at Large*, 48:984-88). Despite being required to make certain concessions, John Collier praised the passage of the Wheeler-Howard Act in his 1934 Annual Report of the Commissioner of Indian Affairs.

### **THE TRIBAL COURT SYSTEM**

The Tribal Court system was a creation that stemmed from the passage of the Indian Reorganization Act of 1934, which deemphasized assimilation, reduced the role of the BIA in tribal affairs and governance, and gave way to increased tribal control and authority of internal matters. The transition from Courts of Indian Offenses to Tribal Courts began the demise of government run legal institutions and control over conflict resolution on Indian reservations (Brakel, 1978).

While most tribes today have some form of a Tribal Court system, much like the Courts of Indian Offenses, these courts did not gain their legitimacy from a piece of legislation. The power of Courts of Indian Offenses came from the Secretary of the Interior, who in 1882 advised the Commissioner of Indian Affairs to create such courts in order to end the “heathenish” practices of the Indians. The actual creation of Tribal

Courts stemmed from the Indian Reorganization Act in 1934, although they were not included in the legislation or in the implementation thereof. The IRA allowed tribes who ratified the Act to adopt their own constitutions and to provide for their own court system. While the BIA drafted a standardized constitution for tribes to use as the basis for their individual tribal constitutions, and the BIA also had final approval authority of these constitutions, the powers afforded to tribal councils and their courts were not derived from the Federal government, rather they were “manifestations of Indian tribal sovereignty retained from a time prior to the United States Constitution” (Brandfon, 1991, p. 998).

While legislation and court rulings have diminished the role and breadth of Tribal Court jurisdiction, Tribal Courts are still an important part of the tribal communities. Although the Tribal Court system bears little resemblance to the traditional methods of customary dispute resolution, they still perform one of the major functions that traditions once did – to define tribal identity and to resolve disputes (Brandfon, 1991). Pommersheim (1995) stated that Tribal Courts provide reliable and equitable adjudications and are a key ingredient for advancing and protecting the rights of self-government; but in order to do so, Tribal Courts must be able to administer justice in two separate cultures. They must be cognizant of the external expectations of the Anglo-American world (where federal funding lies and where economic development and investment rests upon the notion that, among other things, the judicial system in place is fair and equitable, both civilly and criminally) while ensuring internal validity based on the culture and tradition of the people in the community (Miller, 2003).

Modern Tribal Courts mirror the Anglo-American court. These courts handle civil, criminal, juvenile and traffic cases and are presided over by law-trained judges. These courts are typically found in tribal communities that have a constitutional government. Like other courts that are based on the Anglo system, non-compliance tends to lead to punitive measures. Both modern and quasi-modern courts may use alternative dispute resolution based on traditional indigenous practices as a way to address issues and avoid involving the “official” court system.

Modern Tribal Courts may look more like Anglo courts than any of the other courts mentioned; judges may wear robes and witnesses may be called to testify with testimony being held only to matters directly relevant to the case. Participants may have legal/judicial advocates representing them and court decisions are subject to appeal. But quite often, unlike their Anglo counterparts, proceedings are much more informal and relaxed. Judges often control the tempo of the trial. They may ask parties questions directly and may assist parties in clarifying their points in court. Generally, Tribal Courts are not courts of record and seldom are written opinions handed down (Deloria & Lytle, 1983). Another significant difference between Anglo courts and modern-day Tribal Courts is that Tribal Court decisions are not reviewable at the federal level. With the exception of cases involving *habeas corpus* (unlawful detention), Tribal Court cases are considered decisions rendered from an independent sovereign or a “court of foreign jurisdiction” (Brandfon, 1991, p. 1000).

The differences found between indigenous jurisprudence and Anglo-American jurisprudence have raised questions about the legitimacy of these courts as a means for providing justice in Native American communities, particularly in the eyes of the

Anglo-American. Tribal Courts have also been belittled by certain tribal members as being an arm of the oppressive assimilation process that the government attempted to force upon American Indians. Still others see the courts as illegitimate as they fall below the standards of state and federal courts, particularly related to separation of powers, due process, and enforcement of judgments (Pommersheim, 1995).

Article IV Section 1 of the United States Constitution states, “Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.” As it relates to legal proceedings, this provision directs States to acknowledge and abide by decisions rendered in other States. It does not, however, require States to extend this courtesy to Tribal Courts. Although many States do so, it is more a matter of legal courtesy and reciprocity. As stipulated in *Mexican v. Circle Bear* (1985), Tribal Court orders should be recognized in state courts under the principle of comity in so long as the Tribal Court adheres to certain externally stipulated procedural requirements (Brandfon, 1991, p. 1003):

- The Tribal Court must have jurisdiction over the matter decided.
- The Tribal Court order must not have been obtained fraudulently.
- The Tribal Court must allow each party adequate opportunity to offer evidence.
- The Tribal Court must grant an impartial hearing that satisfies due process requirements.

Vine Deloria & Clifford Lytle (1983, pp. 136-138) identify the major strengths and weaknesses in Tribal Courts. He identifies the following strengths of Tribal Courts:

- Federal courts are beginning to recognize the authority of Tribal Courts in handling matters that occur in Indian country.
- Tribal Court systems have allowed larger reservations to have greater access to the legal arena.
- The federal government, tribal leaders, and other organizations are increasing their support of Tribal Courts.
- Tribal Courts provide an avenue to interpret law to the Indian people and to interpret Indian culture to other legal institutions.
- Indian judges, despite being underpaid and receiving few fringe benefits, are dedicated.

The primary weaknesses in the Tribal Court system are identified as:

- Tribal Courts are susceptible to political influence... Indian judges do not enjoy the level of independence that judges in the Anglo-American judiciary do.
- Tribal judges possess and exercise an enormous amount of power in the criminal arena and with few institutional checks.
- Tribal constitutions and codes are deficient, often badly written and not codified.
- A lack of qualified personnel, low salaries, political influence and a high turn-over rate in judicial and administrative personnel.
- There is a lack of alternatives to incarceration on reservations, with that punishment more often than not being a judge's only way to dispose of a case.
- There is a lack of proactive approaches to addressing Tribal Court issues... they are only addressed after the problems are apparent.

The National American Indian Court Judges Association, in a report entitled "Justice and the American Indian," mirrored many of the concerns identified by Deloria



and Lytle. They identified six major problems that demand attention in the administration of Tribal Courts:

- There is a lack of judicial independence from tribal officials that leads to insecurity and erodes the effective administration of justice.
- The lack of judicial training of judges inhibits effective judicial leadership in relation to complex Anglo-American legal issues.
- There is a lack of staff, administrative organization, and mechanical support for courts.
- There is an inability to enforce court orders, especially when there is a lack of confidence in the Tribal Court by the tribal leaders.
- Tribal Courts and law enforcement are often too closely associated, thereby presenting the appearance that they are in fact one in the same.
- Tribal Court relationships with the Bureau of Indian Affairs pose special problems when the judges are employed and appointed by the BIA (Deloria & Lytle, 1983, pp. 123-125).

As previously mentioned, often times there is an inherent lack of separation of powers in tribal government. This makes the judiciary subject to undue influence from the legislative branch of a tribal government, typically the tribal council. When the Bureau of Indian Affairs laid out their draft constitution to serve as a model for tribes who ratified the Indian Reorganization Act, they failed to include any stipulation related to separation of governmental powers. It has been argued that in traditional Indian societies there was no separation of powers as is found in the United States government. While there are those who claim otherwise, no historical documentation exists to indicate that Indian societies had any doctrine that incorporated the separation of a judiciary from legislative branch (Brandfon, 1991).

Very few tribes have constitutions that mandate a separation of powers. This, arguably, serves as a disservice to tribal communities. The lack of judicial review over tribal council acts or ordinances prevents any oversight related to compliance to tribal constitutional protections or guarantees. There are those tribal councils who believe that they themselves have the right and ability to interpret the tribal constitution, while others argue that judicial review endangers overall tribal sovereignty, while still others have argued that disagreements between branches of tribal government are political in nature, not “justiciable” (Brandfon, 1991, p. 1008).

Most Americans believe that “law is something to be applied and justice is something to be administered...In contrast, tribes traditionally believe law is a way of life and justice is part of the life process” (Melton, 1995, p. 133). Tribal Courts must be able to effectively respond to the internal pressures that are driven by cultural values while responding “competently and creatively” to the pressures place upon them by federal and state entities (Pommersheim, 1995, p. 111).

Despite the long and arduous journey tribal judicial systems have had, they have “demonstrated an exceptional capacity for growth in competence and sophistication in the last quarter century” (Pommersheim, 1995, p. 112). It is inherent to the success of Tribal Courts and justice systems through Indian country that whatever court mechanism is utilized, it must be one based on the needs of the community. Attempting to maintain traditional methods of dispute resolution for the sake of fending off Anglo influence when the customary practices are no longer capable of maintaining order and peace is counterproductive (Joh, 2000, pp. 124-125).

Perhaps one of the most insightful opinions regarding the history, strengths and challenges of the Tribal Court system came from then-Associate Justice of the United States Supreme Court, Sandra Day O'Connor, who spoke at the Indian Sovereignty Symposium in Tulsa, Oklahoma on June 4, 1996.

Justice O'Connor noted that significant disruptions in customary Native American life had occurred due to forced migration, creation of reservations, allotment of lands and forced adoption of Anglo practices. By the time of the Indian Reorganization Act of 1934, traditional methods of dispute resolution within tribes was lost; reinstating those practices of old was not immediately feasible. Despite being forced to adopt Anglo practices, Justice O'Connor noted that many tribes are incorporating tribal customs into their courts. She mentioned that many tribes have criminal codes that focus on maintaining harmonious relations within the tribe and amongst its members through the use of alternatives to the Anglo adversarial process.

These methods and practices provide tribes the ability to incorporate traditional values and set an example for the rest of the nation on the use of alternative dispute resolution. The flexibility of Tribal Courts and their relative informality provide tribes the opportunity to incorporate traditions and values of the individual tribe to the greatest extent possible to resolve issues within their respective communities. In addition, Justice O'Connor noted that Tribal Courts have seen an increase of law-trained judges and lawyers practicing within the court. Despite the positive aspects noted, she identified potential issues with judicial independence as many Tribal Courts are seen as a subordinate arm of tribal councils. Despite this challenge, O'Connor noted that Tribal Courts have the ability to teach federal and state courts about restorative justice, while

federal and state courts may serve as an example to Tribal Courts related to the concepts of judicial independence and appeals.

### **TRIBAL HEALING TO WELLNESS COURTS**

Perhaps the first concerted effort to address the ineffective rehabilitative outcomes of the U.S. judicial and corrections systems occurred in 1989 with the founding of the Miami-Dade Drug Court. According to the National Association of Drug Court Professionals (NADCP), the court was developed to address the drastic increase of drug-related crime in the greater Miami area and the lack of any measurable effect by traditional courts to positively affect change in the drug culture and climate. Since the inception of the Miami-Dade Drug Court, numerous evaluations have shown that the Drug Court model has been significantly more effective in addressing crime and criminal activities associated with the use of legal and illegal drugs than the traditional adversarial Anglo Court model. The effectiveness of these “problem-solving courts” is evidenced that, by mid-2012, over 2,700 Drug Courts were active in every U.S. State and territory (NADCP.org).

The 2010 publication of the National Institute of Justice’s Multisite Adult Drug Court Evaluation – a five year longitudinal study which sampled 23 drug courts in eight states – found that participants reported less criminal activities (40% vs. 53%), had fewer rearrests (52% vs. 62%), reported less drug use (56% vs. 76%), were less likely to test positive (29% vs. 46%), and reduced overall court costs by \$5,700 to \$6,200 per offender (USDOJ, 2013). The NADCP found that three-quarters of Drug Courts significantly reduced crime; the best Drug Courts reduced crime by almost 40% (Marlowe, 2013).

In January of 1997 the NADCP, Drug Court Standards Committee, in conjunction with the Bureau of Justice Assistance, published a report entitled “Defining Drug Courts: The Key Components.” This report identified ten key components for the successful implementation and use of Drug Courts to address criminal activities tied to substance abuse. These guidelines set forth the practices required for an optimally effective Drug Court that reduced the rates of recidivism among the serviced population.

American Indian reservations, historically plagued by alcohol abuse and fast becoming transit points for the illegal drug trade, began adopting the Anglo Drug Court model a decade after the first Drug Court appeared in Miami-Dade, FL. In 1998, three Tribes – the Fort Peck Sioux, the Poarch Band of Creek Indians, and the Blackfeet Tribe – began operating Drug Courts, known as Tribal Healing to Wellness Courts (Gottlieb, 2010). Although the NADCP had

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**TABLE 3.1**

*Key Components of Drug Courts*

Key Component 1	Drug courts integrate alcohol and other drug treatment services with justice system case processing
Key Component 2	Using a non-adversarial approach, prosecution and defense counsel promote public safety while protecting participants’ due process rights
Key Component 3	Eligible participants are identified early and promptly placed in the drug court program
Key Component 4	Drug courts provide access to a continuum of alcohol, drug, and other related treatment and rehabilitation services
Key Component 5	Abstinence is monitored by frequent alcohol and other drug testing
Key Component 6	A coordinated strategy governs drug court responses to participants’ compliance
Key Component 7	Ongoing judicial interaction with each drug court participant is essential
Key Component 8	Monitoring and evaluation measure the achievement of program goals and gauge effectiveness

Key Component 9	Continuing interdisciplinary education promotes effective drug court planning, implementation, and operations
Key Component 10	Forging partnerships among drug courts, public agencies, and community-based organizations generates local support and enhances drug court program effectiveness

identified the ten key components for a successful Drug Court, it became apparent to those Tribal Courts utilizing the Drug Court model that what worked in the state model may not be wholly effective or appropriate for the American Indian population. In 2003 the Tribal Law and Policy Institute, with funding from the Bureau of Justice Assistance, reoriented the ten key components so as to allow them to be implemented in the different geographic, demographic and cultural contexts found in tribal communities (TLPI, 2013).

**TABLE 3.2**

*Tribal Ten Key Components*

Key Component 1	Individual and Community Healing Focus
Key Component 2	Referral Points and Legal Process
Key Component 3	Screening and Eligibility
Key Component 4	Treatment and Rehabilitation
Key Component 5	Intensive Supervision
Key Component 6	Sanctions and Incentives
Key Component 7	Judicial Interaction
Key Component 8	Monitoring and Evaluation
Key Component 9	Continuing Interdisciplinary Community Education
Key Component 10	Team Interaction

The adaptation of key components – in addition to or in lieu of the NADCP key components – reflected the different perspectives found in the tribal judicial systems that had forcibly adopted the Anglo judicial model. The key components for Tribal

Courts to consider in the planning, operation and/or maintenance of their courts are explained in relation to American Indian communities as:

**Individual and Community Healing Focus:** Tribal Healing to Wellness Court brings together alcohol and drug treatment, community healing resources, and the tribal justice process by using a team approach to achieve the physical and spiritual healing of the individual participant, and to promote Native nation building and the well-being of the community.

**Referral Points and Legal Process:** Participants enter Tribal Healing to Wellness Court through various referral points and legal processes that promote tribal sovereignty and the participant's due (fair) process rights.

**Screening and Eligibility:** Eligible court-involved substance-abusing parents, guardians, juveniles, and adults are identified early through legal and clinical screening for eligibility and are promptly placed into the Tribal Healing to Wellness Court.

**Treatment and Rehabilitation:** Tribal Healing to Wellness Court provides access to holistic, structured, and phased alcohol and drug abuse treatment and rehabilitation services that incorporate culture and tradition.

**Intensive Supervision:** Tribal Healing to Wellness Court participants are monitored through intensive supervision that includes frequent and random testing for alcohol and drug use, while participants and their families benefit from effective team-based case management.

**Sanctions and Incentives:** Progressive rewards (or incentives) and consequences (or sanctions) are used to encourage participant compliance with the Tribal Healing to Wellness Court requirements.

**Judicial Interaction:** Ongoing involvement of a Tribal Healing to Wellness Court judge with Tribal Wellness Court team and staffing and ongoing Tribal Wellness Court judge interaction with each participant are essential.

**Monitoring and Evaluation:** Process evaluation, and performance measurement and evaluation are tools used to monitor and evaluate the achievement of program goals, identify needed improvements to the Tribal Healing to Wellness Court and to Tribal Court process, determine participant progress, and provide information to governing bodies, interested community groups, and funding sources.

**Continuing Interdisciplinary Community Education:** Continuing interdisciplinary and community education promote effective Tribal Healing to Wellness Court planning, implementation, and operation.

**Team Interaction:** The development and maintenance of ongoing commitments, communication, coordination, and cooperation among Tribal Healing to Wellness Court team members, service providers and payers, the community and relevant organizations, including the use of formal written procedures and agreements, are critical for Tribal Wellness Court success.

While Wellness Courts adopted many of the same operational concepts as the Anglo Drug Courts, they also took into consideration some of the unique challenges facing American Indian tribes in modern society. Understanding these challenges is essential for tribal governments to provide services needed to address substance related criminality in their society.

### **PUBLIC LAW 111-211 – TRIBAL LAW & ORDER ACT**

On July 29, 2010 President Obama signed Public Law 111-211 – The Tribal Law and Order Act. This Act amended the Indian Law Enforcement Reform Act, the Indian Tribal Justice Act, the Indian Tribal Justice Technical and Legal Assistance Act of 2000, and the Omnibus Crime Control and Safe Streets Act of 1968 in order to improve the prosecution of, and response to, crimes in Indian country. It identified significant shortcomings and challenges related to the enforcement of laws in Indian country as well as the prosecution of offenders who commit acts therein. Congress and the President acknowledged that Tribal Courts are the most appropriate systems to maintain law and order in Indian country. Tribal law enforcement officers are often the first responders to incidents that occur in Indian country and even with the augmentation of Federal law enforcement officers, the number of law enforcement personnel assigned to deal with crimes in Indian country represent less than half of the presence that is found in rural areas in the United States; less than 3,000 law enforcement officers, both



Federal and tribal, to patrol over 56 million acres of Indian lands throughout the U.S.

The following challenges and concerns are identified in section two of the Act:

- Complicated jurisdictional rules have a significant negative impact on the ability to provide public safety in Indian communities which has been increasingly exploited by criminals. A high degree of cooperation and commitment between tribal, Federal, and State law enforcement agencies is required.
- Domestic and sexual violence against American Indian women has reached epidemic proportions; 34% of American Indian women will be raped during their lifetime, 39% will be the victim of domestic violence.
- Increased methamphetamine use in tribal communities has led to significant increases in domestic violence, burglary, assault, and child abuse.
- The Bureau of Indian Affairs and the Department of Justice have not been able to coordinate or consistently report crime and prosecution rates in tribal communities; such data is imperative for effective law enforcement efforts.

The Act was intended to clarify the responsibilities of Federal, State, tribal and local governments with respect to crime committed in Indian country. In addition, the Act aimed to increase coordination and communication among Federal, State, tribal and local law enforcement agencies; to empower tribal governments with the authority, resources, and information necessary to safely and effectively provide public safety in Indian country; to reduce the prevalence of violent crime in Indian country and to combat sexual and domestic violence against women; to prevent drug trafficking and to reduce rates of alcohol and drug addiction in Indian country; and, to increase and standardize the collection of criminal data and the sharing of criminal history information among Federal, State and tribal officials responsible for responding to and investigating crimes in Indian country.

The Tribal Law and Order Code, although not allowing for complete jurisdiction by tribal justice agencies on Indian lands, is a significant step forward in ensuring Federal,

State, and local cooperation with tribal justice agencies. It is a solid step in the right direction to facilitate stronger self-governance in the judicial and enforcement arenas and provides a basis for stronger, more effective public safety on Indian lands.

## **CONCLUSION**

The history of law and social control as it relates to American Indians is convoluted and has, along with Federal Indian policy as a whole, has been altered by special interests and the passage of time. Little is definitively known about how the original inhabitants of the United States resolved conflict among themselves, although it is somewhat apparent that it was done with the interest of the community as a whole and was effective. Efforts to control the wards of the nation have been found in both legislative efforts and court rulings. Quasi-official judicial oversight occurred within half a century of the founding of the United States, becoming more structured and restrictive with the passage of time.

Attempts to force upon the Indians an Anglo-judicial model have all but obliterated traditional methodologies for handling internal conflict. Although efforts, most notably by John Collier, have re-emphasized tradition and culture in Indian tribes, the damage caused by changing U.S. Federal policy, specifically those associated with assimilation and termination, has had an adverse effect on not only how tribes engage in social control, but how they exist as a whole. Efforts by tribes to regain some semblance of tradition and culturally relevant methodologies to handle their judicial oversight has been both embraced and criticized. Regardless of whether these efforts have instilled the degree of self-governance that is relevant to tribal members served, the current state of Indian control of internal matters, to include law and social control,

has undoubtedly improved in the past half century, although admittedly not to the degree of replication of certain historically and culturally relevant practices.

## **CHAPTER IV: CRIME AND LAW ENFORCEMENT IN INDIAN COUNTRY**

Crimes in the United States are largely underreported and, as such, the actual depiction of crime rates is somewhat skewed. The reasons for underreporting are numerous; the social stigma of being a rape victim and how a victim may be treated in a court of law by defense attorneys, fear of getting involved or of retribution, distrust of the police and courts, or not wanting to be a “rat” are often cited as reasons that people don’t report crimes. In Indian Country, especially among smaller and more isolated tribes, these issues may become more pronounced based on a relative homogeneity of the population. It has also been argued that American Indians have not always been fully cooperative with the U.S. Census Bureau, resulting in underreporting of the Indian population that may have skewed crime rates higher based on per-capita rates of reported crimes (Nielsen, 1996).

Regardless of these suggestions, information related to crime in Indian country is likely not highly accurate, and to what degree it differs from the accuracy of nationwide data is unknown. Historical data of crime rates in Indian country are difficult to obtain, although, as discussed earlier, early first-hand accounts of crime and social control in Indian country indicates that Indians were generally lawful as a whole. With Federal policies that stripped traditional methods of dispute resolution, the traditional lawfulness of American Indians waned.

What is not arguable is the fact that there is a correlation between alcohol abuse and crime in Indian country. Victims of violent crimes in Indian country believed their attacker to be under the influence of alcohol or alcohol and drugs 62% of the time. According to Larry Gould, alcohol-related deaths among American Indians are seven

times that of the general population. The rate is even higher for those in the 15-24 age group (twelve times the comparable population group); for Indians between 25 and 34 years old the rate is 13 times higher than the comparable population group (Ross & Gould, 2006). While American Indians have long used alcohol, traditionally and historically it was associated with rituals or ceremonies and was strictly controlled. Alcohol sales to American Indians were restricted from the Implementation of the Trade and Intercourse Act of 1834 until 1953, although the degree of enforcement was not consistent. Prohibition was not believed to be an effort to protect the American Indian from the ills of alcohol consumption, rather an effort to control American Indians and their use of alcohol for ceremonial purposes (French, 2003). Alcoholism seems to have been prevalent despite the restrictions that were put in place. After contact with explorers and settlers, American Indians were often given alcohol during negotiations with traders in order to get better deals; one of the most prevalent items traded for was alcohol itself (Ross & Gould, 2006).

There have been many different theories put forth as to why American Indians have a greater propensity for alcohol abuse and dependence. One of the most prevalent theories is that of anomie – American Indians are “mourning the loss of a historical tradition and reacting to the stresses of acculturation, including the demand to integrate and identify with mainstream society” (Barker, 1998, p. 85). The social problems found in American Indian communities, including alcohol consumption, can be attributed to a “chronic sense of depression over an irretrievable past, and a future to which they can neither adapt nor understand” (Barker, 1998, p. 85). Other theories include those

related to biological, sociocultural, and environmental, with the latter two being somewhat related to anomie (Ross & Gould, 2006).

Regardless of the why American Indians seem more prone to alcoholism, the use of alcohol, not only in the bartering system with early traders, seems to have been a concerted effort to desensitize and acculturate the native population. In 2000 at a ceremony marking the 175<sup>th</sup> Anniversary of the Bureau of Indian Affairs, then-commissioner Kevin Gover apologized for the past treatment of the indigenous population. Included in his comments was an apology for “the use of the poison alcohol to destroy mind and body [of the people].” Another comment that seems to support the idea that the introduction of alcohol was a deliberate effort to weaken any resistance from the native population came from Benjamin Franklin who stated, “If it be the design of Providence to extirpate these savages in order to make room for cultivators of the earth, it seems not improbable that rum may be the appointed means. It has already annihilated all the tribes who formally inhabited the sea-coast” (Gellert, p. 157). President Andrew Jackson, not known as an advocate of American Indians and who often clashed with Chief Justice John Marshall over Supreme Court rulings that favored Indians, authorized the use of public funds to purchase barrels of whiskey for entertaining indigenous parties (Ross & Gould, 2006). Regardless of whether or not the introduction of alcohol was a planned effort to speed the process of acculturation or to kill off the Indians, the distribution and consumption of alcohol has led to increased social dysfunction, economic dispossession, cultural conflict and cultural violence.

A number of studies have correlated alcohol use to crime rates in Indian country and for Indians living off the reservation. Although most research shows that the same

percentage of American Indians consume alcohol as the those in the general population, those Indians who do drink tend to be more likely to binge drink and Indians are twice as likely than the general population to be problem drinkers (Ross & Gould, 2006).

Barker (1998, pp. 83-84) cites the following statistics related to alcohol consumption, abuse, crimes, and death among American Indians over the past thirty years:

- Accidents kill one in four American Indians, with about 75% of those accidents being alcohol-related.
- The suicide rates for indigenous youth is almost double that of the overall population, with apparently 80% of those being alcohol-related.
- Homicide rates among Indians are approximately three times that of the overall population, with 90% of those deaths being alcohol-related.
- Nationally, half of all suspected abuse and neglect cases involving Indian minors involve alcohol abuse.
- Evidence suggests that upwards of 90% of all matters dealt with by reservation police and courts are alcohol-related.

Alcohol abuse in native communities has a direct relation to death rates from accidents and crimes. The following sections provide further statistical data to show that alcohol consumption continues to play a significant role in criminal matters in Indian country and in those communities that house Indians off the reservation.

According to Ross and Gould (2006), the history of alcohol in Indian country was first used to steal indigenous goods and land; then it was used in part to demoralize the native population; and finally, as a means to criminalize indigenous behavior. Whether these statements are more perception than fact is debatable although one thing is not –

American Indian communities suffer from high rates of alcohol-related deaths, alcohol-related crime, and alcohol-related illness.

### **AMERICAN INDIANS AND CRIME**

Perhaps the most comprehensive data collected to date regarding American Indians and crime resulted from a U.S. Department of Justice, Office of Justice Studies statistical analysis from 1992-2002. The breadth and scope of the statistical profile was the most significant to date, but regrettably has not been expanded upon since its initial release in 2004. The statistical profile, compiled by Steven W. Perry of the Bureau of Justice Statistics and entitled *American Indians and Crime*, revealed a disturbing picture of crime and victimization in Indian country.

*Violent Victimization:* Between 1992 and 2001, the rate of violent victimization among American Indians was 101 per 1,000 persons aged 12 or over or approximately 2½ times the national average. Crimes considered to be violent for the purpose of this study included rape, sexual assault, robbery, aggravated assault and simple assault. The following summarizes violent crimes against Indians during the survey period:

- Per each 100 acts of violence, 61 were simple assaults, 25 were aggravated assaults, eight were robberies, and five were rapes or sexual assaults.
- Indians were most likely to be victims of violence in urban settings.
- Males were the victims of violent crimes 55% of the time.
- Indians aged 25 to 34 were most likely to be victims of violent offenses (27%), followed by 18-24 year olds (24%) and 12-17 year olds (21%).
- Indians were more likely to be victimized by strangers (42%), compared to acquaintances (37%) or family members (21%).



- American Indians identified the offender of violence as being white 57% of the time, with a white offender being identified in 78% of the rapes and sexual assaults committed against Indians.
- Victims of violent offenses believed the offender was under the influence of alcohol (48%), drugs (9%) or both (14%) in 71% of the offenses. The perception of the Indian victim regarding the offender being under the influence of some substance is 60% higher than the average for all races.

*Murder:* Between 1976 and 2001, approximately 144 American Indians were murdered each year. That represents 0.7% of all murders recorded during that time frame, which is about one-quarter less than average based on a population percentage of 0.9% of the total population. Approximately three-quarters of all murder occurred in ten states, which accounted for 61% of the American Indian population of the United States, led by California (13.2% of the murders, 13.5% of the Indian population) and Oklahoma (11.7% of the murders, 11% of the Indian population). Alaska, North Carolina, Arizona, Washington, Minnesota, New Mexico, New York and Oregon accounted for 50.6% of murders and 36.4% of the Indian population.

- Murder rates of American Indians declined 45% between 1995 and 2001, from 6.6 murders per 100,000 to 3.6 per 100,000, mirroring substantial declines in the crime rate at the national level.
- American Indians were less likely to be murdered by a member of the same race (58%) compared to Whites (86%) and Blacks (94%).
- Indians were significantly more likely to be murdered by someone with whom they had a prior relationship than not (83% to 17%), which was slightly higher than the national average of 79% to 21%. One-third of American Indians killed by an

acquaintance or relative were killed by a member of a different race.

*Arrest Rates of American Indians:* Between 1991 and 2001, the number of American Indians arrested for violent crimes ranged from 159 to 232 per 100,000 persons. The arrests of American Indians declined approximately 26% between 1992 and 2001, although there was an increase of 1.7% between 2001 and 2001. The rate of arrest in 2001 of 159 per 100,000 persons was similar to rate of all races (152 per 100,000). These rates reflect arrest by ethnicity – both on and off reservation lands - by State or local law enforcement agencies.

- With the exception of murder, Indian youth age 17 or under were significantly less likely to be arrested for violent offenses than the overall population (140 per 100,000 persons compared to 203 per 100,000 persons of all races) in 2001. In regards to murder, Indian youth were 2.3 times more likely to be arrested for murder than the all races (7 per 100,000 persons compared to three). Indian adults were also 25% more likely to be arrested for murder than the average for all races.
- Alcohol related arrests in 2001 for American Indians, which included Driving under the influence, liquor law violations, and drunkenness, was twice the national average. For youth age 17 and under, the rate of arrest per 100,000 for Indians it was 681 versus the average of 362. For adults, the rate was 1,240 versus 623.

*American Indians in the Federal Justice System:* In accordance with U.S. Title 18, section 1153, the United States Courts hold jurisdiction over cases identified under the Major Crimes Act of 1885 (and subsequent revisions), regardless whether the victim

is Indian or non-Indian. In Fiscal Year 2000, the U.S. Attorney's Office (USAO) investigated an estimated 123,559 suspects, of which 2,074 occurred in Indian country. Of the total number of suspects investigated, 6,036 were associated with violent offenses with one-quarter of those violent offenses occurring in Indian country.

- The overall number of violent crimes investigated by U.S. attorney's declined 21% from 1997 to 2000 (1,927 to 1,525).
- The number of charges filed against American Indians for violent crimes increased 27% between 1997 and 2000.
- Approximately 75% of all suspects investigated in Indian country involved a violent crime, compared to 5% nationally.
- While the 924 cases filed by the USAO in Fiscal Year 2000 involved offenses in Indian Country and represented 1% of all filings, 18% of all filings related to violent crimes came from Indian country.

*American Indians entering Federal Prisons:* Between 1994 and 2001, approximately 751 American Indians entered the federal prison system each year for violent offenses. Of the 69,900 offenders who entered U.S. Bureau of Prisons facilities in fiscal year 2001, approximately 1,662 were American Indians, or 2.4% of all new intakes. That is significantly higher than the average population of American Indians in the United States (0.9%).

- Approximately 16% or 913 offenders entering federal prisons in FY2001 for violent offenses were Indians.
- Approximately 54.9% of all Indians entering federal prisons in FY2001 were incarcerated for violent offenses, a decrease from 1994 when 59.7% of Indians entering federal prisons were incarcerated for violent offenses.

- By overall percentage of offenders entering prison for violent offenses between 1994 and 2001, the percentage of those identified as American Indian increased from approximately 12% to 15%.

*Recidivism among American Indian prisoners released in 1994:* The Bureau of Justice Statistics conducted a study of recidivism among persons released from prisons in 15 States, accounting for approximately two-thirds of all released State prisoners in 1994. Those States included in the study were Arizona, California, Florida, Illinois, Maryland, Michigan, Minnesota, New Jersey, New York, North Carolina, Ohio and Oregon. Although included in the research, Delaware, Texas and Virginia did not provide dated related to American Indians. The study followed a sample of 272,111 former inmates, of which 1,712 were American Indians, for three years after release in 1994. Of those Indians included in the study, 27% were incarcerated for violent offenses, 32% for property offenses, 18% for drugs, and 22% for public-order offenses. American Indians were more likely to be incarcerated for violent offenses and public order offenses (to include DUI, weapons offenses, parole violation, obstruction of justice, habitual offender, and contributing to the delinquency of a minor) than the general population. They were much less likely to be incarcerated for property offenses.

- Within six months of release, 25.5% of the 1,712 release Indians were arrested for a new crime consisting of either a felony or serious misdemeanor. Approximately 11.6% of those released were convicted of a new crime, and 3.6% were returned to prison.
- Within one year, the percentage of those arrested increased to 44.7%, with a conviction rate of 24.6% and an incarceration of 8.9%.

- Within two years, over half (56.6) had been rearrested, 35.7% had been convicted and 14.1% sentenced to prison.
- By the three year mark, of the 1,712 Indians released in 1994, 1,023 (60.1%) had been arrested, 735 (46.6%) had been convicted of a new serious crime, and 323 (21.3%) had returned to prison.
- By way of comparison, these numbers were slightly lower than the average of all prisoners released and tracked during that same period. Approximately 67.5% of all prisoners had been arrested within three years, compared to the Indian rate of 59.6%; approximately 46.9% of all prisoners had been convicted of a new serious crime, compared to the Indian rate of 46.3%.
- Twenty-nine percent of those Indian released in 1994 having served time for a violent offense were arrested for a new violent offense within three years of release. Of the 75 Indians released from prison in 1994 having served time for a murder conviction, approximately 15% were arrested for another murder within three years.

*American Indians and capital punishment:* Between 1973 and 2002, 7,254 persons were sentenced to death in State and Federal courts. During that same time frame, 60 American Indians were sentenced to death.

- Between 1977 and 2002, 820 non-native prisoners were executed, representing 11.3% of those on death row. During that same time frame, 13.3% of the Indians on death row were executed (8).
- Approximately 39.7% or 2,877 non-natives were removed from death row by a means other than execution (e.g., commutation, overturned conviction, died from natural causes). Twenty-five American Indians, or 41.7% of those on death row, were removed in a similar fashion.
- As of December 31, 2002, a total of 3,557 non-natives were on death row pending execution, or 49% of the original number sentenced between 1973 and 2002. Twenty-seven American Indians were still

awaiting execution, or 45% of those originally sentenced during that time frame.

The aforementioned information provided a general picture of crime as it related to the American Indian; both as victim and offender. One of the most distinct and telling statements about victimization related to American Indians can be found in the foreword of the study: “The rate of violent crime estimated from self-reported victimizations for American Indians is well above that of other U.S. racial or ethnic groups and *is more than twice* the national average. This disparity in the rates of exposure to violence affecting American Indians occurs across age groups, housing locations, and by gender” (emphasis added).

While it is to be expected that the rates of violent crimes under investigation and leading to federal imprisonment would be significantly higher for American Indians than any other race based on federal jurisdiction on reservations and non-fee lands, the fact that rates between American Indians and other races is similar outside of federal jurisdiction is troublesome. At best, American Indians living outside tribal or federal jurisdiction appear normal as it relates to criminal activities, arrests, incarceration and recidivism. When taking into consideration those crimes that occur in federal jurisdiction, there is a glaring discrepancy related to serious offenses, which fall under the purview of the U.S. Courts. It must be noted that this research study does not specifically take into account cases that have been resolved, to include incarceration, in Tribal Courts.

## **FEDERAL DECLINATION OF INDIAN COUNTRY CRIMINAL MATTERS**

Crimes that are committed in Indian country fall under the oversight of the U.S. Courts in accordance with the Major Crimes Act of 1885. As such, crimes that would be considered felonies at the State level fall under the prosecutorial oversight of the U.S. Attorney's Office. A frequent complaint in Indian country is the low prosecution rate by the federal government that the tribes themselves are forbidden to prosecute to the fullest extent of the law. Until the passage of the Tribal Law and Order Act of 2010, tribal courts were limited in their sentencing authority to one-year imprisonment/incarceration. Although that has been increased to three years based upon adherence to pretrial and trial protections to safeguard the rights of the accused, Indian courts are still limited in their ability to incarcerate offenders whose cases are declined by the U.S. Attorney's Office. If the USAO does not believe that a case forwarded to their office meets the elements required for a successful prosecution, an individual accused of murder may be prosecuted in tribal court under tribal code (that does not include felony offenses) and may be incarcerated for up to three years.

The United States Government Accountability Office (GAO) conducted research on federal declinations in Indian country matters under project number GAO-11-167R between October 2009 and December 2010. Between fiscal year 2005 and 2009 a total of 10,006 cases were received for matters pertaining to Indian country. Of those, a vast majority – 7,680 cases – were for violent offenses. At the time this report was released, 4,584 cases were filed for prosecution; 2,013 had been immediately declined; and, another 2,493 were reviewed further yet still declined. Approximately 1,000 of the cases received had not been filed for prosecution or declined as of

September 30, 2009 with a subsequent declination rate for prosecution at 50%. During the period of review by the GAO, declination rates for all crimes have fallen each year, from a high of 58% in 2005 to 37% in 2009.

Separating the categories of violent crime and non-violent crime, rates in both categories have, just as the aggregate showed, fallen annually. Declination rates for non-violent crimes fell from 54% in FY05 to just 26% in FY09. Violent crime declination rates, which the USAO typically has sole jurisdiction over in Indian country, remain higher. Although the rates have fallen from 59% in FY05, they still remained relatively high at 41% in FY09. When queried by the staff as to why violent crime rate declinations were higher than non-violent, staff members from different USAO's referred to the amount and quality of the evidence as to why violent crimes were more likely to be declined for prosecution. Violent crimes were specifically found to have occurred more frequently "outside the presence of a witness, other than a typically fragile witness" and generally lacked documentary evidence.

Of the 94 USAO districts in the United States, 51 received Indian matters between fiscal years 2005 and 2009. Of the 51 districts, five accounted for 73% of all matters referred to the USAO. South Dakota and Arizona each accounted for 24% of all matters referred (2,414 and 2,358 cases respectively). New Mexico, Montana and North Dakota rounded the top five at nine percent, eight percent and eight percent, respectively. The remaining 46 districts accounted for 27% of the total cases referred to USAOs, with 26 of those districts referring ten or fewer matters to the USAO.

The primary offices that referred cases to the USAO were the Federal Bureau of Investigation (FBI) and the Bureau of Indian Affairs (BIA). Together they accounted



for 79% of cases submitted to the U.S. Attorneys' Office. Through fiscal years 2005 and 2009, the FBI referred 5,500 matters (55% of all referrals) to the USAOs while the BIA referred 2,355 cases (24% of all referrals). The remaining matters referred to the USAO came from state, county, or municipal authorities (665), with a total of 15% of all referrals being categorized as "other."

In regards to declinations, the USAOs declined 46% of all matters referred to them by the FBI and 63% of those matters referred to them by the BIA. One reason cited for the disparity in declination rates involves agency protocols associated with crimes investigated by these agencies. FBI officials stated that they may elect not to refer matters in which there is insufficient evidence that may lead to prosecution. The BIA, on the other hand, refers all matters investigated to the USAOs, regardless of the strength of the evidence and subsequently the case.

Over half of all cases referred to the US Attorney's Office were related to crimes of violence. Twenty-nine percent of all referrals stemmed from assaults, followed by sexual abuse (26%). Other cases involving violence were homicides or attempts (6%) and firearms, explosives or related offenses (4%). Of the 2,922 assault cases referred the USAOs, 46% were declined for prosecution. Approximately two-thirds (67%) of the 2,594 sexual abuse matters were also not prosecuted by the U.S. Attorney's Office. USAO officials cited the reason for the high rate of declinations as evidentiary problems, specifically in the timely reporting and the subsequent obtaining of evidence and witnesses. In fact, the most frequent reason for declining to prosecute an alleged crime is weak or insufficient admissible evidence, which accounted for 42% of all declinations. The declination rate for this reason was substantially higher for violent

offenses than non-violent offenses (44% to 31%). Other reasons cited were no federal offense evident (18%), witness problems (12%), lack of evidence of criminal intent (10%), and the suspect was to be prosecuted by other authorities (10%).

