

Testimony of Hon. Anthony Brandenburg, Chief Judge,  
Intertribal Court of Southern California  
before the  
Senate Committee on Indian Affairs  
regarding a  
Legislative Hearing on S. 797, the Tribal Law and Order Act of 2009  
June 25, 2009

Chairman Dorgan, Vice Chairman Barrasso, honorable Members of the Senate Committee on Indian Affairs, thank you for this opportunity to appear before you this afternoon to provide testimony on matters of such great importance. My name is Anthony Brandenburg, and I have the privilege and honor of serving as the Chief Judge of the Intertribal Court of Southern California.

The Intertribal Court of Southern California (the “Intertribal Court”) is an inter-tribal court system, which works on a “circuit court” format whereby a judge travels from one Reservation to the next presiding over assigned cases. Rulings are based on tribal laws, ordinances, customs and historical precedent. The Intertribal Court provides a judge to each tribe, court administration, court clerks, bailiffs, and case management. Court hearings are held at the respective tribes’ reservations, as an exercise of that tribe’s civil jurisdiction.

Prior to my appointment as Chief Judge of the Intertribal Court, I served almost 17 years on the Superior and Municipal Court Bench in San Diego County, California. Because I had worked so many years on a pro bono basis in Indian Country, I had gotten the reputation as the “Indian Judge.”

I think you have heard many complaints from tribes about P.L. 280 and how it has injured their sovereignty. Let me tell you about the practical effects that I have witnessed as a state judge and tribal judge.

Until very recently, there were no tribal courts to speak of in all of Southern California. Yet in San Diego County alone there are 17 federally recognized tribes. Add in our neighboring Southern California counties of San Bernardino, Riverside and Imperial, and we have almost another 17 tribes.

So when a case regarding Indians or Indian Reservations came along I usually got a call. If one were to ask twenty local judges about P.L. 280 nineteen would not know nothing or very little about it. "It's a federal issue," I was once told by one of my presiding judges. "It belongs in federal court," he went on to say, and he honestly believed so. In fact, you can't blame the judges, the reality is they simply have not been schooled on the issues. During my entire tenure on that bench, not once did I hear of nor was I offered a program on Indian Law. Consequently, I knew of no judges who were familiar with P.L. 280.

Allow me to offer this sobering fact. The highest crime rate in the United States per capita does not occur in our inner cities nor is it black or white. It is Indian on Indian crime.

In addressing P.L. 280, and the law enforcement gap it was supposed to close some 50 years ago, I can only say things have gotten worse. The very often confusing jurisdictional issues, coupled with a pervasive distrust of local law enforcement and state courts has left our Indian Country a virtual legal no man's land. For example, P.L. 280 does not allow local or state law enforcement to enforce tribal laws, nor can county or municipal laws or ordinances be enforced on tribal land. In short, this means that local and state law enforcement is frequently reluctant to even come on the reservations.

I think we can all agree that P.L. 280 has been an abject failure. But today we can do something about this! As I stated earlier, as a judge and individual who has lived and worked in Indian Country, I believe the topic of this hearing is a matter of great importance to Indian Country. The first job of any government is public safety. For our tribes, exercising their jurisdiction to provide law and order is a fundamentally significant legal power that tribal government must do and can provide. Providing safe, healthy communities where our elders and children are safe, where families are able to work and thrive, where people can provide for themselves and the community, all in a manner that is consistent with and reinforced by the traditional values and culture of our tribes, is the most significant power the tribes, as sovereigns, can exercise.

While P.L. 280 did not remove tribal criminal jurisdiction over Indians, the practical effect of removing federal jurisdiction was the elimination of federal resources, and the states have not filled the gap. Without those

resources, it was all but impossible for tribes to develop and maintain effective justice systems. What our tribes have done in response has been to decriminalize activities to fit within a civil jurisdictional scheme. The result has been that tribes in P.L. 280 states like California have not developed the type of justice systems needed to exercise criminal justice. Our tribes have no criminal codes to speak of, tribal court staff are not trained in criminal matters, and tribes have no custodial facilities.

Among the goals of S. 797, is a fundamental effort to not only do away with the various misconceptions of P.L.280, but to educate and train at the tribal, local and state level our judges and staffs, while at the same time bringing the federal government back into the equation. The result, if effective, being that tribes will be empowered in their efforts to reestablish and maintain law and order on our reservations. It also serves in allowing the tribes and tribal courts to re-enforce their laws by including cultural and traditional values in their judicial decision-making processes.

In my view as a judge, S. 797 will help us to accomplish these necessary goals by: (1) repealing of the P.L. 280 provisions removing federal jurisdiction; (2) Authorizing and encouraging cross-deputization, mutual aid, and other cross-jurisdictional agreements through the cooperative assistance grants; (3) giving expanded sentencing authority for tribes; and (4) providing resources for tribal custodial facilities. I cannot emphasize enough the positive benefits that would be achieved by expanding tribal sentencing authority, and allowing tribes to provide realistic, culturally appropriate sentencing which would actually deter behavior. And providing resources for tribal custodial facilities would be a first for California. This would allow for development of culturally appropriate facilities that can have a direct and lasting impact on rehabilitation and the reduction of recidivism in our communities.

The Intertribal Court, as a consortium of tribes, is uniquely positioned to benefit from this legislation. It allows for the pooling of resources, which is particularly relevant to our tribes since many of them share not only a common heritage, but common goals.

The people of our Native Communities want to feel safe and secure in their properties and on their ancestral homelands. They want nothing more than any other person in any neighborhood in any other part of this country, and they should accept nothing less. With the help of this legislation we can

continue our work on winning the trust and confidence of our people in a tribal judicial system, as well as our state and federal systems. But we can not do this alone any more than local, state or federal agencies have succeeded in doing this on their own.

In addressing cross-deputization, cooperation and mutual aid agreements this bill suggests that these agreements are critical to the success of our efforts, and I whole-heartedly agree. I know this from first hand daily experiences. I am in the trenches. If any efforts are to succeed you must first have the trust and respect of the members of your tribal community. This can only happen with a fair and effective law enforcement system.

Recently I had the privilege of meeting with the California Joint State/Federal Judicial Council. Members of this group include the Chief Justice of the California Supreme Court, the Senior Judges of the 9<sup>th</sup> Circuit Court of Appeals. In essence, I can tell you they agree that we must work together in our efforts as we approach issues of law in Indian Country.

In conclusion, I am very encouraged by your efforts as reflected thus far in S. 797. This legislation can help create a seamless state, federal and tribal law enforcement procedure to the mutual benefit of all. Let me add this as a caveat though: the true goals and intent of S. 797 will only be realized if the federal government has a long term commitment to provide the resources and, as important, the influence to encourage all the law enforcement jurisdictions – tribal, federal, state and local – to join in this effort.

The time is now once and for all for everyone to step up to the plate. Whether it is expanding the tribal courts' sentencing authority or the building of tribal custodial facilities, we have not only have an opportunity here, but an obligation to act. Tribes need your support in their efforts at improving their relationships with state and federal agencies in helping them protect our children, woman and elders, and most of all in providing our Native Peoples with an equal access to justice.

This legislation goes a long way in closing the gap and, respectfully, I pray that Congress gives it the support it deserves.

Thank you, Chairman and Members of the Committee. I stand ready to answer any questions you may have.