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George D. Watson Jr.
Chadron State College, Chadron, NE

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THE OGLALA SIOUX TRIBAL COURT:  
FROM TERMINATION TO SELF-DETERMINATION

George D. Watson, Jr.

Justice Studies Department  
Chadron State College  
Chadron, NE 69337

Abstract. In 1976, a study by the Judicial Services Division of the Bureau of Indian Affairs concluded that insufficient information is available on Indian tribal courts, suggesting that they have been largely ignored by historians and political scientists alike. By examining a specific court the Oglala Sioux Tribal Court a fuller understanding of its vital role in the operation of the Pine Ridge Indian Reservation can be gained.

From 1870 to the present, the Oglala Sioux Tribal Court has experienced a series of changes dictated by federal Indian policy including the replacement of tribal legal traditions with federal laws such as the Major Crimes Act of 1885. The passage of the Indian Reorganization Act (IRA) in 1934 and the Indian Civil Rights Act of 1968 brought a new era to the tribal court. Today, severe budget restrictions and increasingly high crime rates have created problems for the Oglala Sioux Tribal Court. Nevertheless, the court has become the linchpin for effective tribal control of the Pine Ridge Indian Reservation.

Throughout the United States, there are more than 100 Indian tribes that operate their own judicial systems and these courts play an important role in Indian self-government and the administration of justice on reservations. Despite the large number of tribal courts, and the critical role they occupy on reservations and in the larger system of American justice, few people are aware of their existence, and even fewer understand how Indian courts operate. For example, in 1985, the Oglala Sioux Tribal Court located on the Pine Ridge Indian Reservation in southwest South Dakota handled over 12,000 criminal, civil, and juvenile cases. The Judicial Services Division, created by the Bureau of Indian Affairs in 1976, concluded that there was insufficient written information on tribal courts. Since then, the National American Indian Court Judges Association, the American Indian Law Center, and the American Indian Lawyer Training Program have published a series of studies that focus on tribal courts.
While these investigations have been helpful, they have, for the most part, focused on tribal courts in general despite significant differences that exist between them. As a result, few published studies exist that address the historical evolution of these courts, their organization, structure, workloads, personnel, current issues, and daily operations.

At the beginning, one might ask: why should we study tribal courts and more narrowly, why should we study specific tribal courts? There are several reasons for such studies. First, with the policy of Indian self-government and tribal autonomy, tribal courts play a vital role in the operation of reservation government. Second, it is important to comprehend the day-to-day operations of tribal courts as they develop solutions to unique reservation problems. Third, we must understand tribal courts because of the on-going relationships with other jurisdictions and the role they play in the larger system of American justice. Finally, while there is a great deal written about jurisdictional issues, treaty rights, and water use, few studies address tribal institutions such as tribal courts, the problems they face, and their future. This essay will provide a broad overview of the tribal court system.

Background

The Pine Ridge Indian Reservation, the second largest in the United States, is located in southwest South Dakota. It was originally part of the Great Sioux Reservation created by the Fort Laramie Treaty of 1868 (Fig. 1). Article 16 provided that “the United States hereby agrees and stipulates that the country north of the North Platte River and east of the summits of the Big Horn mountains shall be held and considered to be unceded Indian territory” (Prucha 1990:114). The Act of 1889 established six smaller Sioux Reservations and Pine Ridge became the home of the Oglala branch of the Sioux Tribe. Pine Ridge, South Dakota, once known as the Red Cloud Indian Agency, is located in the southwest corner of the reservation and is the headquarters for the Oglala Sioux tribal government and the Bureau of Indian Affairs. The reservation encompasses 1,780,760.29 acres, and consists of grasslands, rolling hills, and a portion of the Badlands (U.S. Census 1980). In 1980, the reservation had an official population of 11,323, and by 1986 an estimated population of 16,373. Basically a rural region, with Federal and Tribal governments providing the principle source of employment followed by agriculture and ranching, unemployment reaches 40% and underemployment is widespread on the reservation, with low per capita and family income (Pine Ridge Commission Report 1975).
The Oglala Sioux justice system has evolved through four distinct stages. The first period, pre-1870, was highlighted by a policy of deference on the part of the federal government to the traditional tribal systems of law and order. During the second period, from 1871 to 1934, the federal government created and developed Indian courts as a part of their assimilation policies. In the third period, from 1934 to 1975, tribal courts established pursuant to the 1934 Indian Reorganization Act began to appear throughout the United States. Some tribal courts, however, were not organized under the Indian Reorganization Act. The fourth and final period, from 1975 to the present, marks the era of the contemporary tribal court. During this period tribal courts developed under the policies of Indian self-determination and tribal self-government which recognized the importance of building and improving many aspects of tribal government including the tribal courts.
From Deference to Traditional Tribal Justice

Some observers have suggested that Indians were people without laws and that their civilization was so primitive that they did not actually need law. This view was shared by many and is a matter of record in the Annual Reports of the Commissioner of Indian Affairs. For example, in 1879, Commissioner Ezra A. Hayt stated that:

a civilized community could not exist as such without law, and a semi-civilized and barbarous people are in a hopeless state of anarchy without its protections and sanctions. It is true the various tribes have regulations and customs of their own, which, however, are founded on superstition and ignorance of the usages of civilized communities, and generally tend to perpetuate feuds and animosities (Report of the Commissioner of Indian Affairs 1879:105).

Most tribes had a system of justice or some form of customary codes of behavior that were enforced by social sanctions and institutions. James R. Kerr described these traditional methods:

Disruptive and anti-social conduct was treated as crime against the tribal group and offenders were treated so as to reintegrate them into the group. Traditional Indian legal systems, for example, stressed restitutive rather than retributive justice in criminal matters. If a horse were stolen, justice demanded its return to the rightful owner. If a person were murdered, payment of merchandise or horses to the injured family was necessary to avoid the beginning of a blood feud. Tribal harmony and solidarity demanded that wrongdoers be reassimilated into the tribe rather than severely punished or exiled (Kerr 1969:311).

These “customs and usages which attained the force of law” governed criminal behavior, property rights, domestic relations, and matters of government and relationships with other tribes. Indian legal systems were unique to each tribe and reflected the culture, values, and needs of that society. The notion that these systems were “savage and primitive” is not historically accurate (Kickingbird 1976). On the contrary, “the Indian nations had developed a highly sophisticated system of justice. . . . The Indian legal systems sought to preserve the welfare of the tribe by defining the relationships of tribe to tribe, man to man, and man to tribe” (Kickingbird 1976:689).
Many early agents assigned to reservations found Indians were receptive to customs and laws governing their behavior. The agent for the Blackfeet reservation in Montana remarked that “although hopefully impressed by the manner in which the laws were passed, I was unprepared to find them so rigidly maintained and observed, and also to see the strict sobriety and exemplary conduct of these people here” (Report of Indian Commissioner 1885:300). The Sioux maintained a system of customs with laws designed to provide a sense of security in many vital areas of societal existence. They were concerned with the protection of property, marital fidelity, communal human rights, and the guarantee of life itself. If these laws were broken, the penalty was severe opprobrium and occasionally outright ostracism (Hassrick 1960:47).