While tribal governments, specifically their courts, complain that the federal courts fail to effectively prosecute Indians in Indian country, it appears that the reason is more related to cooperation with federal authorities in these cultures and insufficient evidence. While this report does not draw cause and effect between these two factors, there appears to be some correlation between the investigative capabilities by federal agencies and tribal member cooperation. If a correlation does not exist, then one must look at whether or not investigations conducted into crimes in Indian country are investigated with the intent and availability of resources that may be seen outside the reservation.

While Federal declination rates related to Indian Offenses may appear to be high, by way of comparison to matters received and cases filed by the US Attorneys' Office, the declination rate is not significantly different. According to the United States Attorneys' Annual Statistical Report for Fiscal Year 2010, prosecution rates nationwide average only 40% to 50% of all matters received. Between 2005 and 2009, Indian declination rates for violent crimes fell from 59% to 41%, while for non-violent offenses the rate dropped from 54% to 26%. During that same time period, prosecution rates for all criminal cases filed in Federal Court – of which Indian Offenses accounted for only 0.1% of all cases – peaked at 50% in 2007 and fell to a rate of 39.34% in 2009. These prosecutorial rates do not definitively assume that 50 to 60% of cases are not

prosecuted; many of the cases are either immediately declinations, later declinations, while others are cases that are in the investigatory phases for prosecution.

On May 30, 2013, the U.S. Department of Justice released a report to Congress entitled *Indian Country Investigations and Prosecutions*. The report indicated a significant increase in prosecutions by the U.S. Attorney's Office with Indian Country jurisdiction; prosecutions increased approximately 54% between Fiscal Years 2009 and 2012. The declination rate for the USAO fell to 31% in Calendar Year 2012 with 2,180 cases of the 3,145 cases referred being prosecuted. A majority of the cases declined by the USAO was based on insufficient evidence (61% and 52%) followed by cases being referred to/subject to prosecution in another jurisdiction (19% and 24%) in CY 2011 and 2012 respectively.

### **POLICING ON AMERICAN INDIAN RESERVATIONS**

As mentioned previously, the first true Indian Police forces came into existence around 1869 when the plains and western Indians began to receive police services from the BIA. The first congressionally approved and funded Indian Police force came to be in 1874 at the San Carlos Agency in eastern Arizona (Barker, 1998). According to the Department of Justice, Office of Justice Programs, there were some 178 police departments as of 2008. Departments range from two or three officers up to departments with 200 uniformed police officers.

The most common police departments found in Indian country are referred to as '638' departments based on Public Law 93-638, also known as the Indian Self-Determination and Education Assistance Act of 1975. Under P.L. 93-638, tribes were given the opportunity to establish their own governmental functions by contracting with

the Bureau of Indian Affairs. A 638 law enforcement contract, administered by the BIA's Division of Law Enforcement Services, establishes a department's organizational structure and performance standards while providing basic funding for law enforcement. Police officers as well as administrative support personnel under 638-contracts are tribal employees (Wakeling, Jorgensen, Michaelson & Begay, 2001).

The second most common police entity in Indian country is found in BIA administered police departments. Those performing law enforcement functions in a BIA administered department are federal employees and are part of a national, BIA-employed hierarchy of law enforcement officers. While more and more tribes are entering into 636-contracts, the number of BIA administered departments continues to decrease. The third most common form of provision of law enforcement comes in the form of self-governance compacts with the BIA. Under this scenario, law enforcement officers and support staff are considered tribal employees but rather than monies coming from budgeted line items, financing for the law enforcement function comes from block grants (Wakeling, Jorgensen, Michaelson & Begay, 2001).

A rare form of policing in modern-day tribes consists of police departments that are funded from tribal coffers. In fact, data from 1995 show that just over two percent of tribal law enforcement agencies were outright funded from tribal monies. Tribes that pay for their police function are not required to comply with certain procedural and organizational requirements that those under 638-contract do, giving tribes more control of their self-governance. Those states under mandatory P.L. 280, and those states which may have assumed legal jurisdiction under the optional P.L. 280 clause, provide law enforcement and legal jurisdiction as they would over the regular state population.

In addition to the aforementioned arrangements, law enforcement duties may be hired out, patrol duties may be conducted by tribal law enforcement officers, while criminal investigations may be carried out by a BIA investigator who is a federal employee. One final possibility related to policing in Indian country combines tribal police with BIA police. Under this arrangement, tribes who have received Community Oriented Policing (COPs) grants and who have BIA police hire entry-level officers, but in accordance with the grant, these officers cannot be federal employees (Wakeling, Jorgensen, Michaelson & Begay, 2001).

One of the ongoing issues with law enforcement in Indian country relates to responsibilities and funding levels of these police departments. On average, Indian country police departments receive or are funded at levels 25% to 45% lower than non-Indian communities. Taking into consideration that statistics have continually identified crime rates in Indian country being between two to three times higher than the national average, crime rates in Indian communities are more comparable to urban areas such as Baltimore, Detroit, New York City, and Washington, D.C. These metropolitan areas have police-to-citizen ratios of between 3.9 to 6.6 officers per one thousand residents; Indian communities typically average two or less officers per one thousand residents (Wakeling, Jorgensen, Michaelson & Begay, 2001, p. vii).

The National Institute of Justice survey (Wakeling, Jorgensen, Michaelson & Begay, 2001, p. 9) identified what it found to be the typical Police Department in Indian country:

- The department is either administered by the tribe under a 638-contract or is administered by the Bureau of Indian Affairs.

- The department has 32 employees, of which nine are civilians, six are detention officers, 16 are police officers, and one to three are command staff.
- The typical operating budget is approximately \$1 million-per-year.
- The police department is housed in a building that is 20 or more years old.
- Sworn officers are high school graduates and graduates of a certified law enforcement training academy.
- A slight majority of the officers are American Indians.
- The department is on a large area of land (500,000 acres) with a small population (10,000).
- Police have one to three officers on patrol at any given time.
- The patrol vehicle fleet is at least three years old.

There are numerous challenges facing criminal justice agencies operating in Indian country. Many tribes engage in hiring practices which provide preference to tribal members over non-members and non-Indians. While this may lead to a greater cultural representation within the judiciary, which is important in tribes that incorporate cultural components in addressing crime and criminality, frequently these tribal members lack the academic and/or professional training and certifications possessed by their counterparts in the Anglo system. In treatment programs, where certifications are typically mandated, the lack of Indian personnel employed in these critical positions may lead to a disconnect between counselor and patient, which may have an adverse effect on the success of treatment.

The effectiveness and efficiency of criminal justice agencies in Indian Country is dependent upon being able to understand the intricacies associated with Federal

Indian Law, specifically where the crime was committed (reservation vs. fee land), who committed the crime (Indian vs. non-Indian), and what crime was committed (misdemeanor vs. Major Crimes Act offense). Hiring preferences may be detrimental to criminal justice administration in the absence of additional qualification standards that necessitate the possession of certain academic or professional certifications.

During the latter 1960s, as the governmental policy of termination came to a close and a new era of self-determination took root, coupled with increased public awareness of American Indian activism and crime in Indian country, the U.S. Congress significantly increased authorizations for the employment of additional police personnel in Indian country and also established the BIA Law Enforcement Academy. Despite a policy change towards self-determination for American Indian tribes, law enforcement in Indian country reversed the trend in the overall policy in two separate ways. First, increased funding for police services in Indian country brought with it an increased presence and control over policing and policy by the Bureau of Indian Affairs Division of Law Enforcement Services. This took what social control power the tribes had exercised by default and neglect away from tribes themselves and put it back into the hands of the BIA.

Secondly, the national trend towards a professional policing model, which the BIA adopted on Indian lands, continued a process of alienation between police officers and tribal community members. The previous models of policing found “beat cops” assigned and integrated into neighborhoods and communities with the accompanying familiarity being of great assistance in deterring crime and solving crimes through strong community connections and communication. While there were multiple benefits

associated with this policing model, it was also found to be highly corrupt. The professional policing model that replaced it was based on severing close relations between the officers and the citizens as well as insulating police officers from undue political influence and pressure. The professional model of policing is characterized by a centralized hierarchical structure mirroring a military structure and primarily focuses on solving crimes, with prevention being a secondary focus. While the intent is to allow for impartial policing, it has basically created a gap between police officers and the community that they serve by typically failing to take into account tribal values and norms as it relates to law enforcement and dispute resolution (Wakeling, Jorgensen, Michaelson & Begay, 2001).

As previously mentioned, one of the greatest challenges related to policing in Indian country is executing law enforcement functions in a convoluted jurisdictional maze. Not only do police departments typically have to deal with budgetary constraints, Federal Indian policy has limited who can be arrested based on the race of the offender, the race of the victim, the location of the offense, and the type of offense.

The three specific Acts that created this convoluted jurisdictional structure in Indian Country were the General Crimes Acts (enacted in 1817 which placed interracial crimes in Indian country under federal jurisdiction), the Major Crimes Act (enacted in 1885 which initially identified seven – later increased to 15 – crimes that the federal government had jurisdiction over), and the Assimilative Crimes Act (enacted in 1898 which took existing state criminal laws and applied them via federal law to locations under federal jurisdiction, such as Indian reservations). Based on these three Acts specifically, and the eventual passage of Public Law 280 in 1953 that gave so-called



“Mandatory States” concurrent jurisdiction of criminal matters in Indian country, the criminal justice jurisdiction map in those states not affected by P.L. 280 is as follows (Garrow & Deer, 2004, pp. 93-94):

**TABLE 4.1**

*Criminal Jurisdiction in States Not Covered By P.L. 280*

<i>Offender</i>	<i>Victim</i>	<i>Jurisdiction</i>
Non-Indian	Non-Indian	State jurisdiction is exclusive of federal and tribal jurisdiction.
Non-Indian	<b>Indian</b>	Federal jurisdiction under the General Crimes Act is exclusive of state and tribal jurisdiction.
<b>Indian</b>	Non-Indian	If listed in the Major Crimes Act, there is federal jurisdiction, exclusive of the state, but probably not of the tribe. If the listed offense is not otherwise defined and punished by federal law applicable in the special maritime and federal jurisdiction of the United States, state law is used in federal courts. If not listed in the Major Crimes Act, there is federal jurisdiction, exclusive of the state, but not the tribe, under the General Crimes Act. If the offense is not defined and punished by a statute applicable within the special maritime and territorial jurisdiction of the United States, state law is used in federal courts under 18 U.S.C. § 13.
<b>Indian</b>	<b>Indian</b>	If the offense is listed in the Major Crimes Act, there is federal jurisdiction, exclusive of the state but probably not of the tribe. If the listed offense is not otherwise defined and punished by federal law applicable to the special maritime and territorial jurisdiction of the United States, state law is used in federal courts. If not listed in the Major Crimes Act, tribal jurisdiction is exclusive.
Non-Indian	Victimless	State jurisdiction is exclusive although federal jurisdiction may attach if an impact of individual Indian or tribal interest is clear.
<b>Indian</b>	Victimless	There may be both federal and tribal jurisdiction. Under the Indian Gaming Regulatory Act, all state gaming laws, as well as criminal, are assimilated into federal law, and exclusive jurisdiction is vested in the United States.

With every jurisdiction defined, whether it is federal, state, or tribal, those specific policing agencies are the primary, if not the only, authorized respondents for law enforcement. For reservations that were allotted with subsequent “surplus” land being open to non-Indian settlement (fee lands), there is additional confusion regarding jurisdiction or resistance associated with the law enforcement function. For example, while tribal police may be the primary force on an allotted reservation, when certain offenses come to light that involve fee-lands or non-Indian suspects, yet it occurs within the exterior boundaries of a reservation, local and state law enforcement agencies may be hesitant to respond to a potential criminal offense because, despite the facts associated with the location and subject, it is still on an Indian reservation. The jurisdictional convolution has led to confusion and hesitancy to respond to, investigate, and prosecute certain cases.

There are often numerous agencies exercising partial jurisdiction in Indian lands and over its inhabitants. According to the Commission on State-Tribal Relations, “Coordination among these organizations would seem to be necessary, especially where Indians and non-Indians are closely intermingled in the same community, and where understaffed police units are responsible for patrolling large, overlapping geographic areas” (Barker, 1998, p. 71). Cross-deputization between tribal and outside agencies has been proposed by tribal and local authorities alike, and has been endorsed by academics as “one easy way to untangle the question of legal jurisdiction over reservation and non-reservation lands” (Barker, 1998, p. 71). The cross-deputization may allow tribal police to enforce state law on non-Indian suspects while also allowing non-Indian police greater authority when dealing with tribal offenders on trust land.

The benefit was summarized by the BIA Task Force, which stated (Barker, 1998, pp. 71-72):

“...law enforcement officers can cross jurisdictional lines, conduct investigations, and provide general services to both Indians and non-Indians. State police, using cross commissions, patrol state highways that traverse Indian reservations. They enforce state traffic laws and have authority to arrest both Indians and non-Indians. An Indian arrestee is taken to tribal court for trial while non-Indians go to municipal or justice of the peace courts. Often both police forces use the same radio frequency so that they are constantly informed of each other’s activity.”

**TABLE 4.2**

*Resources Available to Police Departments in Indian Country*

	Indian Country	Comparable Non-Indian Jurisdictions: Small, Rural	National Average	Comparable Non-Indian Jurisdictions: High Crime
<b>Officers per 1,000 residents</b>	1.3	1.8 – 2.0	2.3	3.9 – 6.6
<b>Law enforcement dollars per capita</b>	\$83	\$104	\$131	N/A
<b>Dollars spent per employee</b>	\$36,000	\$43,400	\$48,200	N/A

Literature, including the Executive Committee for Indian Country Law Enforcement Improvements, has also identified that one of the top challenges related to law enforcement in Indian country is the lack of funding available for enforcement operations. The National Institute of Justice Study on Policing on American Indian Reservations utilized three reference points to illustrate the disparity between Indian country and other law enforcement jurisdictions; officers per 1,000 residents, law enforcement dollars per capita, and dollars spent per employee. Their findings show a

significant disparity between tribal law enforcement agencies and their counterparts (Wakeling, Jorgensen, Michaelson & Begay, 2001, p. 27).

### **AMERICAN INDIANS AND TRIBAL JAILS**

Since 2000, the U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics (BJS), has compiled data regarding jails in Indian Country (to include American Indians and Native Alaskan). The most recent data published by the BJS from July 2014 reflects mid-year data collected each year between 2000 and 2013, with the exception of 2005 and 2006, when not data was collected.

In 2013 a total of 2,287 inmates were confined in 79 Indian country jails. That represents an increase of 512 inmates (22.4%) since 2000, but a reduction of 77 inmates (3% decrease) from a peak of 2,364 inmates in 2012. The number of incarceration facilities increased from 68 in 2000 to 79 in 2013, although the number represents a decrease from a peak of 82 in facilities in 2008. This is attributed to closing of some facilities, the consolidation of some facilities, and new construction. The rated capacity of the facilities in Indian country increased from 2,076 inmates in 2000 to 3,482 inmates in 2013. The occupancy percent of these facilities fell from 85.5% in 2000 to 65.7% in 2013. The average daily population at these facilities was 75% occupancy in 2004 (no data was available prior to this year). In 2013, the rate fell to 61.5%, a reduction of 18% since 2000. The average number of inmates incarcerated per facility increased from 26.1 in 2000 to 28.9 in 2013.

The 2013 report also showed that the number of inmates incarcerated in Indian country jails for violent offenses held steady at 31% - as it had since 2010. Of those incarcerated for violent offenses, domestic violence (15%) and assault (10%) – both

aggravated and simple – accounted for the largest percentage of violent offenders. Approximately 20% of all inmates incarcerated in Indian country jails were held for public intoxication charges. The average stay at admission to jail for all inmates was approximately six days. In 2000, 84% of all individuals incarcerated in Indian jails were adults (16% juveniles). By 2013, the percentage of juvenile offenders in jail had dropped to 8%. Males (both adult and juvenile) account for 78% of all offenders incarcerated; a rate that has held steady between 2000 and 2013. Between 2000 and 2013, there has been a 5% decrease in the number of inmates incarcerated that had been convicted (61% to 56%).

Although the 2013 report holds the most recent data available from the Bureau of Justice Studies, the most comprehensive report to date from BJS is the 2011 Compendium of Tribal Crime Data. The following highlights information from that report:

- Nationwide (including local, State, and Federal facilities), the number of American Indians under correctional supervision in 2009 increased 5.6% over the previous year. Of the nearly 79,600 Indians under supervision, approximately 37% (29,400) were incarcerated while the remaining 63% were under supervised probation or parole.
- Of 29,400 Indians incarcerated, approximately one-half were in state prisons (14,646) and 11% (3,154) were being held in federal prison. The remaining 11,576 were in either local jails (9,400) or in tribal facilities (2,176).
- Over a 12-month period ending June 30, 2009, the average daily population in Indian country jails increased 12% while the occupancy rate of these jails increased from 64.2% to 73.5% of capacity.

While the American Indian population accounts for just less than one percent of the overall U.S. population, American Indians accounted for 1.3% of all persons incarcerated in the United States. The incarceration rate for American Indians was 932 per 100,000 persons, approximately 25% higher than all other races (747 per 100,000 persons). Between 2000 and 2009, the number of American Indians incarcerated in jails and prisons nationwide grew by 4.3% annually. Between June 2008 and June 2009, the number of American Indians under correctional supervision grew 5.6% while the number of those incarcerated in jails or prisons grew 3.5%. The locations of confinement with the greatest increase of Indian population were federal prisons (5.5%) followed by local jails (4.4%) and state prisons (2.7%). Indian country jails registered the lowest increase in incarceration rates at 1.9%.

Adult males made up the majority of those being held in Indian country jails. The percentage of jail inmates that are adult males has ranged from 68 to 72% between 2000 and 2009. Adult females have accounted for between 15 and 19% of those incarcerated in Indian country jails during that same time frame. Juvenile males (8-12%) and juvenile females (3-4%) make up the remaining Indians incarcerated in Indian country jails. Between 2000 and 2009, there has been a significant increase in percentage of those in jail who have been convicted. In 2000, 61% of those incarcerated had been convicted with the remaining 39% being held in pretrial confinement. That number increased to 69% as of 2009 with 31% remaining jailed without conviction.

Violent crime (domestic violence, assault, rape/sexual assault, and other violence) offenders accounted for 37% of those incarcerated in Indian country jails in

2009, a drop from a rate of 41% in 2007. While there was a slight increase in incarceration for those arrested or convicted of assault, those arrested or convicted of domestic violence dropped from 20% to 12%, with incarceration rates for other violent acts holding steady.

This study identifies that American Indians are jailed at a rate 25% higher than all other races in the United States, with only a small percentage of American Indians being jailed in Indian country facilities. Although it draws no comparative analysis otherwise to the rest of the populace, it identifies the prevalence of violence leading to incarceration and the fact that incarceration rates for American Indians is on the increase.

There is an inherent difference in cultural beliefs, values and practices between the Anglo-judicial and the traditional American Indian concept related to justice. As stated previously, returning an offender and the aggrieved party back into a harmonious state with the community was the primary focus in most, if not all, native communities. William Archambeault identified these competing values as follows (Ross & Gould, 2006, p. 148).

**TABLE 4.3**

*Prison Management vs. Native American Values of Justice*

<i>Native American Values</i>	<i>Prison Management Values</i>
Tribal sharing and ownership of material possessions	Authority, protection of individual property rights, order maintenance through written laws and formal enforcement of law
Spiritual bonding and balance with nature and each other	Legalistic protection of individual rights and formalized punishment of wrong-doing by legal proscription

<p>Respect for diverse individual behavior, natural equality for all people and living things</p> <p>Restoring balance and harmony among the tribe through mediation and mutual agreement between victim and wrongdoer</p> <p>Use of traditional methods of healing and mentoring are the key to restoring balance and harmony</p>	<p>Prison policies developed to ensure health and safety of staff and inmates and to prevent escapes</p>
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In addition to the differences in goals between American Indian values of justice and the Anglo-American concept of prison management, the very concept of time and movement differs significantly as well, at least from a historical standpoint. Whether or not this holds true in today's American Indian population is debatable, based on the history of Federal Indian policies and the attempts to assimilate Indians into the mainstream lifestyle of Anglo-America. From a theoretical standpoint, Ross & Gould (p. 151) identify the differences as:

**TABLE 4.4**

*Prison Management vs. Native American Values of Movement*

<i>Native American Values</i>	<i>Prison Management Values</i>
<p style="text-align: center;"><u>Natural cycles of time</u></p> <ul style="list-style-type: none"> <li>• Time as continuous and repeating cycles of nature</li> <li>• Recognize cycles of the sun and moon as real. Do not recognize small units of linear time as being real.</li> </ul>	<p style="text-align: center;"><u>Linear Time</u></p> <ul style="list-style-type: none"> <li>• Conceptualize all human historical and present activities as moving through space towards some unknown or future ultimate goal or purpose.</li> <li>• Time is organized into conceptually manageable and operationally measurable units.</li> <li>• Assume that these abstract units of time are real and that people must structure their lives to conform to them.</li> </ul>



<p style="text-align: center;"><u>Event</u></p> <ul style="list-style-type: none"> <li>• An event is ready to begin when all people and objects are assembled. An event ends when the natural cycle of time has elapsed.</li> </ul> <p style="text-align: center;"><u>Location</u></p> <ul style="list-style-type: none"> <li>• Native healing involves natural processes and most ceremonies occur in natural surroundings. Some require specific locations in nature.</li> </ul> <p style="text-align: center;"><u>Freedom of movement</u></p> <ul style="list-style-type: none"> <li>• Healing in nature requires freedom of movement as the individual experiences the healing energies of Mother Earth.</li> </ul>	<p style="text-align: center;"><u>Activity</u></p> <ul style="list-style-type: none"> <li>• Prisons organize inmate activities according to small units of linear time. Each activity has a rigid beginning and stopping point.</li> </ul> <p style="text-align: center;"><u>Assigned location</u></p> <ul style="list-style-type: none"> <li>• Prisons assign ceremonies to designated, secured locations within the prison.</li> </ul> <p style="text-align: center;"><u>Restricted movement</u></p> <ul style="list-style-type: none"> <li>• The movement of all prisoners within an institution must be tightly controlled, supervised, and restricted by physical barriers.</li> </ul>
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For American Indians who are incarcerated and adhere to traditional methodologies of healing, there is continual conflict based on the native concepts of space and time and those ideals imposed upon the general prison population. Many traditionalists still believe in the powers of the so-called medicine man. The medicine people are often frustrated by the inability to practice traditional healing. They are often treated as second-class citizens by prison chaplains, are pressured to conduct ceremonies on a specific timeline, have their sacred objects (e.g., eagle feathers) treated with disrespect, have sacred objects taken from them by prison staff (e.g., tobacco), and have to accommodate to varying rules depending on which prison staff shift is on during their visits (Ross & Gould, 2006).

Regardless of the prevalence of tradition and culture adhered to by American Indians serving time in Federal, state or local correctional facilities, there is undoubtedly a problem in Indian societies regarding violence, crime, and recidivism. The apparent conflict between traditional or customary healing and prison rules and

regulations only exacerbates the problem. Even though there has been a decline in recent years in the American Indian incarceration rate for violent crimes, incarceration of American Indians for violent offenses is twice the national average and, overall, the fact that the incarceration rate for the native population is one-quarter times the national average for all other races indicates a continuing systemic problem that is not being effectively dealt with.

### **CONCLUSION**

This section identified the numerous challenges facing American Indians relating to crime and law enforcement in Indian country. Indians have been found to be more highly represented in the criminal justice arena than all other races; are more apt to be under the influence of alcohol when committing crime; and are overrepresented in incidents of violent crime compared to non-Indians. The convoluted jurisdictional make-up associated with crime in Indian country has limited the effectiveness of policing and the court systems. Federal declination rates appear to be based primarily on evidentiary and witness availability, perhaps indicating a general mistrust of the federal court process. Despite efforts to improve policing through cross-deputization of tribal, local, and state officers, there are still issues associated with funding which have had an adverse effect on policing and the ability to effectively prosecute court cases. These factors, taken together, indicate that the criminal justice system in Indian country, although by far improved over years past, is deficient in ensuring the public safety of those residing in and around Indian country.

## CHAPTER V: THE UTE INDIANS

### PRE-CONTACT

The Ute Indians are the oldest continuous residents in the State of Colorado (Jefferson, Delaney, Thompson, & In O'Neil, 1972). The Utes were likely part of the great migration of Indian people that came from western Canada and Alaska during the thirteenth century. They settled in the area formerly inhabited by the Anasazi, or *ancient ones*, and the presence of the Utes may have led to the Anasazi to move into sandstone caves for defensive measures, which can still be seen today at Mesa Verde National Park. The Utes settlement encompassed present-day Colorado, northern New Mexico, and eastern Utah (Delaney, 1974).

The Ute Indians were surrounded by numerous other tribes, including the Arapaho, Cheyenne, Kiowa, Apaches, Comanche, Sioux, and Pawnees to the east and northeast. To the south were the Navajos and the Apache. The Shoshones, Snakes, Bannocks, Paiutes and Goshutes were found to the north and northwest. Of all the tribes, only the Jicarilla band of the Apaches were consistently friendly to the Utes, with the others often driving the Utes back if they went into their territory looking for food. Relationships between the Utes and neighboring tribes varied based on the needs and alliances present at any given time (Jefferson, Delaney, Thompson, & In O'Neil, 1972).

The Ute Indians eventually became concentrated into a loosely affiliated band of seven tribes with distinct geographical areas of residence (Jefferson, Delaney, Thompson, & In O'Neil, 1972):

- The *Moache* band lived in southern Colorado and in northern New Mexico down to the area of Santa Fe.

- The *Capote* band lived in the area of the San Luis Valley in Colorado near the headwaters of the Rio Grande and near the towns of Chama and Tierra Amarilla in northern New Mexico.
- The *Weeminuche* resided in the valley of the San Juan River and its northern tributaries in Colorado and northwestern New Mexico.
- The *Tabeguache*, also referred to as the *Uncompahgre*, lived in the Gunnison and Uncompahgre River valleys in Colorado.
- The *Parianuc*, also known as the *Grand River Utes*, lived along the Grand River in Colorado and Utah.
- The *Yampa* band lived in the Yampa River valley and the lands adjacent thereto.
- The *Uintah Utes* inhabited the Uintah Basin, predominately in the western portion.

The *Moache* and *Capote* bands of the Utes are now known as the Southern Utes and reside in Southern Colorado, headquartered in the town of Ignacio. The *Weeminuche* band is now referred to as the Ute Mountain Utes and resides in the far western portion of the State of Colorado, the northwestern portion of New Mexico, and the southeastern section of Utah. They are based primarily out of Towaoc, Colorado with a small presence near Blanding, Utah. The remaining bands are now known as the Northern Utes and are located on the Uintah-Ouray reservation in the eastern portion of Utah at Fort Duchesne (Jefferson, Delaney, Thompson, & In O'Neil, 1972).

The Utes, early in their history and before they acquired the horse from the Spanish, were somewhat limited in their numbers and influence due to being surrounded by other tribes that were competing for resources. In order to ensure survivability, the Utes separated into smaller family units for a majority of the year. This requirement was based on the limited amount of food and a large area of land was

required to sustain a small number of people. Searching for food in large groups, while perhaps quicker, did not provide the amount of sustenance required for a large number of people (Delaney, 1974).

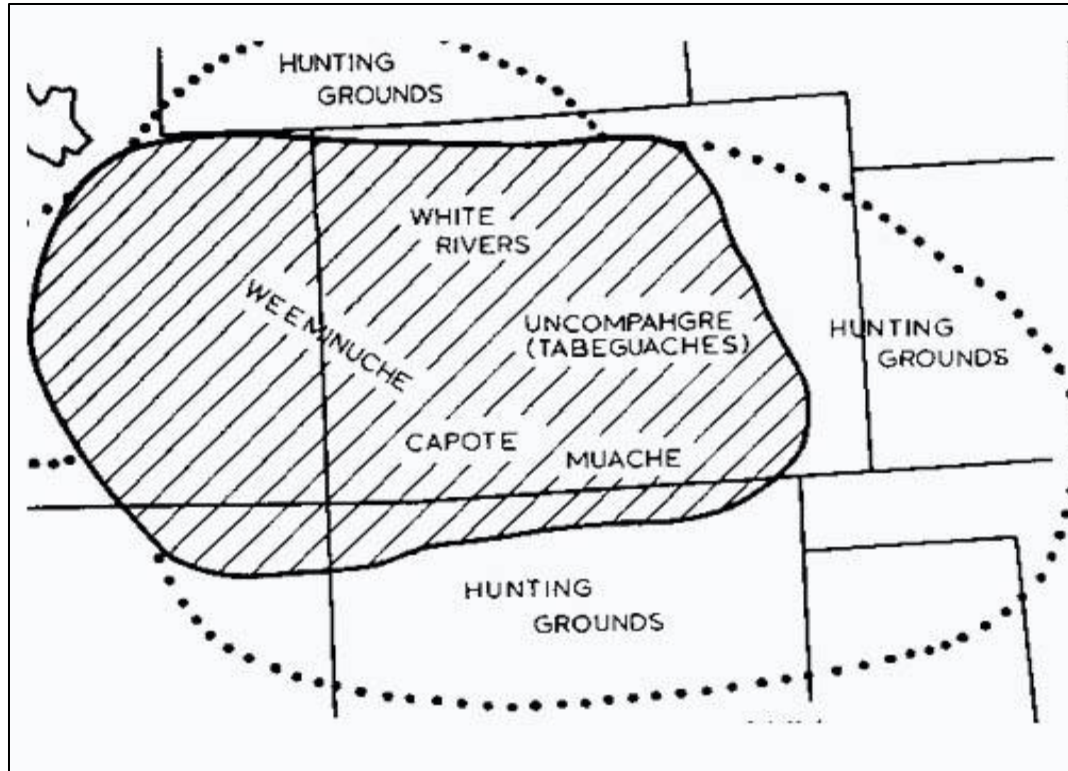
The San Juan Mountains offered the Utes sustenance consisting of deer, elk and timber. It also provided them with protection via the natural landscape. The attributes that attracted the Utes to migrate to the San Juan area in the seventeenth century also drew Spaniards living in the Province of New Mexico (Brooks & Omohundro Institute of Early American History & Culture, 2002).

These family units or clans, usually controlled by older relatives, would follow a circular route throughout the year, going to places where they knew they could find food. From early spring to late fall, the Utes would hunt deer, elk, antelope, and other animals. This was a difficult task as they had yet to acquire horses and their tools and weapons were made of stone. They would also gather fruits and, on occasion, would plant corn, beans and squash to be harvested in the autumn (Delaney, 1974).

As winter approached, these clans of Utes would move to lower elevations and live close together for a stronger defense and to socialize with their people. Each band had its own chief and council who would be responsible for the overall camp activities and movement. Each family unit would control individuals within their family. The Capotes, Moache and Weeminuche bands would winter in northwestern New Mexico or northeastern Arizona; the Uncompahgre would winter between Grand Junction and Montrose, CO; the Northern Utes near the Green, White or Colorado Rivers. These winter camps would serve as a festive time to visit before the cycle began once again (Delaney, 1974).

**FIGURE 5.1**

*Original Ute Territory*



<http://www.southern-ute.nsn.us/history/chronology>

### **CONTACT AND RELATIONS WITH NEW SPAIN**

The first contact between outsiders and the Ute Indians likely occurred towards the end of the 16<sup>th</sup> century when the Ute Indians came into contact with Spanish explorers who began to trade with the Utes. As early as 1598, Spanish expeditions identified the “Yuttas” as powerful people who were expert bowmen. Ute men were said to go naked, probably with breechcloths while the women wore pants and shoes made of buckskin (Delaney, 1974). They traveled in seasonal migration which brought them into contact with the northward expansion of the Spanish. Despite this fact, the

Utes lived outside of the sphere of influence from Spanish, then Mexican settlers until the eventual conquest by the United States (Blackhawk, 2006).

Initial contact between the Utes and Spanish was peaceful and led to perhaps the most significant acquisition by the Utes – the horse. The typical price for a horse was too high for the Utes, so they would often trade their children for horses. These children would in turn be trained as sheep and cow herders. The acquisition of the horse led to a significant change in lifestyle for the Utes. The introduction of the horse allowed Ute clans to become more stationary; horses allowed the warriors to go and hunt the buffalo of the Plains and eastern slope of Colorado while multiple clans could gather together for joint protection, no longer inhibited by the difficulties of gathering food and hunting small game over a vast area for survival. The Utes became very proficient and the buffalo soon became their primary resource, providing vast amounts of meat and skins for making tepee covers, blankets, thread bowstrings, skin bags, moccasins, and other clothing items (Rockwell, 1998).

As the Utes obtained more horses, they grew into a more powerful force among the Plains Indians and Spanish settlements in New Mexico. From previously withdrawn and peaceful grouping of small family units, the Utes became more warlike and aggressive. They began conducting raids to acquire more horses from Spanish settlements and also conducted raids on other Indian groups in order to take captives to trade for horses. Despite this fact relations between the Utes and Spanish were considered to be generally peaceful (Marsh, 1982). The Spanish brought a culture of violence and slavery to New Spain, something that had a significant effect on the native population throughout the Southwest. Pueblo Indians and those residing on the Spanish

colony frontier soon found themselves as valuable commodities to the Spanish, specifically in the mining industry. The Utes' first encounter with a flourishing slave trade came at the hand of Governor Luis de Rosas who, in 1639, launched a war against the neighboring Utes which resulted in numerous deaths and the capture of 80 Utes as slaves. The Utes themselves would transition from a slave commodity to slave traders as their equestrian and military capabilities grew (Blackhawk, 2006). This first violent contact would shape Ute relations with the Spanish and lead to reprisals for the next century, although the Spanish and Utes reengaged in trading at an increased frequency and under a generally peaceful relationship by 1641 (Jefferson, Delaney, Thompson, & In O'Neil, 1972).

In 1670, the Utes, being mobile and an increasingly significant force to be reckoned with in New Mexico, entered into their first treaty with a European nation. The Spanish realized that they could not prevent Indian raids solely through violence and turned to trade as a means to protect their interests on New Spain's northern frontier. Deteriorating relations with other tribes led the Spanish to attempt to enter into treaties in order to stabilize their rule in New Mexico (Marsh, 1982). Spanish traders introduced metals, tools, horses and weaponry to the Indians who in turn provided pelts, furs and other items indigenous to their economy (Blackhawk, 2006).

In 1680, the Spanish were pushed out of New Mexico to present-day El Paso by the Pueblo Revolt and would not return until 1692. The Pueblos, never liked by the Utes, had been relatively free from Ute incursions while under Spanish protection, but during the period without a Spanish presence, the Utes expanded their area of influence southward and conducted raids on Pueblo Indian settlements (Jefferson, Delaney,



Thompson, & In O'Neil, 1972). The Pueblo revolt created a vacuum in the area and saw Indian groups vying to take control of the economic resources left behind as the Spaniards departed. During the Spanish absence, raids into the territory increased as Apaches, Navajos, Utes and Great Plains Indians sought to gain horses, weapons and regain captives taken from them in previous raids (Blackhawk, 2006).

Prior to the Pueblo revolt, the Utes and Spanish had entered into a peaceful coexistence. The Utes had created an economic, social and military union with settlers in New Mexico. When the Spanish returned to New Mexico in 1692, Diego Vargas not only sought to punish the Pueblo Indians for the revolt, but sought out the Ute Indians to renew their alliance and, at the same time, strengthen their foothold in the colony. The Utes, who had resorted to raiding their southern border area during the absence of the Spanish, reinstated trade relations but also continued raids in the area (Blackhawk, 2006).

At the turn of the eighteenth century, the Ute Indians, already a powerful Indian force in the southwest, entered into a new alliance with a group unknown to the Spanish colony. In 1706, the first recorded reference of the Comanche Indians appeared when residents of Taos notified the Spanish governor in Santa Fe that the residents were expecting an imminent attack from the Ute Indians and their new allies. The Comanches were a splinter group of the Shoshone Indians that migrated south towards the latter part of the seventeenth century, possibly due to disputes over game, the encroachment on the populace of a small epidemic, or an effort to gain access to Spanish horses. The southward migration saw the Comanche skirting the Apache frontier and led them to the territorial lands of the powerful Ute Indians. Although the

initial belief was that the first encounter between these two people may have been a violent one, it is now believed that the first encounter between the Utes and Comanches was more of a reunion between two people that shared a distant relationship; they both came from Numic-speaking cultures which shared a similar language and cultural background (Hämäläinen, 2008).

The Utes were far more advanced than the Comanches upon their reunion. The Utes, who shared a border with the Spanish province of New Mexico, had a greater exposure to Spanish technology and trade. The union between these two Indian groups proved to be mutually beneficial. The Comanches learned from their Ute allies the intricacies of their new homeland, were exposed to the equestrian lifestyle of hunting and war, and provided the tools to become tradesmen with their southern neighbors. The Utes, who had been engaged in warfare with a number of neighboring tribes, found military assistance in the Comanche (Hämäläinen, 2008).

Within two decades of establishing trade with the inhabitants of New Mexico, the Utes along with their new Comanche allies, sought to solidify their power in the region. The Utes had acquired firearms from New Mexican trade fairs despite a sales ban to Indians and the Utes and had enough in their possession to train and provide arms to their new allies. Although horses and firearms provided the Utes and Comanches with the ability to increase their range for hunting and raiding – which allowed for additional trade at New Mexican trade markets – the real economic power in the region by the turn of the century was in the slave trade (Hämäläinen, 2008).

Although prohibited by Spanish law, the slave trade thrived in New Mexico. The colonists in the area sought slave labor for domestic work and agricultural and

other trade requirements. In order to legally purchase slaves, Spanish settlers in New Mexico sought to purchase savage Indians in an effort to rescue them from “maltreatment and heathenism” (pg. 26). The concept of purchasing Indians to provide them with religious education was a method to circumvent the ban on the slave trade. The Utes had previously been part of the slave article of trade due to raids against their encampments by Spanish, Navajo and Apache slave traders. Now, with their Comanche allies, the Utes sought to reenter the trade as the supplier. When not hunting and raiding their southern frontier for horses, the alliance took to taking and selling captives over a large expanse of the southwest. The loose confederation of Spanish settlements in northern New Mexico seemed helpless to ward off the efforts of the Ute-Comanche alliance. By the 1720s, an eastward vision gave relief to the Spanish of New Mexico (Hämäläinen, 2008).

The expansion eastward of certain Ute bands and their Comanche allies occurred within a generation of the Comanches allying with their distant relatives. Although the Plains offered opportunities to explore and expand their territorial holdings, the push eastward almost certainly incorporated an expansion of the slave trade. The Jicarilla and Carlanas bands of the Apache Indians had previously fled eastward from the Rocky Mountain region due to continuous harassment and raids from the Utes and Comanches. Rather than buffer themselves from the aggression of their neighbors, the retreat to the Great Plains drew Ute and Comanche slave traders into the heart of Apache lands. When the Utes and Comanches arrived in the Great Plains, they found ample grasslands and water to supply for their horses year-round. The longer the Utes and Comanches remained in the Plains, the greater the increase in the number of

their horses. The amount of bison in the Plains also provided the Utes and Comanches an enormous and predictable resource. In addition, the vast number of commercial opportunities found in a thriving trader market appealed to the Utes and Comanches, who had limited opportunities to acquire goods in a limited manufacturing reserve in New Mexico. By the late 1720s through the 1730s, Ute and Comanche Indians moved in mass to the Great Plains (Hämäläinen, 2008).

By the mid-eighteenth century, the Ute-Comanche alliance had ended. Within half-a-century, the Comanches had progressed from the Stone Age to the Iron Age. They had acquired weapons, horses, and a proclivity for trade. The Utes, who had taken in their distant cousins fifty years prior, had outlived their usefulness; the Comanches were ready to stand alone. By 1749, the Utes had sought protection and assistance from the Spanish military against the Comanches. The end of their joint war against the Apaches and Spanish, coupled with independent negotiations with the French, Taovays and Pawnee Indians, indicated that the Comanches no longer needed the Utes and were, in fact, considered threats to the Comanche commerce established on the plains. The Comanches, once dependent upon Ute assistance, had outgrown their allies and would become the dominant tribe in the southern plains (Hämäläinen, 2008).

