Is Saying "*I'm Sorry*" Enough? A Primer on How Attorneys & Judges Can Act Justly in Tribal Disputes

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INTRODUCTION

On October 25, 2024, during a visit to the Gila River Indian Community (GRIC), located just outside of Phoenix, AZ, President Joe Biden apologized to Native Americans for the horrors inflicted on Indian[2]

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[2] The term "Indian" will be used interchangeably with Native American and Indigenous in this paper. The term Indian is not being used as a slight, nor a slur. The term is the preferred reference used in the United States Code as a definition for the first inhabitants residing in the North American landmass prior to Europeans coming to North America. *See, e.g.*, 18 U.S.C. § 1153; 25 U.S.C. § 1301(4).

families by America's Indian boarding schools' policies.[3] This is an appreciated and positive step towards healing between Native Americans and the United States government,[4] but is a mere apology enough? I am honored to have been the Alternate Appellate Judge for the Gila River Indian Community's Court of Appeals since 2015.[5] Two days after the GRIC judicial appointment, I was appointed as a Justice of the Pawnee Nation Supreme Court in Oklahoma.[6] As one enters the Pawnee Reservation, the first thing one sees is the dilapidated husk of the Pawnee Indian Boarding School, sitting on the reservation to remind visitors of past wrongs Pawnee children suffered at the hand of the white majority.[7] Before the reader presumes: "Great, another lecture by a scorned, liberal, Indian law professor," I am white, conservative, Christian, and an outsider to every Native American Nation where I work.[8] I hail from the great State of Tennessee.[9] Lessons I learned from working in Indian Country may help answer the follow-up question to President Biden's apology: what now? President Harry S. Truman—who began the disastrous "Termination Era"[10] in federal Indian policy that unilaterally eliminated the very existence of approximately 100 Indian Tribes[11]—considered the poor track record of how the United States historically treated Native

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[3] To read this apology, see Press Release, The White House, FACT SHEET: President Biden Touts Historic Support for Indian Country and Transformation of the Nation-to-Nation Relationship with Tribal Nations (Oct. 24, 2024), https://bidenwhitehouse.archives.gov/briefing-room/statements-releases/2024/10/24/fact-sheet-president-biden-touts-historic-support-for-indian-country-and-transformation-of-the-nation-to-nation-relationship-with-tribal-nations [https://perma.cc/3RWC-CJ8R].

[4] For a discussion regarding the impact of President Biden's apology to Native Americans, see generally Deb Haaland, *The Impact of President Biden's Apology to Indian Country*, U.S. DEP'T OF THE INTERIOR BLOG (Jan. 6, 2025), https://www.doi.gov/blog/deb-haaland-impact-president-bidens-apology-indian-country [https://perma.cc/UYM8-DHWB].

[5] *See* Gregory D. Smith, *A Streamline Model of Tribal Appellate Court Rules for Lay Advocates and Pro Se Litigants*, 4 AM. INDIAN L.J. 27, 27 n.* (2015).

[6] *Id*.

[7] *See, e.g.*, Cong. Rec. CR-1954-0301 (1954) (discussing horrific injuries to a Pawnee Indian Boarding School student). While beyond the scope of this paper, if one wishes to further explore Indian Boarding Schools, see BRENDA CHILDS, BOARDING SCHOOL SEASONS: AMERICAN INDIAN FAMILIES, 1900-1940 (U. Neb. Press 2000).

[8] *See* Tafoya v. Navajo Nation Bar Association, 1989 Navajo Sup. LEXIS 2, at *5–7 (Nav. Sup. Ct. Aug. 9, 1989) (discussing how and why non-Native lawyers hold a healthy place in Indian Country).

[9] For a general discussion of Native American tribal appellate courts, see generally Gregory D. Smith, *Native American Tribal Appellate Courts: Underestimated and Misunderstood*, 19 J. APP. PRAC. & PROCESS 25 (2018).

