

Memo

To: Wendy Church
From: Jessica Pouley
Date: 4/13/2012
Re: Justice in Indian Country: A Case Study of the Tulalip Tribes, Summary.

I. Introduction to Thesis

In Leah Catherine Shearer's thesis written to receive her Masters of Art in American Indian Studies from the University of California, she highlights many of the key points to the Tulalip Tribes successful judicial system. This thesis titled "Justice in Indian Country: A Case Study of the Tulalip Tribes" presents a structure that Tribal Judicial systems should follow and then examines the effectiveness of how Tulalip functions within the structure presented. Shearer then continues on to examine how transferable the success of Tulalip's judicial structure would be to other tribes.

II. The Six-Part Framework

According to Leah Shearer the Tulalip Reservation is a noteworthy success story for Indian country since it's retrocession in the year 2000. She bases this conclusion off of a six-part framework theory presented by Carole Goldberg and Duane Champagne. This framework is said to outline what tribal justice systems need in order to be successful. Briefly put the six parts are: 1) Effective management. 2) Fairness. 3) Cultural compatibility. 4) Inter-governmental cooperation. 5) Tribal control. 6) Adequate resources. The effective management part of this framework means that the tribal justice system should be clearly understood by its community, ensure that justice system documentation, websites and other related materials are clear, administratively function well, and sufficiently train justice system employees. A tribal justice system that fits the fairness aspect of the framework distributes its resources fairly, resolves disputes without bias, responds to crime in a fair way and develops policies that it's citizens can trust. For cultural compatibility to be achieved the location and ways of the tribe in question must be acknowledged. This means that the unique spiritual, cultural, historical, and institutional practices must be taken into account when establishing a tribal justice system in order for members to want to "buy in" to the program. Inter-governmental cooperation comes from both formal and informal methods of working with outside agencies. In both of the previously mentioned forms, a good inter-governmental cooperation has a lack of antagonism among law enforcement, representatives and constituents of all involved jurisdictions. The tribal control portion of the six part framework states that in order for a tribe to successfully practice jurisdiction they must be respected. This refers to the control tribes have over their own government as well as

outside agencies acknowledgement of their control. The final part of the six part framework is resources. A tribal justice system must have adequate funding and resources in order to effectively run. This is where a majority of tribes run into problems because there is a widespread lack of funding for tribal justice systems. The six part framework is meant to function with each piece and not separately. Without all six parts a tribal justice system will be lacking. Fortunately Tulalip's successful justice system is due to their achievement in each part.

III. Tulalips Success with the Six-Part Framework

The Tulalip Tribal Court meets the effective management portion of the six-part framework for various reasons that Shearer proposes in her thesis. One of the key reasons for their success in this area is due to the consistent work by the Tulalip justice system, to educate the community on tribal court processes and ensure that they clearly understand the justice system. Court systems are often confusing for people who do not have any sort of legal background and Tulalip acknowledges this and makes sure to help the client easily navigate the legal process. One of the key ways Tulalip helps its clients is by having a easy to use user friendly website that contains most information anyone would need. The information available here is also available in person with staff members that are well versed in legal matters. The way that Tulalip's justice system treats a client who is directly involved in a court matter is another way in which they meet the criteria for effective management. The frequency of review hearings as well as sentencing options for clients make for a better chance of a successful complement of their court process as well as a lower likelihood of reoffending.

Fairness is an important part of the six-part framework and is also important to Tulalip. Shearer examines why Tulalip is successful with fairness and concludes the following. A simple way of putting how fairness is important was described by employees of the Tulalip justice system which is to, "treat people equally," this means that they do not assume guilt when a person comes into the hands of the court. One way that Tulalip makes a strong effort to ensure fairness to its clients is through the use of the University of Washington's Tribal Court Public Defense Clinic. The use of this clinic gives individuals access to a defense council regardless of their income.

The Tulalip justice system also strives to reflect the values of its community aligning with the cultural compatibility portion the six-part framework. Shearer draws from her personal interviews to say that the Tulalip justice system aims to accomplish four main goals, to act as a healing and rehabilitative court, to support community participation, to develop justice system procedures to support the integration of Tulalip tradition, and to support the diverse nature of the reservation community. The Tulalip court encourages community involvement in order to achieve cultural compatibility. The goal of the Tulalip tribes is to rehabilitate their offenders and help them transition back to being part of the community. They offer alternative sentencing that promoted healing instead of just punishment. They also allow for families and the community to be involved in the healing process partly by allowing them to speak in court which differs from state courts who do not allow unofficial testimonies. The Tulalip justice system promotes the community to understand the justice system so that they can be a part of the healing process. The Elders Panel is a culturally compatible diversion program that is very important within the Tulalip justice system. It helps young offenders understand why their actions are wrong and take responsibility for them

which helps them to not become reoffenders. The acknowledgement of how important Elders are in the healing process is a perfect example of how Tulalip works for cultural compatibility.

Shearer also looks into Tulalip's success with inter-governmental cooperation. Tulalip's justice system strives to have a good relationship with other jurisdictions to directly and indirectly help them function. Since retrocession Tulalip has been sure to communicate consistently to outside agencies what their jurisdiction is and how they can work together. This communication is important because it helps Tulalip as well as outside jurisdictions avoid doing each others work or repeating the work in both jurisdictions. Tulalip also works with outside agencies like Snohomish County in order to share facilities and therefore save money. This healthy communication helps Tulalip continue to function efficiently.

Tribal control is an important part of the six-part framework because it is directly correlated to the respect that a tribe receives and Tulalip also shows success with this according to Shearer. The most important display of tribal control for Tulalip was the retrocession from Public Law 280. Though this is in the past it allowed Tulalip to gain control over their justice system and actually improve safety on the reservation. Tulalip also demonstrates tribal control with the Tulalip Bar, Wellness Court, Elders Panel, Community Accountability Board, and other programs. The cross-deputization agreement between Tulalip and Snohomish County also helped with tribal control because non-Indian offenders could then be arrested even though they may not be able to be prosecuted. Tulalip also keeps an eye out for cases that are being incorrectly processed in nearby jurisdictions so that cases involve their community may be sent to Tulalip and properly processed. This is an obvious assertion of tribal control and helps Tulalip's justice system be respected.

Adequate resources are key to a tribal justice system being able to function well. Tulalip does an excellent job of internally funding their court system. Shearer states that roughly 90% of the Tulalip Tribal Court budget comes from the tribe itself. Tulalip also uses grants in order to fund certain parts of their court system. Tulalip like many other tribes still face some funding problems because with an increased case load they need increased funding but it is hard to attain. The economic development of Tulalip has helped them manage their resources and funding so they can be effective.

IV. Conclusion

Shearer concludes that all in all Tulalip has shown a great deal of success in their short history since retrocession. Their success comes from their ability and efforts to follow the six-part framework. As for the transferability of Tulalip's success, unfortunately it does not apply to most tribes. This is largely due to the issue of resources. Tulalip is lucky to have a reservation that is on the side on Interstate 5 as well as being close to Canada and Seattle. They also made the decision to use this location to their advantage by developing the area with tourist attractions. Not all tribes are willing to allow large amounts of non-Indians onto their reservation nor do they have a location that is ideal for industrialization. Also, not all tribes have the opportunity to take control of their justice systems like Tulalip did and if they do they may not be able to get through the process. Tulalip also has a lot of success due to their inter-

governmental compatibility and for many tribes cooperation with outside agencies may not be a reality. The policies and procedures of Tulalip seem to be helpful to other agencies but ultimately it is up to other tribes to decide if the reasons for Tulalip's success can apply to them or how they can be adjusted to work for their community.