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Chapter 6 Contemporary Hopi Courts and Law

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Chief Judge, Hopi Tribal Trial Court

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Contemporary Hopi Courts and Law

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“We believe we are ‘at the center’ and this gives us a very secure feeling about where we are, where we have been, and what we are going to do.”

One of the things that a Hopi is not supposed to be is boastful, and I think that you can recognize this as a rule. We love to talk, though. We love to talk about Hopis, we love to talk about our history, our traditions and customs, and we love to talk about our art and culture, but we can’t do that without telling you how great we are. We are very proud and although I am half Hopi, the more I read and study about the Hopi, and the more I go back to the reservation, the more I can relate to Hopis and the more Hopi I feel, and that’s a very secure feeling.

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An “Indian” for the purposes of this Code is any person who is an enrolled member of any Federally recognized tribe or who has Indian blood and is regarded as an Indian by the society of Indians among whom he lives.¹

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The Hopi Courts are in much the same situation that I am—halfway. The courts are trying to recognize custom, tradition, and history in the rendering of decisions and judgments, but the Hopis are living in a contemporary world and they have laws that are not the same as those with which Hopis have traditionally learned to live. The Hopi courts, as with all courts, should be predictable. How can a Hopi predict what the result of his conduct will be unless he can look to the court to support in some way his custom and tradition? Whenever possible and to the extent possible, the judges try to observe custom and tradition in the rendering of decisions.

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WHEREAS, the Hopi Judicial Code, consisting of Ordinance 21 and parts of other ordinances and the Hopi Civil and Criminal Procedures are limited in their scope; and WHEREAS, there are no adequate sections of the code covering juvenile law, probate law, or codified traditional laws; and WHEREAS, the Hopi Appellate and Trial Court Judges have urged the codification of traditional and customary laws; THEREFORE BE IT RESOLVED, that the Hopi Tribal Council authorizes the Chairman of the Hopi Tribal Council and/or his designee(s) to pursue funds for a project to research and develop a more complete code for the judiciary.²

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To understand how Hopi courts are trying to utilize custom and tradition, it is necessary first to understand the court structure, jurisdiction, and procedures of the Hopi Nation’s judicial system. The Hopi court system is composed of two courts—the Hopi Tribal Appellate Court and the Hopi Tribal Trial Court. Each Hopi court is made up of three judges. Serving at one time on the Hopi Tribal Appellate Court were an Arizona Superior Court Judge, an Arizona Appellate Court Judge, and myself, a Stanford University graduate with a doctorate in jurisprudence and twenty-five years of trial practice experience. My replacement on the Appellate Court is a law school graduate, and although not a practicing attorney, he is Hopi and, therefore, knowledgeable and experienced in the Hopi way.

My present appointment is Chief Judge of the Hopi Tribal Trial Court. There are two other judges on the Hopi trial court. One is working toward a B.A. degree from UCLA; the other has a great deal of experience and education through the National College of American Indian Tribal Judges at Reno, Nevada, and is presently serving as President of the National Association of Indian Court Trial Judges. We have, then, trial and appellate courts with the highest educational and practical qualifications of any of the Indian courts in the United States today.

My home is in Salinas, California, and once a month my judicial position calls me to fly to Phoenix and drive five and one-half hours to the Hopi Reservation. In many ways it is a “time warp.” Being the Chief Judge and also a non-reservation circuit judge has its weaknesses and strengths. Often, in a small community the judge’s actions and conduct are carefully scrutinized, and it is very easy for the community to decide that, “He’s not such a great guy, why does he have the right to judge us? He can’t do that to me, because he does not know how I live. He doesn’t live on the reservation.” But when the court meets on the Hopi Reservation, it provides me with an opportunity to once again observe the Hopi way and make myself known among the communities. The people become acquainted with me as the Hopi judge, so that they do not look upon me as a foreign intruder who passes sentence and then leaves.

An Indian judge does not have to be a lawyer or an Indian, but the Chairman appointed judges such as myself to the court because he wanted the identity of a Hopi and a lawyer as Chief Judge guiding the court. Another advantage to having non-reservation judges on the court is that they bring with them experience in non-Indian courts. Since non-Indian law is being imposed upon the Hopi, it is helpful for them to have someone who is experienced in such law and is able to interpret it. The other two Hopi Tribal Trial Court judges are Hopi who have grown up on the reservation, and together we complement each other. Together we can interpret and utilize this non-Indian law in a way that would be less offensive to the Hopi people.

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Any person who is a graduate of an accredited school of law and who is over the age of 30 years and who has never been convicted of a felony, or, within the year just past, of a misdemeanor, shall be eligible to be appointed probationary chief judge of the Trial Court of the Hopi Tribe.