After the end of the Ute-Comanche alliance, the eviction from the Great Plains, and the return to their traditional homelands, the Utes found themselves surrounded by Indian groups that they were not allied with; the Navajo to the south, the Comanches to the east and the up-and-coming Plains Indians to the north. By the mid-eighteenth century, Spanish officials sought to either incorporate the Utes (and other Indian groups) into an alliance or to exterminate them. The end goal for the Spanish was to

missionize the surrounding Indian communities and to convert them into a lifestyle which would result in self-sustenance. The Spanish understood that protection of their settlements relied on an alliance with their Indian neighbors, but also feared that these Indian groups may ally with rival imperialist groups, specifically the French (Blackhawk, 2006).

By the mid-eighteenth century, the Utes and Jicarilla Apaches, who shared the northern border of New Mexico with the Utes, began to seek peaceful relations with New Mexicans. Northern New Mexican settlements, long abandoned due to the Ute-Comanche raids of the first half of the eighteenth century, saw resettlement with the Utes building strong commercial ties with the villages immediately south of their territory, specifically Abiquiu and Ojo Caliente (Books, 2002). By 1752, the Utes and Comanches had reached individual accords with the Spanish. For the next decade, the Utes and Comanche would engage in battles against one another in a borderland war that now separated the former allies. By 1762, the Utes established trading operations in Abiquiu and Ojos Caliente to distance themselves from the Comanches. These new trading posts were separated from Taos by the Rio Grande and Chama River, moving the Utes away from Comanche interests (Hämäläinen, 2008).

While Utes had a strong political relationship with the Spanish on their southern border, the potential for conflict with their neighbors heightened the need to increase their stocks of horses and weapons. In the mid-1700s, the Utes turned to the west for a solution. The non-equestrian Great Basin Indians such as the Western Shoshone and Paiutes were targeted by Ute raiders. These tribes were weak by comparison and provided the Utes with the ability to capture and sell persons in the New Mexico slave

market. Coupled with traditional trade items such as animal hides, northern New Mexico markets were dependent on Ute trade; without Ute trade and alliance the northern frontier could not be maintained. Spanish governors directed local officials on the frontier to be compassionate with their Ute neighbors (Blackhawk, 2006).

Spanish authorities also knew that the Utes had a capability to wage war, but the peace achieved was based on a persistent fear of their former allies, the Comanches. The peace accord between the Utes and New Mexico led to a change in political authority within the Ute culture as well. Understanding that the alliance with the Spanish would increase their overall protection from hostile neighbors, Ute leaders found themselves punishing those within the tribe that conducted raids into New Mexico and returning stolen property. Despite the alliance with their northern neighbors, the Spanish leaders of New Mexico still believed in their superiority over their Indian allies (Blackhawk, 2006).

During the 1770s the Comanche expanded their interests and territory; they established settlements deep in Ute territory, driving the Utes westward, and by doing so soon found themselves with unfettered access to Ute raiding and trading spheres. The Utes on the eastern front had retreated to the Utah Lake valley and, when encountered by Domínguez-Escalante expedition, feared Comanche war parties to such an extent, they were no longer able to go out for hunts and were suffering from starvation. By the end of the decade, the Comanche who had continued raiding into northern New Mexico found themselves at the receiving end of a call to war. In 1779 the governor of New Mexico, Juan Batista de Anza, along with 600 presidial soldiers and 200 Ute and Jicarilla Indians, went to attack the Comanche on the plains. Spanish

victory in the western Comanche territory and the death of Cuerno Verde, ruler of the territory, led to an immediate cessation of Comanche hostilities in New Mexico and a retreat from Ute territory. By 1786, the Comanche and Ute Indians had entered into peace accords with the Spanish and with one-another (Hämäläinen, 2008).

By the early nineteenth century, Utes had become predatory slavers. Along with bringing goods to trade fairs, Utes frequented New Mexican trade markets to sell captives. Their strong equestrian background allowed the Utes to capture and sell Indians from the Great Basin. Adult male slaves were considered too difficult to manage, so Ute slavers would often kill male captives and dealt predominately in women and children. Indian women provided domestic and agricultural labor for the Spanish; they were also used as sex slaves which assured demographic growth in communities. Larger and more populated border towns provided more security for New Spain by increasing the buffer zone along the Indian frontier (Blackhawk, 2006).

### **RELATIONS WITH INDEPENDENT MEXICO**

While the Southern Utes had generally maintained friendly relations with the residents of New Mexico for many decades and were treated well during times of peace, the Mexican War for Independence would change the relationship between the Utes and their southern neighbors. The newly formed Mexican government initially encouraged peaceful relations with the Southern Utes Indians and, during the 1820s, gave numerous gifts to the Utes to encourage peace as the Mexican government lacked sufficient troops to maintain and control their the Indians on the frontier (Delaney, 1974).

The alliances that Spain had built began to unravel with Mexican independence. There was a flood of foreign traders entering the area and conflicts between local Indian

groups increased. Mexican authorities liberalized trade in the area and soon American traders flooded the area, providing much needed weapons and manufactured goods. Despite their efforts to transition the alliance shared with the Spanish to Mexican officials, the Southern Utes were unsuccessful in attaining the same privileges they once had under Spanish rule. Their history of peaceful coexistence made the Utes less of a threat against an independent Mexico and Mexican authorities turned to the more hostile tribes in the area – specifically the Comanche, Cheyenne and Navajo – with gift disbursements to protect their national interests. Between 1821 and 1844, the Southern Utes were virtually dismissed if not punished for living at peace with their neighbors (Brooks & Omohundro Institute of Early American History & Culture, 2002).

The initially peaceful relationship between the Mexicans and the Southern Utes fell apart in 1832 when the Mexican government allotted the Tierra Amarilla land grant – granting land to Mexican settlers in the region. As more Mexicans came into the region, encroachment on Southern Utes lands inevitably occurred, specifically affecting the traditional lands of the Capote band of the Ute Indians. In an effort to offset the encroachment, the Southern Utes and Navajo Indians allied to push back both Mexican settlers and other Indian tribes of the Plains that were being pushed into their land base. Additional land grants occurred during the 1830s and 1840s which increased the friction between the Southern Utes and the Mexicans in the area (Jefferson, Delaney, Thompson, & In O'Neil, 1972).

The Southern Utes would join Navajo and Apache raiders in New Mexico to acquire goods to trade with American traders. When Southern Utes would go to New Mexico for the purpose of trade, it was to seek out American traders. Otherwise the



Southern Utes would invite American traders onto their lands in an effort to draw them away from New Mexican markets. By 1840, many New Mexicans feared Southern Utes raids and would not go to Ute lands, although those who resided in the area still felt a tie to their Indian neighbors (Brooks & Omohundro Institute of Early American History & Culture, 2002).

Increased contact occurred between Anglo-American “mountain men” during Mexican rule as the Mexican government was less stringent in regards to controlling commerce than the Spanish crown had been. The relationship between the Southern Utes and Anglo trappers was generally peaceful based on the fact that the Utes understood that these men were not permanent settlers, unlike the Mexican frontiersmen who moved into the area to farm and ranch. All that was to change as the U.S. entered into war with Mexico in 1846 and within two years would acquire all of the Ute territory (Delaney, 1974).

Since the arrival of Spanish explorers over 200 years prior through Mexican control of their territory, the Ute Indians had lived in relative peace with their non-Indian neighbors. Although never considered equals, there was an understanding and a mutual accommodation between the Utes, Spanish and Mexicans. The U.S.-Mexican War brought a significant change to the dynamics in the region. The signing of the Treaty of Guadalupe-Hidalgo in 1848, ending the war between the United States and Mexico, included United States recognition of the legitimacy of all land and property rights of Mexicans throughout traditional Ute lands (Rockwell, 1998).

## **RELATIONS WITH THE UNITED STATES**

Upon the termination of hostilities in 1848, a large influx of settlers, migrants and soldiers entered New Mexico and Colorado. The Southern Utes, having survived over a century of Spanish then Mexican settlements in the area, were ill prepared to handle the rapid expansion westward of the United States. The Southern Utes soon learned that they could not compete militarily with the U.S. Army, and embarked on a campaign signified by negotiation, accommodation and diplomacy. The Southern Utes, who had pledged peace to U.S. officials, remained neutral in conflicts between the U.S. and neighboring tribes. This policy allowed the Utes the ability to maintain control over their traditional homeland (Blackhawk, 2006).

The first negotiations with the Ute Indians and the government of the United States actually occurred two years before the end of the Mexican – American War. In 1846, the United States Army had occupied New Mexico and entered into negotiations with the Ute Indians in an effort to protect the Army supply and communication lines in the area. The U.S. Army, knowing that Ute horsemen could effectively maneuver as well as any light cavalry, needed to ensure that their military focus on expansion westward would not be impeded by the Utes. On October 13, 1846, a delegation of sixty Ute leaders entered into an agreement with the U.S. Army to remain peaceful with the United States (Rockwell, 1998).

By early 1849 though, the Utes in Colorado found themselves in raiding campaigns. With the influx of settlers and the subsequent reduction of resources, Ute raiding parties entered New Mexican and Euro-American settlements in the area in an effort to provide for themselves during scare times. For the Utes, it was an act of

survival – an economic means to an end. To the U.S., it was a breach of peace which required immediate retaliation. In March 1849, the U.S. Army engaged in what would be an on-again of off-again military campaign against the Utes. The death of ten Utes, the taking captive of three others and the destruction of 50 lodges and provisions led to Ute retaliations. In the end, the Utes sent envoys to Santa Fe in an effort to resolve the issue diplomatically instead of militarily (Blackhawk, 2006).

The following year, Congress ratified the first treaty with the Ute Indians. The Utes recognized the power and authority of the United States and agreed to cease hostilities, return stolen property and captives, and allow for the passage of white settlers through their land. In turn, the Utes would receive trading posts, military agencies and annuities, and be provided a clearly established territorial boundary. Due to appropriation constraints, the U.S. Indian Office was unable to provide what was agreed upon in the Treaty of 1850. Although most Utes maintained a desire for peace, the Utes felt that the delay in the establishment of forts, agencies and annuities, coupled with a perceived disparity in treatment received compared to their rivals, nullified the terms of the treaty (Blackhawk, 2006).

No specific boundaries were set forth in the treaty itself and, after the leaders of the Utes who signed the treaty expressed “an utter aversion” to labor, Agent Calhoun promised that the U.S. would take care of the Ute Indians in the sum of \$5,000 per year. An Indian agency was opened in Taos in 1850 to assist the Ute Indians, but closed shortly after it opened due to the absence of congressional appropriations to support it (Delaney, 1974). It would reopen three years later under Indian Agent Kit Carson,

considered to be a friend of the Utes. Additional agencies would open at Abiquiú, Tierra Amarilla, and Cimarron (Decker, 2004).

Additional towns were founded between 1851 and 1853 in the San Luis Valley – San Luis, San Pedro, and San Acacia – by former Mexican citizens. The subsequent increase in settlers and livestock led to a reduction in the amount of game that the Utes had historically relied upon for their survival. The game went further into the higher elevations and the Utes reverted to raiding settlements for livestock (Jefferson, Delaney, Thompson, & In O'Neil, 1972). This led to increased tension between the Utes and both Anglo and Mexican settlers in the area. The U.S. government, in turn, established their first military post in Ute territory – Fort Massachusetts – in 1852 in an effort to protect the settlers from the Utes and their departure from their reserved lands, lands that had not been definitively defined in the Treaty of Abiquiú (Decker, 2004).

The expansion of Americans westward placed the Utes at a great disadvantage by the 1850s. Treaties with Indians in the Plains gave these tribes annual annuities which included arms and ammunition. The Ute Indians received no such gifts and fell behind the Cheyenne and Arapahoe in military capabilities. This was exacerbated by the trading affiliation with these tribes and Arkansas traders. By the end of 1854, the growing resentment towards disparaging treatment, and the presence of Fort Massachusetts, led to a Ute uprising (Brooks & Omohundro Institute of Early American History & Culture, 2002). On Christmas Day 1854, Ute Indians attacked Fort Pueblo, killing all of its inhabitants. For the next nine months, the Utes - specifically the leader of the Muache Band Tierra Blanca – were involved in skirmishes with the U.S. Army (Delaney, 1974).

By 1855, the Utes, subjected to military conflicts with the United States, entered into a new treaty with the U.S. It was apparent that diplomacy, despite previous broken promises, was a more prudent avenue to take. The failure of the U.S. to ratify (and subsequently comply with the terms of) the 1855 treaty with the Utes did not result in the type of concerted military action that was seen after the 1850 abrogation, although individual groups frequently took to raiding settlements in an effort to provide for themselves. The Utes spent the following decade in discussion with the U.S. to secure access to their mountain homelands (Blackhawk, 2006).

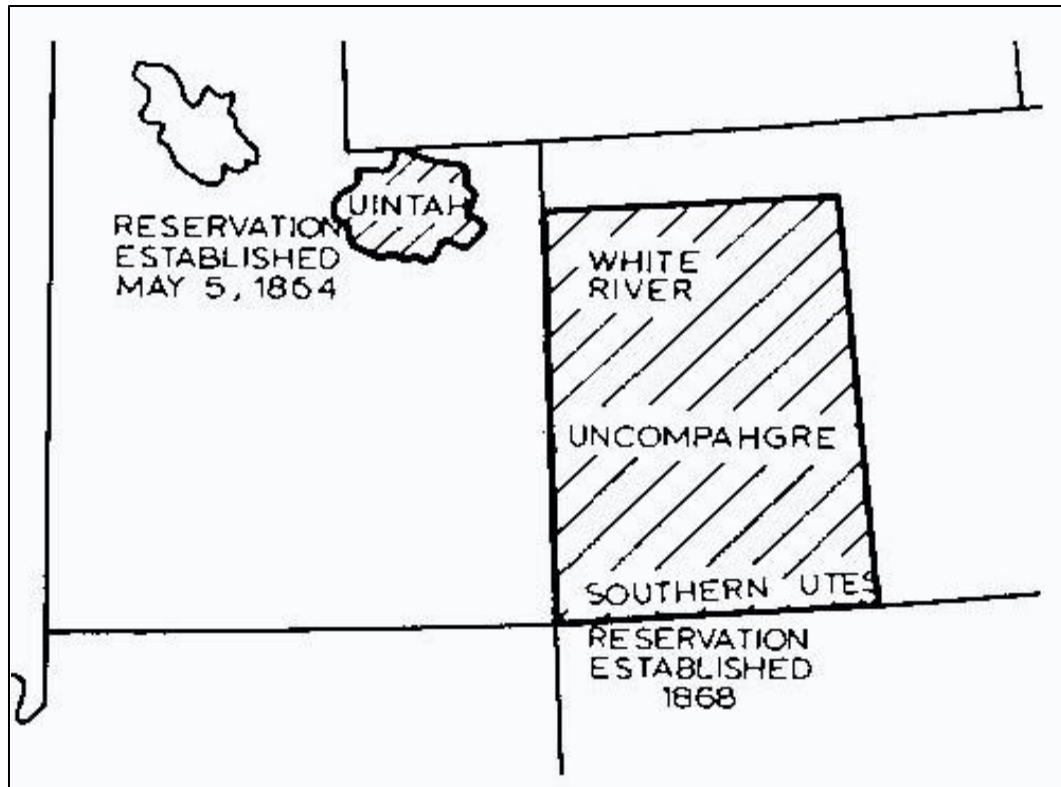
The next treaty between the Utes and the United States was signed in 1863 as friction continued between the Utes and settlers who moved into Ute lands. The Treaty of Conejos, also referred to as the Tabeguache Treaty, was signed by the representatives from the Tabeguache Tribe in 1863 and signed by President Lincoln the following year. The treaty was controversial among the Utes as only the Tabeguache representatives signed the agreement, while the Capote and Moache refused to sign and the Weeminuche refused to even send representatives to negotiate with the United States. The treaty surrendered one-quarter of all Ute land, which was the traditional hunting bands of the other Ute tribes, while keeping most of the lands customarily associated with the Tabeguache bands (Young, 1997). The United States promised to provide the Tabeguache with cattle, sheep, a blacksmith, and \$10,000 cash-per-year and the equivalent of \$10,000/year in provisions for the next decade. The U.S. government failed to fulfill a single obligation it incurred; they acquired one-quarter of all Ute lands for nothing.

Five years later, on March 2, 1868, a new treaty was negotiated in Washington, D.C. in an effort to end the Ute problem, a problem caused by the government's failure to adhere to previous agreements and stipulations. An additional problem with the Treaty of 1863 existed; the United States had negotiated with what the U.S. government considered to be the Chief of all Utes – the influential and cooperative Ouray. In reality, no such single chief existed over the Ute bands and the support for the Treaty of 1863 was lacking (Young, 1997). As the Utes were confined to smaller parcels of land to appease white settlers and with the failure of the government to provide guaranteed provisions, the Tabeguache Ute Indians, without sufficient game to hunt, took to begging in the streets of Colorado City, Colorado. This caused additional friction with the white settlers in the area (Jefferson, Delaney, Thompson, & In O'Neil, 1972).

The treaty of 1868 designated a single reservation for all bands of the Ute Indians in the western third of Colorado. An agency for the Northern Utes was established along the White River while the Tabeguaches, Moaches, Capotes and Weeminuches were to be provided for by an agency located along the Los Piños River. Provisions, to include education, clothing and rations, were to be provided by the U.S. government until such a time that the Utes could support themselves (Delaney, 1974). The treaty guaranteed that the new lands designated as theirs would remain forever theirs and created a third agency in Denver in 1871, although it was closed five years later as the Ute Indians, no longer able to acquire money through the sale of hides, started to cause problems in the city (Rockwell, 1998). This would be the last treaty between the Ute Indians and the U.S. government as Congress passed a law three years later that ended treaty making with the Indians (Delaney, 1974).

**FIGURE 5.2**

*Ute Territories in the 1860s*



<http://www.southern-ute.nsn.us/history/chronology>

The first post-treaty agreement entered by the Utes and the U.S. government occurred in 1873. Just after the Treaty of 1868 was signed, gold and silver were discovered in the San Juan Mountains, located in the heart of the Ute lands. The will of the miners to extract the precious minerals exceeded the capability of the Indian agent at the Los Piños agency to prevent them from trespassing on Ute lands. Even the arrival of a small contingent of Army personnel would not dissuade the miners from protecting their new homes and their desire to mine gold and silver. Public opinion in Colorado was heavily against the presence of Army troops and, under political pressure, the

troops returned to Fort Garland, having failed to extract the trespassing miners (Decker, 2004).

Understanding that the current divide between the Utes and the miners would not end well without intervention from the government, President Grant appointed a special commission headed by Felix Brunot in an effort to purchase the San Juans from the Utes. Chief Ouray, still favored by the U.S. government as the primary negotiator for the Utes, along with eight other chiefs, went to Washington, D.C. to negotiate the sale of the lands. Although the Utes were unified against any further reduction in their land base and offered concessions such as allowing whites to mine but not settle in the San Juans, Ouray understood that without going to war with the miners and settlers who were infringing on their land, they had little choice but to accept the government's offer to purchase the land in the San Juans. If they were to go to war, the Ute Indians would eventually be faced with a larger, better equipped army, which was of no benefit to the bands of the Ute tribes (Decker, 2004).

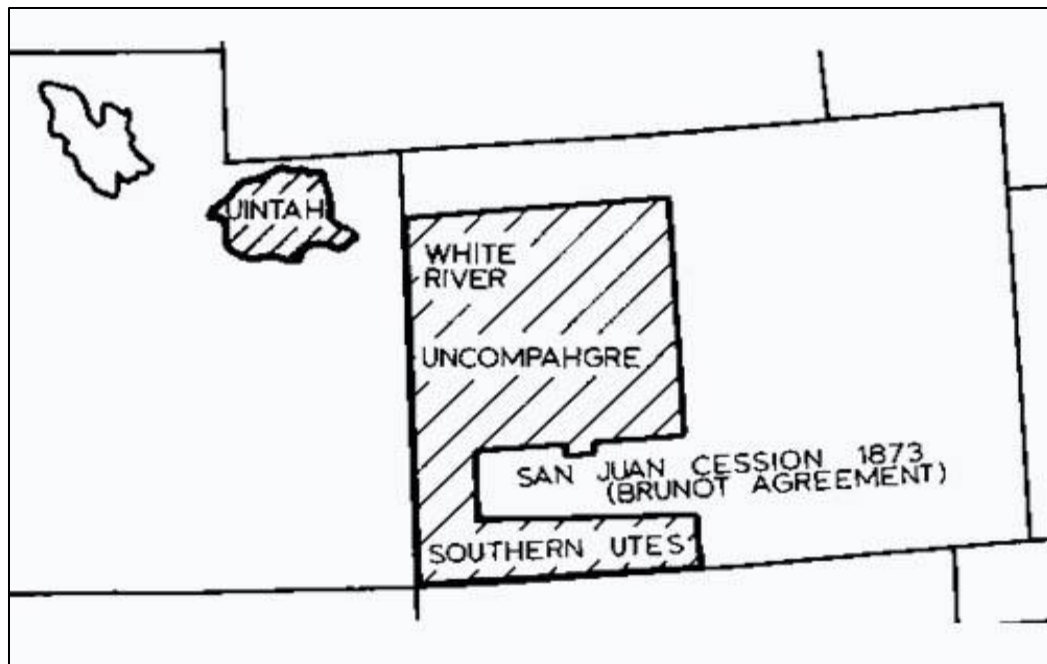
The Utes relinquished approximately four million acres to the U.S. government, approximately one-quarter of the 1868 treaty lands. Despite the fact that the government had continuously failed to follow through with previous promises, either based on lack of appropriations by Congress or simply different interpretations as to what and when provisions were to be provided, Ouray and his party did enter into an agreement with the government, only to find out once again, that what they were to receive was not quite what they were promised. The Utes understood that they would receive an additional annuity payment of \$25,000, not realizing that it was based on interest accruing Treasury Bonds. The Utes were also unaware that the U.S.



government, not the Utes themselves, would determine how and where the funds were to be spent (Decker, 2004).

**FIGURE 5.3**

*Ute Territory – Brunot Agreement*



<http://www.southern-ute.nsn.us/history/chronology>

As Congress only appropriated \$60,000 to fund both the 1868 and 1873 agreements, the payments to the Utes were not made. This particularly alienated the Southern Ute bands, consisting of the Weeminuche, Capote, and Moache Utes; it was mostly their traditional lands that had been ceded. The great Weeminuche Chief Ignacio stated that, “any business done by or through Ouray for him and his country [in the San Juan district] would never be recognized” by the southern bands (Decker, 2004). Many Utes felt that Ouray had favored the desires of the white settlers and government officials in exchange for a \$1,000/year salary provided to him in the Brunot agreement and Ouray was the principle person blamed among the Utes when the

government again failed to live up to its obligation to pay the tribe \$25,000/year for the sale of the San Juans (Rockwell, 1998). Ouray had in fact realized that the Utes were unable to prevent the encroachment of white settlers and by selling the mountainous region to the government, along with the promise of keeping settlers out of the new territorial boundaries, he was attempting to protect the tribe (Decker, 2004).

The final reduction of Ute lands occurred before the end of the decade with the Meeker Massacre at the White River Agency in 1879 in which the Indian Agent and members of the settlement were killed by members of the White River Utes. This uprising was the final major act of resistance by any of the Ute Indian bands and the catalyst for a permanent removal of the Ute Indians from Colorado. The White River Utes were initially forcibly removed, while the Uncompahgre Utes voluntarily followed (Simmons, 2001).

The Act of June 15, 1880, passed by the U.S. Congress, began the process of removal and set the foundation for the Allotment Act of 1887 where reservation lands would be allotted to individual Indians (Quintana, 2004). Before the end of 1881, the four bands of "Northern Utes," including those responsible for the Meeker Massacre, would settle on lands in northeastern Utah on a reservation known as the Uintah-Ouray Reservation. It would take an additional 15 years to determine the fate of the Southern Ute Indians (Decker, 2004).

The first settlement by outsiders into the Ute territory occurred in 1874 in the Rio Chama Valley. Francisco Manzanares, a Ute by birth who had been captured and raised in New Mexico returned to Ute lands with his extended family. The Largo settlement was the first of many settlements on traditional Ute lands and eventually on

the Ute Reservation itself. The Utes began to secretly invite New Mexicans to settle on their reservation and convinced their Indian Agent to issue grazing permits to the new settlers (Brooks & Omohundro Institute of Early American History & Culture, 2002).

One of those who settled there was German-born Civil War veteran William Stollsteimer and his wife, the daughter of trader Antoine Rodidoux. The Utes even managed to convince the Bureau of Indian Affairs to appoint Stollsteimer as their Indian Agent in 1885. Between 1885 and 1887, the Southern Ute Agency developed a local policy of tenant farming where New Mexican villagers would settle on Ute lands, clear lands, build farms and operate them under Ute landlords. During that same time period the son of a slave and a former Buffalo Soldier from the U.S. Army Ninth Cavalry by the name of John Taylor settled on the reservation and married into a Ute family. Thus began the multiethnic and multicultural society that remains to this day (Brooks & Omohundro Institute of Early American History & Culture, 2002).

Between 1880 and 1895, the question of what to do with the Southern Ute Indians remained unanswered. Numerous proposals for relocating the Southern Ute Indians were presented before ten different legislative sessions of Congress – including relocation to northern New Mexico or eastern Utah – during this period, although none were passed (Decker, 2004). In 1874, Congress decided that the Southern Ute Indians, who had resided in southern Colorado since the initial establishment of the reservation in 1868 and whose lands remained, albeit in a diminished capacity, would remain in southern Colorado. In 1894, House Resolution 6792 was passed; it stated that a previous treaty agreed upon with the Southern Ute people to relocate to the territory of Utah was to be voided and those Indians choosing to accept land in severalty in the

eastern portion of the designated reservation while those who did not be assigned to the west (Jefferson, Delaney, Thompson, & In O'Neil, 1972).

The Hunter Act of 1895 imposed the conditions of the Allotment Act of 1887 on the Southern Utes. In order to take effect, three-quarters of the Southern Ute Indians would need to approve the measure. Of the 301 Southern Ute males that voted on the provision, 153 approved taking the allotted lands. Despite the fact that the vote did not meet the three-quarter requirement, virtually all of the Moache and Capote Indians voted in favor, while a vast majority of the Weeminuche band voted against the provision. The U.S. Government, noting that two of the three Southern Ute bands had agreed to the provision, and based on House Resolution 6792, created two separate reservations and subsequently, two separate Tribes.

The Moache and Capote bands would reside on allotted lands on the eastern portion of the reservation, while the Weeminuche would remain on the western portion of the reservation on land held in common, along with a small enclave in southeastern Utah. The Weeminuche band would become known as the Ute Mountain Utes, while the Moache and Capote would be known as the Southern Utes (Simmons, 2001). The external boundaries of the three distinct reservations remain to this day, although the Uintah-Ouray and Southern Ute Indian Reservations are checkerboard allotted lands with vast amounts of non-Indian land holdings within these boundaries.

The end of the nineteenth century and beginning of the twentieth century was difficult for the “newly defined” Southern Utes. By mid-1896, a year after the passage of the Hunter Act, 371 Southern Utes had accepted land allotments totaling 72,811 acres. The remainder of the 595,079 acre reservation became part of the public domain

upon the completion of the allotment period (Simmons, 2001). The opening of the remainder of the land within the boundaries of the reservation was delayed for a period due to a question regarding the location of the eastern border of the reservation. After governmental surveys were conducted and the issue settled, excess lands on the reservation were open for settlement on May 4, 1899. Unlike previous land grabs in the Oklahoma territory, the land available after allotment was far from ideal. The Southern Utes had acquired the best agricultural land, although a number of purchases of land occurred within the opening of the reservation for non-Indian settlement (Jefferson, Delaney, Thompson, & In O'Neil, 1972).

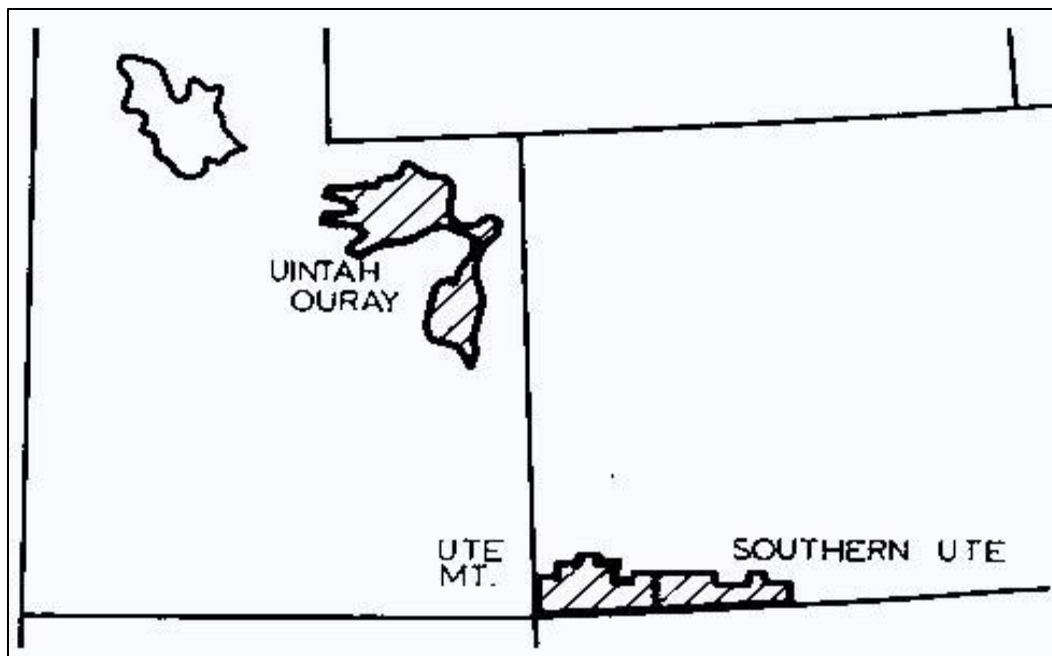
Between 1895 and the passage of the Indian Reorganization Act in 1934, the customary way of life was greatly diminished for the Southern Utes. The separation of the Weeminuches from the Moaches and Capotes fragmented the leadership and political power of the Southern Utes and the lifestyle that had sustained the Southern Ute Indians was being forcibly altered. From the time of “discovery” through the end of the 18th century, the overall population of the Ute Indians fell between 75 and 80 percent from a peak of 8,000-10,000 members. That trend continued through the first two decades of the 20th century; the number of Southern Utes decreased approximately 15% between 1895 and the 1923 census to a total of 359 members (Simmons, 2001).

The efforts to assimilate the American Indians into mainstream society had a devastating effect on the Southern Utes. The traditional Ute diet, consisting of hunted lean game, fish, berries and plant, had been replaced by rations of beef, beans, flour, sugar, salt, coffee and lard. The dietary change led to increase in diabetes, hypertension, and obesity among the populace (Simmons, 2001). The Ute Indians,

although willing to eat the white man's food, wear his clothes and even pray to his God, considered farming demeaning and degrading. Over the course of the first three decades of the Southern Ute Reservation, many Indians began to engage in farming, although many more did not (Pettit, 1990).

**FIGURE 5.4**

*Current Ute Reservations*



<http://www.southern-ute.nsn.us/history/chronology>

Efforts to assimilate Indian youth typically consisted of forced entry into government run boarding schools. The Southern Ute's did not unilaterally oppose sending their children to boarding schools, but they refused to send them to boarding schools away from the reservation (Pettit, 1990). Early enrollments in boarding schools were not kind to the Utes. An 1894 report by the Southern Ute Indian agent stated that one-half of the Ute children sent to the Indian Boarding School in Albuquerque died and one-quarter of those sent to the Fort Lewis School had contracted trachoma, rendering the students blind (Young, 1997).

Sporadic attendance in boarding schools occurred until the turn of century. In 1902, the Southern Ute Boarding School was opened and in 1912 the Allen Day School began operations (Quintana, 2004). By 1916, most of the Southern Ute children were attending public schools (Pettit, 1990). The transition of education from story-telling – which was usually done by the child’s grandparents (Pettit, 1990) – to a structured education led to an eventual reduction of tribal members whose primary language was Ute and, over the course of time, greatly reduced the number of tribal members who could speak any Ute at all.

The role of the medicine man (shaman) began to diminish as well at the turn of the century. Not only had the children sent to boarding schools battled death and disease, the Southern Ute population as a whole became subject to ailments such as tuberculosis, the flu and venereal disease. This was attributed to the fundamental change in their diet and lifestyle coupled with poor lodging, poor sanitation and unsafe drinking water. Medicine men, unable to use traditional healing methods to treat these new diseases, were seen as practicing “bad medicine” and often revenge-killings took place (Young, 1997). Medical services were eventually provided by agency physicians and by the mid-1910s, the practices of the traditional medicine had declined to a point where a majority of those Utes who were ill would contact the white physician assigned to the agency (Quintana, 2004).

Additional traditional practices were also addressed during this time frame to encourage assimilation. In 1911, the Superintendent compelled Utes to formalize their marriage practices and barred children born to parents whose union was not formalized from the Southern Ute rolls (Quintana, 2004); this practice basically made children born

out of sanctioned wedlock unrecognized by the Government thereby eliminating their rights to receive annuities, rations and other services provided by the Agency. Prior to the requirement to formalize marriages, a man would simply move in and sleep with a girl and they were considered married; females were not forced to marry, but acceptance of the male sleeping next to her constituted consent. The newlyweds would stay with the female's family until the birth of a child before starting a home of their own (Pettit, 1990).

Traditional practices, such as the Sundance and the Beardance, were being outlawed as well. These dances had served as an integral part of the Ute identity for centuries. The Sundance is considered by many to be the single most important spiritual ceremony for the Ute Indians. The Sundance is a communal effort by tribal members that focuses on both the individual and the community. The main focus of the dance, which occurs on the summer solstice, was to acquire spiritual power and physical health for all tribal members. For the males that participate in the dance itself, it provided a stage to gain prestige among the tribal members. The participants dance for four consecutive days, with only brief periods of rest, and without food or water. The end desire of the dancer is to attain a vision which is the ultimate religious experience one can attain during the dance (Young, 1997).

The Beardance, usually held on the spring equinox, was considered to be both a social event and a dance that represents the balancing of forces. It also emphasized the value of life-giving, nurturing and fertility. Unlike the Sundance, which was masculine based, the Beardance focused significantly on the female members of the tribe; the women would not only take part in the dance, but would choose their partners.



Although less controversial, powwows occurred frequently as a means to socialize, sing, dance, trade, and celebrate American Indian culture and tradition (Wroth, Taylor Museum, & Colorado Springs Fine Arts Center, 2000). As per the Government's desire and policy, traditions and culturally relevant practices were being discouraged or outlawed in order to assimilate the American Indian into mainstream society.

In 1931, G.E.E. Lindquist, a member of the U.S. Board of Indian Commissioners, traveled to the Consolidated Ute Agency and compiled a report about the Southern Ute Indians (as well as the Ute Mountain Utes) after approximately one half century of reservation life. He found the 360 Southern Utes in 92 families who were restricted from leaving the exterior boundaries of their reservation. Of the original 375 parcels of land allotted to the Southern Utes, only 230 remained – the rest having been sold or traded. The primary source of individual income was gained through the sheep industry, but employment of Indians was still problematic with many jobs being held by unqualified individuals (Pettit, 1990).

The Southern Utes also received rations as per treaty, as well as annuity payments of \$35 annually, but all funds were controlled by the Government. Lindquist believed that the Southern Utes had progressed enough to change the treaty obligations related to support, as the Southern Utes appeared to be self-sustaining (Pettit, 1990). In 1933, despite protests from tribal elders regarding the Government's obligation to the Southern Utes, the annuity payments were stopped as were the provision of rations. By this time, half of the Southern Utes who had received allotments in the 1890s were without land and expected to be self-sustaining (Young, 1997).

According to Lindquist, there were sufficient houses on the Southern Ute Reservation, although the Utes needed to be encouraged to maintain their homes. Although gambling was identified to still be a problem on the reservation, the requirements of farming and cattle seemed to curb the frequency. Lindquist also reported that the surrounding community appeared tolerant of the Ute Indians and there were no reports of racial prejudice between Indians, Whites and Mexicans in the area. He also noted that the chief vices of the Southern Utes were the use of intoxicants, gambling and sexual deviance and that offenses committed on the reservation were handled by civil courts due to the lack of police or courts in the area (Pettit, 1990).

Two significant events occurred for the Southern Utes in 1936; the last traditional Chief of the Southern Ute Indians, Charles “Buckskin Charlie” Buck, died at the age of 96, and the Southern Ute Indian Tribe adopted a Constitution in accordance with the provisions of the Indian Reorganization Act (IRA) of 1934. It marked the end of the Federal Government’s efforts to assimilate American Indians by whatever means necessary and ushered in a period of tribal self-government and co-existence. Despite initial concerns by the Southern Ute Tribe and initially rejecting the provisions of the IRA, a vote by Southern Ute members overwhelmingly approved the measure (Young, 1997).

The IRA was passed based on the findings of the Meriam Report, which clearly stated that the Federal Government’s efforts to assimilate American Indians into mainstream society had been an utter failure and had actually lead to increased poverty, illness, a reduction of life span, and psychological illness. The IRA was built upon the protection of indigenous law, culture, language, education and symbolism and lifted

activities once considered detrimental to development (e.g. – dances). It also authorized the Secretary of the Interior to return to tribes any unclaimed lands that had been opened for homesteading during the allotment era. Finally, it called for tribes to reorganize politically and economically in an effort to progress toward self-rule and economic stability (Quintana, 2004).

Once the process of adopting the provisions of the IRA by tribal majority vote had been completed, and the Southern Utes moved quickly to establish a new Constitution and Corporate Charter under the provisions of the IRA. While not mandated, tribes were encouraged to adopt one or the other in order to obtain the right to self-govern (Quintana, 2004). Tribal Constitutions were required to be approved by the Bureau of Indian Affairs and often were written in a generic template and not necessarily tribe-specific. Between January and November 1936, the Southern Ute Constitution – which was one of the generically formatted documents - was presented to the General Council, approved by tribal vote, accepted by the Secretary of the Interior, and instituted (Young, 1997).

The 1936 Constitution consisted of a preamble, eight distinct articles, and by-laws of the Southern Ute Tribe. The preamble identified the establishment of the document as a means to exercise the rights of self-governance. The following summarizes the eight Articles of the Southern Ute Constitution:

- Article I of the Constitution identified the jurisdiction of the Tribe as all lands within the exterior boundaries of the Southern Ute Reservation except those that were no longer of Indian ownership.
- Article II set forth the requirements for membership within the tribe and included all members enrolled in the 1935 census and all children of members that are on at least one-half degree of Ute Indian Blood.

- Article III identified the governing body of the tribe as the Council of the Southern Utes; it also stipulated the membership of the council – six members and the chairman – as well as the requirements for election of members and qualifications.
- Article IV identified the requirements for voting in tribal elections.
- Article V identified the powers held by the Council which included, but was not limited to the preservation of tribal land, to make rules, regulations and ordinances, and regulate the conduct of tribal members.
- Article VI discussed the concept of the General Council, whereas all voting members of the tribe may come together to discuss matters relating to public welfare, for the purpose of elections, and/or due to a petition signed by a majority of eligible voters.
- Article VII stipulated that reservation land not currently allotted shall remain so; the Council was also authorized to assign land for private use in so long as it did not violate any ordinances or vested rights on tribal members.
- Article VIII identified the process by which amendments may be brought forth related to the Tribal Constitution and By-laws

Many of the authorities granted by the Southern Ute Constitution required some sort of submission to and approval of the Consolidated Ute Superintendent or the Secretary of the Interior. Despite these restrictions, the Southern Ute Constitution became an important first step in tribal self-governance. The By-laws of the tribe identified the requirements and expectations of tribal council members in the performance of their duties; the Southern Ute Constitution would undergo revisions in 1975 and again in 1991 in order to capture changes in Indian policy and the development of the Tribe.

In addition to adopting a tribal constitution, the Southern Ute Indian Tribe ratified a corporate charter on November 1, 1938. Tribal incorporation was seen as a mechanism by which to promote tribal economic development, provide corporate rights and immunities to the tribe, and secure economic independence. The Charter also allowed the tribe to secure loans from the Indian Credit Fund – established as a part of the IRA – for tribal ventures or to loan to individual members. The Charter did restrict

the sale of tribally owned lands and limited to whom and the length the tribe could lease land. It also allowed for the tribe to engage in per capita distribution in so long as the distribution, coupled with the costs associated with running the corporation, did not exceed one-half of all surplus funds.