James Walker, an agency physician on the Pine Ridge Reservation recorded a great deal of information on the traditional life of the Oglala Sioux. Walker reports that customs were made by “councilors” who were appointed by chiefs of the tribe. The “councilors” made ordinances for governing the camp and they were the arbiters for those who wished to settle matters in this way . . . There were rules and customs of long standing and recognized by all that they could not abrogate, but they could sit in judgement on cases of alleged violation of these customs and rules if they were submitted to them and their judgement was accepted (Walker 1982:30).

According to Walker, individuals within the camps were expected to abide by these rules and customs and “among the Oglala Sioux Indians, a man in a camp was subject to the commonly accepted laws and customs, and to the regulations of that camp. If he desired to be free from these regulations, he might set up his tipi alone, far away from the camp” (Walker 1982:23).

The Sioux recognized thievery and the taking of another human life as serious offenses. “The codes against stealing were so completely inculcated, so much an internalized sanction, that offenses were extremely rare, almost nonexistent” (Hassrick 1964). Taking another person’s life was punishable by death. But normally the aggrieved party might accept horses or other property as atonement. The responsibility for carrying out “vengeance and atonement” were family prerogatives, while the lesser penalties of “ostracism and tipi destruction were prosecuted, and carried out by the group as a whole.” While there were no written codes, customs and traditions clearly established accept-
able patterns of behavior in Sioux life. Gossip, revenge, retaliation, public ostracism, reparation, and punishment encouraged adherence to these moral codes of behavior.

In addition to moral codes, the Oglala Sioux had a police society with soldiers, and marshals called *akicita* who shared responsibility for enforcing recognized rules, customs and the administration of justice. In his description of the basic organization of the police society, Clark Wissler explained the Chiefs' council delegated authority by selecting four councilors who were responsible for general welfare.

Four other men were appointed by the Chiefs and councilors as *Wakicun* or *Wicasa Intancan* who were primarily responsible for internal order. In turn, they gathered the *akicita* or police chiefs (Wissler 1912).

Kirke Kickingbird noted that the "*Akicita* performed all the duties that white society distributed among police, prosecutors, judges and penal authorities. They prevented and detected violations of the tribal order and meted out punishment" (Kickingbird 1976:678). *Akicita* were supposed to punish those who committed crimes against the tribe while families punished the criminal acts against the individual.

If in their opinion anyone disobeyed the ordinances, rules, or customs they could punish such a one. Such a one might want to appeal to the councilors or others, but the *akicita* might grant such appeal or not, just as he saw fit. The punishment consisted in destroying the tipi, the robes, the implements, or in the killing of dogs or horses, or in driving the person out of the camp, or in the aggravated cases of killing the person of the offender. The offender was seldom killed except when he resisted the marshals, which was considered justifiable cause for killing (Walker 1982:31).

Tribal law provided the accused the right to appeal the judgment of the *akicita* to the council that had powers to reverse or void the judgment. The *akicita* were subject to customs concerning their behavior and if they failed to do their duty or showed cowardice, they could be punished by other *akicita* or deposed "for repeated disregard of rules and customs recognized by all" (Walker 1982:30).

The Commission of Indian Affairs recognized the strength of the traditional Indian justice institutions. William T. Hagan concluded:
Though it appeared to the casual white observer that anarchy reigned in Indian encampments, those societies had evolved patterns of law and order. While they lacked law in the sense of formal written codes, of course, there were clearly defined customary codes of behavior enforced by public opinion and religious sanction (Hagan 1966:11).

The perception that Oglala Sioux society lacked law and order and that they were desperately in need of basic legal organization is inaccurate. The strong traditional legal system of the Oglala Sioux, with its institutional framework, organization, customs, and ordinances was accepted by the whole tribal group. These customs governed many aspects of tribal life and were strictly enforced. They provided for summary justice, a basis of review and appeal, and a system of punishments for both private and public wrongs.

The Indian Courts, 1871-1934

While traditional tribal justice institutions continued under the deference or “leave them alone” policies of the pre-1871 period, the pressure to open the reservations and the view that Indians should be assimilated politically and culturally into the dominant society led to the destruction of the traditional Sioux law and order systems. In 1871, Congress enacted legislation terminating the era of treaty making, which marked a shift in federal Indian policy. Communal property concepts and traditional governance were inconsistent with these new policy objectives and pressure mounted to impose a system of codified law upon the Indians. It became clear that the traditional law and order system could not long survive when the Commissioner of Indian Affairs signalled an all out campaign against traditional Indian governance:

My predecessors have frequently called attention to the startling fact that we have within our midst 275,000 people, the least intelligent portion of our population, for whom we provide no law, either for their protection or for the punishment of crime committed among themselves. Civilization even among white men could not long exist, without the guaranties which law alone affords; yet our Indians are remitted by a great civilized government to the control, if control it can be called, of the rude regulations of petty, ignorant tribes... That the benevolent efforts and purposes of the Government have proved so largely fruitless, is, in my judgement, due more to its failure to make these people amenable to our laws than to any other cause, or to all other causes combined. An Indian should be given to under-
stand that no ancient custom, no tribal regulation, will shield him from just punishment for crime (Report of Commissioner of Indian Affairs 1876:389).

Indian agents, representatives of the Department of Interior, were responsible for rationing and other government functions including maintaining order. These agents frequently found that they had to work with the Chiefs to deal with the Oglala Sioux. During the transitional adjustment to reservation life Indian agents began to handle cases involving minor offenses. This quickly undermined the traditional Sioux systems of law and order. The dilemma created by this breakdown is clearly seen in the statement by Episcopalian Bishop Hare who wrote in 1877 that “civilization has loosened, in some places broken, the bonds which regulate and hold together Indian society in its wild state, and has failed to give the people law and officers of justice in their place” (Report of the Indian Commissioners 1887:2).

The annual reports of the Indian Commissioners included numerous requests for the enactment of laws for Indian reservations. Commissioner Hiram Price complained:

For years past urgent appeals have been made by this office for such legislation as will insure a proper government of the Indians, by providing that the criminal laws of the United States shall be in force on Indian reservations and shall apply to all offenses, including those of Indians against Indians; and by extending the jurisdiction of the United States court to enforce the same . . . The importance of this subject has been so frequently enlarged upon in the annual reports of this office for years past that it seems almost superfluous to add more (Report of Indian Commissioner 1882:18).

This concern about the absence of law on the reservations was highlighted in Commissioner Price’s annual report in 1883 wherein he argued that “Congress should confer both civil and criminal jurisdiction on the several states and Territories over all reservations within their respective limits” (Report of Indian Commissioner 1883:8). By administrative order, Price created the Indian courts in 1883 and in his report he exerted pressure on Congress to extend white law to reach the Indian on the reservation. There was no consideration for allowing traditional Indian law and customs to maintain order on the reservations. Price’s report is an example of the assimilation policies of this period and reinforced
the commonly held view that the reservations needed institutional frameworks and structures more compatible with European ideas of law and justice.

