

**Honorable Abby Abinanti, Chief Judge, Yurok Tribal Court**

**Testimony for the**

**Senate Committee On Indian Affairs**

**Hearing Regarding Justice for Native Youth: The GAO Report on “Native American Youth Involvement in Justice Systems and Information on Grants to Help Address Juvenile Delinquency”**

**September 26, 2018**

**INTRODUCTION**

Good afternoon Chairman and distinguished Committee members. I am Abby Abinanti, Chief Judge of the Yurok Tribal Court, and I am a Yurok Tribal member. I am a graduate of Humboldt State College and the University of New Mexico School of Law. When I was admitted to the California State Bar in 1974, I was the first California Native woman admitted to the California State Bar. I am one of a very limited number of attorneys who have been practicing tribal child welfare law since prior to the 1978 enactment of the Indian Child Welfare Act. I served as a California Superior Court Commissioner for the City and County of San Francisco assigned to the Unified Family Court for the 18 years before retiring in September 2011. I have continued to serve as Chief Judge for the Yurok Tribal Court since my appointment in March 2007, and run the Yurok Tribal Court’s Wellness Court Program. Additional tribal court experience includes serving as Chief Magistrate, Court of Indian Offenses, for the Hoopa Valley Indian Reservation from 1983-1986 and as a Judge by special appointment for many other tribal courts including Shoshone-Bannock Tribal Court (1985), Hopi Tribal Court (1986), and Colorado River Indian Tribe (1994). I have served as the President of the Board of Directors of the Tribal Law and Policy Institute since its establishment in 1996.

The Yurok Tribe is the largest federally recognized tribe in California. The Tribe’s reservation, the second largest in California is located on the lower Klamath River in Humboldt and Del Norte Counties in Northern California. The Yurok Reservation extends for one mile on either side of the Klamath River, from the Pacific Ocean at the mouth of the river to upstream approximately 45 miles to just above the Yurok village of Weitchpec and the confluence with the Trinity River.

While our tribal membership is approximately 6,200, there are more than 10,000 Yurok descendants living on the reservation and throughout the most rural areas Del Norte and Humboldt Counties. The Tribe has a very active culturally based Tribal Court and Education and Social Services Departments that provide services to Yurok families, including youth and juvenile delinquents. The Tribe works closely with Del Norte and Humboldt Counties to provide services.

As my testimony will explain, the GAO report is a positive step toward gathering information and data regarding Native American youth in involvement in the justice system and grants to support such work. There is a great need for more accurate data regarding tribe specific juvenile involvement. This Committee should consider authorizing a pilot project to develop data collection systems to track Native American juvenile justice statistics. Further, there should be an increase in educational grants to tribes directly as a means to prevent juvenile delinquent behavior. Finally, if efforts through education fail, and Native American youth find themselves in the justice system, Tribal Courts are best suited to provide restorative justice that leads to positive lifelong results. Federal funding to support tribal courts in PL-280 states should be increased as well as tribal court jurisdiction to process juvenile claims.

## **DISCUSSION**

### **I. MORE DATA IS NEEDED REGARDING NATIVE AMERICAN YOUTH IN JUSTICE SYSTEMS**

As the GAO Report on “Native American Youth Involvement in Justice Systems and Information on Grants to Help Address Juvenile Delinquency” notes accurate figures as to juvenile justice issues in Indian Country are hard to obtain. The lack of data regarding Native American juvenile incarceration remains lacking and is an obstacle to finding solutions. For example, looking only at P.L. 280 states, such as California, there is little data available because State systems are not required to accurately report tribal contact/incarceration rates for juveniles or adults. The question of whether an arrestee is Native American and if so, what tribe are not an arrest intake questions. Tribes in adult matters can access public records and go through the tedious process of “hand” reviewing all arrests to discern tribal affiliation. As to juveniles, however, the Tribes are left to having parents, caretakers (including foster care parents) report to the Tribes – only when and if they seek the assistance of the Tribes. The Yurok Tribe has resorted to inferential reporting primarily by looking at school related figures and/or foster care referrals which

are compiled on a more reliable basis. While this helps, states should be required to collect tribe specific data and then share with the tribe to more accurately understand the scope of the problem of Native American youth in the justice systems. A critical step in collecting data is federal grants to support pilot programs for developing data collection systems in Native American juvenile justice. We strongly urge this Committee to develop such a pilot program.