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The position of Chief Judge of the Hopi Trial Court is a permanent one after a one-year probationary period. The Chief Judge serves forever so as not to be subject to political pressures present in some
Indian courts. It is the very same situation as federal judges hold in the United States. My permanent appointment was a step most important in establishing the independence of the Hopi courts.

The Hopi Trial Court is the highest trial court and exercises a full range of jurisdiction in all criminal and civil matters. It has original jurisdiction over all civil causes of action arising on the Hopi Reservation if the defendants are Indians, and it has original jurisdiction over all criminal offenses committed by Indians in violation of Hopi tribal ordinances on the Hopi Reservation.\(^9\) A new Hopi Children’s Code has expanded the Hopi Trial Court’s jurisdiction to include any adult, Indian or non-Indian, on or off the reservation, that might “facilitate the handling of children’s cases.”\(^10\) All appeals, except for small criminal case punishments, go to the Hopi Tribal Appellate Court, which has only this appellate jurisdiction.\(^11\)

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“Reservation” within the meaning of this Code shall encompass all lands within the exterior boundaries of the 1882 Executive Order Reservation, the villages of Moen- copi and surrounding range and farmlands occupied or used by Hopi Indians, and such other lands as from time to time may be added to the Hopi Reservation.\(^12\)

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Geographically, Hopi jurisdiction originally encompasses about 600,000 acres, and after the dispute between the Hopis and Navajos was resolved, Hopi courts had geographical jurisdiction over 1,500,000 acres. In 1894 the Hopis wrote, “We most earnestly desire to have one continuous boundary enclosing all the Tewa and all the Hopi land that it should be large enough to afford sustenance.”\(^13\) Hopis were asking then for what the Congress and federal courts eventually did—to establishing a final boundary line between the Hopis and Navajos.

As Hopi Tribal Chairman Abbott Sekaquaptewa has stated, it is important for Hopis to establish what has been described as the sovereignty of an Indian nation. To the extent possible our courts are going to utilize our jurisdiction in civil and criminal matters to the exclusion of all other jurisdictions until someone comes along and tells us it cannot be done. Unfortunately, they come along and tell us it cannot be done. Unfortunately, they come along and tell us that every day. We are told that we have a sovereign nation with unlimited jurisdiction, but we can have nothing to do with non-Indians. So our jurisdiction is presently limited so far as non-Indians are concerned. We also have a limitation so far as crimes are concerned. In the federal courts the United States government has retained jurisdiction over certain crimes, primarily those which we would consider felonies, such as murder and violations involving tribal officials, since judges on the Hopi court or the Indian courts would be intimidated by having an official of the tribe in court.\(^14\) These restrictions will be challenged, and perhaps the Hopi courts might be able to extend their legal jurisdiction in the future.

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ORDINANCE 21

BE IT ENACTED BY THE HOPI TRIBAL COUNCIL ASSEMBLED, by virtue of its inherent authority as a sovereign American Indian Tribe . . . . \(^15\)

* * * * *
The law existing on the Hopi Reservation today is a written ordinance, Ordinance 21, similar to those in other states in the United States. It is written law. As it was originally written, and as it has evolved presently, the ordinance is a very simple document which encompasses a criminal and civil code, and criminal and civil procedures for the court. It is very direct and fairly easy to understand. It gives latitude to the judges to interpret it and to utilize custom and tradition. Therefore, the judge is not necessarily bound by the strict letter of the written law.

Hopis have not always had codified laws and courts. In the past they had the customs and traditions which everybody supposedly understood. However, there are many different clans and peoples who came in the migrations to the Hopi Reservation. As they came they brought different ideas about how things should be done and what the ceremonies should be. They also brought different customs and traditions. In Hopi courts, customs differ from place to place, so the judges try to accommodate and make do with what they know.

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It is the purpose of the Hopi Children’s Code to provide for the full consideration of religious and traditional preferences and practices of families during the disposition of a matter . . . .16

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The Hopi judiciary is working very hard to make the courts something that the Hopi people can understand and use when it becomes necessary. It is hoped that the people will continue to practice their customs and traditions as they did in the past in resolving disputes. It has been said that the Hopi word describing the Hopi people means “peaceful people.” In some sense, that is correct; but in everyday life, Hopis have arguments, disputes, and fights as all people do. As a small community, the bickerings become more pronounced, and everyone is aware of what each dispute is about. One way that Hopis dealt with conduct which was out of character with the community was the use of the Mudheads. During a ceremony in the plaza, the Mudheads would act out or describe inappropriate conduct through sarcastic pantomime and ridicule. Of course, everyone in the village, including those who were the object of such ridicule, know who was being mimicked. With the community pressure demonstrated by the Mudheads the conduct which was considered inappropriate for that community at that particular time was altered. The Hopi judges attempt to utilize the same sort of pressure, or punishment, in the rendering of decisions and judgments.