After the Indian Appropriation Act of May 27, 1878 authorized payment for Indian police, agents began using tribal members to maintain order. The Indian police allowed the civilian agents to decrease the large numbers of military troops on the reservations, an undesirable expense that many wanted to reduce. The police slowly became the symbol of law and order on the reservation. The impact on traditional customs was direct as it “diminished the influence of squawmen and the curtailment of prerogative formerly claimed by tribal chiefs” (Report of the Indian Commissioner 1880:90).

Officials established the Indian police force at the Pine Ridge Agency in 1879. Agent Valentine T. McGillycuddy met strong resistance to using Indian police. He reported:

On assuming charge of the agency in March, 1879, I found that no force has been organized, the failure to do so being out of deference to the feelings of Chief Red Cloud and some of his coadjutors, both red and white. After several months of the most emphatic refusal on the part of the chiefs to allow the enlisting of young men, and varied opposition on the part of half-breeds and “squaw-men” have in the past exercised a very powerful control over the Sioux Indians, and it can therefore be easily understood why they so strongly opposed the introduction of the Indian police system, as it placed in the hands of the government a detective and controlling agency that can easily thwart them in any plans they may form. The Chiefs opposition was partly from the instructions of these “squaw-men,” also because they naturally dislike any innovation, and because it put a power in the hands of the government and agent, independent of themselves, and over which they could not exercise the slightest control.

Situated as the agency is, in close proximity to the ever-increasing white settlements, it would be impracticable and almost impossible to conduct this agency without this organization. It represents law and order, and the members, uniformed and disciplined, and far advanced in civilization, offer the best and most practical example for other Indians (Report of the Indian Commissioner 1879:90).

Two years later, Agent McGillycuddy wrote that Indians were beginning to recognize police authority:
from time immemorial there has existed among the Sioux and other tribes native soldier organizations, systematically governed by laws and regulations. Some of the strongest opposition encountered in endeavoring to organize the police force in the spring of 1879 was from these native soldier organizations, for they at once recognized something in it strongly antagonistic to their ancient customs. Today the United States Indian Police have, to a great extent, supplanted the soldier bands and exercise their ancient powers (Report of the Indian Commissioner 1881:308).

Prior to 1884, tribal members arrested by Indian Police were tried and sentenced by the agents. However, in 1883, the Secretary of the Interior authorized the creation of “Courts of Indian Offenses” to replace traditional customs of the Indians and the agent scheme. The administrative rules instructed the agents to appoint judges for such courts and provided a code of offenses. These administrative codes subverted tribal customs and religious practices. Commissioner Hiram Price reported that the court would be useful in “abolishing the old heathenish customs that have been for many years resorted to, by the worst elements on the reservation, to retard the progress and advancement of the Indians to a higher standard of civilization and education” (Report of the Indian Commissioner 1883:19). Congress funded this administrative initiative and a federal court decision in 1888 characterized these courts as “mere educational and disciplinary instrumentalities by which the government of the United States is endeavoring to improve and elevate the conditions of these dependent tribes to who it sustains the relation of guardian” (U.S. v. Clapox:577).

In 1883, the U.S. Supreme Court decision in Ex Parte Crow Dog created a furor on the Pine Ridge Reservation. This case involved Crow Dog and Spotted Tail, two Sioux living on the Pine Ridge Reservation. Crow Dog killed Spotted Tail and, according to the traditional Sioux code of justice, the two families reached a settlement. However, white authorities prosecuted and convicted Crow Dog of murder in the U.S. District Court in Dakota Territory. The U.S. Supreme Court ruled that the murder of one Indian by another upon the reservation was not within the criminal jurisdiction of the federal court. After much protest, in 1885 Congress passed the Major Crimes Act which empowered the federal courts to try Indians for the commission of seven felonies, including homicide, within an Indian reservation. The following year, the U.S. Supreme Court upheld the Major Crimes Act in U.S. v. Kagama. This series of events seriously curtailed tribal legal jurisdiction over crime on reservations.
In 1889, the Great Sioux Reservation was broken up into six smaller reservations, with the Pine Ridge Indian Reservation becoming the home of the Oglala branch of the Sioux tribe. The reservation agent, the Indian police, the Court of Indian Offenses, the Administrative Code, the Major Crimes Act, and the Allotment Act facilitated the policies of political and cultural assimilation of the Indian into the dominant society. While the Courts of Indian Offenses operated at two-thirds of the reservation agencies, there was a great deal of tribal resistance to them, but eventually the opposition eroded. Criticism of the Courts of Indian Offenses focused on the agency superintendent’s control of judges. This power included appointment by the Bureau of Indian Affairs with tribal council approval. The superintendent appointed four judges on the Pine Ridge Indian court. By the 1920s judges were selected “because of their influence in the community, their morals, ideals and sense of justice” (Annual Report of Pine Ridge Superintendent 1926), and were typically chosen from tribal elders. The tribal court met on a regular basis, usually the first week of each month or the last week of each month and, according to instructions, all decisions were translated and approved by the superintendent (Annual Report of Pine Ridge Superintendent 1926).

The annual reports filed by the agents at Pine Ridge between 1910 and 1935 are filled with praise for the court. By 1921 the agent could report that law and order on the reservation was directly under the charge of the Court of Indian Offenses. In 1926 the administrative view of the court was that it functioned well, that it was held in “high esteem” by Indians on the reservation, and that the “verdicts are fair and just and are accepted as such by the prisoners.” Some believed that the court contributed to stability in a population that was more orderly than “white society.” By handing minor and petty cases over to the courts, the superintendent’s work load was reduced allowing him to assume other important duties.

The Court of Indian Offenses had jurisdiction over minor offenses and performed a function similar to the justice of the peace in white communities. Cases often involved marriage contract violations, morals charges, and other misdemeanor or minor offenses. Agents complained about jurisdictional problems between the reservation and state courts and the absence of jurisdiction for certain offenses related to sex crimes and liquor violations. The Court of Indian Offenses usually heard an average of 6 to 10 cases per month. An examination of the data for 1910, 1920, and 1929 is very sketchy, but it does reveals the general nature of cases handled by the court. In 1910 reservation statistics reveal the following types and numbers of criminal cases: adultery 16, killing cattle 3, wife beating 2, selling cattle without a permit 13, stealing 4,
school runaways 5, selling wood outside the reservation 2, driving cattle off reservation 2, abusing cattle 2, and fighting 2. A decade later, the annual report showed 4 larcenies, 1 assault with a dangerous weapon, 1 arson, 1 arrest for drunkenness, and 93 cases of non-support, abandonment, adultery, bastardy, gambling, disorderly conduct and petit larceny. The 1929 report revealed 20 larcenies, 32 liquor violations, 2 rapes, 2 misconducts, 10 assaults, 23 adult and bastardy proceedings, and 45 other liquor violations that resulted in 32 convictions. The criminal categories are so uneven that is difficult to interpret the data. It seems apparent, however, that crime was not a major reservation problem.