In addition to a push for self-governance, the Indian Reorganization Act authorized the return of unsettled allotment lands to Tribes under the authority of the Secretary of the Interior. A large number of allotment tracts on the Southern Ute Reservation were surplus land; they lacked potential for agricultural use. In 1938, 3.5 million acres of land in Western Colorado were returned to the Federal Government as public lands, while the Southern Ute Indian Tribe received approximately 220,000 acres of surplus lands on the reservation. On this tract on land, the Southern Utes would find a large natural gas reserve which would, along with strong tribal leadership, secure the financial stability and future of the Southern Ute Indians (Young, 1997). That year also saw the Southern Utes join with the Ute Mountain Utes and Northern Utes in filing a claim in the U.S. Court of Claims for compensation for lands taken from the Ute Indians during the latter half of the 1800s. The Court ordered the Federal Government to compensate the Consolidated Band of Ute Indians close to \$32 million for lands taken. Prior to appropriating the funds, Congress required that each tribe provide a long-range plan identifying how the funds were to be spent; by 1951, the Southern Utes received their share of the settlement in the amount of \$5.7 million to be used for per capita payments, housing improvements, agricultural assistance, emergency family assistance and the establishment of trust funds for children (Quintana, 2000).

The result of the Ute compensation was mixed. On one hand, it provided much needed funds to the Consolidated Ute Indians, on the other hand, and unbeknownst to the Utes, it would place them into a category that would make the Consolidated Utes an ideal candidate for upcoming termination efforts. Although the Bureau of Indian Affairs had previously identified the Utes as ill-prepared for termination, the monies gained from the settlement led the Bureau to identify the Utes as being capable of assuming the responsibilities and obligations that the Federal government had assumed over the previous century (Metcalf, 2002).

Life on the Uintah and Ouray Reservation was abysmal in 1950. Poverty was rampant and so bad that the Superintendent had to request emergency per capita payments in the amount of \$100 for clothing purchases and other needs. Superintendent Stone understood that requests for per capita payments would not be approved without a “permanent constructive plan.” In November of 1950 a Ute delegation met with Commissioner Dillon Myer who demanded a permanent constructive plan for granting emergency per capita funding. The Ute Jurisdictional Act had stipulated that any judgement monies appropriated to the Utes required Congressional approval and approval from the Subcommittee on Indian Affairs. That subcommittee was chaired by Arthur Watkins, a senator from the State of Utah and leading congressional advocate for the termination policy (Metcalf, 2002).

During his meeting with Ute representatives in 1950, Commissioner Myer inferred that the approval to release judgement funds was also tied to the “permanent constructive plan.” The Ute delegation, desperately needing short-term relief, and with the implied correlation between the constructive plan and settlement money, agreed to

the terms required by the Commissioner. For Myer the term “permanent constructive” equated to a long-range termination plan. By taking advantage of the Utes poor economic situation and tying future judgement money to termination, Myer and Watkins blackmailed the Utes into a termination program (Metcalf, 2002).

The requirement by Congress for the development of a long-range plan for the use of monies from the U.S. Court of Claims was a precursor to a policy shift by the Federal Government. Despite significant strides made by a number of American Indian Tribes – to include the Southern Utes – Congress passed House Concurrent Resolution 108 on August 1, 1953. The legislation officially began the policy shift from reorganization and self-governance to a policy of ending federal supervision of the American Indian population within the United States. After a period of 17 years, the Federal Government reverted back to a program that marked one of the darkest times in American Indian history – assimilation.

The plan included abolishing reservations, providing assistance to Indian families rather than communities, providing training for jobs and/or being relocated to cities. While some tribes were terminated without consultation, certain larger tribes (by either population or land holdings) were given an option for immediate termination or rehabilitation in preparation for termination (Quintana, 2004). Although the Southern Utes rejected this change in policy, being given the choice a majority of Southern Utes favored a gradual discharge from federal supervision rather than immediate termination. For better or worse, the Southern Ute relationship had a long relationship with the Bureau of Indian Affairs, spanning almost eight decades (Young, 1997)

The experience of many Southern Utes taking part in the relocation program under termination was demoralizing at best. Those who took part in the program moved to a city and were provided an apartment and training with the anticipated goal of becoming self-sufficient within six months. For many of the Southern Utes, the experience consisted of discrimination, inadequate acculturation to city-life, unemployment, and alienation from family. This resulted in a large number of Indians returning to the reservation before the end of the 1950s (Young, 1997). Those who remained behind found that agriculture and cattle were not profitable and often times not able to provide even self-sustaining income. Without the assistance that they were accustomed to under BIA care, unemployment skyrocketed and tribal members became more and more dependent on per capita payments as a source of income; the Utes were unable to support themselves yet unwilling to leave their lands. Between 1950 and 1962, reliance on unearned income increased from 20 percent to almost 60 percent. The influx of money from land claims and subsequent per capita income increases led to a number of societal changes for the Southern Utes. Tribal members suffering from obesity and diabetes became common; fatal accidents, crime rates, child neglect and alcoholism rates drastically increased; a contributing factor to these deviant behaviors is likely due to a 1953 Congressional act legalizing the sale of alcohol to Indians (Young, 1997).

While the period of termination was predominately marked by negative experiences and even tribal factionalism, there were significant positive outcomes that occurred on the Southern Ute Reservation during the 1950s. A cultural revival took root among many tribal members; traditional practices, such as the Sundance, the



Beardance, the use of sweat lodges, and the use of the Ute language began to reemerge. In addition, the standard of living on the reservation had dramatically increased as did the tribes financial resources, although few members had achieved economic self-sufficiency (Young, 1997). Offices and departments within the tribal government were created to forward economic and social development; the Tribal Credit Fund, the Office of the Program Director, the Business Office, the Agricultural Resource Committee and the Land Operations Office were all developed as part of the Southern Ute's Rehabilitation Plan (Delaney, 1974).

Although self-determination did not officially become the policy of the Federal Government until the passage of the Indian Self-Determination and Education Assistance Act of 1975, the transition from the termination policy back to a policy more closely aligned with self-government began to take root long before the passage of the Act; evidenced by President Nixon's special message to Congress in 1968 where he proposed freedom of choice and self-determination for the "first Americans."

During the period of self-determination the Southern Ute Tribe and its members struggled to find economic stability and meaning in their modern world. Many members, refusing to leave their homeland despite the lack of employment opportunities, basically turned the reservation into a social state – reliant on per capita payments to survive. Unemployment was rampant, averaging 55% between the mid-1970s and early-1980s and the tribal economy, built almost entirely around natural gas revenues, was subject to price fluctuations and instability. Natural gas revenues in the 1970s greatly increased tribal funds and with it, allowed for a substantial increase in per-capita payments to tribal members. The following decade, when the "energy bust"

of the 1980s occurred, the tribe's General Fund saw a 50% reduction of inflow of cash, but the same outflow as tribal members demanded the same per-capita payments that they had been accustomed to during the natural gas boom on the reservation (Young, 1997).

Over a five-year period in the 1980s, the amount of money in the tribe's general fund decreased over 75% - from 13 million in 1983 to less than \$3 million in 1988. Over time, and perhaps based on lessons learned from the boom-to-bust experience of the tribe, the tribe worked to reduce its reliance on natural gas and other natural resources. The introduction of solid business investments and, upon the passage of the Indian Gaming Act in 1988, a gaming industry on the reservation, assisted the economic development and growth of tribal assets (Young, 1997).

### **CONCLUSION**

Like many American Indian Tribes throughout the United States, the Southern Ute Indian Tribe has experienced numerous challenges adapting to its role in modern-society. Their history shows that despite ever-changing Federal policies in Indian affairs, the Southern Ute Tribe has adapted and typically worked within the confines of limitation and restrictions placed upon them. Unlike many American Indian Tribes, the Southern Utes have made a transition from a hunter-gather society upon "discovery," to a tribe suffering from immense poverty, to a successful and modern tribe; possibly the wealthiest by tribal holdings in the nation. When faced with federal policies that limited tribal rights, the Southern Ute Tribe adapted as needed to survive; when policies were favorable, the tribe actively pursued available avenues for the betterment of its members, although these efforts impacted the tribal culture.

The Southern Ute Indian Tribe operates both as a government and a corporation. According to the tribe's website, the tribal government consists of a Chairman, six Council members, two executive officers, 19 distinct departments and three special boards/committees. The Tribal Government operates similarly to other federal, state and local governments with service oversight/provision in multiple areas to include but not limited to: Tribal Services, Tribal Planning, Information Services, Tribal Housing, Tribal Health, Tribal Court, Justice and Regulatory, Education, Property/Facilities Management, Natural Resources, Finance, and Human Relations. In addition, the tribe has specialized departments that focus on cultural preservation, community health, private education, and tribal youth.

With income from natural resources and the new gaming industry on the reservation, the tribe set up a growth fund office to manage the tribe's assets. Since its inception in 2000, the Growth Fund has turned \$69 million of liquid assets into over \$2 billion. It has done so by setting up five tribal owned energy companies, two real estate groups, and the tribe's own energy and utilities companies. The actual amount in the Growth Fund and the wealth of the tribal corporation are highly guarded, but it is estimated that the overall value of the Southern Ute Indian Tribe exceeds \$4 billion and may be as much as \$14 billion (Thompson, 2010). Between 2009 and 2011, the Growth Fund posted average annual earnings of \$316 million, before tax, depreciation and amortization (Cowan, 2013). Tribal members receive monthly stipends, estimated to be around \$1500, between the ages of 26 and 60 years-old, when they become eligible for an elder's pension which was estimated to be between \$65,000 and \$75,000 annually. The performance of tribal investments also contributes to annual

payouts to tribal members (Moran, 2007). The overall performance and stability of the Southern Ute Indian Tribe is reflected in the fact that the Standard & Poor's as well as Fitch Ratings bestowed a 'AAA' rating upon the tribe in 2001; a rating that they have maintained ever since.

With the economic situation well in-hand for the Southern Ute Tribe, the tribe continues to look at means to retain its' unique cultural heritage – Ute language instruction is provided at the Southern Ute Montessori Academy; in 2011 the tribe opened the Southern Ute Cultural Center and Museum which has been collecting and cataloging oral histories of tribal elders; the Cultural Preservation Department began providing cultural, history, and language lessons and workshops and a collaborative effort to instill culturally relevant and traditional practices and/or symbolism in other governmental departments and programs.

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**FIGURE 5.5**

*Great Seal of the Southern Ute Indian Tribe*



<http://www.southernute-nsn.gov/government/great-seal>

The Southern Ute Indian Tribe continues to thrive economically while investing back into the community after years of instability and uncertainty. Recent and ongoing efforts made by the tribe to revive their cultural identity while ensuring self-sufficiency marks perhaps the first time in centuries that these goals – once believed to be contradicting – can be successfully achieved. These once-competing ideologies are unified in the Great Seal of the Southern Ute Indian Tribe, a symbol which serves as a continuous reminder of the tribe’s past, present and future.

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**TABLE 5.1**

*Symbolisms of the Great Seal of the Southern Ute Indian Tribe*

The circle and the red/white border of the Tribal Seal represent the Circle of Life; everything within this circle represents the life of the people
The Indian head represents the tribe as a person, a very "Colorful Man" with the colors of red, yellow, black, blue and white representing all of the colors of nature.
The mountains and forest represent the Ute ancestral and present lands.
The river represents the seven rivers that cross the reservation.
The tractor, cattle, sheep and gas well represent the ranching, farming and industry that the tribe and its members are involved in to make a living.
The peace pipe represents the tribe as a peaceful people while the two feathers on the pipe represent the tribe’s belief in a great spirit and the healing power of the tribe.
The leaf/branch represents the Southern Utes belief in peace – the green represents the Earth and the red willow is present as it is used during the Sundance and in sweat ceremonies.
The bear and elk represent the big game that lives on the reservation.
The sun represents the spirit that watches over the tribe and its members.
The State of Colorado flag represents the Utes historical homeland.

## **CHAPTER VI: THE SOUTHERN UTE INDIAN CRIMINAL JUSTICE SYSTEM**

The authority of the tribe to provide criminal justice services lies in the 1936 Constitution of the Southern Ute Tribe; Article I – Jurisdiction identifies the jurisdiction of the tribe as lands within the exterior boundaries of the Southern Ute Reservation that have not passed out of Indian hands; Article V – Powers of the Council, section 1(m), empowers the Council of the Southern Ute Tribe to “regulate the conduct of members of the tribe and to protect public peace, safety, morals and welfare of the reservation through the promulgation and enforcement of ordinances...”

In the 1975 revision of the Constitution, while Article I reiterated the tribe’s jurisdictional authority, the “Powers of the Council” became Article VII and provided much more specificity than the original Constitution as it relates to public safety. Section 1(e) now, in addition to the original content, empowers the Southern Ute Indian Tribe to “...govern the administration of justice through the Tribal Courts, prescribe the powers, rules and procedures of the Tribal Courts in the adjudication of cases involving criminal cases...of tribal members within the reservation.”

In the 1990 Supreme Court case of *Duro v. Reina*, and as codified in the 1991 amended Constitution of the Southern Ute Tribe, the authority to enforce laws and adjudicate cases through Tribal Court was extended to non-member Indians.

The Southern Ute Criminal Justice System is structured very much like systems of the tribe’s Anglo counterparts based on the Tribe’s acceptance of the Indian Reorganization Act (IRA) of 1934. The two main departments within the tribal government involved in the criminal justice system are the Justice and Regulatory

Department and the Tribal Court. The laws governing the Southern Ute Indian Reservation are contained within the Tribal Code Book.

### **THE SOUTHERN UTE TRIBAL CODES**

The Southern Ute Tribal Codes (hereafter referred to as the Code), which were last significantly revised in 1989, are currently undergoing revision based on the passage of Public Law 111-2111 – the Tribal Law and Order Act of 2010. The Code consists of 23 different titles, many of which have been amended through Tribal Council resolutions since the adoption of the most recent revision of the code in its entirety. Within these 23 titles, six are directly related to the administration of criminal justice in the Southern Ute Indian Tribe:

**TABLE 6.1**

*Applicable Title and Articles, Southern Ute Tribal Code Book (1989)*

<b>TITLE</b>	<b>DESCRIPTION</b>	<b>ARTICLES</b>
I	General Provisions	1 – Tribal Code & Jurisdiction 3 – Tribal Court, Judges & Other Personnel
III	Appellate Code	1 – Appeals, Procedure & Appeals Court
IV	Criminal Procedures Code	1 – General Provisions 2 – Special Procedures Relating to Juvenile Delinquents
V	Criminal Code	1 – Criminal Code
X	Exclusion & Removal Code	1 – Exclusion & Removal
XIV	Traffic Code	2 – Alcohol & Drug Driving Offenses 3 – Driving Privilege Revocations

## **TITLE I – GENERAL PROVISIONS**

Article 1 of Title 1 states that the Code was adopted in accordance with Article VII of the Southern Ute Indian Constitution (as amended in 1975) and that criminal jurisdiction of the Code extends to all Indian persons who commit – or conspire to commit – offenses within the exterior borders of the Southern Ute Reservation in order to ensure maximum protection for the tribe and its members. For the purpose of the Code, an Indian is defined as any person or his dependents that is, or is qualified to be, an enrolled member of any federally recognized tribe or receives aid under a federal or other program as an Indian. This jurisdiction of the tribe is concurrent for offenses that occur in which a federal court may also have jurisdiction; otherwise the tribe maintains exclusive original jurisdiction.

Article 1 also identifies the eligibility and performance of jury duties. The Chief Judge of the Southern Ute Tribal Court is required to prepare and maintain a list of no less than 50 names of eligible jurors in the event a jury trial is requested. In order to be considered eligible to serve on a criminal jury, a candidate must be an enrolled member of the Southern Ute Indian Tribe who resides within the exterior boundaries of the reservation, over the age of 18, who has not been convicted of a felony. In the event of a jury trial, the court clerk is required to subpoena no fewer than 14 eligible jurors; those selected for jury duty are compensated for their service and/or mileage costs. Court personnel are prohibited from serving on juries.

Article 3 of Title 1 establishes the Tribal Court and stipulates the powers, limitations and requirements of court personnel. The duty of the Tribal Court is to administer justice equally and impartially – in accordance with the laws governing the



United States and the Constitution of the Southern Ute Indian Tribe – to protect the rights and welfare of those within its jurisdiction. Officers of the Tribal Court are identified as the clerk of the court, assistant clerk, any deputy, any enforcement officer, and attorneys who are admitted to practice in the Southern Ute Tribal Court.

The Tribal Council appoints as many judges as it deems necessary; if more than one judge is appointed, the council appoints one to serve as the chief judge. Judges are appointed for three-year renewable terms, but may be removed for neglect of duty or misconduct by a tribal council vote upon a removal hearing. To be eligible to receive an appointment to the bench, an individual must be at least 22 years-old, have no felony convictions, have had no misdemeanor convictions in the previous year prior to selection, be a person of good moral character and judicial temperament. Judges, in this Article, are empowered to administer justice and assume responsibility for the administration of the court and all probation/parole officers. The Article also identifies the standard of conduct and ethics for all court officers.

### **TITLE III – APPELLATE CODE**

The Appellate Code required the establishment of a Tribal Court of Appeals, consisting of one judge, who is selected by the Tribal Council. The judge is required to be a licensed attorney and have at least five years practicing law. Appeals are required to be submitted to the court clerk within 15 days of case adjudication and identify the reasons or rationale behind the appeal. The Code identifies two different types of appeals: appeals by right and discretionary appeals. Any individual who receives a sentence of a jail term in excess of 10 days *or* a fine over \$200 are entitled to an “appeal

by right.” All others who want to appeal a ruling must file a petition for a discretionary appeal with the appeals judge.

While the Code required the establishment of a Tribal Court of Appeals, the southern Ute Tribal Council adopted a resolution the following year by which the tribe adopted the Southwest Intertribal Court of Appeals (SWITCA) as its appellate court (Coochise, Robertson & Lujan, 2006). SWITCA was established in 1988 with funding from the Bureau of Indian Affairs’ Branch of Judicial Services. In February of 1990, the Southern Ute Tribe Indian Tribe became the first member tribe of the SWITCA. The tribe currently uses the SWITCA for all appeals (Zuni, 1994).

#### **TITLE IV – CRIMINAL PROCEDURE CODE**

Article 1 of the Criminal Procedures Code incorporates the guarantees stipulated by the 1968 Indian Civil Rights Act and codified in Title 25 US Code, Chapter 15, §1301-1303. The criminal procedures of the Tribal Court effectively mirror those of their Anglo counterparts. There are sections that, while mostly similar to U.S. court processes, possess minor differences. For example, in the jury selection, obtaining qualified jurors parallels the Anglo model (e.g., preemptive challenges, challenge for cause), but the qualification requirement stipulates that the individual must be at least 18 years of age, been a resident of the Southern Ute Indian Reservation for 90 days, be an enrolled member of the Southern Ute Indian Tribe, have not been convicted of a felony in any jurisdiction, and not be under disability; a minimum of six jurors are required in any criminal case and these jurors are only required to serve once per fiscal year, unless the juror agrees to perform the duty more than once during that period.

Article 2 of Title 4 addresses the procedures that the tribe and the Tribal Court will use in cases involving juvenile delinquents. The tribe's desire is to provide supervision, care and rehabilitation in an effort to separate children from the legal consequences of criminal behavior and activities whenever possible. The Code differentiates between finding a child to be a delinquent and a criminal conviction. The Code allows for warrants to be issued for juveniles and ensures all procedural rights of the accused in regards to court hearings for the commission of juvenile offenses, with the exception of the right for a jury trial. Other protections are similar to those of the Anglo courts (e.g., informed consent, parental rights, confidentiality).

The Tribal Prosecutor may, at his discretion, confer with the child and his/her parent(s) and/or guardian(s) in an effort to resolve the matter without a formal adjudication. The prosecutor and the guardian of the child may enter into a written agreement, to be approved by the court, for a "deferred adjudication." Based on the seriousness of the offense, the juvenile's previous contact with officers of the court, admission of allegation, and parental input, the child may be allowed to complete requirements stipulated by the court. If these requirements are successfully completed, the case is dismissed; if the juvenile fails to complete the requirements or violates conditions of the deferred adjudication, a revocation hearing is scheduled. Based upon a preponderance of evidence presented at this hearing and the juvenile's previous admission in the deferred adjudication agreement, the child may be adjudicated a juvenile delinquent.

The Code requires that a juvenile delinquency petition (complaint) must be proven beyond a reasonable doubt and allows the court to enter orders that serve in the

best interest of the child and the community as a whole. It also limits the use of juvenile court proceedings as evidence in other proceedings and identifies who is entitled to see court records and files under the rules of confidentiality.

## **TITLE V – CRIMINAL CODE**

The criminal code of the Southern Ute Indian Tribe is codified in Title 5 and contains nine sections. Although jurisdiction is clearly identified in the Title 1 of the Code, Title 5 states that for so-called “Major Crimes,” the Southern Ute Indian Tribal Court will only exercise concurrent jurisdiction for crimes that fall under Title 18 US Code § 1153 when the United States fails or declines to prosecute. The Code then identifies three charges that are proximate or connected to other crimes held within the criminal code: *Attempt, Criminal Conspiracy, and Solicitation*.

An individual is guilty of an *attempt* to commit a crime when he acts “with the kind of intent otherwise required for the commission of the offense,” participates in actions that are seen as a significant step to commit a crime, or is an accessory after the fact of such a crime. An individual is guilty of *criminal conspiracy* when he agrees with one or more persons to commit a crime and any of one of them actually engages in the criminal activity. An individual is guilty of *solicitation* when he “entices, advises and incites, orders, or otherwise encourages” another person to commit a criminal offense. A conviction of *attempt, criminal conspiracy, and/or solicitation* is subject to the same sentencing guidelines of the crime applicable crime.

There are seven major offense categories in the criminal code: Offenses against the Person; Offenses Against Property; Offenses Against the Family; Offenses Against Public Order and Decency; Offenses Against the Administration of the Government;

Offenses related to Animals; and, Offenses Against Public Health, Safety, Welfare and Morals. Each of the offense categories identify the crimes that make up the codified offense. Within each of these categories, there are subcategories and sub-classifications (related offenses). For example, under the category of Offense against the Person, there is a subcategory of Assault, and sub-classifications of Assault, Assault and Battery, Assault and Battery on a Peace Officer, and Mayhem.

Since the adoption of the Criminal Code in 1989, there has been numerous amendments and administrative orders issued to clarify and expand the scope of the Criminal Code. The process to amend the Code is defined by the federal law and originated from the Indian Reorganization Act of 1934 and codified in the Southern Ute Constitution. Any change and/or amendment of the Code requires a review by the Bureau of Indian Affairs in order to validate that the change does not violate federal law. Proposed changes are identified via Tribal Council Resolution and are forwarded to the servicing BIA superintendent for review and decision.

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**TABLE 6.2**

*Major Categories and Subcategories of the Criminal Code*

Category	Subcategory
Offenses Against the Person	Assault and Related Offenses Homicide and Related Offenses Abduction and Related Offenses Sexual Offenses
Offenses Against Property	Theft, Robbery, Burglary and Related Crimes Fraudulent and related Practices Destruction of Property Violation of Timber Use Policy
Offenses Against the Family	Endangering the Welfare of a Child Contributing to the Delinquency of a Minor

	Bigamy Prohibited Sexual Contact Child Abuse
Offenses Against Public Order & Decency	Disorderly Conduct Disturbing the Peace Liquor Violations Shooting Offenses
Offenses Against the Administration of the Government	Abuse of Office Falsification in Official Matters Obstructing Governmental Operations
Offenses Related to Animals	Cruelty to Animals Failure to Register Dogs and Cats Livestock Offenses
Offenses Against Public Health, Safety, Welfare and Morals	Offenses Against Public Health, Safety, and Welfare Offenses Against Public Morals

### **TITLE X – EXCLUSION & REMOVAL CODE**

Any individual who is not a member of the Southern Ute Indian Tribe and is not authorized under federal law to be present on the Southern Ute Indian Reservation may be subject to removal or exclusion from the reservation. An individual who has committed repeated violations of tribal ordinances, interferes with tribal ceremonies or religious affairs, abuses any privilege extended by the tribe, or relatedly commits acts which jeopardize the health, safety, welfare or peace of the Southern Ute Indian Tribe are subject to exclusion or removal. The Tribal Court, within 20 days of being notified by a Southern Ute Indian Tribal member, must hold a hearing to determine if the accusations warrant exclusion or removal. The accused individual has a right to be represented at his own expense during the hearing, which occurs during regularly schedule court sessions.

In the event that the exclusion or removal from the reservation is determined to be an emergency, an individual can be removed from the reservation prior to his hearing and may not return until the matter has been resolved. All law enforcement agents of the tribe and the U.S. government are authorized to, upon the issuance of an exclusion/removal order, carry it out. In the event an individual violates the order, he is subject to a fine up to \$500 and up to six months in jail. One year after an exclusion or removal has been in effect, and individual may petition the court to lift the order.

#### **TITLE XIV – TRAFFIC CODE**

The original Traffic Code has undergone significant changes since it was adopted in 1989. Many of these measures align the tribal traffic Code with that of the State of Colorado. Under its original provisions, the Code did not differentiate between Driving Under the Influence (DUI) and Driving While Ability Impaired (DWAI) (Anaya, 1994). In 2001, the Southern Ute Indian Tribe entered into an Intergovernmental Agreement with the State of Colorado regarding driver's license revocation and had previously, through Tribal Council Resolutions, identified adoption of assimilative codes based on Colorado law.

The Traffic Code differentiates and incorporates Colorado's provisions for both DUI charges and DWAI charges. The Blood Alcohol Content (BAC) per 100 milliliters of blood or 210 liters of breath is now codified at 0.05-0.08 for a DWAI and over 0.08 for a DUI. The Code also incorporates the Express Consent statute in Colorado law as it relates to the authority of law enforcement officers to demand a test of either blood or breath. In addition and as stipulated in the Intergovernmental Agreement, offenses that occur on Southern Ute lands involving American Indians are will be reported to State

officials for the purpose of the potential revocation of licensure. The remaining sections of the Code also mirror state and federal law regarding equipment requirements, moving violations, signage, etc.

### **THE DEPARTMENT OF JUSTICE AND REGULATORY**

The Department of Justice and Regulatory has approximately 100 employees when fully staffed and is composed of eight divisions, of which six are tied into the criminal justice system: the Southern Ute Police Department (SUPD), Division of Gaming (Enforcement Division), Natural Resource Enforcement, the Southern Ute Detention Center (SUDC), the Tribal Prosecutor's Office and the Public Defender's Office. Of these six departments, the SUPD, the SUDC, the Prosecutor's and Public Defender's Offices have the most significant roles in the Southern Ute Criminal Justice System.

*The Southern Ute Police Department:* The SUPD began operations as a department in the 1950s and received initial training from the Bureau of Indian Affairs to assume all law enforcement functions involving tribal members and eventually all American Indians. A review was conducted of the Southern Ute Indian Tribe Annual Reports from 2002 through 2009 in an effort to provide a more detailed description of the SUPD, but it appears that the Annual Report varies from year to year. A review of SUPD files covering the same period was done in an effort to determine the amount of cases processed through the department.

The SUPD averages 7,742 calls for service annually, equating to approximately 21 calls per day. The department issues an average of 874 citations each year, many of which involve traffic and licensure violations. Approximately 25% of citations issued



each year come from offenses involving speeding, careless driving, traffic accidents, and driver's license violations (e.g., unlicensed, driving on suspension). The most frequently occurring single offense that officers from SUPD must deal with is disorderly conduct. The department responds to and cites an average of 138 disorderly conducts each year. Many of these cases involve the use or abuse of alcohol and are tied to other offenses.

Another alcohol-related offense is prevalent within the SUPD's jurisdiction – underage drinking. The SUPD issues an average of 76 citations per-year for the offense of underage drinking. While that may not seem to be significant – about three citations every two weeks – the problem is considered much more systematic by the SUPD and Tribal Court. The department also averages 61 citations for Driving under the Influence or Driving While Ability Impaired annually. While alcohol is typically associated with most cases that involve substance use or abuse, the SUPD averages 30 arrests each year for drug abuse.

Although serious violent crimes are relatively infrequent, violence crimes do occur and the SUPD typically responds when American Indians are involved. There is an average of 93 assaults on the Southern Ute Reservation each year, or close to two each week. Other offenses in the category of “Crimes against the Person” in the Southern Ute Tribal Code, such as vehicular assault, harassment, and false imprisonment do occur periodically, but are not typical calls that the SUPD responds to. Felonious cases, which are typically handled by federal law enforcement agents, do not typically get recorded due to jurisdictional limitations although the SUPD and the Tribal Court can

arrest and charge for the offense if the matter is declined by the US Attorney General's Office.

The Southern Ute Tribe has submitted information to the FBI's Uniform Crime Report (UCR) since 2009. In the three years of available data on offenses known to law enforcement, 52 violent crimes were reported to the FBI by the tribe, none of which involved murder and/or non-negligent manslaughter. The 52 violent crimes consisted of 39 Aggravated Assaults, ten Forcible Rapes and three Robberies. There were 77 property crimes reported during the same period – 44 Burglaries, 26 Motor Vehicle Thefts, four Larcenies, and three Arsons.

It is difficult to accurately put these numbers into context for the purpose of a comparison to crime rates in the United States. The Southern Ute Indian Reservation lies in three counties in southwest Colorado with an American Indian population of 6,754 according to the 2010 U.S Census; it also borders one of the highest populated American Indian counties in the U.S. – San Juan County, New Mexico, with an American Indian population of 47,813. The reservation, due to its location and the number and types of events that it hosts each year, is a travel location for a large number of American Indians; the exact number of American Indians physically residing within the exterior borders is not known. For the purpose of crime rate comparison, the American Indian population of Archuleta County, Montezuma County and La Plata County, coupled with Southern Ute UCR submission, Table 6.3 shows the crime rates per 100,000. For those individuals involved in traumatic incidents, the Victim Services section of the SUPD provides assistance by providing counseling, referrals to outside agencies, and support through criminal proceedings.

**TABLE 6.3***UCR Crime Rates per 100,000*

	U.S. Crime Rates (2011)	Southern Ute Crime Rates (2009-2011)
Violent Crime	386.3	256
Murder/Non-negligent		
Manslaughter	4.7	0
Forcible Rape	26.8	48.8
Robbery	113.7	14.8
Aggravated Assault	241.1	192.4
Property Crime	2908.7	364.1
Burglary	702.2	217.6
Larceny/Theft	1976.9	19.2
Motor Vehicle Theft	229.6	128.8
Arson	18.2	14.8

In recent years, the SUPD has increased its ability to provide services through modernization of communications and technology. The department has incorporated community-oriented policing measures – to include neighborhood watch and the Drug Avoidance Resistance Education (DARE) program. The SUPD faces many challenges in the performance of their duties. With an average of two-to-three patrols on shift covering an area of over one thousand square miles of an allotted reservation, the true capabilities of effective law enforcement and rates of crime on the reservation are unknown. Despite these limitations, the SUPD continues to expand its capabilities,

training and professionalism in an effort to provide more effective law enforcement and assistance to the community.

*The Southern Ute Detention Center:* In the early 1990s, the Southern Ute Indian Tribal Council recognized that the tribe was in need of its own detention center in order to provide for the unique needs of American Indians that went through their court system; the new jail would incorporate programs to address the cultural impacts of drug and alcohol abuse that had plagued American Indians. In 1997, the tribe began to construct a new justice complex, which included the Southern Ute Tribal Court and the Southern Ute Detention Center (SUDC), obligating \$8.5 million of tribal funds for the project. In February of 1997, the SUDC began operations (Gallegos, 2000).

According to the SUDC website (<http://www.southernute-nsn.gov/detention>), the mission of the center is to, “provide safe and humane confinement for all Native Americans, who are under the jurisdiction of the Tribe and other community members through inter-government contracts.” The facility has a rated capacity of 57 inmates as of 2001 (Minton, 2012). Since its inception, the SUDC has incorporated both traditional education programs as well as programs focused on American Indian culture. Programs found through correctional facilities, such as Alcoholics Anonymous, Life Skills/Anger Management, Adult Education and GED, Art Classes, Religious Services, Library Services and Parenting Classes are all offered to inmates at SUDC.

There are three programs tailored to the American Indian population at the detention center. The first program is Native American Indian Awareness. It is a program, instructed by an American Indian, and offers a historic overview of Native American Indian history. The class also addresses the issue of alcohol abuse among the

American Indian population. In addition, this course attempts to establish and internalize positive images and pride among the attendees. The White Bison AA 12 Step Program is similar to the standard Alcoholics Anonymous program, but has been modified to incorporate aspects of Native American religion. Finally, the SUDC has incorporated the Native American Church into its religious program. A traditional Sweat Lodge was constructed in 2003 and American Indian Medicine Men and Women volunteer to conduct sweats with any inmate wishing to attend.

In addition to holding inmates who receive a commitment from the Southern Ute Tribal Court and booking individuals who are arrested by the Southern Ute Police Department, the SUDC is also a contract facility for housing federal holds (specifically for immigration violations) and State warrants. A review of The Southern Ute Indian Tribes' Annual Reports between 2002 and 2009 found the following information regarding the operation of the Southern Ute Detention Center:

- The SUDC employs 28 personnel including a Registered Nurse
- There are an average of 985 bookings into the facility each year
  - 363 are bookings and/or commitments from the Tribal Court or SUPD
  - 23 are bookings for protective custody
  - 599 are bookings for contract holds
- The SUDC generates an average of \$502,376.74 of revenue annually for housing inmates under contract
- The facility transports an average of 265 adult offenders each year, predominately for pick-up or drop-off of contract inmates
- The facility transports approximately 72 juveniles each year to juvenile detention facilities and or secure treatment facilities

*The Southern Ute Prosecutor's and Public Defender's Offices:* The Public Defender and Tribal Prosecutor are both located in the Justice Complex. These two offices are similar to their Anglo counterparts. Although the right to counsel was included in the 1968 Indian Civil Rights Act, this right did not require the prosecuting Tribal Court to

provide legal counsel; it stipulated that the defendant had to the right to obtain counsel at his own expense. For tribes that want to incorporate the enhanced sentencing authorizations under the 2010 Tribal Law and Order Act, a public defender must be made available to those who request and qualify for it.

The Southern Ute Indian Tribe began providing a part-time public defender in 1995 and full-time tribal administered public defender program the following year. The Public Defender has been in his position from the beginning of the program, is non-Native, and is an American Bar Association-certified lawyer in good-standing. A review of The Southern Ute Indian Tribes' Annual Reports between 2002 and 2009 found that the Public Defender is assigned an average of 190-200 clients annually and these clients usually have two-to-three associated charges. Many of the charges are alcohol-related.

The Prosecutor for the Southern Ute Indian Tribe is also a non-Native, American Bar Association-certified attorney in good standing. The current prosecutor has been serving in his position for close to ten years. On average, the Tribal Prosecutor disposes of just under 1,000 cases. Both the Public Defender and the Tribal Prosecutor are actively engaged with the Southern Ute Wellness Court, which is a diversion court based on the Anglo Drug Court Model.

### **THE SOUTHERN UTE TRIBAL COURT**

The Southern Ute Tribal Court was born out of the Indian Reorganization Act of 1934. With the adoption of an Anglo-oriented Constitution in 1936, the Tribe gradually assumed responsibility of its court program. The existence of a Tribal Court is inferred in Article I – Jurisdiction of the 1936 Constitution, although the establishment of such a

court as a constitutional entity is absent. The 1975 Constitution also identifies the court in Article I, but unlike the original constitution, Article VII – Powers of the [Tribal] Council, states that it the responsibility of the tribal council to “govern the administration of justice through the Tribal Courts, prescribe the powers, rules and procedures of the Tribal Courtsin the adjudication of cases involving criminal offenses...” As such, the Southern Ute Tribal Court falls under the authority of the Tribal Council; there is no separation of powers inherent to ensure or protect judicial independence. According to Coochise (2006), it has been the tradition of the Tribal Council to recognize the court as a constitutionally established entity and it has typically been insulated from undue influence.

The process for case adjudication is codified under Title IV of the Southern Ute Tribal Codes. The actual processing of a case from arrest/warrant through the Southern Ute Tribal Court is very similar to Anglo system, as are the prescribed penalties for conviction (stipulated in Title V of the Tribal Code). The Tribal Court has an appeals process for cases decided by the court. All appeals are heard by the Southwest Intertribal Court of Appeals.

The Southern Ute Tribal Court has been very successful in obtaining federal grants for projects related to the court and its operation. For example, the tribal court received grants in 2005 and 2008 from the Tribal Courts Assistance Program (TCAP) administered by the Department of Justice, Bureau of Justice Assistance (BJA). In 2010, the court received close to \$850,000 from the Coordinated Tribal Assistance Solicitation (CTAS) program for projects related to violence prevention and the enhancement of tribal justice systems (Talhelm, 2010). According to the 2009 Annual

Report, the Southern Ute Tribal Court had 12 active grants – many multi-year grants – totaling \$1.9 million in federal and state aid. In 2011, the Tribal Court once again received a grant from the TCAP for almost \$400,000 to assist with programs associated with community policing, substance abuse, and overall public safety measures (Scofield, 2011).

Each year the Tribal Court submits a report to the tribe which is incorporated into The Southern Ute Indian Tribe Annual Report. The information provided to the tribe and its members includes information on the different offices under the court, budget and staffing, accomplishments and, since 2004, goals for the following year. Each year the amount of information included in the annual report increases in specificity and content, providing transparency of Tribal Court operations to tribal members.

### **MISSION AND GUIDING PRINCIPLES**

The Mission Statement of the Southern Ute Tribal Court has remained relatively constant over the recent past. The mission of the Southern Ute Tribal Court is, “...to exercise the sovereignty and jurisdiction of the Southern Ute Indian Tribe by providing a forum for the enforcement of Tribal Law and the administration of justice in disputes affecting the interest of the Southern Ute Indian Tribe or its members.” The guiding principles of the Southern Ute Tribal Court reflect the goals that the court has identified for the upcoming year. Many of the guiding principles are associated with the incorporation of tradition and culture in its programs, equitable programs and opportunities, impartiality, employee training, fiscal responsibility, and to find innovative ways to address substance abuse on the reservation.



## STRUCTURE

The Southern Ute Tribal Court is structured and operates much like most Anglo Courts. The total number of employees within the Tribal Court division of the tribal government varies, but averages about 20, most of who are funded through tribal funds. Employee numbers are affected by the status of grants which pay for certain positions and services. The major offices with the umbrella of the court are the Judges/Court Administration, Probation Department, and the Family Court Support Services Office. Although not designated as an independent office or branch of the court, the Southern Ute TüüÇai Court (aka – Wellness Court), is identified as such in the evaluation based on procedural differences from the standard judicial process codified in the Tribal Criminal Procedures Code.

*Judges and Court Administration:* The Southern Ute Tribal Court has three full-time judge positions – one Chief Judge and two Associate Judges. The chief Judge has historically been a tribal member and not law school trained. A greater emphasis is placed on tribal knowledge (e.g., history, tradition, culture) than on professional legal training, which can be attained through multiple training opportunities for Tribal Court judges. The Chief Judge is appointed by and directly responsible to the Southern Ute Tribal Council and is responsible for the administration of court operations and all the programs that fall under the Division. The two Associate Judges have historically been non-Native, law school trained individuals who preside over a majority of court sessions. Associate Judges are on renewable, staggered, three-year appointments.

The court employs one Court Administrator, a Senior Court Clerk, and 3-4 Deputy Court Clerks. These individuals manage the judges' calendars, maintain court

records, receive payments, and conduct most of the courts daily business. Since 1998, the court clerks have utilized “Full Court Enterprise (FCE),” which is a software-based system to manage all court records; the clerks also manage hard copy files of all clients. In addition, the court employs one Grant-Writer/Data Analyst and two Bailiffs, who are responsible for the safety and welfare of the judges and court proceedings.

*Family Court Support Office (FCSO):* The Family Court Support Office is funded by both tribal funds and grant money. The FCSO employs between four and six individuals, to include the Family Court Therapist/Clinical Supervisor, and is responsible for case management, evaluation, mediation and/or treatment services. This office provides a wide range of programs to community members who have gone before the court; it provides adult and juvenile assessments and treatment and clinical supervision for offenders and, in some cases, for the community as a whole.

The FCSO provides assessments and treatment that include Bio-Psycho-Social, Substance Abuse, Anger Management, Trauma Assessment, Mental Health and Relapse Prevention for both adults and juveniles. The office also oversees the mediation program for the court, the mentoring program, the special advocate and *guardian ad litem* programs for children, parenting education/strengthening families, and is active in both the Adult and Juvenile Wellness Court Programs.