## **II. JUVENILE JUSTICE IN YUROK COUNTRY**

The Yurok Tribal Court does not currently have a delinquency court or the staff to manage a juvenile detention or treatment center for juvenile youth. Truancy court is handled in Del Norte and Humboldt as criminal courts, such that parents can be jailed if their children are truant. Juvenile Justice and truancy is an area that both counties are interested in creating joint jurisdiction court with the Yurok Tribe.

Del Norte and Humboldt Counties have identified that Native American children are at greatest risk of maltreatment based on the disproportionate number of Native American children in foster care in both Counties. Though the Native population of both Counties does not exceed 9%, the rate of Native children in foster care has been as high as 40% and continued to be high in 2018. The Yurok Tribe represents the largest population of children in foster care within both Counties. Educational results for foster children show that these children are at substantially higher risk than the children who are not in this system.

Yurok tribal members make up about 25% of those in local jails on any given day, or one out of four inmates. By comparison, Yurok make up 6% of the Humboldt County total population, and 5% in Del Norte County. This means we are over-represented in the local criminal justice system at a rate up to 5 times our share of the population. In addition, our counts indicate that Yurok tribal members are 11 times more likely to be incarcerated in the local jail than the average American. In addition, the response rate (911 calls etc.) in rural California is considered the worst in the nation and the Yurok Tribe is located in the most impoverished and rural communities within these poor rural counties. The Yurok Tribal Court attempts to track adult members incarcerated in the local county jails.

Equally disturbing are the increasing numbers of Yurok adult women incarcerated. (Many of these women are parents.) In 2015, women made up 9.5% of those held under the jurisdiction of state or federal correctional authorities in the United States, including

jails, prisons and the supervision population (Bureau of Justice Statistics, National Prisoner Statistics, 2005–2015). Yet, women make up approximately 30% or three out of every ten Yurok offenders in the local jails, and this figure does not include those on probation, which would only increase the female share of tribal offenders. This means tribal women are five times more likely to be incarcerated than their non-Native peers. The Yurok Wellness Court and Victims Advocate Program have partnered to offer girls programming to address the issue of increased involvement of young women in truancy behavior, and criminal behavior. Advocates seek to assist families who bring these young women to the attention of the Court either because they are in foster placement or because they are co-referred to the delinquency court. The Youth Court will maintain contact with youthful offenders even when they are placed out of state through Wellness Court hearings. (After care services are minimal.)

With additional funding and jurisdictional authority, the Tribal Court could develop a delinquency court that holds children, parents (native and non-native) accountable, and provides critical culturally appropriate support programs. Doing so has been a long term goal of the Tribe reflected in part by H.R. 3847, the Yurok Lands Act. The bill, if made law, would provide critical support for the Yurok Tribe’s governmental services, including the Tribal Court.

### **III. EDUCATION AND THE JUVENILE JUSTICE SYSTEM**

Children on the Yurok Reservation attend schools in the State of California Klamath-Trinity United School District. There are two elementary schools on the Yurok Reservation. Children must attend off-reservation middle and high schools, as much as 60 miles away from their homes. The Tribe has an education department that works closely with the schools serving Yurok children. Unfortunately, these schools have largely failed Yurok students; most of them dropping out in middle school, and a small percentage of those making it to high school, actually graduate.

The high school dropout rate is as high as 80% for incarcerated juvenile delinquents. To avoid dropping out, several juvenile delinquents attend local continuation schools. Yurok students make up a disproportionately high percentage of students in continuation schools. These schools support high-risk students. While Yurok students may graduate, their attendance at these schools means that they were most likely involved with the juvenile justice system or suspended or expelled from traditional schools. More concerning is the undocumented truancy issues due to illness or lack of transportation

that leads to falling behind in school curriculum, which generally leads to behavior problems, truancies, and a downward spiral to juvenile delinquency.