During this period, the agents clearly reported the reservation as orderly with Indians showing respect for the court and the law. “The Indians themselves are very peaceable and law abiding. Little trouble is experienced in keeping order and the percentage of crime and misdemeanors is very small compared to a white community of similar size and population” (Annual Report of the Superintendent for the Pine Ridge Reservation 1915). The relatively light caseload combined with the small number of police on the reservation (the force had been reduced from 31 officers in 1920 to 20 in 1921) suggests that the administrative institutions greatly influenced attitudes of the Indians or that there was really a dual justice system operating during this period. The official system and some aspects of the traditional system combined with the church to make for an orderly society. The superintendent remarked in 1918 that “the churches are a great help to the Indian in distinguishing right and wrong and securing obedience of the people to the laws and their influence is especially noticeable among the older people” (Annual Report of the Superintendent for the Pine Ridge Reservation 1918).

While certain traditional customs may have contributed to order on the reservation, the Court of Indian Offenses was not integrative in the sense that the court tried to incorporate traditional customs into the official system. In fact, the opposite was true and these courts were seen by the superintendents as vehicles for education and civilization of the Indians and that “in time, many of these old customs will die a natural death” (Annual Report of the Superintendent for the Pine Ridge Reservation 1915). The reports during this era support the view that most of the superintendents saw the courts of Indian Offenses as temporary institutions that would be replaced by state courts sometime in the future. Clearly, administrative officials viewed these courts as a stepping stone in the assimilation process. “The Court is vital to the well-fare [sic] of the reservation until such time as the Indian reservation may be thrown open and State law and jurisdiction is adequate to control the situation” (Annual Report of the Superintendent for the Pine Ridge Reservation 1927). The Court of Indian
Offenses operated for over five decades, eroded the traditional system of justice, and replaced it with an alien court system. Today, the relatively few remaining courts of Indian offenses are referred to as CFR courts.

Origin and Development of Tribal Courts: Post 1936

By 1930, the Court of Indian Offenses did not reflect either Indian or non-Indian courts but had become a hybrid legal system that tried to accommodate two very different cultural and judicial systems. During the 1930's tribal courts emerged as part of a transformation program and since then, tribal court development has passed through two distinct stages. When Congress passed the Indian Reorganization Act (IRA), the federal government abandoned its assimilation policies. Section 16 of the IRA, aimed at restoring the status and authority of tribal governing bodies and tribes, allowed them to draft their own constitutions and laws and establish their own justice systems. Since traditional justice systems had been destroyed and since the tribes had little experience with drafting constitutions and legal codes, most tribes adopted versions based on the model constitution prepared by the Interior department. "The boiler plate provisions of this model were adopted with few alterations by virtually all tribes which voted to organize under that Act" (American Indian Lawyer Training Program Survey 1977). This law profoundly influenced tribal governments and tribal justice systems.

In 1935, the Interior department adopted rules governing the Courts of Indian Offenses and applied these regulations to the IRA-organized tribal courts until they adopted law and order codes. The pervasive impact of these regulations on the development of the tribal courts was quickly apparent. Almost all of the IRA-tribal courts copied "verbatim" the department regulations which resulted in tribal courts that were legally distant from the Courts of Indian Offenses but identical in terms of structure, procedures and laws. However, the trend toward tribal courts did not lead to a reinstatement of traditional justice systems.

The Oglala Sioux Constitution and the Law and Order Code are similar to the model written for the IRA tribes and of the Interior Department regulations. Adopted by a tribal vote of 1348 to 1041, the constitution was approved by the Secretary of the Interior on January 15, 1936. The Secretary of the Interior approved the Oglala Sioux Tribe Law and Order Code on March 20, 1937. In this manner, the Pine Ridge Reservation Court became the Oglala Sioux Tribal Court on the Pine Ridge Indian Reservation. Although the IRA reaffirmed tribal sovereignty over the courts in 1934, there were two notable examples of federal
intervention. Public Law 280 (1947), threatened the transfer of civil and
criminal jurisdiction over reservation Indians to the states, and the Indian Civil
Rights Act (1968) extended to tribes and their members the same or similar
rights guaranteed under the Bill of Rights to citizens within the state and federal
systems. Public Law 280 permitted states to assume civil and criminal jurisdic-
tion over reservations within their boundaries. South Dakota, an option state,
attempted to secure jurisdiction contingent upon federal reimbursement for the
additional costs that did not occur. The final Public Law 280 initiative in South
Dakota, a 1964 referendum, failed by a vote of 201,389 to 58,289. Congress
amended Public Law 280 to require any state assertion of jurisdiction be
approved by tribal referendum.

The Indian Civil Rights Act of 1968 (ICRA) applied most of the protec-
tions of the Bill of Rights to the reservations. The ICRA has had a profound
impact on tribal courts and has been very instrumental in the reform movement.
The nationalization of the Bill of Rights is based on the belief that the federal
government, state governments, and Indian tribes should all be subject to
constitutional limitations. The U.S. Supreme Court incorporated many of the
protections into the Due Process Clause of the Fourteenth Amendment, which
applied the protections to the states. However, state action did not include tribal
actions and tribal authority was not affected by the incorporation theory that had
made those protections binding on the states.

In 1961 the Senate Subcommittee on The Constitutional Rights of Indians
undertook a comprehensive investigation and discovered that tribal authorities
had abridged the constitutional rights of their members and that the
Code of Indian Offenses under which the Courts of Indian Offenses
acted was outdated, impractical, and failed to provide for an
adequate administration of justice on the Indian reservations. The
Subcommittee continually returned to the fact that tribal Indians who
should possess the rights of other citizens were not protected from
arbitrary tribal authority because of judicial rulings supporting tribal
government (Kerr 1969:326).

Congress faced three possible alternatives. First, they could leave the situation
alone which would have left tribal authorities to continue to act free of the Bill
of Rights. Second, they could abolish the tribal courts and place Indians under
the jurisdiction of federal or state courts. Or third, Congress could reform the
tribal judicial institutions by applying the Bill of Rights to the reservations.
Congress chose this third alternative which was consistent with the nationaliza-
tion of the Bill of Rights. However, the ICRA was seen by many as a lack of confidence in tribal government, interference with tribal sovereignty, and the imposition of non-Indian standards upon Indian courts. The imposition of the ICRA was a signal that self-determination was acceptable only to the extent that Indians develop tribal courts that would resemble white courts.

The application of the 1968 ICRA significantly increased the burdens on tribal courts. "Although interest in tribal courts was revived in the 1960s, the outcome of this concern was primarily the application of stringent standards rather than development of a comprehensive program for tribal court improvement" (American Indian Lawyer Training Program Survey 1977:34). In the 1970s, the theme of Indian self-determination continued with Congress passing the Indian Financing Act in 1974 and the Indian Self Determination and Education Assistance Act in 1975. These acts, combined with additional funding from the LEAA and BIA, reflected increased political and financial support for the tribal courts. Today, the largest category of justice systems are the tribal courts, or those established by tribal constitutions, as opposed to traditional courts or CFR courts.

The Oglala Sioux Tribal Court

Origins

The Constitution of the Oglala Sioux Tribe of the Pine Ridge Reservation is brief with respect to judicial power and court organization. The constitution empowers the tribal court to establish the court system and to adopt law and order codes. Article V provides that "the judicial powers of the Oglala Sioux tribe shall be vested in court or courts which the tribe council may ordain or establish" (Oglala Sioux Constitution). The court has jurisdiction over cases "involving only members of the Oglala Sioux tribe, arising under the constitution and by-laws or ordinances of the tribe and to other cases in which all parties consent to jurisdiction" (Oglala Sioux Constitution).