On one occasion before my court was a woman who had been in violation of the law while holding a position of trust and responsibility for the Hopi people. It was very important to impress upon her and the Hopi people that she was going to be dealt with appropriately. After discussing with her what she had done and how it affected the confidence and responsibility that the people had placed in her, it became necessary to penalize her. She could not be fined because she really did not have any money; most of the Hopi people do not have enough money to make a fine significant. So she was placed under house arrest. She could not leave her home except to go to the hospital, to take care of herself or her children, or to go to town to buy groceries, and then only in the company of another family member. She was also not allowed to attend or participate in the ceremonies.
On the Hopi Reservation there is a jail, and a new courthouse is being constructed this year. The new courthouse will also include a jail facility, probation department and a juvenile detention center, though we recently learned that the current trend is away from such detention centers. Our present jail facilities are inadequate for long-term incarceration, and are not equipped to handle women for anything more than a day or two.\footnote{17}
Every person convicted of a violation of any provision of this Code constituting an offense shall be punished by a fine of not more than Five Hundred Dollars ($500.00) or by imprisonment in the Tribal Jail for not more than six months, or by both such fine and imprisonment.\textsuperscript{18}

But by denying the guilty woman her freedom, especially the privilege of participating in the ceremonies, she had really been placed in a jail. Because these restrictions had been placed on her in open court, in front of her friends and family, the sentence was an impressive one for her and for the people who were looking to the court for assistance in dealing with the problems of our contemporary society.

Today there is not always a customary and traditional method of dealing with a problem as there was previously. In the past there was a mediator, usually a clan member or someone in the village with a position of trust and confidence who would mediate problems—a \textit{kikmongwi}. This person is defined in the Children’s Code and given the authority to solve family problems whenever possible.\textsuperscript{19} Reliance on the wisdom of the elders is a common practice of Hopi courts who also try to ascertain how a particular clan or village would deal with certain problems.

A document dated March 27–28, 1894, addressed to the “Washington Chiefs,” is on permanent exhibit at the Hopi Cultural Center and Museum on Second Mesa. It is about three and one-half pages long followed by about twenty pages of signatures of Hopi people and leaders. It represented one of the few times that that number of Hopi ever agreed on anything. Reading in part, the writers commented, “During the last two years strangers have looked over our land with spy glasses, and made marks upon it, and we know but little what to do.” Hopis found this disturbing because they did not traditionally mark off the land in the way the whites proposed. “None of us ever asked that it should be measured into separate lots and given to individuals, for this would cause confusion. The family, the dwelling house, and the field are inseparable because the woman is the heart of these and they rest with her.”\textsuperscript{20} That is the Hopi law and tradition which grows out of a matrilineal society. The land, the home, the children, and most of the possessions belong to the women.

This tradition has been recognized in the Hopi courts. Who owns the house? It is easy; the wife owns the house. If a couple separates, what does the man receive? Not very much. Usually it is just about all that he can carry away with him. He gets his clothing and his personal possessions. He retains his tools, his pole, his planting stick which he uses in the fields, and his weaving instrument. Weaving is very important to the Hopi people, but the men are the weavers, so the man carries it away with him. What do we do about child custody? That is very simple; children belong to the mother because children receive their clan identity through their mother. If the mother is deceased, the children stay with the mother’s side of the family, according to custom.

Voluntary, temporary transfer of legal custody:
Authority: The Children’s Court [Hopi Trial Court Judge] may, upon petition, enter
an order temporarily transferring legal custody from a parent to another member of a child’s extended family.\footnote{21}

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Today Hopis are sometimes required to live in the same manner as non-Indians. The federal government has passed the Indian Child Welfare Act and the Indian Civil Rights Act\footnote{22} which impose non-Indian laws on Indian reservations. Required to have a children’s code, Hopis recently adopted a children’s code which is longer than their entire criminal and civil procedure laws and all their criminal laws they have previously ever adopted. Besides its length, the code introduces concepts which to a large extent are still foreign to Hopis. The children’s code provides for legal adoption of children through the courts.\footnote{23} There is no concept of adoption among Hopis because with the extended clan family the child always has a home. The code also deals with abandonment of children.\footnote{24} That does not happen among Hopis. The child is never abandoned; and there is always someone there to help, guide, and teach the child. The court then is being required to work in a non-Indian way with a society that does not understand many of the terms and laws imposed upon it.