*Probation Department:* The Probation Office, when fully staffed, has three full-time probation officers and one probation clerk. The probation office is responsible for ensuring those who are convicted in the Tribal Court and assigned to probation remain compliant with the terms of the court. The Probation Department and its officers adhere to the Tribal Court’s principles of professional development and training as well as the

incorporation of cultural in probationary requirements; probation officers attend cultural education seminars to gain a better understanding of the population that they serve. The Probation Office has benefited from monies earmarked for the department and have used funding to purchase equipment to increase timeliness and effectiveness; for example in 2008, the Probation Office purchased a urinalysis testing machine which allows Probation Officers to determine alcohol or drugs in a client's system in as little as three hours versus over a week when the analysis was done elsewhere.

*The TiiüÇai (Wellness) Court:* The Wellness Court (WC) is closely aligned with the Family Court Support Office and is overseen by the Chief Judge. The WC serves in a capacity similar to the Anglo Drug Court. The purpose of the Wellness Court is to enhance public safety and the participant's overall sobriety, spirituality, fitness and education based on a holistic notion of wellness. The Wellness Court was implemented in 2003 and in its first decade of operations served approximately 70 clients.

The Wellness Court consists of two main entities: a Program Development Team and the Core Team. The Program Development Team is responsible for providing direction for the Wellness Court. The Core Team is involved and responsible for monitoring and managing participants' cases. There are eight members on the Core Team – the Judge, Prosecutor, Public Defender, Case Manager (from Probation), a SUPD representative, a tribal elder, a community representative, and a substance abuse professional. The same members are on the Program Development Team and are joined by representatives from the Southern Ute Community Center, the Division of Social Services, the Office of Family Court Support, a MST (Multi-Systemic Therapist) and the Court Grant Writer. The Wellness Court Core Team works together in an effort to

provide a holistic notion of wellness for the participant. The Southern Ute Tribal Court operates an Adult and Juvenile Wellness Court program.

Like many diversion courts, the WC has certain restrictions on who qualifies for the program. The program's primary candidate is an individual who suffers from chronic substance or alcohol abuse who has failed to comply with court orders and/or probationary requirements previously. The Wellness Court is not situated to accept clients who have a history of violent felonies, significant mental health issues, sex offenses or suicidal/homicidal ideations. Any matter may be referred to the WC upon request, but it is up to the Core Team to determine the suitability of the client for the program. When a client requests and is screened for eligibility and all members of the Core Team concur with referral to the Wellness Court, a plea is entered, any potential jail sentence is stayed and the participant is scheduled for his/her first review hearing in front of the Wellness Court.

The initial duration of any Wellness Court program is 12 months. Depending on how the participant performs, an early termination from the program (successfully or unsuccessfully) may occur or the program extended. Phase I usually consists of weekly court hearings, two breath tests and/or urinalysis daily, two meetings/week with their case manager, employment/education, participation in cultural or spiritual events, a physical assessment, and additional recommended evaluations by the Core Team. A period of 28 consecutive days of alcohol/drug abstinence and substantial compliance must be attained before the client can request to progress to the second phase.

The second phase usually consists of court hearings every two weeks, a potentially more relaxed schedule of breath and/or urinalysis tests, weekly contact with

the case manager, full-time student or part-time employment status required, completion of 12 thirty-minute exercise sessions, attendance and participation in spiritual/cultural activities, and active engagement and progress in counseling/treatment. The client must meet the required conditions, be making progress in treatment/counseling/treatment for a period of five weeks prior to requesting to advance to the third phase.

The third phase usually consists of court hearings every three weeks, continued breath/urinalysis testing as per case manager requirements, meet with the case manager as scheduled, maintain work/school requirements, be actively engaged in spiritual/cultural activities, and complete 24 thirty-minute exercise sessions. A minimum period of 12 consecutive weeks of negative breath/urinalysis tests and active engagement/progress in counseling/treatment is required before the client can request to advance to the final stage. Clients that are in complete compliance may request to advance at the ten week mark.

The final stage of the Wellness Court program typically lasts 16 weeks with court hearings every 4-6 weeks, random breath/urinalysis testing, active engagement and/or finishing treatment/counseling, employment at 32-hours per week or continued educational activities, spiritual/cultural activities and completion of 32 thirty-minute exercise sessions. For clients that have completed all requirements of the program, a request can be submitted to graduate after 13 weeks.

The Juvenile Wellness Court operates under the same structure as the Adult Wellness Court, although there are differences based on the age of the clients and parental responsibilities. Section 4-2-103(2) of the Southern Ute Indian Code extends the Southern Ute Tribal Court's authority and jurisdiction to parents, guardians, or

custodians of children. If a child is enrolled into the Juvenile Wellness Court, the child's parent or legal guardian are required to sign an agreement which identifies what is required and expected from the guardian. Guardians of juveniles in WC are required to attend all hearings and sign confidentiality agreements as juvenile cases are heard together. If the guardian fails to comply with the agreed upon requirements or expectations of the court, the parent of the juvenile client may be sanctioned by the court. In addition to requirements placed on clients in the Adult Wellness Court, juveniles are required to attend school with no unexcused absences or tardiness, maintain all passing grades or make significant improvements, and follow a curfew. Unlike the Adult WC in which Bio-Psycho-Social evaluations are discretionary, all juveniles must submit to an evaluation.

As with Anglo Drug Courts, the immediacy of sanctions and/or rewards is an important aspect to ensure compliance or motivation to maintain compliance. Table 6.4 shows the typical penalties prescribed by the Wellness Court for violations of program requirements as identified by the Southern Ute Tribal Court Manual. For those who remain in compliance with the Wellness Court requirements, the court offers rewards to help reinforce client progress. In addition to positive reinforcement through comments by members of the Core Group during hearings, clients who are successful may receive reduced frequency of requirements (e.g., breath tests, urinalysis/drug testing, hearings, etc.), may have court costs and/or fines reduced or forgiven, or receive gift cards from the court.

**TABLE 6.4***TüüÇai/Wellness Court Non-Compliance Penalties*

<b>Event</b>	<b>Consequence</b>
Use of alcohol or drugs	Increased Testing; AA Meetings; Community Service
Second use of alcohol/drugs	1 to 3 days of jail
Third use of alcohol/drugs	4 to 7 days of jail
* a missed or diluted/adulterated breath test or urinalysis is considered a positive test	
Further use of alcohol/drug	Individualized (may be sent to residential treatment or terminated from the program)
Missed counseling	Makeup counseling
Missed court hearing	Warrant for arrest
Not employed/in school if required	Will remain in phase until required number of weeks to complete phase has been accomplished
Not doing physical fitness	Will remain in phase until required number of weeks to complete phase has been accomplished
No participation in cultural/spiritual activities	May be required before moving into the next phase; may result in being referred to the cultural/spiritual liaison

From a conceptual and operational standpoint, the Southern Ute Wellness Court bears a striking resemblance to Anglo Drug Courts; that is to be expected as wellness courts are based on the drug court model with some minor variations intended to address the unique legal and social challenges found in American Indian communities. According to the National Association of Drug Court Professionals (NADCPs), drug court participants are provided intensive treatment; are held accountable for meeting their obligations to the court, society, themselves and their families; are regularly and

randomly tested for drug use; are required to appear in court frequently for progress reviews; and, are rewarded or sanctioned for success or non-compliance (<http://www.nadcp.org/learn/what-are-drug-courts>). All of these factors are found within the operational procedures of the Southern Ute Wellness Court. Perhaps the most significant difference between the standard Anglo Drug Court and the Southern Ute Wellness Court is the incorporation of a religious/spiritual and fitness component found within the Wellness Court participation requirements. The traditional belief that a tribal member must be at one with nature and be spiritually and physically fit is not found in a typical Anglo Drug Court.

#### **ANALYSES OF SOUTHERN UTE CRIME AND SAFETY**

Over the past half-century, a number of research projects have focused on the Southern Ute Indian Tribe. Some of the research projects were carried out at the request of the court, while others were conducted by academics in an effort to understand crime, justice, deviance, and social controls. This section will look at five studies conducted between the early 1960s and 2011, four of which were conducted in the past decade.

##### *Society, Personality, and Deviant Behavior: A Study of a Tri-Ethnic Community (1968):*

The Tri-Ethnic Research Project began in 1959 and was co-directed by Richard Jessor and Omer Stewart from the University of Colorado. The research was an ethnographical study and unique as the five main researchers came from three distinct fields; Richard and Shirley Jessor were psychologists, Theodore Graves was an anthropologist, and Robert Hanson was a sociologist. Although the research site was not identified by name in the published results of the study – it was only referenced as a



Tri-Ethnic community consisting of Anglo-Americans, Spanish-Americans, and Indians on an Indian Reservation in the Southwest – the setting was the town of Ignacio on the Southern Ute Indian Reservation.

The research occurred over the first few years in the 1960s and consisted of observations, interviews, self-report data and court data reviews. The results of the study indicated that the Indian population showed a greater degree of deviance than the Spanish-American population, which showed more deviance than the Anglo-American population. The researchers created a Global Deviance measure for their adult sample. An individual was deemed deviant if they had been drunk 15 or more times in the previous year, had two or more instances of drinking-related problem behavior, had at least one instance of serious other deviance, or had a court conviction in the previous ten years for an offense other than alcohol or gaming. The deviance rate for Indians was 75% compared to 24% for Anglos and 30% for Spanish. Significant issues related to alcohol use in the Indian population included problems with heavy drinking at home (37% of sample), serious deviance (60% of sample), and court convictions (54% of sample). When extending the survey to high school students, the researchers found that the Indian population had a higher degree of Global Deviance and Poor School Adjustment than either the Spanish and Anglo population.

The research also found that Anglos in the community have a greater consensus of what constituted appropriate behaviors in everyday roles while both the Spanish and Indians faced more uncertainty about what behaviors were considered proper and legitimate. Unlike the Spanish, the Indians suffered from a relatively low consensus and low strength on most social norms and were suggested to have a more generalized

or prevalent normlessness. The Indian sample in the research showed an overall low deviance rate if the participants were deemed to possess a high level of acculturation coupled with a high level of economic success. For those who had low economic success, a high level of deviance was noted. For those who had a high level of economic success and a low level of acculturation, a high deviance rate was noted.

The study also indicated that both the Spanish and Indian population have learned to expect less in life and their disfavored position had become part of each groups personality structure. The research indicated that both sociological and personality variables were important in understanding deviant behavior. Although the Indian population of the sample maintained a more favorable position regarding access to socioeconomic opportunities than the Spanish, the exposure of the Indian population to deviant role models and a lack of solidarity led to a greater degree of anomie and deviance. The Anglo population, being part of the dominant culture in the area, had greater levels of opportunity, less exposure to deviant role models and a subsequent lower level of deviance.

*The Southern Ute Indian Community Safety Survey (2005):* Under research grant 2001-3277-CA-BJ from the U.S. Department of Justice, Bureau of Justice Statistics, Julie Abril, a PhD candidate from the University of California-Irvine, conducted an in-depth survey of crime on the Southern Ute Indian Reservation. A questionnaire was distributed to all adult enrolled members of the Southern Ute Indian Tribe and a randomly selected sample of 1,100 non-Native adults in La Plata County (the county encompassing the largest concentration of the Southern Ute Indians living within the exterior boundaries of the reservation). In the second phase of data collection, 71

Southern Ute tribal members and 14 members of the Southern Ute criminal justice system were selected to participate in structured personal interviews. An additional 14 tribal government employees were selected to participate in structured personal interviews. The final phase of the study consisted of a content analysis of the Southern Ute Tribal Code to determine if statutory provisions addressed issues and concerns identified during the study.

The results of the study indicated that Indians and non-Indians share similar views of the seriousness of violent crimes such as murder, armed robbery, rape, and assault. They also share similar views on the seriousness of theft, vandalism, and alcohol related offenses as being very or somewhat serious in nature, although the Indian respondents were more much frequently victims of these types of crime in the 12-months prior to questionnaire.

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**TABLE 6.5**

*Self-Reported Victimization Rates*

<b>Incident</b>	<b>Indian Victimization</b>	<b>Non-Indian Victimization</b>
Threatened with a weapon	12.2%	4.8%
Hit or slapped	17.3%	5.9%
Beaten up	10.3%	1.7%
Kicked or bitten	10.9%	1.7%
Pushed, grabbed or shoved	21.5%	7.3%
Raped	4.8%	2.5%

A common trend in in the self-report questionnaires emerged; the underreporting of crimes to police, and the involvement of alcohol. Rape victims were more likely to file a report with police than for the other identified offenses; report rates for Indian

victims was 44.4% (as opposed to 42.5% for other identified offenses), while non-Native victims reported Rape victimization at a much higher rate (66.7%) than other identified offenses (36.7%). All non-Native Rape victims reported the offender was intoxicated at the time event while 77.7% of Indians reported offender intoxication. One third of non-Native victims were injured in the assault, while 55.5% of Indian victims reported injuries. Alcohol use was identified in 64.6% of all other identified Indian offense, while for non-Natives that number was 37.2%.

Regarding community cohesion, non-Natives had a greater sense of unity than Indian respondents. Non-Natives felt that people were willing to help their neighbors far more (79.7% versus 46% of Indians), they belonged to a close-knit community (47.9% versus 32%), and people were trustworthy (56.1% versus 26.3%). Approximately one-third of Indian respondents believed that people in their neighborhood did not get along with one another while fewer than 10% of non-Natives believed that to be the case. Over 43% of non-Natives believed that people in their neighborhood shared the same values, while only 24.6% of Indians believed that to be true. The non-Native respondents also believed that members of their community or neighborhood would engage in informal means of social control to keep their neighbor safe more than the Indian respondents.

Regarding the services provided by the Tribal Government, many respondents were neither satisfied nor dissatisfied, especially those non-Natives that had limited services provided by the Tribe. Indian respondents were also asked about their opinion regarding Southern Ute per-capita payments and retirement benefits. Of those surveyed, 52.8% were satisfied with their per-capita payments and 44% were satisfied

with tribal retirement benefits. Approximately 24.6% were dissatisfied with the per-capita payments and 13% were dissatisfied with retirement benefits; the remainder was neither satisfied nor dissatisfied. Both Indians and non-Indians believed in the importance of Indian cultural values and protecting them, with the Indian respondents typically showing a slightly stronger belief.

**TABLE 6.6**

*Satisfaction Rates of Tribal Provided Services*

Service	Satisfied		Neither		Dissatisfied	
	Indian	Non	Indian	Non	Indian	Non
Southern Ute Police	37.5%	48.4%	31.3%	44.7%	31.3%	6.9%
Tribal Court	28.6%	16.8%	41.4%	74.3%	29.9%	9.0%
Victim Services	24.7%	13.1%	57.6%	82.6%	17.8%	4.4%
Southern Ute Community Action Plan	38.4%	53.5%	46.3%	41.9%	15.3%	4.6%
Tribal Council	39.2%	27.2%	26.2%	61.2%	34.6%	11.6%

*Tribal Court Assessment (2006):* In 2006, Coochise Consulting, LLC conducted an assessment of the southern Ute Tribal Court. The assessment provided a summary of the tribe and its membership. The assessors identified approximately 1410 enrolled members, with 60% living on the reservation with English spoken as primary language; only an estimated 15% converse in the tribal language. The assessors conducted a general review of court operations, policies and procedures as well as the court's budget. In addition six members of the Tribal Council, the Chief Judge, the Associate Judges, the Prosecutor, the Public Defender, the Chief of Police, the Detention Director and other members of the criminal justice process were interviewed.

An analysis of the use of federal funds, court resources and budget, the workload of the court, staffing, functionality, policies and codes led to an overall score of highly moderate to functional. The court staff was identified as experienced, professional and well-trained. The analysis found that the Southwest Intertribal Court of Appeals was not meeting the needs of the Tribe and, although appeals were infrequent, the return of an appeal decision would normally take one to two years; they recommended that the Council establish an Appellate Court and rescind the Tribal Council agreement with the SWITCA. The assessment also led to a recommendation that the Tribal Code be revised in its entirety due to the number of amendments and inconsistencies held within since it was last adopted in 1989.

*TüüÇai Juvenile Court Assessment (2010)*: In 2010 an assessment was conducted of the Southern Ute Indian Tribe's TüüÇai Court. The University of Colorado Denver requested technical assistance to review the Wellness Court in order to determine suitable ways for the court to incorporate cultural components into the court so as to meet the intent of the court model. The National Council of Juvenile and Family Court Judges (NCJFCJ) identified two individuals to assist in a review being conducted by a researcher from the University of Colorado Denver. The assessment occurred on 16-17 September, 2010 and focused on six major areas: a review of current policies and procedures, the youth handbook, and the cultural handbook; interviewing members of the Core Team telephonically or face-to-face; observing treatment staffing, court staffing, and court hearings; providing feedback to the court and the community; providing an overview of the identified strategies of the court and discuss ways to implement culture; and, identify action items to enhance the TüüÇai Court.

A review of the policies and procedures manual showed that they minimally reflect Wellness Court operations. The team recommended that the court develop a dedicated policy and procedures manual that accurately reflects actual operations. For the juvenile participant handbook, it was recommended that it be written at a third-grade level, include de-identified quotes from past participants, discuss the graduated incentive and sanction process, and identify expected accountability components. Since this assessment was done, the recommendations were adopted.

The cultural handbook was identified as a positive guide to introduce members to the Southern Ute culture. The assessment team recommended that it be divided into sections to provide for participant lessons, the addition of activities and exercises, and include opportunities for those who are not Southern Ute to explore and identify components of their culture.

During the observation phase of the technical assistance visit, only one juvenile was in the Wellness Court Program. An evaluation of treatment staffing noted that the case staffing occurred on the day of the hearing – immediately prior to the actual hearing – and consisted of a diverse group of community participants. During the actual hearing, the team noted that there appeared to be no designated point of contact for the participant and the Core Group recommendations regarding the issuance of sanctions or rewards or modifications of treatment plans. The assessment team recommended that each participant be given an individual plan, that there is a designated point-of-contact, ensure that Core Team members make recommendations for sanctions, rewards, and/or modifications of treatment, and also enhance its drug testing format to a more randomized format. The court staffing presented the same

areas of concern as the treatment staffing with similar recommendations: during court staffing and based on consensus, the team should make a recommendation for the participant; the report from treatment should be brief and concise while identifying participation, progress, strengths and weaknesses; other members of the Core Team should also indicate compliance or non-compliance and areas of concern. Since this assessment was conducted, the recommendations of the technical team have been adopted.

During the court hearing itself, the Core Team failed to discuss a recent incident with the juvenile at the hearing. The court also failed to engage the parent of the juvenile to see how he/she was doing at home. The assessment team recommended that parents assume a more active role in the hearing; that the court addresses any issues or concerns, even if the information happens to be hearsay; and more actively engage the youth so he/she can discuss their accomplishments and challenges. Since this assessment was conducted, the recommendations of the technical team have been adopted.

While the technical assistance team noted a number of “deficiencies” in the Juvenile Wellness Court, it also identified a number of strengths. The court was seen as collaborative in nature, committed to cultural inclusion, and the desire to provide a structure that promotes wellness and safety for the tribal youth, their families and the community as a whole. The court was also commended on the inclusion of a physical fitness component/requirement in the program. The Tribal Council was identified as a strong proponent of the program, providing tribal resources and having shown a commitment to Wellness. The members of the Core Team were commended on their



dedication and commitment as well as on their attendance in national Drug Court and Healing to Wellness trainings. The assessment concluded that the Southern Ute TüüÇai Court has the potential to be a model court for other Healing to Wellness Courts in Native America.

## **CONCLUSION**

The “modern” Southern Ute Criminal Justice System can be traced back to the 1930s when the Southern Ute Indian Tribe adopted its Constitution. Despite shifting federal policies regarding Indian rights and self-determination, the Southern Ute Tribe focused on strengthening its government within the confines of the existing policies. The two departments responsible for most of criminal justice matters – the Department of Justice and Regulatory and the Tribal Court – have continued to progress in professional competency and capacity.

The Southern Ute Tribe is at the forefront of American Indian Tribes taking advantage of federal funding to strengthen its justice system. According to the Department of Justice and their Tribal Assistance Program, the Southern Ute Tribal Court is a progressive Court and earned the highest ranking among Indian Courts in the Southwest by the Bureau of Indian Affairs (CTAS, 2011). The Tribe is active in taking advantage of increased autonomy and rights of self-government and has been quick to amend its laws and operations to incorporate these changes.

Previous research conducted on the Southern Ute Indian Tribe indicates that there have been historical problems among the tribal members in the adaptation to Anglo society, a fragmentation of tribal cohesion, and a long-standing issue related to alcohol abuse. The Tribe, its leadership, and its officers of the court have been active in

their efforts to reverse this trend by taking innovative approaches to address substance abuse and cultural anomie. The tribe has utilized its vast wealth to provide state-of-the-art facilities and equipment while ensuring that these organizations incorporate aspects of Southern Ute culture in their day-to-day operations.

## **CHAPTER VII: STUDY DESIGN AND METHODOLOGY**

This research focused on the Southern Ute Indian Tribe headquartered in Ignacio, Colorado. The research traced significant events related to American Indian Policy, tribal sovereignty, to include judicial administration, as well as a brief review of the history of the Ute Indians, the history of the Moache and Capote bands of the Ute Indians, tribal governance and the Southern Ute Criminal Justice System.

This chapter includes an explanation of the qualitative and quantitative methodology used for the analysis of the Southern Ute Tribal Court. The research procedure was approved by the University of Oklahoma's Institutional Review Board and endorsed by the Southern Ute Tribal Council under Resolution 2009-157, dated July 28, 2009. This chapter begins by restating the research goals and then identifies the methodology, research design, population and sample, dependent and independent variables, and the statistical techniques used to analyze the data.

### **RESEARCH GOALS**

The goal of this research was threefold: 1) to trace the effects of Federal Indian policy in an effort to understand how Federal Indian Policy influenced the manner by which tribes traditionally dealt with behavior that would be considered deviant in nature; 2) to conduct an evaluation of criminal cases brought before the Southern Ute Tribal Court in which the defendant was charged with or was under the influence of alcohol or another illegal substance; and, 3) to analyze whether the Southern Ute Tribal Court is able to decrease the recidivism rate in offenders who have had arrests related to substance use. The quantitative research question is: What are the factors that influence recidivism rates in this American Indian community, and more specifically,

do participants in the Wellness Court program have lower recidivism rates compared to offenders who are dealt with in the Tribal Court?

### **RESEARCH LOCATION**

The research project was based out of the Southern Ute Tribal Court, located at 149 County Road 517 in Ignacio, CO., where the Southern Ute Indian Tribe is headquartered. The town of Ignacio has a population of approximately 700 and is the largest town on the Southern Ute Indian Reservation. The Southern Ute Indian Reservation is located in southwest Colorado, covering 1,058 square miles. The reservation is approximately 75 miles east-to-west and 15 miles north-to-south. The reservation consists of three major types of land: Tribal Trust land, Allotted Lands, and Fee-Land. The reservation is bordered by the Ute Mountain Ute Reservation to the west, San Juan County, New Mexico to the South, Archuleta County, Colorado to the east, and Archuleta and La Plata Counties to the north. The Southern Ute Indian Tribe has approximately 1,400 enrolled members living both on and off the reservation; the tribe estimates that approximately 10,000-12,000 people live within the exterior boundaries of the reservation.

The Southern Ute Indian Reservation, and particularly the town of Ignacio, is identified as a Tri-Ethnic community. During the allotment period, a large portion of the reservation was opened to homesteaders; many Anglos who had already encroached upon the reservation and Hispanics of Mexican descent who had settled in the area before the Mexican Cession following the Mexican-American War settled on the reservation. Ignacio was founded in 1913 on allotted land and according to the 2010 census, has a population of just less than 700. Of the residents of Ignacio,

approximately 59% are White, and 17% are American Indian. Of the total population, almost 53% are of Hispanic or Latino origin.

An effort to secure access to the research site was initiated in June 2009 while attending the 2nd Annual American Indian Justice Conference hosted by the Southern Ute Indian Tribe. While attending the conference, I spoke with then-Chief Judge Elaine Newton and requested her endorsement in studying the Tribal Court. Judge Newton agreed and assisted in arranging the presentation of the research proposal to the Southern Ute Tribal Council. The Tribal Council approved the research under Southern Ute Tribal Council Resolution 2009-157 on July 28, 2009. Entry into the research site as an announced researcher was secured and, between July 2009 and January 2012, over four months were spent at the research site. The Tribal Court provided office space in the secured area of the courthouse and access to all electronic and paper records for this study (<http://www.rwpc.us>).

## **METHODOLOGY**

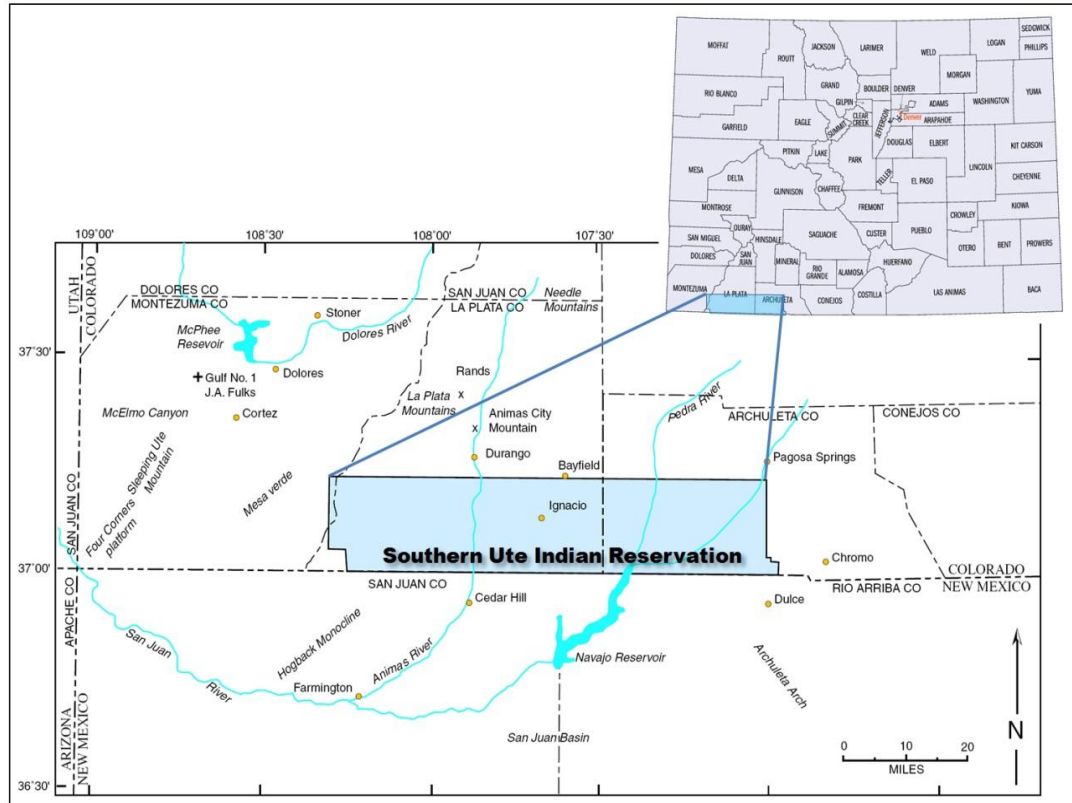
This research incorporated a mixed methodological approach, although it relied heavily on quantitative data analysis. The qualitative analysis of the Southern Ute Tribal Court is descriptive in nature; observations were conducted over multiple trips to the research site between 2009 and 2012. The intent of the observations was to provide an accurate description of the environment of the court, the administration of the court, and the manner by which the court conducted proceedings.

Information gathered for quantitative analysis came from existing court records. Since 1998, the Southern Ute Tribal Court has used Full Court Enterprise (FCE) software as its primary tool to manage the Tribal Court caseload. FCE is designed to

streamline the process of managing court data and serves as a complete case management tool. The system allows court administrators, probation officers, treatment providers and others to access offender data, court rulings and offender requirements.

**FIGURE 7.1**

*Map of the Southern Ute Indian Reservation*



## QUANTITATIVE ANALYSIS

The quantitative portion of this research project consists of an analysis of two distinct data sets. The first assessment consists of an analysis of substance-related case adjudication in the two court programs of the Southern Ute Indian Tribe. This research consists of an analysis of cases adjudicated in the Southern Ute Tribal Court and the Southern Ute Wellness Court in an effort to determine what factors are

significantly related to recidivism rates. The second analysis focused specifically on the Wellness Court itself and looks at recidivism rates of graduates and non-graduates at six months, twelve months and eighteen months post completion/termination of the subjects' enrollment in the program. The three main research questions in this analysis are, 1) What predicts recidivism within Wellness Court?; 2) When both courts are combined, do Wellness Court graduates recidivate less than Tribal Court graduates?; and, 3) Do those who are adjudicated on a substance-related charge, recidivate more than other offenders?

In an effort to understand whether adjudication through the Wellness Court produced different results from adjudication through the standard Court, the sample used in this research consisted of individuals who had at least one identified substance charge between January 1, 2002 and December 31, 2009. Full Court Enterprise (FCE) was used to identify all individuals who had either been arrested or received a citation for a substance-related charge during this period. Although FCE was introduced in 1998, calendar year 2002 was used as a start date as it coincided with the implementation of the TüüÇai/Wellness Court.

While FCE allows the operator of the system to search for charges by type, utilizing a search that only included "substance" was found to be problematic. Every offense is identified as falling into one of six major categories – Substance, Violence, Property, Traffic, Non-Compliance and Other. While reviewing charges in FCE, the charge "Disorderly Conduct" was identified as a violence charge. A review of charges throughout the dataset revealed that "Disorderly Conduct" frequently, if not always, had elements of substance use related to the charge. As such, in addition to searching for

offenders that had an identified substance charge, the search criteria of “BAC (blood alcohol content) at Arrest” was also included in identifying individuals for the overall sample. The cut-off date of December 31, 2009 was used to allow for data collection that could also accommodate a review of offender recidivism after the initial period of review. For those individuals who had at least one substance charge during the data period, criminal charges were identified for an 18-month period – through June 23, 2011. The end date was chosen as it reflected the last day that court records were reviewed.

Additional requirements for inclusion in the sample were identified dates of birth and gender; any individual who was identified as being deceased between their first arrest and June 23, 2011 were excluded from the sample. The initial data set was recorded while at the Southern Ute Tribal Court, and all identifiable information was deleted prior to departing the research site, leaving only FCE identification (ID) numbers. A thorough review of all records was conducted, and those individuals who met the initial criteria for selection, who had a date of birth and gender listed, and who were not identified as having died between January 1, 2002 and June 23, 2011 were included in the final sample for both data sets to be evaluated. The final sample size for the between-court analysis was 495 offenders ( $N=495$ ). The sample size for the Wellness Court specific (or within-court analysis) was 43 offenders ( $N=43$ ). The number of individuals excluded from the overall sample used (495) due to incomplete data was approximately 300.



## **Between Tribal and Wellness Court**

Of the 495 subjects identified, data for offenders who went through the TüüÇai/Wellness Court were also included in the statistical analysis of the data. For inclusion in the analysis, the offender must have completed the program by December 31, 2009. For individuals who were sentenced to either the Juvenile *or* Adult Wellness Court more than once during the period under analysis, the most recent Wellness Court assignment was used in the data analysis. The final sample of 495 included 44 individuals who went through Wellness Court and 451 individuals who went through the regular Tribal Court. The actual number of individuals who, upon completion of the research, had been assigned to Wellness Court numbered 74. Utilizing the inclusion criteria of completion of the program by the end of 2009 and utilizing the most recent iteration of Wellness Court participation (if multiple referrals to Wellness Court occurred for the same individual), only 43 clients qualified for inclusion in the sample.

### **Dependent Variable**

Recidivism was operationalized as a criminal re-arrest during the follow-up period of the study – from January 1, 2010 through June 23, 2011.

### **Independent Variable**

Wellness Court: Participation in the Wellness Court was the key predictor variable in the analyses and was operationalized three different ways. *Participation* in either the juvenile or adult Wellness Court diversion program was coded with a 1; non-participation was coded as 0. *Time in program* reflected the number of days spent in Wellness Court. Finally, *graduation* from the program was coded 1 for graduated and 0

for did not graduate. Operationalizing participation in the program in different ways allowed me to more precisely identify any positive effects on recidivism.

### **Control Variables**

*Offender Demographics:* Because offenders before the Tribal Court were not randomly assigned to participation or non-participation in the Wellness Court diversion program, controlling for possible selection effects was crucial. Prior research suggests that males have higher recidivism rates than females (Deschenes, 2006), so these analyses controlled for sex. *Male* was coded 0, female as 1. The literature on recidivism also suggests that crime rates rise in the early teen years, peak during the mid-to-late twenties, and decline afterwards (Hirschi and Gottfredson, 1983 as cited in Uggen 2000); therefore I included *age* as a control variable. The broad category of race was not a relevant demographic in these data as Tribal Courts are limited by federal law to cases that involve American Indians. Rather than race/ethnicity, these analyses controlled for *tribal affiliation*. A series of dichotomous variables were created representing the following tribal affiliations: Southern Ute, Ute Mountain Ute, Northern Ute, Navajo, and Other/Not Identified. Southern Ute is the reference category.

*Criminal History:* In order to further account for any pre-existing differences between the Wellness Court and Tribal Court participants, the analyses also controlled for a variety of prior criminal behaviors, including *age at first arrest*, which also covered any criminal citation that was received even if the subject was not physically arrested; and whether the subject had a prior charge in two of the six categories used by the Southern Ute Tribal Court – *Violence* and *Property*. The three remaining categories of Traffic, Compliance, and Other were not included in this analysis. Finally, because all of the

offenders have a charge for substance abuse, it was not included among the predictor variables. It is important to remember that two groups (i.e., Wellness Court and Tribal Court participants) in this research were not randomly placed in one program or another; their placement was based on court determinations as per the suitability of the subject to enter Wellness Court (e.g., no significant prior history of violence). By controlling for criminal history, the intent is to account for the pre-existing differences between these two groups.

### **Statistical Techniques**

Data were analyzed at the bivariate level using independent sample t-tests and cross-tabulation (chi-square). The independent sample t-test was used to analyze the significance of relationships for single independent variables with two-levels at the interval level; it was utilized for the variables of individuals in the sample in two ways: 1) at the age at the beginning of the follow-up period (January 1, 2010); and 2) as well as the age of subjects at their first recorded arrest. Given the binary nature of the dependent variable, a chi-squared test was used to test association at the bivariate level. Multiple linear logistic regression analysis was used to determine the relationship between participation in the Wellness Court and recidivism rates, independent of the control variables.

### **Within Wellness Court**

While the analysis between Tribal Court and Wellness Court was used in an effort to determine whether participants in the Wellness Court had reduced rates of recidivism when compared to those whose cases were adjudicated through the Tribal Court, the analysis conducted solely on participants of the Wellness Court was

conducted to determine what effect successful completion from the program had on recidivism rates.

Of the initial 44 subjects identified as offenders who went through the TüüÇai/Wellness Court, one of the offenders was removed from the analysis ( $N=43$ ) due to the absence of a case file which limited the accessibility of the required information to conduct a more detailed analysis of the participants in the program. Because the within-court analyses consist of only 43 cases, multivariate regression analyses were not an option. Instead I present bivariate analysis comparing those who graduated from Wellness Court to those who did not graduate Wellness Court across a variety of variables, which I describe below.

### **Recidivism**

Recidivism was operationalized as a criminal re-arrest during three distinct time frames post Wellness Court.

Wellness Court: Wellness court was the key predictor variable in the analyses and was operationalized three different ways. *Age at Entry to Wellness Court* reflects the age at which a participant officially entered the program. *Days between Referral Charge and Entry into Wellness Court* refers to the days that elapsed from the subjects criminal offense date until their actual entry into the program. Finally, *Number of Days in Wellness Court* refers to the number of days that passed from a subject's entry into the program and their last day in the program regardless of the manner by which the participation ended.

Offender Demographics: As previously mentioned, research suggests that males have higher recidivism rates than females so these analyses controlled for sex. *Male* was

coded 0, female as 1. Unlike the “between courts” analysis, age was not included as a demographic variable rather than incorporated into the criminal history variable set.

The broad category of race was not a relevant demographic in these data as Tribal Courts are limited by federal law to cases that involve American Indians. Rather than race/ethnicity, these analyses controlled for *tribal affiliation*. A series of dichotomous variables were created representing the following tribal affiliations: Southern Ute, Ute Mountain Ute, Northern Ute, Navajo, and Other/Not Identified. Southern Ute is the reference category.

*Criminal History*: In order to further account for any pre-existing differences between the Wellness Court graduates and non-graduates, the analyses compare a variety of prior criminal behaviors, including *age at first arrest*, which also covered any criminal citation that was received even if the subject was not physically arrested. It also included the age at the subject’s last arrest and the average number of charges incurred annually both before and after participation in the Wellness Court program.

### **Statistical Techniques**

The statistical techniques that are used in analysis of the data set consist of independent sample t-tests and cross-tabulation (chi-square) for the bivariate quantitative analysis of the descriptive data. The independent sample t-test was used to analyze the significance of relationships for single independent variables with two-levels at the interval level. The Chi-Square Test was conducted for a single independent variable at two levels for data that were categorical in nature. Multiple linear logistic regression analysis was used to determine the relationship between graduation from the Wellness Court and recidivism rates.

## **CHAPTER VIII – RESULTS OF THE STUDY**

This chapter begins by discussing observations made during multiple trips to the research site. The observations are not meant to be analytical in nature, rather to provide insight into the research site, the set-up of the Southern Ute Tribal Court, and the operation of both the Tribal Court and the Wellness Court. After describing the observations of the court, a discussion of the dependent and independent variables listed in Table 8.1 will occur. Finally, a detailed statistical analysis of the variables will occur in an effort to identify the predictive nature of the independent variables in relation to recidivism rates under three specific models – Wellness Court participation, the time spent in Wellness Court, and Graduation from Wellness Court.

### **Observations of the Research Site and Tribal Court**

In order to gain an understanding of the social setting of the research site, multiple trips to Ignacio, Colorado occurred between 2009 and 2011 with approximately four months spent on site. During these trips, a large portion of the reservation was visited and multiple observations of the Tribal Court and Wellness Court were conducted. In this research, I was a passive participant; I did not engage in any of the court proceedings. Participants in the Tribal Court were not notified of my presence, although due to the closed setting/restricted access of the Wellness Court, all participants' were notified of my presence and the purpose of my presence (observation of proceedings). Observations were recorded after the proceedings under observation had terminated in an effort to minimize drawing attention to myself in the courtroom.

Observations of court proceedings occurred at the Southern Ute Justice Complex, which houses both the Tribal Court and the Southern Ute Police Department. The Southern Ute Tribal Court occupies the west half of the building while the

Department of Justice and Regulatory occupies the eastern portion of the complex. The purpose of the courtroom observations was to three-fold: first, to understand through firsthand experience how case adjudication occurred in the Southern Ute Tribal Court System; second, to observe differences in case adjudication between the tribal and Wellness Court in an effort to understand how the processes differed; and third, to determine whether the Wellness Court operated within the identified constructs of program. The following section is intended to provide an overview of the research site and, more specifically, the location and process of the Southern Ute Tribal Court.

In recent years, the Tribal Court has increased its security measures, which are aligned with how many Anglo courts control entry into court facilities. All individuals who enter the courtroom are required to go through a magnetometer and are subject to search before entry. There is also a closed circuit television (CCTV) system in place. There is a service window immediately upon entering the door; access to the secured area of the administrative offices requires a key or for the front desk to release the door lock. The only office that is not in the secured area of the court's office space is the Public Defender's Office.

The secured area for court administration consists of multiple individual offices, a large court clerk office which houses the lead and deputy court clerks, a law library which also houses space-saver rolling file cabinets for hard-copy client folders, a reproduction room, a jury room, a break room and restrooms. Office spaces and hallways are decorated with American Indian artwork while the offices themselves are modern with all of the necessary equipment to conduct court-related business.

The Southern Ute Tribal Court operates out of two courtrooms, one of which is slightly larger than the other. The determination of which courtroom to use appears to be based on the number of cases being heard during the session, with many proceedings being held in the smaller of the two courtrooms. A standard court proceeding is very similar to those in Anglo courts. Court proceedings are administered by the judge, who wears a black judicial robe, who sits at an elevated “bench” in the center of the courtroom. Entry into the courtroom for the presiding judge is through a separate hallway from the secured area of the court administrative offices. He/she is flanked by a court clerk who is responsible for the current and future calendar, entering judgments, and maintaining court files and paperwork. The prosecutor and defense attorneys sit at separate tables before the judge with a gallery at the rear of the courtroom for defendants and audience members. On the west side of the courtroom is a jury box and on the east side of the courtroom is a secured holding area for defendants who have been brought before the court from jail.