The Tribe strongly believes that early intervention into truancy and behavior problems at schools is the best prevention measure for juvenile delinquency. The Tribe has several education programs including tutoring, school transportation services and many others offered to help students. Tribal control of education to provide culturally appropriate instruction and activity is key. In addition, the Tribe was featured in Anna Deavere Smith's 2016 Broadway production "Notes from the Field: Doing Time in Education," which was culled from more than 200 interviews centering on the realities of the U.S. education and justice systems that push poor students from schools to prisons. Directed by Leonard Foglia ("Master Class"), "Notes from the Field" had a run at the American Repertory Theater in Cambridge, Mass. prior to the run at Second Stage on Broadway. (An earlier version of the show, directed by Leah C. Gardner, played at Berkeley Rep last year.)

This anecdotal representation concerned a young man who had started his interfacing with justice system at the age of 8, and was on his third strike by the time the Yurok Tribal Court intervened to successfully divert him from the criminal justice system. (See also "Tribal Justice" a documentary film by Anne Makepeace produced in 2017 which highlighted this case and others in an effort to show the advantages of locally controlled tribally justice systems.) Anecdotal information while illustrative has not allowed us to secure the funding needed to make long term improvements. The Tribe is capable, with assistance of establishing data collection and remediation programs that can and will prove the value of our efforts. We can only do so with the assistance of federal funding in educational areas that is sufficient to provide systemic interventions.

#### **IV. OPIOID CRISIS IN YUROK COUNTRY**

The Yurok Tribe is also a plaintiff in *Yurok Tribe v. Purdue Pharma LLP et. al.* an opioid class action lawsuit. This case details the horror that has been inflicted on our families by this latest epidemic. Much of this harm has been introduced by opioid manufactures and distributors and medical providers and is having a significant impact on minors and family units. The details of that harm is set out in the complaint. In sum, the Yurok Reservation community has one of the highest opioid usage, addiction, and overdose rates in the County. As a result, Yurok family units are being torn apart. Children often don't have healthy parents or other care providers which results in increased likelihood of

juvenile delinquent behavior.

**V. INCREASE EDUCATION AND JUVENILE DELINQUENCY GRANT FUNDING FOR TRIBES**

The Tribe is severely limited in its approaches by piecemeal justice initiatives which must interface with the State court system. Over 90% of our funding is federal based, that means we must compete for pilot project and ongoing program funding once we discover causation issues in the hopes of establishing corrective/sustainable measures to make systemic changes. It is clear from this brief summary that our educational issues need to be addressed in a serious comprehensive manner if we wish to address juvenile delinquent behavior and the resultant long term effects which lead to lifelong involvement with the justice system and failed communities.

Pilot projects which are systemically motivated e.g., educational interventions that target suspensions/truancy and parental/caregiver interventions can yield long term benefits. There is no shortcut to reversing the harms of inadequate educational responses. (There are many reasons education is problematic in our community including the historical intergenerational trauma of boarding schools.) However, it is a better approach to strengthen the family/community/tribal child to lessen the number of young people whom are being sentenced to facilities for unacceptable behaviors. Re-entry issues can and should be treated differently and require additional staff; too often aftercare planning is neglected as the treatment is treated as incarceration completed with no follow up which leads to the defeat of recidivism.

Systemic pilot projects can be created as community demonstration projects designed to reverse trends. Or we can continue to proceed with program funding for limited impact programs in the hopes that community wide solutions can grow from limited impact programming. The truth is, however, that infrastructure is needed. It can be postponed but it can not be avoided.

**VI. GRANT PROGRAMS MENTIONED IN THE GAO REPORT THE YUOK TRIBE HAS APPLIED FOR AND RECEIVED OR BEEN DENIED**

Yurok has received a number of the grants some of which are addressed in the GOA report that we are grateful for, but we have significant unmet needs in the area of juvenile justice. Below is a list of Grants that the Yurok has applied for and were either awarded or not.