Though required to impose very strict and limited rules and regulations, the Hopi court continues trying to utilize custom and tradition wherever possible. Even though the children belong to the mother’s side of the family, according to Hopi tradition and Hopi court law, the father is not relieved of his responsibilities. Moreover, fields from the lands of the woman’s family are assigned for each of her children, and her husband cares for each parcel. These lands are assigned each year, and there is a good reason for not permanently marking off fields the way the white chiefs of Washington wanted. In the spring and early summer, there are usually gales coming from the southwest that are strong enough to blow away the sandy soil. When the field moves, the planter must follow it. Ordinarily, sandy soil is not considered fertile, but on the Hopi lands, it is the sand upon which the people plant. It contains enough nourishment for the crops to grow, but more importantly, it retains moisture so the crops do not have to expend all of their energy pushing through the hard earth. The sand does blow though, so from time to time the fields move and the planters move with it. The Hopis thought that it would bring great confusion upon them if the white chiefs of Washington came and said, “This is your plot of land and you are going to stay here. The Hopi have been described as the world’s greatest dry-land farmers. As found in the 1894 document mentioned the authors remarked with confidence, “The American is our elder brother and in everything he can teach us, except in the method of growing corn in those waterless sandy valleys and in that we are sure we can teach him.”\footnote{25}

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\textbf{INJURING FENCES.} Any Indian who shall willfully cut, break, stretch, pry open, destroy, or otherwise injure the fence of another or of the Hopi Tribe, or who shall willfully dig or excavate under such fence, or leave the gate open, shall be deemed guilty of an offense.\footnote{26}
To the Hopi, the land, its people, their religion and traditions are central. The Hopi Cultural Center and Museum on Second Mesa has printed on its stationery the words, “At the Center.” We believe we are “at the center” and this gives us a very secure feeling about where we are, where we have been, and what we are going to do. We do not have to go anywhere, we are already there.

This secure feeling extends to the beginning of life and a first naming. When I was younger, I had a Hopi name. Since I did not grow up on the reservation, I did not learn the language, but I did have a Hopi name. My name was Piestewa. I always thought it must be a great name because it sounded so good; something like “speeding eagle” or “running bear.” I finally asked someone its meaning and learned that it meant “tadpole.” This was very self-defeating to me until I realized how important my name was. To a people who live in the desert, who depend upon their crops for their survival, my name was illustrative of fertility. All names that the Hopi people bestow are given for a reason—to make the person feel comfortable. Piestewa has come to mean something special to me, and while it may not have the same sort of connotation that some other names have, I am very happy with it.

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SIGNATURE—Defined: The act of putting down a man’s name at the end of an instrument to attest its validity. A signature may be written by hand, printed, typewritten, or engraved. And whatever mark, symbol, or device one may choose to employ as representative of himself is sufficient.27

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Notes

1. Hopi Judicial Code, Ordinance 21, Title III, Ch. 1 Definitions 3.1.1k, p. 26A.
2. Resolution, Hopi Tribal Council, H-17-76 [emphasis added].
3. Paul Rosenblatt
4. James Ogg
5. Emory Sekaquaptewa
6. Lawrence Numkena
7. Elbridge Coochise
8. Hopi Judicial Code, Ordinance 21, Title I, Ch. 3 Trial Courts 1.3.3, p. 3.
9. Ibid., 1.7.1 and 1.7.2, p. 4.
11. Hopi Judicial Code, Ordinance 21, Title I, Ch. 2 Appellate Court, p. 2.
12. Ibid., Title III, Ch. 1 Definitions, p. 26A [emphasis added].
14. The Hopi Judicial Code does provide for concurrent jurisdiction in felony cases to be exercised at the discretion of the Chief Judge of the Hopi Trial Court. Title III, Ch. 2 General Provisions, pp. 26A-27.
15. Hopi Tribal Code, Ordinance 21, Preamble, p. 1. This document and these powers were in part derived from the federal Wheeler-Howard Act of 1934. This trend continued to be developed at all levels of Hopi life. See Section 12, Special Provisions of the March 1981, Hopi Education Ordinance, 12.1A, p. 11. “It shall be the policy of the Hopi Board of Education to insure that self-determination be initiated to the greatest extent possible and be exercised to the greatest extent possible at the local school board level.”
17. The jail was so inadequate that a specific crime was included in the Hopi Tribal Code, Ordinance 21 delineating the types of damages to the jail that could be prosecuted. Title III, Ch. 2 General Provisions, p. 30.
18. Ibid., p. 27.
20. Letter from Representatives of the Hopi villages to the Washington Chief.
24. Ibid., Ch. VII Offenses by Adults Against Minors, A.1., p. VII–1.
26. Hopi Judicial Code, Ordinance 21, Title III, Ch. 3 Specific Offenses, p. 34.
27. Ibid., Title II, Ch. 1 General Provisions, 2.1.1, p. 7.