The legislative power confers on the tribal council the authority to, promulgate and enforce ordinances, which shall be subject to review by the Secretary of the Interior governing the conduct of members of the Oglala Sioux tribe and providing for the maintenance of law and order and the administration of justice by establishing a reservation court and defining its duties and powers (Oglala Sioux Constitution).
### TABLE 1

**LAW AND ORDER CODE**

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</table>

Source: Oglala Sioux Tribal Law and Order Code, 1969

Originally approved by the Secretary of the Interior on March 20, 1937 and amended in 1952 and 1969, the Oglala Sioux Law and Order Code (Table 1) is presently undergoing a comprehensive amendment process. The tribal law and order code has some custom or law features that were "indigenous" to the Lakota Sioux or at least a part of the traditional Sioux system of justice. In essence, the law and order code followed the old Bureau of Indian Affairs Code (1937). Mixed in with this BIA model are South Dakota law provisions, especially in civil areas and domestic relations areas, and federal constitutional provisions.
The relationship between the tribal council and the tribal court created by Article V of the constitution is not one of a "separate and co-equal" branch of tribal government. The tribal court is established by the tribal council; judges are appointed by the council; there is considerable interaction between the council and the tribal court; the appellate process and appellate court are under the tribal council; and the tribal code contains a provision which suggests that the court can only establish procedural rules subject to council approval. In many respects, the tribal court is subordinate to the council.

The Pine Ridge Indian Reservation justice system is comprised of the tribal court, the office of the prosecutor, and the appellate court. However, to get an accurate picture of the justice system, one must also include the tribal council, the five-person Executive Committee of the tribal council, and the four-person Law and Order Committee. The Executive Committee is made up of the president, vice president, secretary, treasurer, and a fifth member who is a council member. The Law and Order Committee is comprised of four council members. Under the Oglala Tribal Justice System, the lack of judicial independence is a serious problem (Fig. 2). This invites tribal council interference with the functioning of the court. The National American Indian Court Judges Association (NAICJA) Project on Indian Courts and The Future identified two reasons for this interference:

1. Councils perceive courts as alien institutions and do not consider them part of the tribal government structure, or
2. Councils see themselves as above the tribal court and try to influence court decisions (NAICJA 1978:37).

The Law and Order Code contains a separation of power provision. It states that "no member of the tribal council shall obstruct, interfere with, or control the functions in any manner in a case or cases then pending before the courts" (Law and Order Code). Section 19 also provides that "committees of the Oglala Sioux Tribal Council," which would in practice be the Law and Order Committee, retain authority to investigate "tribal court matters" for purposes of future legislation notwithstanding the separation of powers provision. While the retention of authority appears innocuous, the parameters and purposes of such investigations undermine judicial independence. In 1968, George N. Beamer, Jr. identified judicial independence as one of the problems. He suggested that "the fairness and neutrality of judges will be questioned so long as they are
subjected to pressure and influence in any aspect of the court operation" (Beamer 1978). Beamer also concluded that no such pressure was reported by judges as to individual cases but there was pressure from the council regarding court personnel and court procedure. Subsequently judges have reported tribal pressure on individual cases.

The main offices of the tribal court are located in a new justice building in Pine Ridge, South Dakota, with an associate judge assigned to a branch office at Kyle, South Dakota (Fig. 3). Located 60 miles northeast of Pine Ridge, the court in Kyle is also housed in a new law and order building. The construction of both directly resulted from a report completed by the commission on the Pine Ridge Indian Reservation (1975). Appointed by the Secretary of the Interior, the commission was authorized to investigate reports of violence and an alleged
breakdown of law and order (Pine Ridge Commission Report 1975). The Pine Ridge Commission found that inadequate court facilities and the poorly located court system resulted in poor services to outlying communities. While the tribal court is in Pine Ridge, over one-third of the cases occur in the outlying districts of Allen, Kyle, and Wanblee. The new facilities were a direct result of this report.

Tribal Court Judges

In any court system, the people who serve as judges are possibly the most important element. As a result, three key issues need to be addressed: (1) judicial service eligibility; (2) judge selection process; and (3) length of judicial service.
The Oglala Sioux Tribal Court is comprised of 6 judges: one Chief Judge, four Associate Judges and a Special Judge. While the Chief Judge must be a law school graduate, the last chief judge with a law degree sat on the court in 1987. Law training, however, is not a necessary qualification for appointment to an Associate Judge position. The Law and Order Code requires that a candidate be 25 years of age or older; neither convicted of a felony, nor a misdemeanor within one year prior to assuming office; of good moral character; able to read, write, and understand the English language; able to speak Lakota; and demonstrate a knowledge of the Law and Order Code and judicial procedures. However, the Special Judge must be an attorney licensed by the state of South Dakota.

The Law and Order Committee examines all candidates and files a written report on the examination with the tribal council. Judges are appointed by a vote of two-thirds (2/3) of those voting at a meeting of the tribal council. Vacancies are filled by the Executive Council with confirmation by the tribal council. The term of office is four years, unless removed for cause. Any judge may be suspended, dismissed or removed for just cause, after a hearing, by two-thirds (2/3) vote of the tribal council. The Executive Board has the power to suspend a tribal judge, if warranted, after an investigation and hearing.

The Chief Judge is authorized to assign cases to Associate Judges and the Special Judge and they have original jurisdiction to hear all cases, civil and criminal, arising under the Law and Order Code. The Chief Judge has the authority to modify a judgment or sentence imposed by an Associate Judge for cause shown after a hearing in an open court. The Chief Judge also can moderate the sentence imposed by an Associate Judge, but may not increase it. The Special Judge’s sentences or judgments are not subject to modification. Judges are required to render fair and impartial judgments and are precluded from sitting in judgment in a case in which they have a direct interest or where any relative by marriage or blood, in the first or second degree, is a party.

The salaries for judges as well as other court personnel are requested by the Chief Judge but the tribal council has final authority. In practice, since the tribal court is funded by the Bureau of Indian Affairs, the contract officer plays a significant role in the budget process. Judges’ salaries have improved from a rate of $1,820 a year for Associate Judges and $2,400 a year for the Chief Judge in 1955, to a 1986 average salary of $21,000 for associate judges and $34,290 for the Chief Judge.

The Law and Order Code contains a strong incentive for judges to confine individuals who cannot pay the court imposed fine. Judges are personally held liable for the payment of all fines when such payment is deferred by the court instead of serving the time in jail.
Appellate Court

While most reservations have some type of appellate process, it is seldom used. The NAICJA project (1978) reported that only nine tribes reported more than one appeal in 1977 and “most reported no appeals.” Only the Navajos (80-100) and the Oglala Sioux (100) reported more than ten appeals. The primary reasons for lack of appeals include bonding requirements, the fact that many defendants do not understand the appellate process, that Indians accept their guilt, and they don’t try to avoid court judgements on technical grounds.