## 2014

FEMA Public Safety – funded BIA Public Safety -funded

## 2015

DOJ 2015 Combined Tribal Assistance Solicitation - awarded<sup>[[[SEP]]]</sup> DOJ O V A W A Grants to Encourage Arrest Policies & Enforcement of Pro of Protective Orders - awarded<sup>[[[SEP]]]</sup> HumCo Police Office & Juvenile Probation Officer - not awarded<sup>[[[SEP]]]</sup> HUD Klamath Glen Youth Center - not awarded<sup>[[[SEP]]]</sup> I WOULD MOVE THE PENDING TO THE BOTTOM OF THIS LIST<sup>[[[SEP]]]</sup> N7 Yurok Youth Recreation Program - pending<sup>[[[SEP]]]</sup> HAF Yurok Youth Cultural & Environmental Stewardship Program - pending<sup>[[[SEP]]]</sup> Youth outside Yurok Youth Cultural & Environmental Stewardship Program - pending

## 2016

YT Environ Stewardship Mentoring & Skill Building Program – Education – not awarded YVFD & YTEP Measure Z Funds – tribal police – not awarded<sup>[[[SEP]]]</sup> Yurok 2016 DOJ-BJA CTAS – tribal court – funded<sup>[[[SEP]]]</sup> Basketball uniforms – funded

Yurok Healing Families Program – tribal court – funded<sup>[[[SEP]]]</sup> Grants to Exercise Special DV Criminal Jurisdiction – tribal court - funded

## 2017

Youth Center Remodel (Bates Bldg.) – funded<sup>[[[SEP]]]</sup> Substance Abuse Treatment Capacity in Adult Wellness – not funded USDA Youth Center Equipment – Not funded<sup>[[[SEP]]]</sup> 2017 DOJ CTAS - Purpose Area 1,3,5, & 6 – tribal court - funded Conserv Trails to Traditional Ecological Knowledge - funded<sup>[[[SEP]]]</sup> HUD Ke'pel Head Start – Not funded<sup>[[[SEP]]]</sup> Girls & Young Women's Support Group – Wietchpec – funded Archie Thompson Sr. Baseball field- Klamath – not funded

## 2018

PFC & Tribe Youth Leadership Project- Playground – funded<sup>[[[SEP]]]</sup> DOJ CTAS Yurok CTAS FY 2018 A1, A3, A4, A6, and A7<sup>[[[SEP]]]</sup> First nations language immersion emersion - Future Teacher Program – not funded DOJ Yurok Opioid Affected Youth Initiative – Pending<sup>[[[SEP]]]</sup> Yurok Youngest Opioid Vic i tms Assistance (YOVA) Project - pending

## **VII. CULTURALLY APPROPRIATE PREVENTION, RESPONSE, AND RE-ENTRY**

In recent years the Tribe's membership/leadership has renewed their commitment to reinvigorating our culture. We survived a horrendous/debilitating invasion that created many hardships heretofore unknown to the People, some of those hardships continue or new ones arise. However, the People have a core strength and a worldview that focuses on our responsibility to and for ourselves, our lands, all the beings in our world and our neighbors who also are struggling in a time of concern for all. We do not intend to walk away from any of those cultural responsibilities. We are stronger every year as we increase our cultural participation and return to our responsibilities in dance/language and stewardship.

### **CONCLUSION**

Thank you for the opportunity to testify to the Committee. The GAO report is a positive step toward gathering information and data regarding Native American youth in involvement in the justice system and grants to support such work. There is a great need for more accurate data regarding tribe specific juvenile involvement. This Committee should consider authorizing a pilot project to develop data collection systems to track Native American juvenile justice statistics. Further, there should be an increase into educational grants to tribes directly as a means to prevent juvenile delinquent behavior. Finally, if efforts through education fail, and Native American youth find themselves in the justice system, Tribal Courts are best suited to provide restorative justice that leads to positive lifelong results. Federal funding to support tribal courts in PL-280 states should be increased as well as tribal court jurisdiction to process juvenile claims involving native and non-native parents.