Proceedings in the courtroom are very organized and the interactions between the courtroom workgroup (judge, prosecutor and defense attorney) are similar to Anglo court proceedings. Typical courtroom etiquette is expected from all parties – proper attire, non-offensive language, quietness, etc. – and there are typically two bailiffs present during the hearings to ensure that court procedures and expectations are adhered to.

The one noticeable difference in courtroom procedures is the amount of interaction between the judge and the defendant in court proceedings. In typical Anglo court proceedings, there is limited discussion between defendant and judge; in the



Southern Ute Tribal Court, the judge and defendant appeared more apt to talk directly to one another rather than through legal counsel.

While the Southern Ute Wellness Court shares many similarities to the regular Tribal Court, there are significantly noticeable differences. Entry procedures for Wellness Court are limited to those involved in the proceedings and/or family members – which are required in juvenile cases. Prior to Wellness Court hearings, the courtroom is altered from the standard format; all members of the Core Team (to include the judge) sit in a circle with all individuals currently in the program. The setting resembles a talking-circle or healing-circle. The judge still leads the proceeding and is still dressed in his/her robes, but the interaction is much more client focused with each member of the Core Team talking with the client about his/her experiences and/or issues since their prior hearing.

Proceedings are more relaxed and involve significant interaction between the client and Core Team members. Like Anglo Drug Courts, the approach in the Wellness Court is client-specific and there is an expectation of adherence to court orders with rewards and sanctions being given to the client for successes or failing to comply with the court's orders. Wellness Court proceedings are, in many ways, more difficult on the offender than standard court proceedings. In effort to address substance abuse as an underlying cause or symptom of criminal activity, members of the Core Team frequently ask very personal and sensitive questions of the client. These proceedings were observed as being very emotional events for clients – much more so than standard court proceedings.

During multiple observations of the Wellness Court, the most frequent reward given by the court was a gift card, which varied in monetary value based on how far in the program the client was. Additionally, a reduction in the frequency of court hearings and substance tests, early advancement to the next stage of the 4-stage program as well as forgiving court-oriented fines or fees was observed. For individuals who failed to appear for their Wellness Court, the court would immediately issue an arrest warrant.

For those who appeared, yet had not completed conditions put forth by the court, sanctions varied. Not surprisingly, a positive substance test for either alcohol or drugs would restart the time requirement for sobriety in any stage of the 4-stage process. If a positive substance test occurred, the client would, at a minimum, see an increase in the testing requirement. For more systemic issues in the client's overall compliance, the client was either immediately remanded to custody or told to report to the southern Ute Detention Center on a specified date and time. No client was observed being moved back a stage in the program or being terminated from the program. For those clients observed who did receive a sanction, the interaction between the client and Core Team remained supportive – even in the case of jail being ordered.

Observations from court proceedings provided an understanding of how the Southern Ute Tribal Court (to include the Wellness Court) operated in practice. The standard court proceedings showed that this particular Tribal Court operated in a manner that was more informal than the typical Anglo court; the proceedings felt more familial in nature. The judge and the defendant had more direct interaction than in Anglo courts, which typically have interactions between the defendant and judge through the defense attorney. The judge also seemed to have a more genuine concern

and interest in the defendant and the circumstance that brought the individual before the court.

The proceedings observed in Tribal and Wellness Court appeared to be very similar. One difference in standard Anglo court and Drug Court proceedings is the involvement of or focus on the defendant. As such, the interaction between the judge, defendant and other members of the courtroom workgroup appear different in a Drug Court than a traditional court. The Tribal Court is less formal in judicial proceedings than a standard Anglo Court; as such, the interactions appeared between the judge and defendant appeared to be comparable in both courts. An observed difference was that Wellness Court proceedings were closed to the public (only the client, their family members, and court personnel were allowed during the proceedings).

The guiding principles identified by the National Association of Drug Court Professionals and modified by Tribal Law and Policy Institute to meet the needs of American Indians were demonstrated and adhered to. Wellness Court clients, depending on what stage of the program they were in, frequently appeared before the court and discussed their successes and challenges. Members of the core team were actively involved in the proceedings with the prosecutor, defense attorney, treatment providers, and law enforcement all working together in an effort to facilitate the clients' success.

During the observation periods, successful clients met with court personnel to discuss their status in the program. Those who had completed the requirements of a phase of the program were often provided rewards, frequently in the form of a gift card to Walmart. In addition, when participants continued to provide negative samples in

random alcohol or drug tests, the frequency of testing was reduced. When clients were found to be in total compliance with their program requirements, reduced contact with the court (in the form of review hearings) or with providers approved.

Those clients who failed to comply with any of the terms of their program received penalties; these penalties included jail time, increased testing or court/provider contact, a reduction in phase level (e.g., moving from phase II back to phase I), or termination from the program and a reinstatement of jail time associated with their original charge/conviction.

### **Quantitative Analysis between the Tribal and Wellness Court**

The quantitative analysis between the Tribal Court and the Wellness Court consisted of a descriptive statistical analysis of 451 Tribal Court participants and 44 Wellness Court participants. The purpose of the analysis was to determine whether offenders placed into the Wellness Court program Tribal Court.

Bivariate Analysis: Table 8.1 compares individuals who went through Tribal Court and those who went through Wellness Court by gender, tribal affiliation and age during the follow-up period. A majority of individuals arrested with at least one substance abuse charge between 2002 and 2009 were male at 60.8%; males accounted for a similar majority in both Tribal Court and Wellness Court – 60.3% and 65.9%, respectively. Of those individuals whose tribal affiliation was known, members of the Southern Ute Indian Tribe made up a vast majority of the sample in both the Tribal Court and Wellness Court. Approximately 83% of those whose cases were adjudicated in Tribal Court and 76.5% of those whose cases were adjudicated in Wellness Court were Southern Ute tribal members.

Tribal Affiliation data was absent in the Tribal Court’s Full Court Enterprise in almost half of all cases. The reason for the large number of unknown tribal affiliations was not clear. FCE requires court personnel to input the data manually upon first contact with the court (or update information which is absent or has changed). As the court only has jurisdiction of American Indians, it is likely that court personnel simply failed to either inquire or input the data. Due to the large number of missing tribal affiliation data, the variable was not included in the results of the analysis. A majority of those adjudicated in Tribal Court were older than their Wellness Court counterparts – 53.5% of Tribal Court participants were over 30 years old while 54.6% of Wellness Court participants were 21 years old or younger (Source: Southern Ute Tribal Court, Tribal Court Caseload, 2002-2009).

**TABLE 8.1:**

*Descriptive Statistics of Variables in between Court Analysis*

Variables	Min	Max	Wellness Court (N=44)		Tribal Court (N=451)		Statistical Test	
			Mean	SD	Mean	SD		
<b>Dependent Variable</b>								
Arrest During Follow-Up Period	0	1	0.61	0.49	0.33	0.47	12.94 ( $\chi^2$ )	***
<b>Wellness Court Variables</b>								
Participation in Wellness Court	0	1	0	0.00	1	0.00	-	
Number of Days in Wellness Court	0	602	299.1	155	-	-	-	
Graduated from Wellness Court	0	1	0.64	0.49	-	-	-	
<b>Demographic variables</b>								
Female	0	1	0.34	0.48	0.40	0.49	0.527	

Age	13	77	23.6	7.29	33.7	11.9	( $\chi^2$ ) 5.555 (t)	***
Tribal Affiliation								
Southern Ute (reference category)	0	1	0.59	0.50	0.40	0.49	5.922 ( $\chi^2$ )	*
Ute Mountain Ute	0	1	0.09	0.29	0.04	0.19	4.918 ( $\chi^2$ )	*
Northern Ute	0	1	0.02	0.15	0.00	0.67	6.037 ( $\chi^2$ )	*
Navajo	0	1	0.00	0.00	0.03	.018	0.196 ( $\chi^2$ )	
<b>Criminal History</b>								
Age at First Arrest	10	69	16.1	5.80	26.4	11.4	-9.91 (t)	***
Prior Violence Charge	0	1	.64	0.49	0.60	0.49	0.238 ( $\chi^2$ )	
Prior Property Charge	0	1	.48	0.51	0.32	0.47	4.364 ( $\chi^2$ )	*
Prior Incarceration	0	1	0.95	.021	0.65	0.48	16.65 ( $\chi^2$ )	***
* refers to p< .05, ** refers to p< .01,*** refers to p< .001								

As previously mentioned, all data included in the descriptive and statistical analysis came from the Southern Ute Tribal Court’s Full Court Enterprise. Any individual who was arrested for a substance abuse charge between January 1, 2002 and December 31, 2009 was included in the original sample, which resulted in a sample size of 495 ( $N=495$ ). Levels of significance for the dependent and independent variables are identified in Table 8.1. The Statistical Package for the Social Sciences (SPSS) version 19 was used to run all data analysis; the following section discusses those results in greater depth.

***Dependent Variable:*** The dependent variable for this research is recidivism.

Recidivism is operationalized as a criminal re-arrest during the follow-up period of the study – from January 1, 2010 through June 23, 2011. The mean score for this variable for the Wellness Court participants is 0.61, reflecting the fact that 61% of them had at

least one arrest during the follow-up period. The offenders who did not participate in the Wellness Court program had a mean of 0.33, reflecting that only 33% of individuals who were adjudicated through regular Tribal Court had at least one arrest in the follow-up period. The cross-tabulation between arrests during the follow-up period of analysis and which court defendants went through yielded a Chi-Square of 12.94 which was statistically significant at the .001 level.

*Independent/Predictor Variables:* The independent variables for the statistical analysis of this research consist of age (at the beginning the period of analysis), tribal affiliation (if known), gender, Wellness Court, and prior criminal history. The average age of all subjects was 32.83 years-old. When comparing the ages of Wellness Court participants ( $N=44$ ) with Tribal Court participants ( $N=451$ ) utilizing an independent samples t-test, a statistically significant variance is noted at the 0.001 level; Wellness Court participants' average age is a full ten-years younger than those subjects whose cases were adjudicated through the regular Tribal Court.

As previously mentioned, the Southern Ute Tribal Court's jurisdiction is limited by federal law to those cases involving American Indians on tribal property. Instead of using race, tribal affiliation was used in the descriptive analysis. The three tribes of Ute heritage – the Southern Utes, the Ute Mountain Utes, and the Northern Utes – along with the Navajo tribe were specifically identified based on cultural or geographic similarities. A few other sample subjects were identified by tribal affiliation, although the number was very small. Any American Indian who was not identified as being a member of one of the four main groups was categorized in the “other” category and not

included in the analysis as the number of other/unknown made up half of the total sample size.

With the exception of the Navajo category, tribal affiliation was statistically significant at the 0.05 level. This means that those who identified as coming from Ute lineage were more likely to be in Wellness Court than those who were not identified as Ute affiliated. Cross-tabulation results of gender composition of the sample population showed that a total of 272 males and 179 females went through Tribal Court while 29 males and 15 females went through Wellness Court. The Pearson Chi-Square test resulted in a value of 0.527, which was not statistically significant.

The independent variable of criminal history consists of four categories: age at first arrest, prior violence charges, prior property charges and prior incarceration. As sample selection required that each subject had at least one substance charge, that variable was not included. An independent samples t-test was conducted to test the statistical significance of the variable *age at first arrest* which resulted in a t-score of 5.91 which was significant at the 0.001 level. Wellness court participants were 16.1 at first arrest while Tribal Court clients were approximately 26.4 years old at first arrest. Wellness Court participants had an age at first arrest range of 10 to 38, while Tribal Court participants had an age at first arrest range of 11 to 69; almost one-third (30.3%) of all subjects were first arrested and/or charged as a juvenile. Cross-tabulation analysis was conducted to see if the prior violence charges were statistically significant in relation to type of court participation. The Chi-Square result of 0.238 was not significant. The Chi-Square score of 4.36 for prior property offenses was found to be



statistically significant at the 0.05 level and the Chi-Square score of 16.65 for prior incarceration was found to be statistically significant at the 0.001 level.

Logistic Regression Analysis: Logistic regression analysis was conducted to analyze the relationship between recidivism (coded as a dichotomous variable) and several independent variables (Boslaugh, 2013). The objective of this regression analysis is to assess the strength, direction and statistical significance of the independent variables on the dependent variable. The analysis was run in three separate models (each with a different operationalization of the dependent variable) in an effort to see how specific independent variables may account for recidivism with control variables in place. The following section briefly discusses the results with a more substantive discussion in the following chapter.

Table 8.2 shows the results of the three models. In Model 1 – Wellness Court Participation, the analysis indicates that participation in Wellness Court is not a significant predictor of recidivism. Only one variable in this model reached statistical significance as predictors of recidivism; prior arrests for property were statistically significant and positive at the  $p < .01$  level. Those offenders who had a property charge in their criminal history were almost two times as likely to have an arrest in the follow up period as those offenders who did not have a prior property charge. Model 2 – Time in Wellness Court yielded similar results; once again only prior property charges were found to be statistically significant at the same level and direction as indicated in Model 1.

**TABLE 8.2**

*Regression Analysis of Recidivism in Between Court Analysis*

Variables	MODEL 1 Wellness Court Participation (N=495)		MODEL 2 Time in Wellness Court (N=495)		MODEL 3 Graduation from Wellness Court (N=495)	
	Coef/(SE)	OR	Coef/(SE)	OR	Coef/(SE)	OR
<b>Intercept</b>	-.182 (.396)	.834	-.158 (.394)	.854	-.030 (.386)	.970
<b>Wellness Court</b>	.676 (.362)	.547	.002 (.001)	1	.328 (.552)	1.388
<b>Criminal History</b>						
Age at First Arrest	-.064 (.033)	.938	-.064 (.033)	.938	-.066 * (.033)	.937
Prior Violence Charge	.429 (.236)	1.54	.435 (.236)	1.55	.394 (.234)	1.48
Prior Property Charge	.588 ** (.222)	1.800	.595 ** (.222)	1.81	.605 ** (.222)	1.83
Prior Incarceration	-.094 (.241)	.910	-.077 (.239)	.926	-.012 (.236)	.988
<b>Demographic Variables</b>						
Female	-.317 (.218)	.728	-.316 (.218)	.729	-.333 (.217)	.716
Age	.036 (.030)	1.04	.036 (.030)	1.04	.034 (.030)	1.03
<b>Tribal Affiliation +</b>						
Ute Mountain Ute	.358 (.469)	1.43	.380 (.468)	1.46	.408 (.464)	1.5
Northern Ute	-.103 (.961)	.902	-.227 (.977)	.797	-.056 (.981)	.946
Navajo	-.444 (.549)	.641	-.459 (.550)	.632	-.470 (.551)	.625

Nagelkerke R Square	.19	.19	.18
* refers to p< .05, ** refers to p< .01, *** refers to p< .001			
+ Reference Category: Southern Ute			
Note: This table presents logistic regression models with unstandardized coefficients, standard errors and odds ratios. Standard errors are in parentheses			

Model 3 took into consideration the effect of graduating from Wellness Court as a predictor of recidivism during the follow-up period of analysis. Prior property charges remained statistically significant at the same level and direction as Model 1. In this analysis, a second variable was found to be statistically significant as a predictor to future arrest; age at first arrest is statistically significant at the p< .05 level. Based on the results in the odds ratio for this variable, one could expect that an increase in each unit (year) that an offender is upon first arrest, there is a reduced likelihood that the offender will recidivate.

In Model 3, the actual number of graduates from Wellness Court equaled only 18. The limited number of graduates required verification that the number did not skew the results of the analysis. A test for skewness in SPSS resulted in an estimate of skewness at 0.342 with a standard error of skewness at 0.361. The z value resulted in 0.947, well below the 1.96 value required for the skewness of data to be statistically significant (Cramer & Howitt, 2004).

### **Quantitative Analysis within Wellness Court**

The quantitative analysis within the Wellness Court consisted of a descriptive statistical analysis of 43 Wellness Court participants. The purpose of the analysis was to determine whether graduation from Wellness Court had any effect on recidivism.

Bivariate Analysis: Table 8.3 compares individuals who graduated from the Wellness Court and those who did not graduate. A majority of individuals sent through the Wellness Court between 2002 and 2009 were male at 67.4%; as expected, males accounted for a majority in both the graduate and non-graduate categories. Although females only accounted for only 32.6% of all

**TABLE 8.3:**

*Descriptive Statistics of Variables in Within Court Analysis*

			<u>Wellness Court Graduate</u> (N=18)		<u>Wellness Court non-Graduate</u> (N=25)		Statistical Test	
<b>Variables</b>	Min	Max	Mean	SD	Mean	SD		
<b>Dependent Variable</b>								
Any Arrest post Wellness Court	0	1	0.94	.236	0.84	.374	1.11 ( $\chi^2$ )	
Arrest 0-6 months	0	1	.39	.502	.48	.510	.352 ( $\chi^2$ )	
Arrest 6-12 months post	0	1	.39	.502	.32	.476	.219 ( $\chi^2$ )	
Arrest 12-18 months post	0	1	.33	.485	.40	.500	.199 ( $\chi^2$ )	
<b>Wellness Court Variables</b>								
Age at Entry to Wellness Court	13.7	43.8	22.15	9.39	18.25	5.58	1.574 (t)	
Days between referral charge and entry into Wellness Court	2	454	149.33	124.44	77.24	82.50	2.14 (t) *	
Number of Days in Wellness Court	35	602	366.11	76.62	271.48	177.89	2.37 (t) *	
Annual Charges During Wellness Court	0	29.4	1.79	2.64	4.72	6.90	1.94 (t)	
<b>Demographic variables</b>								
Female	0	1	0.44	0.51	0.24	0.44	1.992 ( $\chi^2$ )	
<b>Tribal Affiliation</b>								
Southern Ute (reference category)	0	1	0.78	0.43	0.60	.50	1.506 ( $\chi^2$ )	
Ute Mountain Ute	0	1	0.06	0.24	0.20	0.41	1.819 ( $\chi^2$ )	
Northern Ute	0	1	0.11	0.32	0.04	.020	0.815 ( $\chi^2$ )	

Navajo	0	1	0.00	0.00	0.08	0.28	1.510 ( $\chi^2$ )	
<b>Criminal History</b>								
Age at First Arrest	10	38.9	18.16	7.94	15.72	5.39	1.130 (t)	
Annual Charges Before Wellness Court	1	39.0	3.70	2.27	5.10	7.45	0.882 (t)	
Annual Charges After Wellness Court	0	12.1	2.33	2.50	3.36	2.27	1.471 (t)	
Age at Last Arrest	14	47	25.79	9.21	21.44	5.33	1.799 (t)	
* refers to p< .05, ** refers to p< .01, *** refers to p< .001								

Wellness Court clients, they accounted for approximately 44% of all graduates from Wellness Court, although the Chi-Square test did not indicate statistical significance.

Of those individuals whose tribal affiliation was known, members of the Southern Ute Indian Tribe made up a vast majority of Wellness Court participants. Approximately 78% of those who graduated from Wellness Court and 60.0% of those who did not graduate from the Wellness Court were Southern Ute tribal members.

Graduates from the Wellness Court were typically older than those who did not complete the program (22.15 versus 18.25 years of age) and their criminal history began when they were older than their non-graduate counterparts (18.16 versus 15.72 years of age). The Statistical Package for the Social Sciences (SPSS) version 19 was used to run all data analysis; the following section discusses those results in greater depth.

Recidivism is operationalized as a criminal re-arrest upon the completion of the Wellness Court program. The mean score for this variable for the Wellness Court graduates is 0.94, reflecting the fact that 94% of them had at least one arrest within 18 months of the successful completion of Wellness Court. The offenders who did not graduate from the Wellness Court program had a mean of 0.84, reflecting that 84% of individuals had at least one arrest within 18 months of the unsuccessful termination of

the subject's participation in Wellness Court. The cross-tabulation between arrests during the follow-up period and the graduation status yielded a Chi-Square of 1.11 which was determined not to be statistically significant.

Table 8.3 also compares Wellness Court graduates to non-graduates on court-specific variables, demographic variables, and criminal history variables. Wellness Court variables included age at entry into the Wellness Court, days between the referral charge and entry into the Wellness Court, the number of days spent in Wellness Court, and whether or not the participant received a new charge while in the program. The demographic variables include gender and tribal affiliation. The three tribes of Ute heritage – the Southern Utes, the Ute Mountain Utes, and the Northern Utes – along with the Navajo tribe were specifically identified based on cultural or geographic similarities. Any American Indian who was not identified as being a member of one of the four main groups was categorized in the “other” category and was not included in this analysis. The final set of variables consisted of the subject's age at first arrest, the number of substance and violence charges incurred before entry into the program, and the subject's age at their last arrest. For the age at last arrest, the cut-off date for consideration was June 30, 2011.

Among the four Wellness Court variables under analysis, only days between referral charge and entry into the program, and number of days in the program were found to be statistically significant. Wellness court graduates were found to be older than the non-graduates in three measured age categories. Graduates were just over 18 years-old at their age of first arrest compared to non-graduates average age being three months shy of their 16<sup>th</sup> birthday. Wellness Court graduates were approximately four

years older than non-graduates when entering the court (22.2 and 18.3 years, respectively) and similarly older at the age of their last arrest (25.8 and 21.4 years, respectively).

While in Wellness Court, 61% of graduates and 68% of non-graduates had at least one criminal offense during their enrollment in the program; graduates averaged 1.79 charges compared to non-graduates' 4.72 charges during enrollment. Graduates spent significantly more time than non-graduates in the Wellness Court program - approximately one year in the program compared to an average of nine months for the non-graduates. Perhaps counterintuitive at first glance is that the charges of court graduates waited almost twice as long as non-graduates for placement into Wellness Court based on the referral charge date of occurrence. On average, Wellness Court graduates waited approximately 149 days from the date of the referral charge until entering the program compared to non-graduates who entered into the program at 77 days after their referral charge.

A May 2011 Office of National Drug Court Policy information paper states that the early identification of eligible participants and prompt placement in the drug court is a key component of success. A thorough review of case folders may yield an explanation in this disparity; many of the Wellness Court graduates spent time under other court supervision (i.e., probation) prior to being referred to Wellness Court. The referral to Wellness Court occurred when traditional probation was not successful – in one specific case – did not occur until 454 days after the subject's original charge.

The demographic variables included only gender and tribal affiliation. Unlike the “between courts” analysis in which age was included, the “within court” analysis

did not have a defined start date for reviewing recidivism; recidivism was evaluated at post Wellness Court instead of an 18-month period beginning January 1, 2010.

Participants in the Wellness Court were predominately males, accounting for 67.4% of all participants. Although females accounted for only 32.6% of all participants, they were represented at a higher rate (44%) of those who graduated the program. Southern Ute tribal affiliation was the most prominent of all participants at 67.4%, and these members accounted for 78% of all graduates.

Subject's criminal histories included the age at their first and last arrest (discussed previously) as well as the number of charges incurred prior to Wellness Court entry. Graduates from the program had an average of 3.7 charges per year prior to their entry into the program while non-graduates averaged 5.1 charges per year prior to their entry. Upon completion/termination from Wellness Court, both graduates and non-graduates saw a reduction in annual charges; graduates averaged 2.33 charges/year compared to non-graduates 3.36 charges/year. Although not shown in Table 8.3, the analysis of the Southern Ute Wellness Court shows that while Wellness Court graduates had fewer charges related to substance use/abuse prior to entry into the program than non-graduates (5.9 and 6.2 charges, respectively), graduates of the program actually had, on average, more violence charges than non-graduates (2.7 and 1.8 charges, respectively).



## **CHAPTER IX – DISCUSSION AND IMPLICATIONS**

The following chapter provides a summary of the approach taken in the study. It provides an overview of how and why the study was conducted and the results of the study, taking into consideration that certain assumptions were made regarding the research and that there are limitations in the overall design. The chapter concludes with a discussion of the implications of the research and what future research may prove useful in understanding what factors may contribute to recidivism rates on the Southern Ute Indian Reservation.

### **Overview**

The purpose of the present study was to examine what factors may influence recidivism rates for American Indians who have criminal histories that include charges related to substance use. The study began by discussing the complexities facing American Indian self-governance over a period of almost 500 years – from initial contact with European explorers through the founding and expansion of the territory that is the United States of America. The inclusion of Federal Indian Policy in this study was relevant as a historical backdrop of American Indian tribes’ struggles to “fit in” with what would become the dominant society.

From a criminal justice standpoint, the changing policies – specifically those found in the Allotment and Assimilation, as well as the Termination periods – had a significant impact on the maturation of law and social control in Indian country. These issues were identified in Chapter III, which discussed both the negative impacts that

U.S. policy had on law and social control in American Indian communities, as well as efforts to correct the detrimental results of U.S. policies of the past, which had contributed to an upsurge in crime in these communities. Chapter IV discussed crime and corrections in Indian country and identified the prevalence of violent crime and victimization. American Indians are more than twice as likely to be victims of violent crimes as the general population, are incarcerated at a 25% higher rate than all other races, and alcohol use is a significant contributor to American Indian crime.

With discussions of Federal Indian policy and American Indian crime trends as a backdrop, the research turned to one specific tribe – the Southern Ute Indian Tribe. After tracing the history of the tribe, a detailed discussion of the Southern Ute criminal justice system followed, with the inclusion and results of previous research done on the tribe, its court, and crime.

To gain a better understanding of the Southern Ute Tribal Court and its operations, court procedures were observed to get a sense of any procedural differences between this court and standard Anglo courts. The results of the observations yielded no significant difference in procedures, although the Tribal Court appeared to be a bit less adversarial in the court process. Observations were not statistically analyzed; the inclusion in the results is intended to provide a more visual depiction of facilities and operations.

### **Discussion of the Study Results**

The overall results of the study consisted of two distinct analyses; one which compared and contrasted Tribal Court participants with Wellness Court participants and the other which included only Wellness Court participants and attempted to compare

and contrast differences between those who successfully completed the program and those who did not. The results of the study were mixed. The results of the research found that males were more frequently involved in the criminal justice system than females based on the selection criteria. The results also reflect similarities to prior research regarding the role of age, whereas criminal activities tend to peak in the early to mid-twenties and decline thereafter.

*Between Tribal and Wellness Court:* Prior literature indicates that participation in Drug Courts yields a reduction in recidivism rates 10-20% greater than the rates for non-participants – including lower rates of reported criminal activity and drug use as well as documented arrests and positive urinalysis tests. The NADCP found that three-quarters of Drug Courts significantly reduced crime with the best Drug Courts reducing crime by almost 40% (Marlowe, 2010). The evaluation of the Southern Ute Wellness Court, however, did not yield results that were similar to the national Drug Court literature. While the Wellness Court is in fact consistent with the Anglo Drug Court model in structure and guiding principles, the results were very different.

While the Southern Ute Wellness Court shares the practice with Drug Courts that limits violent offenders into the program, Wellness Court participants were actually more likely to have charges that were violent in nature in their criminal history than those adjudicated through the standard Tribal Court (64% to 60%), which is counter-intuitive to the referral criteria. Wellness Court participants, who were significantly younger than their Tribal Court counterparts, were also found to be almost two times more likely to recidivate during the follow-up period of analysis (61% to 33%).

Moving to the relationship between study variables and recidivism, only two independent variables were found to be statistically significant. Recall that the analyses predicting recidivism rates were run using three different binary logistic regression models – each with a slightly different operationalization of Wellness Court (just being assigned into Wellness Court, time spent in Wellness Court, and graduation from Wellness Court). One variable was statistically significant in all three models, while one variable was statistically significant in the graduation from Wellness Court as a predictor of recidivism.

The sole variable that showed statistical significance in relation to recidivism in all three models was the criminal history variable of “prior property charge.” This category showed a positive correlation at a significance level of  $p < .01$  with coefficients varying between .588 and .625 and odds ratios varying between 1.8 and 1.83. For every unit increase in property crime, a subsequent increase in recidivism of .588-.625 will occur. Put another way, if you have a property charge in your background, you are approximately 1.8 times more likely to recidivate than if you do not.

A second variable showed statistical significance in the Logistic Regression Analysis of Recidivism on Participation in Wellness Court, but only so in Model 3 (Graduation from Wellness Court). The criminal history category of “age at first arrest” shows a negative correlation, with a statistical significance at the  $p < .05$  level. For every unit (year) increase for “age at first arrest,” one could expect to see a decrease of .066 units for recidivism (based on the unstandardized coefficient score). Put another way, there is a predicted 6.6% reduction in probability of recidivism for each year older and individual is at their age of first arrest. With the exception of the inclusion of a third statistically significant variable in Model 3, the results of regression analysis did not

yield any significant variations related to Wellness Court as a predictor for reduced recidivism. The one variable that remained constant and significant as a predictor for recidivism was prior property charges.

Comparing the Tribal Court participants to Wellness Court participants' contacts with the court saw an across-the-board reduction during the 18-month period (January 1, 2010 – June 30, 2011). Tribal Court participants evaluated had the following characteristics:

**TABLE 9.1**

*Tribal Court Annual Rate of Offending*

Annual Avg./Person	01/01/2002- 12/31/2010	01/01/2011- 06/30/2012	Change
Arrests	0.69	0.46	-32.3%
Charges	1.22	0.97	-20.5%
Convictions	0.45	0.33	-26.7%
Substance Charges	0.41	0.27	-34.1%
Substance Convictions	0.21	0.11	-47.6%
Violence Charges	0.27	0.22	-18.5%
Violence Convictions	0.04	0.03	-25.0%
Property Charges	0.07	0.05	-28.6%
Property Convictions	0.03	0.02	-33.3%

Wellness court participants also saw significant reductions in a number of categories, but also saw an increase in four of the nine categories – overall charges, violence charges, and property charges as well as property convictions.

Despite a reduction of the average annual arrests of Wellness Court participants, data show that the number of charges per arrest increased by 4.2%. Although a substantial

reduction in incidents related to substance charges was noted, violence and property-related charges saw a large increase, at 14% and 31%, respectively. In the bivariate analysis – depicted in Table 8.1 – age at first arrest and age during the evaluation period of recidivism were both determined to vary significantly for tribal versus Wellness Court participants. Tribal Court members were significantly older (by about 10 years) than their Wellness Court counterparts when they were first arrested and at the time the follow-up evaluation occurred; Tribal Court members were approximately 26.4 years old at first arrest and 33.7 years old at the beginning of the follow-up period, while Wellness Court participants were 16.1 and 23.6 years old during these time periods.

**TABLE 9.2**

*Wellness Court Annual Rate of Offending*

Annual Avg./Person	01/01/2002-12/31/2010	01/01/2011-06/30/2012	Change
Arrests	1.24	1.05	-15.3%
Charges	2.40	2.50	<b>+4.20%</b>
Convictions	.087	0.76	-22.6%
Substance Charges	1.13	0.73	-35.4%
Substance Convictions	0.52	0.35	-32.7%
Violence Charges	0.43	0.49	<b>+14.0%</b>
Violence Convictions	0.08	0.03	-62.5%
Property Charges	0.16	0.21	<b>+31.3%</b>
Property Convictions	0.07	0.11	<b>+57.1%</b>

Within Wellness Court: In the bivariate analysis of “within” Wellness Court participants (graduates and non-graduates), the propensity to reoffend was not significantly influenced by whether a participant graduated from the program. In fact, 84% of non-graduates reoffended compared to 94% of graduates. Graduates held

steady at a 39% recidivism rate for the first year after graduation from the program. A reduction to 33% was observed from the 12-18 month time period. Those who unsuccessfully terminated from the program saw a recidivism rate of 40% within the first six months; the rate reduced to 32% between six and twelve months – a recidivism rate lower than graduates during the period. The recidivism rate increased to 40% during the 12-to-18 month period after the program.

The frequency of reoffending was less for graduates, though; upon completion of the program, graduates averaged 2.33 charges annually compared to non-graduates' rate of 3.36 charges annually. Non-graduates appeared to have a greater degree of reductions in annual charges over graduates though; the non-graduates reduced their annual charges by 1.74/year compared to the reduction by graduates of 1.36 charges/year.

As expected, the more time spent in Wellness Court was statistically significant as it related to graduation. Despite literature indicating that rapid placement into a drug court was beneficial to program completion; a similar result was not found in this study. Wellness court graduates took over twice as many days than non-graduates to begin the program after the receiving the charge which referred them to the court. A possible explanation as identified in the review of court records and case files is that many graduates were referred to Wellness Court after being non-compliant with traditional probation. Graduates typically had fewer charges incurred while in the program than non-graduates, which was to be expected as adherence to the stipulation of not incurring new criminal cases is a key requirement of graduation from drug court.

When looking at the demographics of the “within Wellness Court” analysis, Southern Ute Tribal members made up a majority of participants in both the graduate (78%) and non-graduate (60%) categories. Members of the Ute Mountain Ute Tribe were the second most frequently identified tribal affiliate, which was expected due to the fact the two reservations border one another and the two tribes share the same lineage. Although a majority of participants in the Wellness Court program were male, females were overrepresented in the graduate group.

### **Assumptions and Limitations**

Entering into this research project, few if any assumptions were made. Perhaps the only assumption made was that this research would provide some sort of useful analysis of recidivism rates for those American Indians under the jurisdiction of the Southern Ute Tribal Court who had a history of substance use and/or abuse. The hope was that this research would not only provide a valuable and useful summation of Federal Indian policy, crime, substance use and recidivism for the reader, but also provide the Southern Ute Tribal Court with the ability to utilize the results for a positive shift in structure and policy. Although the research did not find any “earth-shattering” predictors of recidivism for American Indians with substance abuse criminal histories, the following identified limitations and other observations may provide for useful future research that may further assist the Southern Ute Indian Tribe in its efforts to effectively address substance abuse among its members and those residing in its jurisdictional boundaries.

The major limitation in this research was not the accessibility to court data or an inadequate sample size, rather the reliance on pre-existing data that was incomplete.



Although the Southern Ute Tribal Court utilizes an advanced system for court record management and incorporates treatment service providers, the data set is not being used to its full potential. The absence of simple demographic information – to include gender and date of birth – reduced the sample size to 60% of those individuals who met the criteria of having a substance abuse charge between 2002 and 2009. Had a declared tribal affiliation been used as a mandatory inclusion category, the actual sample size would have been reduced to approximately 250 out of a potential 800 person data set.

Additionally, the dispersion of on-site research over a period of three years limited my ability to adequately observe iterations of Wellness Court and Tribal Court that involved the same clients. Observing two or three iterations of a client's Wellness Court hearing and returning to the research site six months later created a significant hindrance in the analysis of the actual process, which led to a more generalized discussion of tribal and Wellness Court qualities and traits. Having the ability to integrate into the community for an uninterrupted and extended period of time would have undoubtedly been more advantageous in terms of gaining a better understanding of the tradition and culture of the society.

In regards to the analysis of recidivism rates – specifically those at the 6 month and 12 month range after termination of Wellness Court participation – in the Within Wellness Court evaluation, one notable limitation needs to be discussed. In the event that an individual failed to successfully complete the Wellness Court program, they would be subject to incarceration for failing to complete/comply with the terms of the diversion program. During the period of evaluation of the program, the Wellness court could have feasibly sentenced non-compliant participants to up to one year in jail.

For the 25 individuals who failed to comply with the terms of their participation in Wellness Court, a term of incarceration would have been a likely outcome. The number of days of potential incarceration would vary by the initial charge, any sanctions during the program that may have included incarceration, and to what degree the participant may have completed the time and treatment requirements of the program. This information was not fully recorded either in case files or the Full Court Enterprise System, making it difficult to determine when exactly the six- or twelve-month recidivism period began.

Finally, this research looked at recidivism rates in a quantitative capacity. Data pertaining to criminal histories, arrests during the follow-up period, and, to a degree, demographics were available, but this research did not look at the psycho-social background of those who had substance abuse issues. I cannot help but feeling that this research, in the end, discussed symptoms (arrest, re-arrest) in the absence of understanding the underlying cause of crime in this community.

### **Future Research**

Despite the somewhat limited findings of this research, opportunities for future research were identified based on the research undertaken. Even though it was identified as being a limitation in the research design, spreading out trips to the research site did provide additional information and exposures that are useful. This research spanned a period that saw three different Tribal Council Chairpersons and two different Chief Judges. As such, more exposure to the overall political dynamics of the Southern Ute Indian Tribe was gained and with it, identification of future research opportunities.

The Southern Ute tribal members are typically reliant on per-capita payments and annual lump sum payments based on the performance of tribal investments. A tribal member convicted in federal court for a serious crime and sentenced to 20 years in prison can return to the reservation after serving his/her sentence to upwards of \$1 million. Per-capita payments are seen as an entitlement of tribal members. With the exception of the dispersion of funds when a member turns 18 years-old, there have been no recent efforts to look at the per-capita payment system and its effect on the Southern Ute society. Does this entitlement contribute to crime on the reservation and if so, to what degree?

Closely aligned to the per-capita payments is the educational and employment situation of tribal members on the reservation. Most high-paying jobs are held by non-Natives who possess the education and background to qualify for these jobs. For example, in 2009, 64% of Growth Fund positions were held by non-Indians; the percentage increases with the technical skill requirements. Both of the Associate Judges in the Tribal Court are Anglo, as are the prosecutor, the public defender, and many treatment service providers. Despite the fact that Fort Lewis College is 20 minutes from the reservation in Durango (with free tuition for all American Indians), and tribal contributions for higher education, there is a significant lack of tribal members pursuing college degrees. From a criminal justice standpoint, if the Tribal Court identifies itself as incorporating tradition and culture into its programs, what effect does the significant presence of non-Indian personnel have on the ability of the court to succeed in this effort?

Perhaps the most fruitful future research potential lies in addressing the last research design limitation listed in the previous section. What are the psycho-social influences on substance abuse, crime, and recidivism? Hard numbers do not tell the story. To what degree is criminality – especially alcohol-related – a multigenerational problem? An understanding of the psychosocial background of offenders is likely the most promising approach to addressing substance abuse and recidivism in the American Indian community. It has been identified in this research as a systemic problem across Native America; the maturation of the Southern Ute Tribal Court offers an ideal setting to look into this topic further.

## **CONCLUSION**

This research project looked at one specific Tribe's efforts to address substance abuse through the implementation of an Anglo Drug Court model in their judiciary. Despite a somewhat resounding success in the United States, the Drug Court model found in the Southern Ute Wellness Court failed to produce outcomes for participants that were any better than standard adjudication through the Tribal Court. Perhaps a reason for this is that the Tribal Court itself operates in a much different capacity than the typical Anglo Court. The structure and formality of the Anglo Court is absent in Tribal Court. The atmosphere is more relaxed and there is greater direct interaction between the defendant and judge; you almost feel a sense of community resolution in the proceedings. It does not feel adversarial in nature. Perhaps the fact that court proceedings are not as noticeably different in Tribal and Wellness Court is a reason for the lack of results seen in Drug Courts.

While there is no data that supports that adjudication through the Wellness Court is better than the Tribal Court, this research merely scratched the surface of effectiveness of the programs employed by the Tribal Court. Future research must focus on or at least take into consideration significant social factors and influences found on the Southern Ute Indian Reservation.

The selection process of who is offered to participate in the Wellness Court program may yield the most useful information to Tribal authorities. While most Drug Courts tend to look at non-violent offenders for inclusion into the Drug Court program, those participants in the Wellness Court tend to enter the program with more overall criminal offenses, more violent offenses, more property-oriented charges, more incarceration time, and a younger age of first arrest (as indicated in Table 8.1). It is reasonable to expect that these offenders would have higher recidivism rates than Tribal Court clients as they appear to be more criminal upon entry into the program than the comparison group. Wellness court participation was not a significant predictor of recidivism although when you control for age, sex and prior criminal history, the court does not predict higher recidivism rates. As such, the Southern Ute Indian Tribe must take into account the referral process into the Wellness court in order to focus efforts on those who are less deviant upon entry into the program.

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## APPENDIX A

### CODE OF INDIAN OFFENSES (1883)

1st. There shall be established at each Indian agency, except the agency for the five civilized tribes in the Indian Territory, a tribunal, consisting of three Indians, to be known as "the Court of Indian Offenses," and the three members of said court shall each be styled "Judge of the Court of Indian Offenses."

The first three officers in rank of the police force at each agency shall serve as judges of said court, when practicable, and when in the opinion of the agent said police officers are fit and competent persons to satisfactorily perform the duties thereof. The police officer highest in rank shall be the presiding judge. If, however, any of the said police officers are considered by the agent to be improper persons to be so appointed, or in the event of there being no police officers, then the agent may select from among the members of the tribe persons of intelligence and good moral character and integrity, and recommend the same to this office for appointment as judges in lieu of the officers of the police force aforesaid.

Each judge shall be appointed by this office for a term of one year, subject to removal at any time, at the discretion of the Commissioner of Indian Affairs; provided, however, that no person shall be eligible to appointment as a member of said court who is a polygamist; and provided further, that the judges herein provided for shall receive no money consideration on account of their services in connection with said court.