Originally, Appellate Court judges were chosen by the Chief Judge. Currently, the Appellate Judges are appointed by a two-thirds vote of those voting at a tribal council meeting and serve a four year term (Law and Order Code). Vacancies are filled by the Executive Committee with confirmation by the tribal council. The Chief Judge has authority, subject to Executive Committee review, to appoint temporary Appellate Judges where an Appellate Court Judge is disqualified by reason of interest or family relationships. Judges are paid on a per diem basis.

The appeals process involves a notice of appeal within 15 days of the sentence or judgment, a five dollar filing fee and the posting of a bond or cash deposit. The bond cannot exceed $25 in criminal cases or two times the amount of the judgment or value of property awarded in civil cases. Decisions are determined on the basis of written briefs not to exceed four pages, oral arguments, and the calling of witnesses who have testified in the tribal court hearing. Witnesses who did not testify at the trial may be allowed to testify if it is material to the resolution of the case. This practice, which is frequent, may not be an appropriate function of the appellate court as it results in a retrial of the case as opposed to a review of the lower court proceeding and ruling. Only members of the Oglala Sioux Tribe Bar Association may argue cases in the Appellate Court, unless the court decides that there are some unusual circumstances that require waiver of the rule.

Tribal Prosecutors

Until 1960, no provision had been made in the Law and Order Code for a permanent prosecuting attorney and there has been considerable debate as to whether the office of the prosecutor should be a part of the tribal court budget or included in a separate contract under the executive branch of government. This issue has, on occasion, required emergency funding to keep the office functioning. One study (Laymon 1955) reported that prosecutors were ap-
pointed by the tribal judge on a case by case basis and usually received a one-to-three dollar fee. Prosecutors must be qualified members of the Oglala Sioux Tribe, 25 years of age or older; five-year residence on the Pine Ridge Reservation immediately prior to their appointment, never convicted of a felony, or a misdemeanor within the last year, be of good moral character, and be able to speak English and Lakota fluently. The tribal court and Police Personnel Board must review all applicants’ qualifications and competence for the office, and file a written report with the tribal council. The tribal council then makes the appointment.

Under the present system, the prosecutor’s budget is a part of the total court budget which suggests that the prosecutor is a part of the judiciary function. “The public confidence in the neutrality of the courts is eroded where the prosecutor appears to be an integral part of the court. The public has developed several epitaphs to describe such courts; police courts and kangaroo courts are terms frequently employed” (Beamer 1978:13). There is neither a public defender for criminal cases nor budget for payment of appointed defense counsel. Lay advocates also are used in the courts and the only qualifications to practice are an oath which may be waived by the court. The oath states that the person has “studied and is familiar” with the ordinances and that they will conduct themselves with honor towards clients and the court. The clerk of the court keeps and posts a list of practicing tribal attorneys. Any attorney can be denied the privilege of practicing before the tribal court on a permanent or temporary basis for violation of their oath, false swearing, or the commission of a serious criminal offense.

**Court Proceedings**

While the jurisdiction and structure of the tribal court are important, it is equally important to understand the nature of court proceedings and many of the tribal court characteristics that are unique to the institution. Some of these features are similar to the off-reservation rural courts that border the reservation. The Oglala tribal court is very informal compared to off-reservation courts. While judges recently began wearing robes and the main court room has an appearance of formality, most of the proceedings are conducted in an atmosphere that is relaxed and flexible. Like the off-reservation rural courts, the judges tend to know many of the parties that appear in the court. As a result, the court proceedings are more personal and a personal response is made by the court. In these situations, the judge is aware of many features surrounding the parties and the case which results in a more personal perspective on the cases.
There is a mixture of tribal code, federal, state, and traditional law (from prior decisions of the tribal court) used in the Oglala tribal court. The court is not heavily bound by any body of precedent which allows the court to exercise broad discretion and latitude in reaching its decisions. This feature also contributes to the criticism that justice depends a great deal on the judges sense of fairness and makes the court less predictable. This might explain why many parties choose to litigate civil matters in other forums. The caseload of the court is much heavier than the non-reservation border courts; the criminal caseload is staggering and the sheer number of cases affects almost every aspect of court proceedings. With the passage of the ICRA, the tribal court has seen an increased number of licensed lawyers practicing in the court.

The tribal court is clearly less legalistic than the off-reservation rural courts. Since judges lack legal training, lay advocates are the rule, thus the court operates with a relaxed code of evidence. The lack of recorded tribal court cases contributes to this. The ICRA has changed this aspect of the court and in cases that involve basic constitutional rights, there is clearly a greater emphasis placed on substantive norms and procedural rules.

There is a greater amount of judicial participation in tribal court proceedings than the off-reservation courts. The practice is sustained by the informality of the court, the non-adversarial nature of many of the court proceedings and the heavy use of lay advocates. In cases where lawyers are involved, it is apparent that the level of judicial participation is less. Also many of the parties appear in court without counsel forcing the judge to play a larger role. Like most reservations, summary justice is the rule. The most common way of resolving criminal disputes is the guilty plea there are relatively few trials. The effect of this is that cases move fairly quickly through the court. Judges reported that they believed that there was probably more ex parte contact between the judge, attorneys, and litigants. The tribal court maintains good relationships with border courts and the strength of the tribal court is clearly the group of dedicated judges who administer the system.

Justice System Budgets

Funding is at the center of almost all the critical issues confronting the quality, efficiency, and effectiveness of the Oglala tribal court and other components of the justice system. The Pine Ridge Commission Report (1975) identified this issue and concluded that the courts were “inadequately funded” and made specific findings that facilities were inadequate. The report also found that a jury trial was impossible, salaries were inadequate, the court record
systems is inadequate” and “additional emergency and continuing funding is required to upgrade the present system until a new system can be implemented” (Pine Ridge Commission Report 1975:15). Three years later, an Oglala tribal court study (Beamer 1978) also identified funding as a significant problem.

The funding situation is complicated because the tribal courts, the appellate court, the office of the prosecutor, and the tribal police compete for scarce funds. Since budgets are a mixture of tribal, Bureau of Indian Affairs, LEAA, CETA, Public Law 93-638, and other funds further complicates the process. The tribal court budget increased significantly from $180,127.00 in 1977, to a 1983 budget of $413,130.61. The former budget included funds for the prosecutor, while the latter did not. The 1983 budget also included $20,616.51 for two public defenders for criminal cases. By 1985, the budget increased to $489,178.93, including $42,735.00 for the prosecutor, but no allocations for public defenders. Between 1985 and 1987, the budget for the tribal court was significantly reduced. The total budget for 1986 ($456,982.07) represented a 6.5% decrease from the 1985 budget; while the 1987 budget declined an additional 3% (Table 2).

Budget reductions impaired the progress made in the quality, efficiency, and effectiveness of the tribal court. Under these budget constraints, training for judges and court personnel was reduced to $500, even though there were 6 judges and 16 court personnel. Supplies were reduced to $2,500 from a 1984 budget of $9,000 (72% cut). Telephone expenses were reduced from $8,195.45 in 1984 to a total budget of $3,500 in 1987 (57% cut). While these budget reductions have impaired the operations of the justice system, two other areas reveal the seriousness of funding inadequacies within the Pine Ridge Reservation justice system. First, these budgets provided no funds for public defenders in criminal cases, forcing individuals to hire their own. This factor creates a serious problem for the court and certainly places lower income defendants at an extreme disadvantage in the system. Second, the court had only $792 budgeted for jury trials which means that jury trials are beyond the financial abilities of the court. In fact, many defendants ask for jury trials knowing that such a request will mean that their cases will be dropped.