2d. The Court of Indian Offenses shall hold at least two regular sessions in each and every month, the time and place for holding said sessions to be agreed upon by the judges, or a majority of them, and approved by the agent; and special sessions of the court may be held when requested by three reputable members of the tribe, and approved by the agent.

3d. The court as above organized shall hear and pass judgment upon all such questions as may be presented to it for consideration by the agent, or by his approval, and shall

have original jurisdiction over all "Indian offenses" designated as such in Rules 4, 5, 6, 7, and 8 of these rules. The judgment of the court may be by two judges; and that the several orders of the court may be carried into full effect, the United States Indian agent is hereby authorized and empowered to compel the attendance of witnesses at any session of the court, and enforce, with the aid of the police, if necessary, all orders that may be passed by the court or a majority thereof; but all orders, decrees, or judgments of the court shall be subject to approval or disapproval of the agent, and an appeal to and final revision by this office; provided that when an appeal is taken to this office, the appellant shall furnish security satisfactory to the court, and approved by the agent, for good and peaceful behavior pending the final decision of this office.

4th. The "sun-dance," the "scalp-dance," the "war-dance," and all other so-called feasts assimilating thereto, shall be considered "Indian offenses," and any Indian found guilty of being a participant in any one or more of these "offenses" shall, for the first offense committed, be punished by withholding from the person or persons so found guilty by the court his or their rations for a period not exceeding ten days; and if found guilty of any subsequent offense under this rule, shall be punished by withholding his or their rations for a period not less than fifteen days, nor more than thirty days, or by incarceration in the agency prison for a period not exceeding thirty days.

5th. Any plural marriage hereafter contracted or entered into by any member of an Indian tribe under the supervision of a United States Indian agent shall be considered an "Indian offense," cognizable by the Court of Indian Offenses; and upon trial and conviction thereof by said court the offender shall pay a fine of not less than twenty dollars, or work at hard labor for a period of twenty days, or both, at the discretion of the court, the proceeds thereof to be devoted to the benefit of the tribe to which the offender may at the time belong; and so long as the Indian shall continue in this unlawful relation he shall forfeit all right to receive rations from the Government. And whenever it shall be proven to the satisfaction of the court that any member of the tribe fails, without proper cause, to support his wife and children, no rations shall be issued to

him until such time as satisfactory assurance is given to the court, approved by the agent, that the offender will provide for his family to the best of his ability.

6th. The usual practices of so-called "medicine-men" shall be considered "Indian offenses" cognizable by the Court of Indian Offenses, and whenever it shall be proven to the satisfaction of the court that the influence or practice of a so-called "medicine-man" operates as a hindrance to the civilization of a tribe, or that said "medicine-man" resorts to any artifice or device to keep the Indians under his influence, or shall adopt any means to prevent the attendance of children at the agency schools, or shall use any of the arts of a conjurer to prevent the Indians from abandoning their heathenish rites and customs, he shall be adjudged guilty of an Indian offense, and upon conviction of any one or more of these specified practices, or, any other, in the opinion of the court, of an equally anti-progressive nature, shall be confined in the agency prison for a term not less than ten days, or until such time as he shall produce evidence satisfactory to the court, and approved by the agent, that he will forever abandon all practices styled Indian offenses under this rule.

7th. Any Indian under the charge of a United States Indian agent who shall willfully destroy, or with intent to steal or destroy, shall take and carry away any property of any value or description, being the property free from tribal interference, of any other Indian or Indians, shall, without reference to the value thereof, be deemed guilty of an "Indian offense," and, upon trial and conviction thereof by the Court of Indian Offenses, shall be compelled to return the stolen property to the proper owner, or, in case the property shall have been lost or destroyed, the estimated full value thereof, and in any event the party or parties so found guilty shall be confined in the agency prison for a term not exceeding thirty days; and it shall not be considered a sufficient or satisfactory answer to any of the offenses set forth in this rule that the party charged was at the time a "mourner," and thereby justified in taking or destroying the property in accordance with the customs or rites of the tribe.

8th. Any Indian or mixed-blood who shall pay or offer to pay any money or other valuable consideration to the friends or relatives of any Indian girl or woman, for the purpose of living or cohabiting with said girl or woman, shall be deemed guilty of an Indian offense, and upon conviction thereof shall forfeit all right to Government rations for a period at the discretion of the agent, or be imprisoned in the agency prison for a period not exceeding sixty days; and any Indian or mixed-blood who shall receive or offer to receive any consideration for the purpose herein before specified shall be punished in a similar manner as provided for the party paying or offering to pay the said consideration; and if any white man shall be found guilty of any of the offenses herein mentioned he shall be immediately removed from the reservation and not allowed to return thereto.

9th. In addition to the offenses herein before enumerated, the Court of Indian Offenses shall also have jurisdiction (subject to the provisions of Rule 3) of misdemeanors committed by Indians belonging to the reservation, and of civil suits where Indians are parties thereto; and any Indian who shall be found intoxicated, or who shall sell, exchange, give, barter, or dispose of any spirituous, vinous, or fermented liquors to any other Indian, or who shall introduce or attempt to introduce, under any pretense whatever, any spirituous, vinous, or fermented liquors on the reservation, shall be punishable by imprisonment for not less than thirty day nor more than ninety days, or by the withholding of Government rations therefrom, at the discretion of the court and approval of the agent. The civil jurisdiction of such court shall be the same as that of a justice of the peace in the State or Territory where such court is located, and the practice in such civil cases shall conform as nearly as practicable to the rules governing the practice of justices of the peace in such State or Territory; and it shall also be the duty of the court to instruct, advise, and inform either or both parties to any suit in regard to the requirements of these rules.

## **APPENDIX B**

### **REVISED RULES FOR THE COURT OF INDIAN OFFENSES (1892)**

#### **Commissioner of Indian Affairs Thomas J. Morgan**

Districting Reservation – Whenever it shall appear to the Commissioner of Indian Affairs that the best interests of the Indians on any Indian reservation will be subserved thereby, such reservation shall be divided into three or more districts, each of which shall be given a name by which it shall thereafter be designated and known...All mixed bloods and white persons who are actually and lawfully members, whether by birth or adoption, of any tribe residing on the reservation shall be counted as Indians.

Appointment of judges – There shall be appointed by the Commissioner of Indian Affairs for each district a person from among the Indians of the reservation who shall be styled “judge of the Indian Court.” The judges must be men of intelligence, integrity, and good moral character, and preference shall be given to Indians who read and write English readily, wear citizens’ dress, and engage in civilized pursuits, and no person shall be eligible to such appointment who is a polygamist.

Each judge shall be appointed for the term of one year, subject, however, to earlier removal from office for cause by the Commissioner of Indian Affairs; but no judge shall be removed before the expiration of his term of office until the charges against him, with proofs, shall be presented to the Commissioner of Indian Affairs...

District Courts – Each judge shall reside within the district to which he may be assigned and shall keep an office open at some convenient point to be designated by the Commissioner of Indian Affairs; and he shall hold court at least one day in each week for the purpose of investigating and trying any charge of offense or misdemeanor over which the judges of the Indian court have jurisdiction as provided in these regulations. Provided, that the appeals from his judgment or decision may be taken to the Indian court in general term, at which all the judges on the reservation shall sit together.

Offenses – For the purpose of these regulations the following shall be deemed to constitute offenses, and judges of the Indian court shall severally have jurisdiction to try and punish for the same when committed within their respective jurisdictions:

(a) Dances, etc. – Any Indian who shall engage in the sun dance, scalp dance, or any other similar feast, so called, shall be deemed guilty of an offense, and upon conviction thereafter shall be punished for the first offense by withholding of his rations for not exceeding ten days or by imprisonment for not exceeding ten days; and for any subsequent offense under this clause he shall be punished by withholding his rations for not less than ten nor more than thirty days, or by imprisonment for not less than ten days nor more than thirty days.

(b) Plural or polygamous marriages – Any Indian under the supervision of a United States Indian agent who shall hereafter contract or enter into plural or polygamous marriage shall be deemed guilty of an offense, and upon conviction thereof shall pay a fine of not less than twenty nor more than fifty dollars, or work at hard labor for not less than twenty nor more than sixty days, or both, at the discretion of the court; and so long as the person shall continue in such unlawful relation he shall forfeit all right to receive rations from the Government.

(c) Practices of Medicine Men – Any Indian who shall engage in the practices of so-called medicine men, or who shall resort to any artifice or device to keep Indians of the reservation from adopting and following civilized habits and pursuits...or shall use any arts of a conjurer to prevent Indians from abandoning their barbarous rites and customs, shall be deemed to be guilty of an offense, and upon conviction thereof, for the first offense shall be imprisoned for not less than ten nor more than thirty days: Provided, That for any subsequent conviction for such offense the maximum term of imprisonment shall not exceed six months.

(d) Destroying property of other Indians – Any Indian who shall willfully or wantonly destroy or injure, or, with intent to destroy or injure or appropriate, shall take and carry

away any property of any other Indian or Indians, shall, without reference to its value, be deemed guilty of an offense, and upon conviction shall be compelled to return the property to the owner or owners, or, in the case that the property shall have been lost, lost, injured, or destroyed, the estimated full value of the same; and in addition, he shall be imprisoned for not exceeding thirty days; and the plea that the person convicted or the owner of the property in question was at the time a “mourner,” and that thereby the taking, destroying, or injuring of the property was justified by the customs or rites of the tribe, shall not be accepted as a sufficient defense.

(e) Immorality – Any Indian who shall pay, or offer to pay, money or other things of value to any female Indian, or to her friends or relatives, or to any other person for the purpose of living or cohabiting with any such female Indian not his wife, shall be deemed guilty of an offense, and upon conviction thereof shall forfeit all right to Government rations for not exceeding ninety days, or be imprisoned for not exceeding ninety days, or both, at the discretion of the court. And any Indian who shall receive, or offer to receive money or other valuable things in consideration for allowing, consenting to, or practicing such morality, shall be punished in the same manner...

(f) Intoxication and the introduction of intoxicants – Any Indian who shall become intoxicated, or who shall sell, exchange, give, barter or dispose of any spirituous, vinous, fermented, or other intoxicating liquors to any member of an Indian tribe, or who shall introduce, attempt to introduce, under any pretense whatever...shall be deemed guilty of an offense, and upon conviction thereof shall be punished by imprisonment of not less than thirty nor more than ninety days, or by a fine not less than twenty nor more than one hundred dollars, or both, in the discretion of the court.

Misdemeanors – The judges of the Indian courts shall also have jurisdiction within their respective districts to try and punish any Indian belonging upon the reservation for any misdemeanor committed thereon, as defined in the laws of the State or Territory within which the reservation may be located; and the punishment for such misdemeanors shall be such as may be prescribed by such State or Territorial laws...And provided further,

That if an Indian refuses or neglects to adopt habits of industry, or to engage in civilized pursuits or employments, but habitually spends his time in idleness and loafing, he shall be deemed a vagrant and guilty of a misdemeanor, and shall, upon the first conviction thereof, be liable to a fine of not more than five dollars, or to imprisonment for not more than ten days, and for any subsequent conviction thereof to a fine of not more than ten dollars, or to imprisonment for not more than thirty days, in the discretion of the court.

Judges to solemnize marriages – The said judges shall have power also to solemnize marriages between Indians. They shall keep a record of all marriages solemnized by them...and shall issues certificates of marriage...

Indian court in general terms – The judges of the Indian court shall sit together at some convenient place on the reservation, to be designated by the Commissioner of Indian Affairs, at least once in a month, at which sitting they shall constitute the Indian court in general term. A majority of judges appointed for the reservation shall constitute a quorum of the court and shall have power to try and finally determine any suit or charge that may be properly brought before it' but no judgment or decision by said court shall be valid unless it is concurred in by a majority of all judges appointed for the reservation, and in case of a failure of a majority of the judges to agree in any case, the same shall be continued, to be tried again at a subsequent term of the court. The court in general shall be presided over by the senior judge in point of service on the reservation, and in case there be no such judge, the Commissioner of Indian Affairs shall designate one of the judges to preside...

Agents to compel attendance of witness and enforce orders of the court - ...the United States Indian agent for under the agency under which the reservation may be is hereby authorized, empowered, and required to compel the attendance of witnesses at any session of the court, or before any judge within his proper district, and to enforce all orders that may be passed by said court, or a majority thereof, or by any judge within his proper district, and for this purpose he may use the Indian police of his agency.



## APPENDIX C

### PUBLIC LAW 111-211 – TRIBAL LAW & ORDER ACT

#### Title I: Federal Accountability and Coordination

- Requires the Interior Department's Office of Justice Services (OJS) to hold regular consultations with tribal leaders, and to provide technical assistance and training to tribal police. This provision also requires OJS to submit annual spending and unmet needs reports to Congress.
- Requires OJS to coordinate with the Department of Justice (DOJ) to develop a long term plan to address concerns with the Indian country adult and juvenile jails systems.
- Authorizes BIA police to make warrantless arrests where the officer has 'probable cause' to believe that the suspect has committed or is committing certain crimes. Current law requires officers to have 'reasonable grounds' to make a warrantless arrest. This provision also adds a list of offenses for which BIA police may make a warrantless arrest, including certain controlled substances, firearms, assaults, and liquor trafficking violations.
- Requires the U.S. Attorneys to coordinate with tribal justice officials on the use of evidence when declining to prosecute a reservation crime. Requires U.S. Attorneys to maintain data on declinations, and to publish an annual report on declinations by federal district, type of crime, and status of the defendant and victim as Indian or not.
- Encourages the appointment of tribal prosecutors and other Indian law experts as special U.S. Attorneys to prosecute reservation crimes in federal court. Requires the appointment of Assistant United States Attorneys to serve as Tribal Liaisons. It would also define their responsibilities to include: coordinating the prosecution of reservation crimes, developing multi-disciplinary task forces, and communicating and providing technical assistance to tribal law enforcement officials.
- Establishes a Native American Issues Coordinator within the Executive Office of U.S. Attorneys, responsible for working with tribal liaisons to enhance prosecution of reservation crimes, coordinating task forces to address Indian country crime, and gathering information for criminal declination data reports to Congress.

## Title II: State Accountability and Coordination

- Permits an Indian tribe to request federal assistance in investigating and prosecuting reservation crimes, which, upon consent to the request by the Attorney General, would provide the United States with concurrent authority over certain reservation crimes.
- Authorizes the Attorney General to technical assistance to encourage tribal, state, and local law enforcement agencies to enter into cooperative law enforcement agreements to combat crime in Indian country and nearby communities.

## Title III: Empowering Tribal Justice Systems

- Requires the Department of the Interior-OJS to permit greater flexibility in training of police officers serving Indian country, including permitting candidates to train at state and tribal academies, tribal colleges and other training centers that meet relevant federal training standards.
- Increases the maximum age for new officers to 46 from 37 and requires the BIA to expedite background checks for police and corrections officer candidates.
- Enhances existing law to grant Special Law Enforcement Commissions (SLEC) to officers serving Indian lands to enforce violations of federal law.
- Requires the BIA to provide regional trainings to certify officers, and add requirements to set timelines for SLEC-related agreements between the BIA and tribal governments.
- Establish an Indian Law Enforcement Foundation that would be tasked with advancing the role of BIA and tribal law enforcement officers and the provision of public safety and justice services in American Indian communities.
- Authorizes the Drug Enforcement Administration (DEA) to provide grants and technical assistance to tribal police to address drug trafficking in Indian country. Also requires the DEA to place tribal officers on the advisory panel to develop and coordinate educational programs to fight drug trafficking.
- Enhances tribal police officer access and ability to input information into the National Crime Information Center (NCIC) and similar federal criminal databases. The provision establishes tribal officers as authorized law enforcement officials for purposes of access to such databases.

- Acknowledges the ability of tribal courts to sentence offenders for up to 3 years imprisonment for any one offense of a tribal criminal law. The provision also authorizes tribal courts to impose consecutive sentences for multiple crimes, but provides a maximum of nine years' incarceration for any one trial. If a tribe exercises this option, the tribe must provide licensed counsel to any defendant subject to a total of more than one year in jail. Tribes must also require tribal court judges presiding over the case to be licensed and law trained, and the tribe must publish its criminal laws and rules of evidence and criminal procedure, and record the trial through audio or visual means. Tribal courts exercising this option may sentence convicted offenders to serve time in: (1) a tribal facility that meets minimum federal standards; (2) the nearest appropriate federal facility pursuant to a pilot project administered by the Bureau of Prisons; (3) in a state facility pursuant to a tribal-state agreement; or (4) the tribe's alternative rehabilitation center or an alternative form of sentencing pursuant to tribal law.
- Establishes an Indian Law and Order Commission made up of tribal, federal, and state & local justice officials, and other experts. The Commission is tasked with reviewing the current justice system as it relates to Indian lands and providing recommendations to enhance the prosecution and the prevention of crime in Indian country. Specific items to be reviewed include: criminal jurisdiction; the tribal jails system; and the tribal juvenile justice system.

#### Title IV: Resources for Tribal Justice Programs

- Reauthorizes and amends the Indian Alcohol and Substance Abuse Act (IASA), which provides grants for summer youth programs, to develop tribal juvenile codes, and to construct shelters and detention and treatment centers for at risk youth and juvenile offenders.
- Reauthorizes the Indian Tribal Justice Support and Technical & Legal Assistance Acts, which provide funding for tribal court judicial personnel, public defenders, court facilities, development of records management systems, and other needs of tribal court systems.
- Reauthorizes and amends the Tribal Resources Grant Program within the Community Oriented Policing Services Office of DOJ. It authorizes long term funding for the hiring

and retention of tribal law enforcement officers, remove matching requirements, and permit tribes to use funds to cover indirect costs.

- Reauthorizes and amends the DOJ tribal jails construction program. Authorizes and encourages the construction of regional detention centers for long-term incarceration, tribal justice centers that combine courts, police, and corrections services.
- Authorizes and encourages the appointment of Indian country residents to serve as assistant probation officers to monitor federal prisoners living on or reentering Indian lands. Encourages the federal courts to offer services on or near Indian lands.
- Amends the Juvenile Justice and Delinquency Prevention Act, 42 U.S.C. 5783, by establishing a Tribal Youth Program in Title V of that Act, authorizing competitive grants to tribes for activities aimed at preventing juvenile delinquency and treating and rehabilitating juvenile offenders.

#### Title V: Indian Country Crime Data Collection and Information Sharing

- Requires the National Gang Intelligence Center to collect, analyze, and disseminate information on gang activity in Indian country.
- Makes tribal governments eligible for federal grants that promote criminal data collection and criminal history reporting.
- Requires the DOJ's Bureau of Justice Statistics to report Indian country criminal data to Congress on an annual basis.
- Authorizes the DOJ Bureau of Justice Assistance to provide grants to Indian tribes to establish secure information sharing systems to enhance tribal police investigations and tribal court prosecutions. Current law authorizes direct grants to only state and local governments.

#### Title VI: Domestic Violence and Sexual Assault Enforcement and Prevention

- Requires the Director of the Bureau of Prisons and the Director of the Administrative office of the U.S. Courts to notify tribal justice officials when a person in federal custody will return or move to Indian country.

- Requires the BIA Office of Justice Services to develop trainings and provide BIA and tribal officers with specialized training in interviewing victims of domestic and sexual violence, and evidence collection and preservation techniques, with the goal of increasing the conviction rates of such offenses.
- Requires federal employees to testify pursuant to tribal or state court subpoenas on matters within the scope of their duties.
- Requires the Secretary of Health and Human Services to provide recommendations, if any, on the prevention of human trafficking in Indian country. The majority of this provision, as reported, was enacted in the Indian Health Care Improvement Act reauthorization.
- Requires the Director of the IHS to establish and implement standardized sexual assault protocol at IHS and tribal health facilities.
- Directs the Government Accountability Office to study the capability of IHS to collect and secure evidence of domestic and sexual assaults in rural tribal communities.

**APPENDIX D**  
**THE SOUTHERN UTE TRIBAL CONSTITUTION (1936)**

**UNITED STATES**  
**DEPARTMENT OF THE INTERIOR**  
**OFFICE OF INDIAN AFFAIRS**

**CONSTITUTION AND BY-LAWS OF THE**  
**SOUTHERN UTE TRIBE OF THE**  
**SOUTHERN UTE RESERVATION**  
**COLORADO**

**APPROVED NOVEMBER 4, 1936**

UNITED STATES  
GOVERNMENT PRINTING OFFICE  
WASHINGTON: 1936

**CONSTITUTION AND BY-LAWS OF THE SOUTHERN  
UTE TRIBE OF THE SOUTHERN UTE RESERVATION,  
COLORADO**

**PREAMBLE**

We, the Southern Ute Tribe of the Southern Ute Reservation, in Colorado, in order to exercise the rights of self-government, to administer our tribal affairs, to preserve and increase our tribal resources, do ordain and establish this Constitution.

**ARTICLE I-JURISDICTION**

The jurisdiction of the Southern Ute Tribe of the Southern Ute Reservation through their General Council, the Council of the Southern Utes and their Court, shall extend to the lands now included within the Southern Ute Reservation and to such other land as may be added thereto, except such portions of the reservation as may have passed out of Indian ownership.

**ARTICLE II-MEMBERSHIP**

SECTION 1. The membership of the Southern Ute Tribe of the Southern Ute Reservation shall consist of the following:

(a) All persons duly enrolled on the 1935 census of the Southern Ute Reservation; *Provided*, That rights of participation shall depend upon the establishment of legal residence upon the reservation;

(b) All children of members, if such children shall be of 1/2 or more degree of Ute Indian blood.

SEC. 2. The Council shall have power to pass ordinances, subject to the approval of the Secretary of the Interior, covering the adoption of new members.

SEC. 3. No person shall be adopted into the Southern Ute Tribe unless he is of Indian blood and has resided upon the reservation for a probationary period to be determined by the Council.

**ARTICLE III-GOVERNING BODY**

SECTION 1. The governing body of the Southern Ute Tribe of the Southern Ute Reservation shall be known as the Council of the Southern Utes.

SEC. 2. The Council shall be composed of six members. It shall choose from its membership, a Chairman, and from within or without its membership, a Secretary-Custodian, and Treasurer, and such other officers and committees as may be deemed necessary.

SEC. 3. The Council shall have the power to district the reservation and to apportion representation, subject to a referendum of the people, whenever such action is deemed advisable by the Council.

SEC. 4. Members of the Council shall be at least thirty years of age, and permanent residents of the reservation. No person who has been convicted of a felony shall be eligible for membership on the Council.

SEC. 5. The first election of the Council shall be held within sixty days after the adoption and ratification of this Constitution; and thereafter, the annual election shall be held on the first Friday in October.

SEC. 6. At the first annual election after the adoption of this Constitution, two members of the Council shall be elected for one year; two members for two years, and two members for three years. Thereafter, two members shall be elected annually for a three year period.

SEC. 7. Any Councilman who may resign, die, or be removed from his office, shall be replaced only at a regular election or at a special election called by the Council. Any Councilman convicted of a felony or misdemeanor involving dishonesty in a Federal, State or Indian Court may be removed from office by two-thirds vote of the Council.

SEC. 8. Members of the Council shall take office on the first Tuesday of the first month after their election.

SEC. 9. If the first election, after the approval of this Constitution. does not coincide with the annual election, the tenure of the Council elected shall be extended to cover the period between the first election and the annual election.

#### **ARTICLE IV-NOMINATIONS AND ELECTIONS**

SECTION 1. Any resident member, male or female, 21 years of age or over, and otherwise qualified, shall be entitled to vote at any election.

SEC. 2. All elections shall be announced by the Superintendent, or by an officer of the tribe designated by the Council, through a circular letter to the Southern Utes at least ten days before the election.

SEC. 3. At the first election after the approval of this Constitution, nominations for members of the Council for the Southern Utes shall be made for the one, two, and three year terms at a General Council called for that purpose. Persons nominated shall appear in front of the General Council and then be seated, after which voting shall take place. The voting place shall be at the Consolidated Ute Agency. Voting shall be by show of hands.



SEC. 4. Notice of special elections shall be given in the same manner as that for general or regular elections.

## **ARTICLE V-POWERS OF THE COUNCIL**

SECTION 1. The Council of the Southern Ute Tribe shall exercise the following powers, subject to any limitations imposed by the statutes or the Constitution of the United States, and subject further to all express restrictions upon such powers contained in this Constitution and the attached By-laws.

(a) To prevent the sale, disposition, lease or encumbrance of tribal lands, interests in lands, or other tribal assets without the consent of the tribe. Leases shall be made by the Council subject to the approval of the Secretary of the Interior, in accordance with existing law, but no lease nor grant of tribal land, nor of interest in land, nor of water rights shall be made to a non-member of the tribe unless it has been approved by a referendum vote of the tribe and authorized by the Council.

(b) To advise the Secretary of the Interior with regard to all appropriation estimates or Federal projects for the benefit of the Ute Indians of the Southern Ute Reservation prior to the submission of such estimates to the Bureau of the Budget and to Congress.

(c) To select subordinate boards tribal officials, and employees of the Council not otherwise provided for in this Constitution and to prescribe their tenure and duties.

(d) To promulgate ordinances regulating the domestic relations of members of the tribe.

(e) To make rules and regulations governing its own procedure.

(f) To approve or veto expenditures from the tribal funds which may be proposed by the Secretary of the Interior.

(g) By ordinances and resolutions, subject to review by the Secretary of the Interior, to manage the tribal herds, particularly with regard to the selling of steers, lambs, wool, the purchasing of fresh stock, the distribution of the increase to the Indians as individual cattle and sheep owners, and the protection of the herds and the range against encroachments.

(h) To employ legal counsel for the protection and advancement of the Southern Ute Tribe of the Southern Ute Reservation, the choice of counsel and the fixing of fees to be subject to the approval of the Secretary of the Interior.

(i) To pass ordinances, subject to review by the Secretary of the Interior, covering the activities of voluntary associations consisting of members of the tribe organized for purposes of cooperation or for other purposes, and to enforce the observance of such ordinances.

(j) To provide by ordinances, subject to review by the Secretary of the Interior, for the removal or exclusion from the reservation of any non-members whose presence may be injurious to members of the tribe.

(k) To provide by ordinances, subject to review by the Secretary of the Interior, for the appointment of guardians for minors and mental incompetents.

(l) To prescribe rules for the inheritance of property other than allotted lands.

(m) To regulate the conduct of members of the tribe and to protect the public peace, safety, morals, and welfare of the reservation through the promulgation and enforcement of ordinances, subject to review by the Secretary of the Interior, to effectuate these purposes.

(n) To appropriate for public purposes any available funds of the tribe.

(o) To request the Superintendent to furnish it with the names of all Civil Service probationers or temporary employees under Civil Service regulations on the Southern Ute Reservation that are nearing the end of their probationary periods, and to advise with the Superintendent in the matter of their being given permanent positions as employees on the reservation.

SEC. 2. The Council may exercise such further powers as may be delegated to the Southern Ute Tribe by the Secretary of the Interior or by any other qualified official or agency of Government.

SEC. 3. Any rights and powers heretofore vested in the Southern Ute Tribe of the Southern Ute Reservation but not expressly referred to in this Constitution shall not be abridged by this article, but may be exercised by the people of the Southern Ute Reservation through the adoption of appropriate bylaws and constitutional amendments.

SEC. 4. Any resolution or ordinance which by the terms of this Constitution is subject to review by the Secretary of the Interior, shall be presented to the Superintendent of the reservation who, shall, within ten days thereafter, approve or disapprove the same, and if such ordinance or resolution is approved, it shall thereupon become effective, but the Superintendent shall transmit a copy of the same, bearing his endorsement, to the Secretary of the Interior, who may, within ninety days :from the date of enactment, rescind said ordinance or resolution for any cause, by notifying the Council of such. action: *Provided*, That if the Superintendent shall refuse to approve any resolution or ordinance submitted to him, within ten days after its enactment, he shall advise the Council of his reasons therefor, and the Council, if such reasons appear to be insufficient, may refer the ordinance or resolution to the Secretary of the Interior, who may pass upon same and either approve or disapprove it within ninety days from its enactment.

## **ARTICLE VI-GENERAL COUNCIL**

The General Council consisting of all the voters of the Southern Ute Tribe of the Southern Ute Reservation shall assemble at the time appointed for a regular annual election, and at such other times as the Council of the Southern Ute Tribe shall call them together for the discussion of matters relating to the public welfare. A General Council may also be called upon a petition signed by a majority of the qualified voters of the reservation.

## **ARTICLE VII-LAND**

The reservation land now unallotted shall remain tribal property and shall not be allotted to individuals in severalty, but assignment of land for private use may be made by the Council in conformity with ordinances which may be adopted on this subject, provided the vested rights of members of the tribe are not violated. Right of occupancy of long established allocations or dwelling places and improvements made by individuals or families on tribal lands shall be confirmed by the Council through appropriate ordinances.

## **ARTICLE VIII-AMENDMENTS**

This Constitution and By-laws may be amended by a majority vote of the qualified voters of the tribe voting at an election called for that purpose by the Secretary of the Interior, provided that at least 30 percent of those entitled to vote shall vote in such election, but no amendment shall become effective until it shall have been approved by the Secretary of the Interior. It shall be the duty of the Secretary of the Interior to call an election on any proposed amendment upon presentation of a petition signed by a majority of the eligible voters of the tribe.

## **BY-LAWS OF THE UTE INDIANS OF THE SOUTHERN UTE RESERVATION, COLORADO**

### **ARTICLE I-MEETINGS OF THE COUNCIL**

SECTION 1. At the first meeting of the Council after a regular election, the Council shall see that its members have a correct and clear understanding of the Constitution and By-laws and of the management of the tribal and reservation affairs as well as of the rules for the conduct of its own body.

SEC. 2. The regular meetings of the Council shall be held on a date decided on at a previous meeting of the Council but meetings shall be held once a month at 9:00 o'clock in the morning.

SEC. 3. The Chairman of the Council shall call a special meeting of the Council upon the request of two or more Councilmen. Notice of such special meeting shall be given to every member of the Council and to the Superintendent as promptly as possible.

SEC. 4. Matters of business before the Council shall be decided by a majority vote of a quorum present. A majority of the members of the Council shall constitute a quorum. In the absence of the Chairman, the remaining members of the Council may elect a temporary Chairman.

## **ARTICLE II-DUTIES OF OFFICERS**

SECTION 1. The Chairman of the Council shall preside over all meetings of the Council, shall perform all duties of a Chairman and exercise any authority given him by the Council or by a General Council of the tribe. He shall vote only in case of a tie.

SEC. 2. The Secretary-Custodian shall be chosen by the Council from among its members if there is among them a man able to perform such duties; otherwise the Council may elect a Secretary-Custodian from the outside. If a Council member is able to perform common secretarial duties but not to conduct more difficult secretarial business, he may have a competent assistant from outside the Council. As long as the Federal Government gives help in health and educational service, a Superintendent, and other advisory officials, it may be represented at the Council meetings by a delegate without vote, and such delegate may be selected by the Council to serve as Secretary. To such a secretary, or other employee of the United States Government, selected by the Council, shall be entrusted for the time heretofore referred to, the safekeeping of all valuable papers and records of the Council and tribe, such papers to be kept in the agency office and be accessible to the Council Chairman and other authorized persons. The Secretary-Custodian shall send out notices of elections and regular and special meetings at the direction of the Council or its Chairman, and shall perform such other clerical duties as may be given him by the Council.

SEC. 3. The Council treasurer shall be the custodian of all moneys which may come under the jurisdiction or into the control of the Council. He shall pay out money in accordance with the orders and resolutions of the Council. He shall keep account of all receipts and disbursements and shall report the same to the Council at each regular meeting. He shall be bonded in such an amount as the Council may by resolution, approved by the Commissioner of Indian Affairs, provide. The books of the Council treasurer shall be subject to audit or inspection at the direction of the Council or the Commissioner of Indian Affairs. Until the treasurer is bonded, the Council may make such provision for the custody and disbursement of funds as shall guarantee their safety and proper disbursement and use.

## **ARTICLE III-RESTRICTION ON VOTING OF COUNCILMEN**

Any Councilman who may be personally interested in any matter before the Council shall not vote on such matter without the consent of the remaining members.

## **ARTICLE IV-ADOPTION OF CONSTITUTION AND BY-LAWS**

This Constitution and By-laws, when adopted by a majority vote of the qualified voters of the Southern Ute Tribe of the Southern Ute Reservation, voting at a special election called by the Secretary of the Interior, in which at least thirty (30%) percent of those entitled to vote shall vote, shall be submitted to the Secretary of the Interior for his approval and shall be in force from the date of such approval.

### **CERTIFICATION OF ADOPTION**

Pursuant to an order, approved August 4, 1936, by the Secretary of the Interior, the attached Constitution and By-laws was submitted for ratification to the members of the Southern Ute Tribe of the Southern Ute Reservation and was on September 12, 1936 duly ratified by a vote of 61 for and 8 against in an election in which over 30 percent of those entitled to vote cast their ballots in accordance with section 16 of the Indian Reorganization Act of June 18, 1934, (48 Stat. 984), as amended by the Act of June 15, 1935, (49 Stat. 378).

**ANTONIO BUCK, SR.,**

*Chairman of Election Board.*

**JULIUS CLOUD,**

*Secretary of Election Board.*

**D. H. WATTSON, Superintendent.**

I, Harold L. Ickes, the Secretary of the Interior of the United States of America, by virtue of the authority granted me by the act of June 18, 1934 (48 Stat. 984), as amended, do hereby approve the attached Constitution and By-laws of the Southern Ute Tribe of the Southern Ute Reservation.

All rules and regulations heretofore promulgated by the Interior Department or by the Office of Indian Affairs, so far as they may be incompatible with any of the provisions of the said Constitution and By-laws are hereby declared inapplicable to the Southern Ute Tribe of the Southern Ute Reservation.

All officers and employees of the Interior Department are ordered to abide by the provisions of the said Constitution and By-laws.

Approval recommended October 23, 1936.

**WILLIAM ZIMMERMAN, Jr.,**  
*Assistant Commissioner of Indian Affairs.*

**HAROLD L. ICKES,**

*Secretary of the Interior.*

[SEAL]

WASHINGTON, D. C., *November 4, 1936.*

**AMENDMENT-CONSTITUTION AND BY-LAWS OF THE  
SOUTHERN UTE TRIBE OF THE SOUTHERN UTE RESERVATION,  
COLORADO**

**AMENDMENT II**

Article V, section 1 (a), which reads as follows:

"To prevent the sale, disposition, lease or encumbrance of tribal lands, interests in lands, or other tribal assets, without the consent of the tribe. Leases shall be made by the council, subject to the approval of the Secretary of the Interior, in accordance with existing law, but no lease nor grant of tribal land, nor of interest in land, nor of water rights shall be made to a nonmember of the tribe unless it has been approved by a referendum vote of the tribe and authorized by the council." shall be amended to read as follows:

"To prevent the sale, disposition, lease or encumbrance of tribal lands, interests in lands, or other tribal assets, without the consent of the tribe. Leases shall be made by the council, subject to the approval of the Secretary of the Interior, in accordance with the existing law, but no lease shall be made to a nonmember of the tribe unless it has been approved by and authorized by the council."

I, Oscar L. Chapman, Assistant Secretary of the Interior of the United States of America, by virtue of the authority granted me by the act of June 18, 1934 (48 Stat. 984), as amended, do hereby approve the foregoing Amendment II to the Constitution and By-laws of the Southern Ute Tribe of the Southern Ute Reservation.

Approval recommended: February 11, 1946.

**WALTER V. WOEHLKE,**  
*Acting Commissioner.*

**OSCAR L. CHAPMAN,**

*Assistant Secretary.*

[SEAL]

WASHINGTON, D. C., *February 28, 1946.*

### **CERTIFICATION OF ADOPTION**

Pursuant to an order approved October 5, 1945, by the Assistant Secretary of the Interior, the attached Amendment to the Constitution and By-laws for the Southern Ute Tribe of the Southern Ute Reservation, Colorado, was submitted for ratification to the qualified voters of the Tribe, and on November 1, 1945, was adopted by a vote of 38 for and 0 against, in an election in which more than 30 percent of those entitled to vote cast their ballots in accordance with section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended by the Act of June 15, 1935 (49 Stat. 378).

**SAMUEL BURCH,**

*Chairman, Southern Ute Tribal Council.*

**THELMA KUEBLER,**

*Secretary, Southern Ute Tribal Council.*

**FLOYD E. MACSPADDEN,**  
*Superintendent, Consolidated Ute Agency.*

U. S. GOVERNMENT PRINTING OFFICE: 1951

**APPENDIX E**  
**CORPORATE CHARTER OF THE SOUTHERN UTE TRIBE**

**UNITED STATES**  
**DEPARTMENT OF THE INTERIOR**  
**OFFICE OF INDIAN AFFAIRS**  
**CORPORATE CHARTER**  
**OF THE**  
**SOUTHERN UTE TRIBE, COLORADO**

**RATIFIED NOVEMBER 1, 1938**

UNITED STATES  
GOVERNMENT PRINTING OFFICE  
WASHINGTON: 1939



# CORPORATE CHARTER OF THE SOUTHERN UTE TRIBE, COLORADO

## A FEDERAL CORPORATION CHARTERED UNDER THE ACT OF JUNE 18, 1934

Whereas, the Southern Ute Tribe of the Southern Ute Reservation in Colorado constitutes a recognized Indian tribe organized under a constitution and by-laws ratified by the Tribe on September 12, 1936, and approved by the Secretary of the Interior on November 4, 1936, pursuant to section 16 of the Act of June 18, 1934 (48 Stat. 984), as amended by the Act of June 15, 1935 (49 Stat. 378); and

Whereas, more than one-third of the adult members of the Tribe have petitioned that a charter of incorporation be granted to such tribe, subject to ratification by a vote of the adult Indians living on the reservation;

Now, therefore, I, Oscar L. Chapman, Assistant Secretary of the Interior, by virtue of the authority conferred upon me by the said Act of June 18, 1934 (48 Stat. 984), do hereby issue and submit this charter of incorporation to the Southern Ute Tribe of the Southern Ute Reservation to be effective from and after such time as it may be ratified by a majority vote of the adult Indians living on the reservation at an election in which at least 30 per cent of the eligible voters vote.

- |                              |  |
|------------------------------|--|
| <i>Corporate Existence.</i>  | 1. In order to further the economic development of the Southern Ute Tribe of the Southern Ute Reservation in Colorado by conferring upon the said Tribe certain corporate rights, powers, privileges and immunities; to secure for the members of the Tribe an assured economic independence; and to provide for the proper exercise by the Tribe of various functions heretofore performed by the Department of the Interior, the aforesaid Tribe is hereby chartered as a body politic and corporate of the United States of America, under the corporate name "The Southern Ute Tribe." |
| <i>Perpetual Succession.</i> | 2. The Southern Ute Tribe shall, as a Federal Corporation, have perpetual succession.  |
| <i>Membership.</i>           | 3. The Southern Ute Tribe shall be a membership corporation. Its members shall consist of all persons now or hereafter members of the Tribe, as provided by its duly ratified and approved Constitution and By-laws.   |
| <i>Management.</i>           | 4. The Council of the Southern Utes established in accordance with the said Constitution and By-laws of the Tribe, shall exercise all the corporate powers hereinafter enumerated.   |
| <i>Corporate Powers.</i>     | 5. The Tribe, subject to any restrictions contained in the Constitution and laws of the United States, or in the Constitution and By-laws of the said Tribe, shall have the following corporate powers, in addition  |

to all powers already conferred or guaranteed by the Tribal Constitution and By-laws:

(a) To adopt, use and alter at its pleasure a corporate seal.

(b) To purchase, take by gift, bequest, or otherwise, own, hold, manage, operate, and dispose of property of every description, real and personal, subject to the following limitations:

(1) No sale or mortgage may be made by the Tribe of any land, or interests in land, including water rights, and mineral rights, now or hereafter held by the Tribe.

(2) No leases, permits (which term shall not include land assignments to members of the Tribe) or timber sale contracts covering any land or interests in land now or hereafter held by the Tribe within the boundaries of the Southern Ute Reservation shall be made by the Tribe for a longer term than ten years, except when authorized by law, and all such leases, permits or contracts must be approved by the Secretary of the Interior or by his duly authorized representative.

(3) No action shall be taken by or in behalf of the Tribe which in any way operates to destroy or injure the tribal grazing lands, timber, or other natural resources of the Southern Ute Reservation. All leases, permits, and timber sale contracts relating to the use of tribal grazing or timber lands shall conform to regulations of the Secretary of the Interior authorized by section 6 of the Act of June 18, 1934, with respect to range carrying capacity, sustained yield forestry management, and other matters therein specified. Conformity to such regulations shall be made a condition of any such lease, permit, or timber sale contract, whether or not such agreement requires the approval of the Secretary of the Interior, and violation of such condition shall render the agreement revocable, in the discretion of the Secretary of the Interior.

© To issue interests in corporate property in exchange for restricted Indian lands or other lands of members of the Tribe, the forms for such interests to be approved by the Secretary of the Interior.

(d) To borrow money from the Indian Credit Fund in accordance with the terms of Section 10 of the Act of June 18, 1934 (48 Stat. 984), or from any other Governmental agency, or from any member or association of members of the Tribe, and to use such funds directly for productive tribal enterprises, or to loan money thus borrowed to individual members or association of members of the Tribe: *Provided*, That the amount of indebtedness to which the Tribe may subject itself, except for indebtedness to the Indian Credit Fund, shall not exceed

\$5,000, without the express approval of the Secretary of the Interior.

© To engage in any business that will further the economic well-being of the members of the Tribe or to undertake any activity of any nature whatever, not inconsistent with law or with any provisions of the Charter.

(f) To make and perform contracts and agreements of every description, not inconsistent with law or with any provisions of this Charter, with any person, association, or corporation, with any municipality or any county, or with the United States or the State of Colorado, including agreements with the State of Colorado for the rendition of public services: *Provided*, That any contract involving payment of money by the Tribe in excess of \$1,000 in any one fiscal year shall be subject to the approval of the Secretary of the Interior or his duly authorized representative.

(g) To pledge or assign chattels or future tribal income due or to become due to the Tribe: *Provided*, That no such assignment of tribal income, other than an assignment to the United States, shall extend more than ten years from the date of execution nor cover more than one-half the net tribal income from any one source: *And provided further*, That any such pledge or assignment shall be subject to the approval of the Secretary of the Interior or his duly authorized representative.

(h) To deposit corporate funds, from whatever source derived, in any national or state bank to the extent that such funds are insured by the Federal Deposit Insurance Corporation, or secured by a surety bond, or other security, approved by the Secretary of the Interior; or to deposit such funds in the Postal Savings Bank or with a bonded disbursing officer of the United States to the credit of the corporation.

(i) To sue and to be sued in courts of competent jurisdiction within the United States; but the grant or exercise of such power to sue and to be sued shall not be deemed a consent by the said Tribe or by the United States, to the levy of any judgment, lien or attachment upon the property of the Tribe other than income or chattels specially pledged or assigned.

(j) To exercise such further incidental powers, not inconsistent with law, as may be necessary to the conduct of corporate business.

*Termination of  
Supervisory  
Powers.*

6. Upon the request of the Council of the Southern Utes for the termination of any supervisory power reserved to the Secretary of the Interior under sections 5 (b) 2, 5 (c), 5 (d), 5 (f), 5 (g), 5 (h), and section 8 of this Charter, the Secretary of the Interior, if he shall

approve such request, shall thereupon submit the question of such termination to the Tribe for referendum. The termination shall be effective upon ratification by a majority vote at an election in which at least 30 per cent of the adult members of the Tribe residing on the reservation shall vote. If at any time after ten years from the effective date of this Charter such request shall be made and the Secretary shall disapprove it, or fail to approve or disapprove it within 90 days after its receipt, the question of the termination of any such power may then be submitted by the Secretary of the Interior or by the Council of the Southern Utes to popular referendum of the adult members of the Tribe actually living within the reservation and if the termination is approved by two-thirds of the eligible voters, it shall be effective.

*Corporate  
Property.*

7. No property rights of the Southern Ute Tribe as heretofore constituted, shall be in any way impaired by anything contained in this Charter, and the tribal ownership of unallotted lands, whether or not assigned to the use of any particular individuals, is hereby expressly recognized. The individually owned property of members of the Tribe shall not be subject to any corporate debts or liabilities without such owners' consent. Any existing lawful debts of the Tribe shall continue in force, except as such debts may be satisfied or canceled pursuant to law.

*Corporate  
Dividends.*

8. The Tribe may issue to each of its members a non-transferable certificate of membership evidencing the equal share of each member in the assets of the Tribe and may distribute per capita, among the recognized members of the Tribe, all profits of corporate enterprises or income over and above sums necessary to defray corporate obligations and over and above all sums which may be devoted to the establishment of a reserve fund, the construction of public works, the costs of public enterprises, the expenses of tribal government, the needs of charity, or other corporate purposes. No such distribution of profits or income in any one year amounting to a distribution of more than one-half of the accrued surplus shall be made without the approval of the Secretary of the Interior. No distribution of the financial assets of the Tribe shall be made except as provided herein or as authorized by Congress.

*Corporate  
Accounts.*

9. The officers of the Tribe shall maintain accurate and complete public accounts of the financial affairs of the Tribe, which shall clearly show all credits, debts, pledges, and assignments, and shall furnish an annual balance sheet and report of the financial affairs of the Tribe to the Commissioner of Indian Affairs.

*Amendments.*

10. This Charter shall not be revoked or surrendered except by Act of Congress, but amendments may be proposed by resolutions of the Council of the Southern Utes which, if approved by the Secretary of the Interior, shall be effective when ratified by a majority vote of the

adult members living on the reservation at a popular referendum in which at least 30 per cent of the eligible voters vote.

*Ratification.* 11. This Charter shall be effective from and after the date of its ratification by a majority vote of the adult members of the Southern Ute Tribe living on the Southern Ute Reservation, provided at least 30 per cent of the eligible voters shall vote, such ratification to be formally certified by the Superintendent of the Consolidated Ute Agency and the Chairman of the Council of the Southern Utes.

Submitted by the Assistant Secretary of the Interior for ratification by the Southern Ute Tribe of the Southern Ute Reservation.

**OSCAR L. CHAPMAN,**

*Assistant Secretary of the Interior.*

[SEAL]

**WASHINGTON, D. C., July 11, 1938.**

#### **CERTIFICATION**

Pursuant to section 17 of the Act of June 18, 1934 (48 Stat. 984), this Charter, issued on July 11, 1938 by the Assistant Secretary of the Interior to the Southern Ute Tribe of the Southern Ute Reservation, Colorado, was duly submitted for ratification to the adult Indians living on the Reservation and was on November 1, 1938 duly adopted by a vote of 78 for and 3 against, in an election in which over thirty per cent of those entitled to vote cast their ballots, this election having been duly called by the order of the Assistant Secretary of the Interior dated October 22, 1938, and the election originally called by the Assistant Secretary of the Interior having been duly postponed.

**ANTONIO BUCK, Sr.,**

*Chairman, Council of Southern Utes.*

**S. F. STACHER,**  
*Superintendent, Consolidated Ute Agency.*

**APPENDIX F**

**CONSTITUTION OF THE SOUTHERN UTE INDIAN TRIBE (1975)**

CONSTITUTION

OF THE

SOUTHERN UTE INDIAN TRIBE

OF THE

SOUTHERN UTE INDIAN RESERVATION, COLORADO

**PREAMBLE**

We, the members of the Southern Ute Indian Tribe of the Southern Ute Indian Reservation in Colorado, in order to exercise our inherent rights of self-government as confirmed by the constitution and bylaws approved November 4, 1936 to administer our tribal affairs, to preserve and increase our tribal resources, do ordain and establish this constitution.

**ARTICLE I - JURISDICTION**

The jurisdiction of the Southern Ute Indian Tribe through its general council, its tribal council and courts, shall extend to all the territory within the exterior boundaries of the reservation, and to such other lands as may be added thereto by purchase, gift, Act of Congress or otherwise.

**ARTICLE II - MEMBERSHIP**

**Section 1.** The membership of the Southern Ute Indian Tribe shall consist of the following:

- (a) All persons duly enrolled on the 1970 tribal census roll dated August 31, 1971, approved by the Albuquerque Area Director on February 1, 1972.
- (b) All children of enrolled members born subsequent to July 14, 1965, and prior to the effective date of this revision, such children possess at least one-fourth (1/4) degree of Southern Ute Indian blood; and have been enrolled as a member of any other tribe.
- (c) All children of enrolled members born subsequent to the effective date of this revision, if such children shall be one-fourth (1/4) or more degree of Southern Ute Indian blood and PROVIDED that such person shall not be included on the membership roll of any other Indian tribe and is approved for adoption by the tribal council.

**Section 2.** The tribal council shall have the power to enact ordinances consistent with this constitution, to govern future membership, loss of membership and the adoption of persons into the Southern Ute Tribe. Such ordinances shall be subject to approval by the Secretary of the Interior or his authorized representative.

**Section 3.** The tribal council shall have the power to prescribe rules governing the compilation, maintenance and correction of a tribal membership roll. Such rules, insofar as the correction of blood degree is concerned, shall be subject to approval by the Secretary of Interior or his authorized representative.

**Section 4.** The tribal council shall have the sole authority and original jurisdiction to determine eligibility for enrollment. No decree of any non-tribal court purporting to determine membership in the tribe, paternity, or degree of Indian blood, shall be recognized for membership purposes.

### **ARTICLE III - GOVERNING BODY**

**Section 1. Name.** The governing body of the Southern Ute Indian Tribe of the Southern Ute Indian Reservation shall be known as the Southern Ute Indian Tribal Council.

**Section 2. Composition of the Council.** The council shall be composed of seven (7) members (chairman and six (6) councilmen) all of whom shall be elected on an at-large basis for three (3) year staggered terms or until their successors are duly elected and installed. The chairman shall be elected from among candidates who specifically file for that office. Following his installation, the chairman shall appoint from within the council membership a vice-chairman to serve in that capacity at the pleasure of the chairman provided such appointment shall not extend the vice-chairman's normal three (3) year term on the council.

**Section 3.** The tribal council and tribal officials incumbent on the effective date of this constitution shall remain in office and shall be entitled to exercise all powers granted by this constitution to the tribal council and tribal officials until such time as their successors are duly elected and installed pursuant to the provisions of this governing document.

### **ARTICLE IV - NOMINATIONS AND ELECTIONS**

**Section 1. The First Election.** The first election under this constitution shall be held on the first Friday in November (November 7, 1975) and shall be supervised and conducted in accordance with an election ordinance enacted by the council then in office pursuant to Section 7 of this article. The position of tribal council chairman and the two (2) vacancies on the council which would occur in November, 1975 under the original constitution, shall be filled for three (3) year terms at the November 7, 1975 election. Those incumbents in the two (2) above mentioned council positions shall continue to serve until December 2, 1975 unless earlier removed from office, or until their successors are duly elected and installed.

Successful candidates for the three (3) vacant council positions (chairman and two (2) council members) and the person appointed by the chairman to serve as vice-chairman, shall be installed in office on the first Tuesday of December (December 2, 1975).

**Thereafter** there shall be annual elections on the first Friday in November to fill for three (3) year terms, the two (2) vacancies occurring each year so as to continue the system of staggered terms of office. Every third year there shall also be elected a tribal council chairman for a three (3) year term. No person shall hold the office of Tribal Council Chairman consecutively for more than three terms.

**Section 2. Terms of Office.** The terms of office of the tribal council chairman and the members of the tribal council shall be three (3) years, PROVIDED, that upon adoption and approval of this constitution the unexpired terms of the council members elected under the previous constitution shall continue until their terms expire at the end of three (3) years from the date of their installation or until their successors are duly elected and installed.

**Section 3. Assumption of Office.** Newly-elected members of the tribal council shall be installed in office on the first Tuesday of December after their election. Persons who are elected or appointed to fill any unexpired term on the council shall take office immediately following certification of their election or appointment.

**Section 4. Voter Qualifications.** Any enrolled member of the Southern Ute Indian Tribe, male or female, eighteen (18) years of age or over, shall be entitled to vote at any tribal election PROVIDED such person is duly registered.

**Section 5. Qualification of Candidates.** Candidates for membership on the tribal council shall be at least twenty-five (25) years of age at the time of election or appointment, and shall have physically resided within the present exterior boundaries of the Southern Ute Indian Reservation for at least ninety (90) days immediately preceding their appointment or the election at which they are candidates for tribal office. No person who has been convicted of a felony shall qualify as a candidate or hold membership on the tribal council.

**Section 6. Election Board.** An election board, appointed by the tribal council, shall maintain a register of qualified voters, rule on the eligibility of the candidates for tribal office, settle all election disputes and supervise and administer all tribal elections in accordance with established tribal ordinances and in conformity with this constitution PROVIDED, that no member of the election board shall be at the same time a member of the tribal council or a candidate for tribal office. Persons appointed to the election board may be removed by the tribal council chairman. with the concurrence of the tribal council. The election board shall choose its own chairman, vice-chairman and secretary from within its membership.

**Section 7. Election Ordinance.** Rules and procedures governing the elections under this constitution shall be prescribed by ordinance of the tribal council. Such ordinance shall include provisions for notice of election, secret ballots, absentee voting,



registration of voters, special elections and a procedure for settling election disputes. Further, it shall contain provisions to govern the filling of unexpired terms of office pursuant to Section 5 (b) of Article V and the conduct of referendum elections as set forth in Section 3 of Article VI.

## **ARTICLE V - VACANCIES, REMOVAL AND RECALL**

**Section 1. Removal.** Any member of the tribal council or other elected official of the Southern Ute Indian Tribe who, during his term of office, is convicted of a felony in any court, shall thereupon forfeit his term of office. Any member of the tribal council or elected official of the tribe may be removed from office by the affirmative vote of not less than four (4) members of the tribal council for gross neglect of duty, misfeasance in office or for misconduct reflecting on the dignity and integrity of the Southern Ute Indian Tribe, PROVIDED, that first, the accused person shall be given a written statement of the charges made against him at least ten (10) days before the meeting of the tribal council at which he is to appear, and he shall be given an opportunity to answer such charges. The decision of the tribal council shall be final.

**Section 2. Recall.** Any member of the tribal council or other elected official of the Southern Ute Indian Tribe shall be subject to recall from office at a special election to be called and held at the direction of the tribal council within thirty (30) days following receipt of a petition signed by at least thirty percent (30%) of the registered voters of the Southern Ute Indian Tribe, PROVIDED, that a majority of the registered voters of the Southern Ute Indian Tribe shall vote in such election. Once a recall attempt has been concluded for any given member, it shall not be considered again until twelve (12) months have passed. No recall shall be initiated until the official has completed at least six (6) months of his term.

**Section 3. Procedures.** Procedures and regulations governing the conduct of recall elections and removal proceedings shall be established by ordinance of the tribal council.

**Section 4. Registration.** The chairman of the Southern Ute Indian Tribe or any member of the tribal council may, at any time, resign from the office to which he was elected by submitting a written resignation to the tribal council.

**Section 5. Filling Vacancies.** Any vacancy in the membership of the tribal council, resulting from any cause, shall be filled.

(a) By a tribal member who meets the qualifications for that office, appointed by the chairman of the Southern Ute Indian Tribe and confirmed by a vote of not less than four (4) council members if the term of the vacant office is due to expire within six (6) months following the date upon which it becomes vacant; or

(b) At a special election to be called and held at the direction of the tribal council within sixty (60) days following the date upon which it becomes vacant if the term of the

vacant office has longer than six (6) months to run. Procedures and regulations to govern such special election shall be embodied in the election ordinance.

## **ARTICLE VI - REFERENDUM**

**Section 1.** Upon the receipt of a petition signed by at least twenty percent (20%) of the registered voters of the Southern Ute Indian Tribe, or upon the adoption of a resolution of the tribal council supported by no less than four (4) members thereof, the tribal council shall direct the election board to call and hold a special election at which the registered voters of the Southern Ute Indian Tribe may vote upon any enacted or proposed ordinance or resolution of the tribal council. Such election shall be held within thirty (30) days following receipt of said petition or adoption of the foregoing resolution by the tribal council. The decision of the tribal electorate shall be final, PROVIDED, that not less than fifty percent (50%) of the registered voters of the Southern Ute Indian Tribe Vote in such referendum.

**Section 2. Limits of Referendum.** No referendum shall serve to abrogate, modify or amend any properly approved contract or agreement to which the tribal council is a party. Once a referendum has been voted upon and fails, that issue shall not be considered again until twelve (12) months have passed.

**Section 3. Procedures.** Special elections for referendum purposes shall be held in conformity with procedures established in the election ordinance of the Southern Ute Indian Tribe.

## **ARTICLE VII - POWERS OF THE COUNCIL**

**Section 1.** The inherent powers of the Southern Ute Indian Tribe, including those set forth in Section 16 of the Act of June 18, 1934 (48 Stat. 984), as amended, shall be exercised by the Southern Ute Indian Tribal Council, subject only to limitations imposed by the Constitution and Statutes of the United States, by the regulations of the Department of the Interior and by this constitution. The tribal council shall be empowered to:

(a) Regulate its own procedures by appropriate ordinance. In addition, the council may appoint subordinate boards, commissions, committees, tribal officials and employees not otherwise provided for in this constitution, and may prescribe their salaries, tenure and duties.

(b) Authorize and regulate tribal associations, corporations and subordinate organizations for economic and other purposes, with the approval of the Secretary of the Interior or his authorized representative whenever required by law, and may transfer tribal assets thereto for management and control;

(c) Any encumbrance, sale, lease, permit, assignment, or management of any portion of the reservation, or the grant of any rights to use of lands or other assets, or the grant or

relinquishment of any water or mineral rights or other natural or fiscal assets of the Southern Ute Indian Tribe, are hereby reserved to the tribal council.

(d) Advise the Secretary of the Interior and heads of other Federal Agencies with regard to all appropriation estimates or Federal projects for the benefit of the Southern Ute Indians of the Southern Ute Indian Reservation.

(e) Subject to approval by the Secretary or the Interior, or his authorized representative, the tribal council may enact ordinances and codes to protect the peace, safety, property, health and general welfare of the members of the Southern Ute Indian Tribe and to govern the administration of justice through the tribal courts, prescribe the powers, rules and procedures of the tribal courts in the adjudication or cases involving criminal offenses, domestic relations, civil actions and the inheritance and probate of trust, real and personal property of tribal members within the reservation.

(f) Provide by ordinances for the appointment of guardians for minors and mental incompetents.

(g) Provide by ordinance, subject to the approval of the Secretary of the Interior, or his authorized representative, for the removal or exclusion from the reservation of any nonmembers whose presence may be found by the tribal council to be injurious to members of the tribe.

(h) The tribal council shall manage all funds within the control of the tribe, and may appropriate available tribal money for public, business, governmental or investment purposes with approval of the Secretary of the Interior, or his authorized representative, whenever required by Federal law.

1. All appropriations of tribal funds shall be expended in conformity with annual budgets subject to approval by the Secretary of the Interior, or his duly authorized representative;

2. Provisions shall be made for adequate accounting of all tribal financial transactions, including a comprehensive annual audit. An annual summary audit report showing income and expenses for the fiscal year ended, reflecting the financial condition of the tribe, shall be available to tribal members upon request. All tribal officials and employees who are directly responsible for the receipt, disbursement and custody of tribal funds shall be adequately bonded. The cost of such bond shall be paid from tribal funds.

(i) The tribal council may authorize the deposit of any tribal funds under its control, to the credit of the Southern Ute Indian Tribe, without limitations on the amount carried in any account, in any bank whose deposits are insured by any agency of the Federal Government.

(j) The tribal council shall have the power to borrow money for business and economic development purposes from the Federal Government or other lending agencies.

(k) The tribal council may levy and collect taxes and fees on tribal members, and may enact ordinances, subject to approval by the Secretary of the Interior, or his authorized representative, to impose taxes and fees on nonmembers of the tribe doing business on the reservation.

(l) The tribal council may administer charity.

(m) The tribal council may adopt ordinances to authorize the loan of tribal funds to tribal members or tribal organizations.

(n) To protect and preserve the property, wildlife and natural resources of the tribe, and to regulate the conduct of trade and the use and disposition of tribal property upon the reservation.

(o) To employ legal counsel for the protection and advancement of the Southern Ute Indian Tribe of the Southern Ute Indian Reservation, the choice of counsel and the fixing of fees to be subject to the approval of the Secretary of the Interior, or his authorized representative, so long as such approval is required by Federal law.

(p) To enact ordinances, covering the activities of voluntary associations consisting of members of the tribe organized for the purposes of cooperation or for other purposes, and to enforce the observance of such ordinance.

(q) To establish housing and such other authorities to conduct the business of the tribe.

**Section 2. Acting Chairman.** In the absence of the chairman and vice-chairman, the tribal council shall by proper resolution appoint from within its membership an acting chairman, who will be given all authority of the regular chairman.

**Section 3. Further Powers.** The tribal council may exercise such further powers as may be delegated to or conferred upon the Southern Ute Indian Tribe by the Congress of the United States, the Secretary of the Interior or other competent authority.

**Section 4. Reserve Powers and Rights.** Any rights and powers heretofore vested in the Southern Ute Indian Tribe of the Southern Ute Indian Reservation but not expressly referred to in this constitution shall not be abridged by this article, but may be exercised by the members of the Southern Ute Indian Tribe through the adoption of appropriate amendments to this constitution.

**Section 5. Approval of Council Enactments.** Every resolution or ordinance passed by the tribal council shall, before it becomes effective, be presented to the chairman for approval within five (5) days following the date of its passage. If he approves, he shall sign it within ten (10) days following its receipt by him and take such further action as

may be necessary. If he does not sign an enactment of the tribal council, it shall not become effective and he shall, at the next regular meeting of the tribal council following its submittal to him for signature, return it to the council with a statement of his objections. It shall, thereafter, not become effective unless it is again approved by five (5) of the six (6) tribal council members.

#### **ARTICLE VIII - LAND**

The reservation land now unallotted shall remain tribal property and shall not be allotted to individuals in severalty, but assignment of land for private use may be made by the tribal council in conformity with ordinances which may be adopted on this subject, PROVIDED, the vested rights of members of the tribe are not violated.

#### **ARTICLE IX - MEETING OF THE TRIBAL COUNCIL**

**Section 1. First Meeting.** At the first meeting following installation of newly-elected council members, the carry-over members shall see that new members have a correct and clear understanding of the constitution, the management of tribal and reservation affairs and the rules governing the conduct of the council.

**Section 2. Regular Meeting.** The regular meetings of the council shall be held on a date decided on at a previous meeting of the council, but meetings shall be held every two (2) weeks.

**Section 3. Special Meetings.** The chairman shall call a special meeting of the council whenever necessary or at the request of four (4) or more councilmen. Notice of such special meeting shall be given to every member of the tribal council as promptly as possible.

**Section 4. Agenda and Quorum.** Matters of business before the tribal council shall be decided by majority vote of a quorum present. Any four (4) of the seven (7) council members shall constitute a quorum. In the absence of the chairman and the vice-chairman, the remaining members of the tribal council may appoint an acting chairman as provided in Article VII, Section 2.

#### **ARTICLE X - DUTIES OF OFFICERS**

**Section 1.** The chairman shall preside over meetings of the Southern Ute Indian Tribal Council and shall perform all duties of a chairman and exercise any authority given him by the tribal council. He shall vote only in case of a tie.

(a) The chairman shall appoint all non-elective officials and employees of the executive department of the tribal government and shall direct them in their work, subject only to applicable restrictions embodied in this constitution or in enactments of the tribal council establishing personnel policies or governing personnel management.

(b) The chairman, subject to the approval of the tribal council, may establish such boards, committees or subcommittees as the business of the tribal council may require and may serve as an ex-officio member of all such committees and boards.

(c) The chairman shall serve as contracting officer for the Southern Ute Indian Tribe executing all contracts and agreements to which the Southern Ute Indian Tribe is a party following approval by the tribal council.

(d) The chairman shall have power to veto all enactments of the council as provided in Section 5 of Article VII of the constitution.

(e) The chairman shall direct the preparation of the annual budget of the tribe and its presentation to the tribal council.

(f) The chairman may represent the tribe in negotiations with non-tribal organizations, agencies and branches of government.

(g) The chairman shall direct the tribal police to assure the enforcement of ordinances of the tribal council.

**Section 2. Vice-Chairman.** In the absence of the chairman, the vice-chairman shall preside and shall have all powers, privileges, duties and responsibilities of the chairman.

(a) The vice-chairman shall function as chairman of the tribal council in the absence or at the direction of the chairman.

(b) The vice-chairman shall perform such other duties as directed by the chairman.

**Section 3. Treasurer.** The treasurer and assistant treasurer of the Southern Ute Indian Tribe shall be appointed by the tribal council. The treasurer and assistant treasurer may be removed by the chairman with the consent of the majority of the total membership of the tribal council.

(a) The treasurer shall accept, receipt for, keep and safeguard all funds under the exclusive control of the tribe by depositing them in a bank insured by an agency of the Federal Government, or in an individual Indian Money account as directed by the Southern Ute Indian Tribal Council, and shall keep an accurate record of such funds. The treasurer shall make or authorize disbursement from funds under his control only as authorized in the approved annual budget of the tribe or by special action of the tribal council. He shall report on all receipts and expenditures and upon the amount and nature of all funds in his custody to the tribal council at regular meetings and at such other times as requested by the tribal council.

(b) All checks shall be signed by the treasurer or assistant treasurer. Vouchers shall be approved for payment in accordance with a resolution to be adopted by the tribal council.

(c) The treasurer and assistant treasurer shall be bonded as provided in Section 1 (h) 2 of Article VII of the constitution.

#### **ARTICLE XI - RESTRICTION ON VOTING OF COUNCILMEN**

In cases where a conflict of interest exists for a given council member, on any question before the council, that person shall not vote on such matters without the consent of all the remaining council members.

#### **ARTICLE XII - CONSTITUTIONAL AMENDMENTS**

Section 1. This constitution may be amended at an election authorized by the Secretary of the Interior.

(a) Whenever, by favorable vote of at least four (4) members of the tribal council, the governing body of the tribe shall authorize the submission of a proposed amendment to the electorate of the tribe, or

(b) Whenever a minimum of twenty percent (20%) of the registered voters of the tribe, by signed petition, shall request such amendment.

**Section 2.** If, at such election, the amendment is adopted by majority vote of the registered voters of the tribe voting therein, and if the number of ballots cast represents not less than thirty percent (30%) of the registered voters, such amendment shall be submitted to the Secretary of the Interior and, if approved by him, it shall thereupon take effect.

#### **ARTICLE XIII - SAVING CLAUSE**

All ordinances and resolutions heretofore enacted by the tribal council of the Southern Ute Indian Tribe shall remain in full force and effect to the extent that they are consistent with the constitution.

#### **ARTICLE XIV - GENDER**

Whenever necessary, words used in this constitution in the masculine gender shall whenever appropriate be construed to read in the feminine gender.

#### **ARTICLE XV - ADOPTION OF CONSTITUTION**

This constitution when adopted by a majority vote of the qualified voters of the Southern Ute Indian Tribe of the Southern Ute Indian Reservation, voting at a special election authorized by the Secretary of the Interior, in which at least thirty percent (30%) of those entitled to vote shall vote, shall be submitted to the Secretary of the Interior for his approval and shall be in force from the date of such approval.

**APPROVAL**

I, Morris Thompson, Commissioner of Indian Affairs, by virtue of the authority granted to the Secretary of the Interior by the Act of June 18, 1934 (48 Stat. 984), as amended, and delegated to me 230 DM 11, do hereby approve the Constitution of the Southern Ute Indian Tribe of the Southern Ute Indian Reservation, Colorado.

Morris Thompson Commissioner of Indian Affairs

Washington, D.C.

Date: October 1, 1975

Ignacio, Colorado

September 26, 1975

Commissioner  
Bureau of Indian Affairs  
U.S. Department of Interior  
1951 Constitution Avenue, N. W.  
Washington, D.C.

Certificate of results of election pursuant to an election authorized by the Secretary of Interior on August 13, 1975 was submitted to the qualified voters of the tribe and was on September 26, 1975 duly adopted by a vote of 92 for and 55 against in which at least 30 percent of the 268 members entitled to vote cast their ballots in accordance with Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended by the act of June 15, 1935 ( 49 Stat. 378).

Raymond J. deKay, Superintendent

Chairman, Election Board

Southern Ute Agency

Ignacio, Colorado



## APPENDIX G

### TÜÜÇAI COURT RESTORATIVE PROGRAMS

#### Fatherhood/Motherhood is Sacred

The Fatherhood/Motherhood is Sacred Program recognizes that the family is the oldest and most important institution in society. It is designed to strengthen families and bring unity to communities. Our approach uses a culturally rich model to help fathers and mothers to become loving and devoted parents, to create change, and to build safe and happy families. While the program is based on Native American Culture and wisdom, Fathers and Mothers of all cultures and ethnicities are welcomed and invited to participate.

#### Mending Broken Hearts

Community-based, Treatment Provider facilitated group that focuses on the healing from the effects of historical and intergenerational trauma.

#### Multi-Systemic Therapy

Multi-systemic Therapy (MST) is an intensive family- and community-based treatment program that focuses on addressing all environmental systems that impact chronic offenders. MST recognizes that each system plays a critical role in an offender's world and each system requires attention when effective change is needed to improve the quality of life.

#### Personal Training

The Southern Ute Recreation Center, SunUte, provides personal trainers for WC participants to fulfill the fitness component. They receive a fitness assessment, followed by personal attention while exercising.

#### Positive Indian Parenting

Positive Indian Parenting is an eight week class designed to provide a brief, practical culturally specific training program for Native American parents (as well as non-Native American foster parents of Native American children) to explore the values and attitudes expressed in traditional Native American child-treating practices and then to apply those values to modern skills in parenting. For hundreds of years Native American parents were guided by traditions that never left parenting to chance. These traditions were passed from one generation to the next, but they all had the same purpose: to ensure the tribe's future through its children. While we cannot go back to the world as it once was, we can still find great values in our child-rearing experience.

### Strengthening Families

The Strengthening Families Program is a 14-session, science-based parenting skills, children's life skills, and family life skills training program specifically designed for high-risk families. Parents and children participate in SFP, both separately and together. Group Leader Manuals contain a complete lesson for every session. Parents' and children's Handbooks/ Handouts are also provided for every session.

### Southern Ute Cultural Department

The Cultural Department ensures revitalization, promotion, and sustainment of the culture, language and history in a manner that honors past generations, and ensures a health and balanced tribal community; by using the advice and knowledge of elders, and educating the general public in a manner that serves tribal interests. It offers cultural classes on traditional craft and activities. The Department has recently designated two Elders to work solely with Wellness Court clients to teach cultural practices.

### Southern Ute Cultural Center and Museum

SUCCM houses a welcoming gallery, as well as temporary and permanent galleries. Library and Archive collections include photos, recordings, research and historical materials. Surrounding the Museum are plants of great significance to the Ute people.

### Southern Ute Vocation Rehabilitation

The Southern Ute Indian Tribe Vocational Rehabilitation (SUITVR) Program assists American Indians with disabilities to prepare for, achieve and maintain employment. Services are custom designed to fit each individual's needs.

**APPENDIX H**  
**SOUTHERN UTE TRIBAL COUNCIL RESOLUTION 2009-157**

**RESOLUTION NO. 2009-157**

**RESOLUTION**  
**OF THE**  
**COUNCIL OF THE SOUTHERN UTE INDIAN TRIBE**  
**July 28, 2009**

**WHEREAS**, authority is vested in the Southern Ute Indian Tribal Council by the Constitution adopted by the Southern Ute Indian Tribe, and approved November 4, 1936, and amended October 1, 1975, and August 27, 1991, to act for the Southern Ute Indian Tribe; and

**WHEREAS**, pursuant to Article VII, Section 1 (e) of the Tribal Constitution, the Southern Ute Indian Tribal Council is empowered to enact ordinances and codes to protect the peace, safety, property, health and general welfare of the members of the Southern Ute Indian Tribe; and

**WHEREAS**, the Southern Ute Indian Tribe operates a Tribal Court to carry out justice proceedings to protect individual rights, and the peace, safety, property, health, and general welfare of the community; and

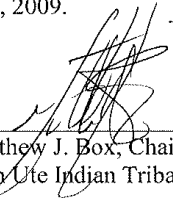
**WHEREAS**, the Southern Ute Indian Tribe desires to better understand the effectiveness of the Court's proceedings to reduce crime and to help prior offenders become successful, contributing members of the community; and

**WHEREAS**, Daniel J. Brush, PhD Candidate of the University of Oklahoma, has proposed to study the Court's effectiveness, with conditions that the study and any subsequent publications will be subject to Tribal Council review and approval.

**NOW, THEREFORE BE IT RESOLVED** that the Southern Ute Indian Tribal Council authorizes Daniel J. Brush to begin justice research studies on the Southern Ute Indian Reservation, and approves the Agreement regarding research and writing between the Tribe and Mr. Brush, which is attached hereto as Exhibit A.

**BE IT FURTHER RESOLVED** that the Chairman of the Southern Ute Indian Tribe is hereby authorized to execute the necessary documents and take all necessary actions to carry out the intent of this resolution.

This resolution was duly adopted on the 28<sup>th</sup> day July, 2009.

  
\_\_\_\_\_  
Mr. Matthew J. Box, Chairman  
Southern Ute Indian Tribal Council

## AGREEMENT REGARDING RESEARCH AND WRITING

THIS AGREEMENT is entered into the <sup>th</sup>28 day of July, 2009, by and between the SOUTHERN UTE INDIAN TRIBE, of the Southern Ute Indian Reservation, P.O. Box 737, Ignacio, Colorado, 81137, hereinafter referred to as the "Tribe," and Daniel J. Brush, CMR 463 Box 64, APO AE 09177, hereinafter referred to as "Author."

### RECITALS

WHEREAS, the Author has requested that Tribe allow him to conduct research regarding the Tribe's Southern Ute Court("Court") and the aim of research by the Author are three-fold as set forth in Exhibit A; and

WHEREAS, in consideration of the Tribe allowing Author to conduct said research and writing, the Tribe and the Author have agreed to certain terms and conditions regarding Author's work.

### TERMS AND CONDITIONS

NOW THEREFORE, in consideration of the terms and conditions contained herein, the parties agree as follows:

1. Responsibilities of Author.

a. Author shall provide Tribal Council with copies of any surveys, interview questions, or other research protocol, which have been approved by an Institutional Review Board, prior to starting any research activities involving human participants.

b. Author shall be allowed to conduct research and writing as set forth in Exhibit A.

c. Author shall be responsible for submitting progress reports to the Southern Ute Indian Tribal Council, as requested.

d. Author specifically agrees that the information assembled pursuant to this Agreement is for the benefit of the Tribe and shall not be used in a manner deemed unacceptable by the Tribe. Author may use the research and written materials produced pursuant to this Agreement only in accordance with specific written instructions from the Tribe.

e. Upon completion of any complete draft or final work product, Author shall submit the material to the Tribe for review. The Tribe may, following such review, approve distribution of the work product, as requested by Author, but such approval shall be granted upon the sole discretion of the Tribe.

f. Author agrees that all documents and other records received from the Tribe and used by Author during the term of this Agreement shall be the work product and property of the Tribe. All such documents and copies thereof shall be returned to the Tribe; and at no time shall

Author reveal such documents or the information contained therein to a third party without the express written permission of the Tribe.

g. Author retains copyright authority for any work produced as a result of this Agreement. Author agrees that the primary purpose of this research is academic in nature and shall be submitted as part of his doctoral dissertation and is hereby authorized to do so after review and release authorization is granted by the Tribe as stipulated in section 1.e

2. Responsibilities of the Tribe.

a. The Tribe, through the Court, shall cooperate with Author in the Author's work, done pursuant to this Agreement. Such cooperation may include making tribal members and staff available for interviews and/or allowing Author to review certain tribal documents; provided, however, nothing herein shall authorize tribal staff to ignore their otherwise assigned job responsibilities to assist Author.

3. Independent Author.

Author and the Tribe understand and acknowledge that Author is independent and not an employee of the Tribe, and that the benefits and rights to which Author is entitled are limited to those expressly set forth in this Agreement. No other rights or benefits are conferred upon Author by any other contract, tribal law or policy, including the Tribal Personnel Policies and Procedures. Author has no authority to bind the Tribe in contract or otherwise without the express written permission of the Tribe. Author shall, at all times, have complete control over the manner, means and all details of the work to be performed.

4. Indemnification.

Author shall indemnify and hold harmless the Tribe, the Southern Ute Indian Tribal Council and the Tribe's employees, agents, and representatives from any and all claims, damages, losses and expenses of every nature, except for those specifically provided for by this Agreement, made against the Tribe arising out of Author's work.

5. Termination.

a. Either party may terminate this Agreement upon 7 days written notice to the other party.

b. This Agreement also may be immediately terminated by the Tribe if Author fails to meet Author's responsibilities regarding the allowed use and distribution of the work product to be developed pursuant to this Agreement.

6. Miscellaneous.

a. Choice of law and forum. Jurisdiction for any dispute shall be the Southern Ute Tribal Court and choice of law shall be Southern Ute Indian tribal law. Nothing in this Agreement, however, shall constitute a waiver of the Tribe's immunity from suit.

b. Litigation Expense. Should litigation be necessary to enforce any term or provision of this Agreement, or to collect any portion of the amount payable under this Agreement, all litigation expenses, collection fees, witness fees, court costs and attorney fees shall be paid by the non-prevailing party.

c. Assignment. This Agreement is for personal services. As such, Author shall not assign this Agreement without the prior written consent of the Tribe.

d. Severability of Provisions. Should any provision herein be found or deemed to be invalid, this Agreement shall be construed as not containing such provision, and all other provisions which are otherwise lawful shall remain in full force and effect and, to this end, the provisions of this Agreement are declared to be severable.

e. Total Agreement. This Agreement represents the entire and integrated agreement between the Tribe and Author and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by the parties.


f. Counterparts and Faxes. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Faxed signatures shall have the same force and effect as original signatures.

EXECUTED on the date first set forth above.

SOUTHERN UTE INDIAN TRIBE

by:   
Matthew Box, Chairman  
Southern Ute Indian Tribal Council

AUTHOR

  
Daniel J. Brush  
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**APPENDIX I**  
**INSTITUTIONAL REVIEW BOARD APPROVAL LETTER**



*The University of Oklahoma*

OFFICE FOR HUMAN RESEARCH PARTICIPANT PROTECTION

IRB Number: 12855  
Meeting Date: February 04, 2010  
Approval Date: March 03, 2010

March 04, 2010

Daniel Brush  
College of Continuing Education  
CMR 463 Box 64  
APO, AE 09177

**RE: Incorporating A Traditional & Holistic Approach to the Administration of Criminal Justice in Native America: The Capota and Muache Bands of the Ute Indians**

Dear Mr. Brush:

The University of Oklahoma Norman Campus Institutional Review Board (IRB) reviewed the above-referenced research protocol at its regularly scheduled meeting on February 04, 2010. It is the IRB's judgement that the rights and welfare of the individuals who may be asked to participate in this study will be respected; that the proposed research, including the process of obtaining informed consent, will be conducted in a manner consistent with the requirements of 45 CFR 46, as amended; and that the potential benefits to participants and to others warrant the risks participants may choose to incur.

On behalf of the IRB, I have verified that the specific changes requested by the convened IRB have been made. Therefore, on behalf of the Board, I have granted final approval for this study.

This letter documents approval to conduct the research as described:

Other Dated: July 28, 2009 Southern Ute Indian Tribal Council Authorization  
Other Dated: July 28, 2009 Agreement Regarding Research and Writing  
Survey Instrument Dated: January 22, 2010 Tribal Elder Questionnaire  
Survey Instrument Dated: January 22, 2010 External Judiciary Questionnaire  
Consent form - Subject Dated: February 25, 2010 Tribal Elder - Revised  
Consent form - Subject Dated: February 25, 2010 Judiciary Consent Form  
Consent form - Other Dated: February 25, 2010 Information Sheet - Revised  
Survey Instrument Dated: February 25, 2010 Anonymous Judicial Survey - Revised  
IRB Application Dated: March 02, 2010 Revised  
Protocol Dated: March 02, 2010 Revised

As principal investigator of this protocol, it is your responsibility to make sure that this study is conducted as approved by the IRB. Any modifications to the protocol or consent form, initiated by you or by the sponsor, will require prior approval, which you may request by completing a protocol modification form.

The approval granted expires on February 03, 2011. Should you wish to maintain this protocol in an active status beyond that date, you will need to provide the IRB with an IRB Application for Continuing Review (Progress Report) summarizing study results to date. The IRB will request a progress report from you approximately two months before the anniversary date of your current approval.

If you have questions about these procedures, or need any additional assistance from the IRB, please call the IRB office at (405) 325-8110 or send an email to [irb@ou.edu](mailto:irb@ou.edu).

Cordially,

Lynn Deyenport, Ph.D.  
Chair, Institutional Review Board