The 1988 budget alleviated some of these problems. In 1988 the training budget was increased to $12,890.43, and provided $11,584 for jury trials. However, in 1989, the training budget once again declined, as did the jury trial share. Despite significant improvements in the tribal court subsequent to the Pine Ridge Commission Report in 1975, the present funding trend places the court in a precarious position and has certainly retarded its development.
TABLE 2

OGLALA COURT BUDGET, 1987

<table>
<thead>
<tr>
<th>Position</th>
<th>Budget 1987</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chief Judge</td>
<td>$ 34,694.00</td>
</tr>
<tr>
<td>Associate Judges (4)</td>
<td>85,696.00</td>
</tr>
<tr>
<td>Clerk of Court</td>
<td>17,368.00</td>
</tr>
<tr>
<td>Deputy Clerk of Court (2)</td>
<td>23,130.00</td>
</tr>
<tr>
<td>Court Administrator</td>
<td>14,560.00</td>
</tr>
<tr>
<td>Complaints Clerk (2)</td>
<td>23,130.00</td>
</tr>
<tr>
<td>Court Reporter</td>
<td>11,565.00</td>
</tr>
<tr>
<td>Presenting Officer</td>
<td>11,565.00</td>
</tr>
<tr>
<td>Child Welfare Advocate</td>
<td>11,565.00</td>
</tr>
<tr>
<td>Juvenile Officers (2)</td>
<td>23,130.00</td>
</tr>
<tr>
<td>Juvenile Clerk</td>
<td>9,984.00</td>
</tr>
<tr>
<td>Probation Officer</td>
<td>11,253.00</td>
</tr>
<tr>
<td>Caseflow Clerk</td>
<td>11,565.00</td>
</tr>
<tr>
<td>Bailiff (2)</td>
<td>18,554.00</td>
</tr>
<tr>
<td>Fringe Benefits</td>
<td>47,549.00</td>
</tr>
<tr>
<td>Telephone</td>
<td>3,300.00</td>
</tr>
<tr>
<td>Postage</td>
<td>1,000.00</td>
</tr>
<tr>
<td>Travel</td>
<td>4,000.00</td>
</tr>
<tr>
<td>Supplies</td>
<td>2,500.00</td>
</tr>
<tr>
<td>Library</td>
<td>1,000.00</td>
</tr>
<tr>
<td>Equipment/Leases</td>
<td>1,000.00</td>
</tr>
<tr>
<td>Maintenance (Equipment)</td>
<td>1,000.00</td>
</tr>
<tr>
<td>Publications</td>
<td>500.00</td>
</tr>
<tr>
<td>Training</td>
<td>500.00</td>
</tr>
<tr>
<td>Jury Trials</td>
<td>792.00</td>
</tr>
</tbody>
</table>

Total: $371,100.00

Indirect Costs: 70,723.00
Total 1987 Budget: $441,823.00

Source: Oglala Sioux Tribal Court Budget, 1987
Criminal and Civil Statistics

Most observers, experts and lay people, assume that crime rates are higher on the Pine Ridge Reservation and that civil litigation is common place. This assumption is based on what they indirectly or collectively think they know about reservations and crime in general, precisely that reservations are a breeding ground of crime. The following court statistics from the Pine Ridge Reservation provide an indication of the seriousness of the crime problem and the level of civil litigation. From the outset, it should be made clear that there is much criticism of crime reporting systems and court statistics. First, since not every offense is reported and since police may not take official action in every case that is reported, the actual crime rate will be higher than the official crime rate based on police or court statistics. Second, it is difficult to make a comparison to off-reservation or other reservation statistics because the crime classification criteria is different. Third, do you compare reservation data to state data, county data, or data from rural areas surrounding the reservation?

Caseload statistics for the year October 1984 to September 1985 for the Pine Ridge Reservation are shown in Table 3. The total criminal and civil caseload was 12,084. It is quite clear that crime was common on the Pine Ridge Reservation which confirms the perceptions of many observers of reservation life. The breakdown of the types of criminal cases in the Pine Ridge tribal court for 1985 is shown in Table 4.

When one factors in the 1980 reservation population figures (11,323) and the estimated number for 1986 (16,373), crime rates were very high. The number of criminal court cases in 1985 was equal to 28.7% of the total population (using the 1986 population figure) and 41.5% of the 1980 total population. These figures are staggering when one considers that these are court statistics and not victimization or police statistics and that major crimes are prosecuted in federal courts under the Major Crimes Act. Even recognizing that these figures include multiple arrests, they paint a dramatic image of reservation life and confirm the impression that crime is endemic on the reservation.

In analyzing the data, it is clear that "disorderly conduct, intoxicated in public" (3,372), liquor violations (211), and driving while under the influence (262) comprise the biggest group of crimes and are a commentary on this aspect of life on the Pine Ridge Reservation. This is not inconsistent with other reservations as "a majority of the tribes responding to the BIA’s 1977 law enforcement survey indicated the greatest single cause of crime is alcohol," and virtually all of those reporting stated that "over 90% of their court’s cases were alcohol related" (National American Indian Court Judges Association 1978:46).
TABLE 3
CASELOAD STATISTICS

<table>
<thead>
<tr>
<th></th>
<th>Adult</th>
<th>Adult</th>
<th>Adult</th>
<th>Juvenile</th>
<th>Juvenile</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>criminal</td>
<td>traffic</td>
<td>civil</td>
<td>criminal</td>
<td>civil</td>
</tr>
<tr>
<td>First Quarter</td>
<td>1,000</td>
<td>109</td>
<td>231</td>
<td>307</td>
<td>89</td>
</tr>
<tr>
<td>Oct-Dec 1985</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pine Ridge Court</td>
<td>710</td>
<td>93</td>
<td>48</td>
<td>133</td>
<td>26</td>
</tr>
<tr>
<td>Kyle Sub-Court</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Second Quarter</td>
<td>1,015</td>
<td>130</td>
<td>256</td>
<td>70</td>
<td>112</td>
</tr>
<tr>
<td>Jan-Mar 1985</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pine Ridge Court</td>
<td>573</td>
<td>35</td>
<td>44</td>
<td>120</td>
<td>19</td>
</tr>
<tr>
<td>Kyle Sub-Court</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Third Quarter</td>
<td>1,219</td>
<td>253</td>
<td>308</td>
<td>330</td>
<td></td>
</tr>
<tr>
<td>Apr-Jun 1985</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pine Ridge Court</td>
<td>1,019</td>
<td>39</td>
<td>54</td>
<td>158</td>
<td>17</td>
</tr>
<tr>
<td>Kyle Sub-Court</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fourth Quarter</td>
<td>1,302</td>
<td>255</td>
<td>375</td>
<td>108</td>
<td>113</td>
</tr>
<tr>
<td>Jul-Sep 1985</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pine Ridge Court</td>
<td>1,050</td>
<td>90</td>
<td>60</td>
<td>159</td>
<td>31</td>
</tr>
<tr>
<td>Kyle Sub-Court</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Cases</td>
<td>8,217</td>
<td>747</td>
<td>1,328</td>
<td>1,385</td>
<td>407</td>
</tr>
<tr>
<td>Oct 1984-Oct 1985</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: Oglala Sioux Tribal Court Clerk, 1985

A 1975 Department of Justice Report concluded that criminal conduct on reservations is almost always alcohol related and that crime rates, with the exception of property crimes, are considerably higher than non-Indian areas. The statistics also show a high number of crimes against individuals, with 315 assaults, 116 resisting arrests or violence against policemen or judges.
TABLE 4

CRIMINAL CASE STATISTICS, 1985

<table>
<thead>
<tr>
<th>Crime</th>
<th>Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assault</td>
<td>315</td>
</tr>
<tr>
<td>Child Abuse</td>
<td>22</td>
</tr>
<tr>
<td>Spouse/Elder Abuse</td>
<td>15</td>
</tr>
<tr>
<td>Weapons Charge</td>
<td>9</td>
</tr>
<tr>
<td>Contributing to the Delinquency of a Minor</td>
<td>34</td>
</tr>
<tr>
<td>Disobeying Court Order</td>
<td>94</td>
</tr>
<tr>
<td>Disorderly Conduct</td>
<td>150</td>
</tr>
<tr>
<td>Disorderly Conduct Intoxicated in Public</td>
<td>3,272</td>
</tr>
<tr>
<td>Escape</td>
<td>84</td>
</tr>
<tr>
<td>Non-support</td>
<td>17</td>
</tr>
<tr>
<td>Fraud</td>
<td>36</td>
</tr>
<tr>
<td>Forgery</td>
<td>3</td>
</tr>
<tr>
<td>Liquor Violation</td>
<td>211</td>
</tr>
<tr>
<td>Malicious Mischief</td>
<td>127</td>
</tr>
<tr>
<td>Receiving Stolen Property</td>
<td>8</td>
</tr>
<tr>
<td>Resisting Arrest or Violence to Law Officer</td>
<td>116</td>
</tr>
<tr>
<td>Sex Crimes</td>
<td>8</td>
</tr>
<tr>
<td>Drug Violations</td>
<td>12</td>
</tr>
<tr>
<td>Miscellaneous</td>
<td>37</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>4,708</strong></td>
</tr>
</tbody>
</table>

Source: Oglala Sioux Tribal Court Clerk, 1985

These represent a serious level of interpersonal violence on the reservation. On the other hand, the statistics show relatively few crimes against property with 36 frauds, 3 forgeries and 8 incidents of receiving stolen property. This suggests that crime on the reservation is heavily alcohol related and personal in nature. Further, the statistics indicate that narcotics offenses are infrequent with only 12
cases of marijuana possessions, or a controlled substance or inhabiting a room
where there are controlled substances.

A comparison of the 1985 and 1986 Pine Ridge court statistics (does not
include the Kyle sub-court) shows that criminal charges between 1985 and 1986
increased by 24.9%. These court caseload increases are significant and place
severe burdens on the tribal court. Only 14% of the total tribal caseload were
civil cases. Most civil cases consisted of domestic relations problems with a
lesser number of contract-commercial problems, landlord-tenant, probate-trust
and other civil matters. While the level of civil litigation appears low in
comparison to the criminal caseload, one cannot conclude that it is a sign that
they are more litigious or that they are underusing the tribal court. Underuse of
the tribal court for civil cases could be attributed to a number of factors including
informal dispute resolution and reluctance of Indians to resort to the tribal court
on civil matters. Brakel suggests that “very low civil use of the tribal courts is
a pattern of most, if not all, reservations” (Brakel 1978:40). Most civil caseloads
are under 10% of the total caseload and this Pine Ridge pattern is similar to other
reservations.

Conclusions

The Oglala Sioux face many problems relating to whether they should
maintain separate tribal courts for their reservation or integrate them into the
state system. Advocates of separate tribal courts argue that the quality of justice
has improved, there are better facilities, they are more efficient and effective,
and that professionalism in the courts has increased. They also claim that there
is “Indian Justice” within the tribal courts which reflects and preserves Indian
culture; that there is substantial prejudice against Indians in the off-reservation
courts; that Indian courts are less formal, more humane, and personal than their
white counterparts which are more legalistic; and that local control is essential
to autonomy and Indian self-determination.

Opponents of perpetuating separate tribal courts argue that these tribal
court systems do not reflect any traditional indigenous Indian justice systems
but are merely poor copies of the white court system; that there is no evidence
that Indians are treated adversely in white courts and that while there may be
instances of prejudice, it is not “pervasive or systematic”; that rural off-
reservation courts are no more formal than the tribal courts and are just as
humane and personal as their tribal counterparts; that tribal courts are beset with
political interference and controlled by the tribal councils or law and order
committees; that tribal judges are not well trained and are under tremendous
social pressure in deciding cases due to the closed nature of reservation society; that tribal courts do not reflect or preserve Indian culture; and that they are under budgeted, understaffed and not effective in responding to the problems of reservation life. Samuel Brakel claimed:

The tribal courts do not work well, and necessary improvements would require much time and involve many difficulties. To perpetuate them at all runs counter to the evolutionary trends in the Indian’s relation to the dominant culture in this country. Therefore, it would be more realistic to abandon the system altogether and to deal with Indian civil and criminal problems in the regular county and state court systems (Brakel 1978:103).

The Oglala Sioux Tribal Court experienced a great deal of progress subsequent to the 1975 Pine Ridge Commission Report which was critical of the quality, efficiency, and effectiveness of the tribal court. However, spiraling criminal and civil caseloads, dwindling resources, loss of key personnel, such as legally trained judges, and political interference has undermined the development of the Oglala Sioux tribal court and make it vulnerable to arguments that integration into the state court system is necessary.

The vacillations in federal Indian policy, from termination of Indian institutions and assimilation to the more recent policies of self-determination and strengthening tribal government, have directly affected the tribal judicial systems including the Oglala Tribal Court. Under recent policies, the Oglala Tribal Court has developed and improved. While few people remember what the tribal court was like before, almost all say that it is better now. At the same time, the Oglala Tribal Court should not be measured by how closely it resembles the off-reservation courts or how much it reflects and preserves traditional Indian culture, if at all, but should be judged by the contribution that it makes to effective tribal government on the Pine Ridge reservation and whether it meets the law and order requirements demanded by the Oglala Sioux residents. The Oglala Tribal Court should be given sufficient financial and political support to allow it to develop the structure, rules, procedures, and operations that are unique to the Pine Ridge reservation and to the Lakota Sioux who live there. The fact that these courts are different from the off-reservation courts is not a weakness but a strength as any institution must reflect the culture of which it is a part. The Oglala Tribal Court must bridge the gap between two distinct cultures and that is a difficult task.
References


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**Cases Cited**