[10] For a general discussion of the Termination Era of Federal Indian Policy (1945-1961), see DAVID H. GETCHES ET AL., CASES AND MATERIALS ON FEDERAL INDIAN LAW 200–207 (6th ed. 2011).

[11] Adam Crepelle, *Finding Ways to Empower Tribal Oil Production*, 22 WYO. L. REV. 25, 36 n.88 (2022).

Americans[12] and mused: "How would I mark our paper in terms of the Indian? Zero minus."[13] This paper may serve as a basic primer on public relations and communications for lawyers, judges, and public servants who wish to work in Native American communities.

I. HONOR OVER POLITICS

Native Americans have endured a polarizing mix of heroes and villains from D.C. By way of example, two of the Presidents most impactful to Native American Nations are President Lyndon D. Johnson and President Richard M. Nixon; these Presidents were driving forces in the creation of the Indian Civil Rights Act[14] and support for the Self-Determination Era[15] for Native Americans. These initiatives are associated with Indian Nations beginning to run the day-to-day government of their own nations and reservations.[16] Both presidents were unpopular with other populations in the United States.[17] On the other hand, President Abraham Lincoln, widely considered a champion for racial justice,[18] is often seen as a villain in Indian Country for allowing politics to dictate the execution of thirty-nine Dakota men over a mere fistfight through the "Sibley Commission"—a farce of due process—in 1862.[19] This commission was

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[12] For an example of this highly documented concept, see Courtenay W. Daum & Eric Ishiwata, *From the Myth of Formal Equality to the Politics of Social Justice: Race and the Legal Attack on Native Entitlements*, 44 LAW & SOC'Y REV. 843, 855 (2010):

> The history of the U.S. government's mistreatment of Native Americans is well documented: forced relocation and exploitation; deprivation of life, liberty, and property; government policies that oscillated between mandatory assimilation and separation. It is important, however, to reiterate that the historical relationship between the BIA—created in 1824 to manage Indian services and affairs—and native tribes has been contentious at best.

[13] ALEX AYERS, *"Native Americans,"* in THE WIT AND WISDOM OF HARRY S. TRUMAN 102 (1988).

[14] *See, e.g.*, Santa Clara Pueblo v. Martinez, 436 U.S. 49, 63 n.11 (1978).

[15] *See* GETCHES, *supra* note 10, at 216–220.

[16] James Hall, *The Promise Zone Initiative and Native American Economic Development: Only the First Step Forward Toward the Promise of a Brighter Future*, 40 AM. INDIAN L. REV. 249, 256 n.43 (2016) (quoting 25 U.S.C. §4301(a)(2)).

[17] *See, e.g.*, J. Brian Atwood, *The War Powers Resolution in the Age of Terrorism*, 52 ST. LOUIS U. L. J. 57, 61 (2007) (" . . . send a message to an unpopular President, Richard Nixon."); Charles Gardner Geyh, *Judicial Independence at Twilight*, 71 CASE W. RSRV. L. REV. 1045, 1085 (2021) ("During the unpopular Vietnam War, Lyndon Johnson withheld facts about the progress of the war effort that engendered public distrust of the national government.").

[18] *Examining Lincoln's Views on African Americans and Slavery*, ABRAHAM LINCOLN PRESIDENTIAL LIBR. & MUSEUM (2025), https://presidentlincoln.illinois.gov/education/educator-resources/teaching-guides/lincolns-views-african-american-slavery [https://perma.cc/867P-6NLM].

[19] *See* Paul Finkelman, *"I Could Not Afford to Hang Men for Votes." Lincoln the Lawyer, Humanitarian Concerns and the Dakota Pardons*, 39 WM. MITCHELL L. REV. 405, 426 (2013).

a military trial consisting of five officers that tried 392 Indians of death penalty-eligible offenses in a span of approximately one month (September 28–November 3, 1862), convicting 323 of these individuals.[20] President Lincoln allowed thirty-nine hangings but commuted all other sentences to imprisonment.[21] On a single day, this commission completed forty-two full-blown death penalty trials![22] As elsewhere, "politics make strange bedfellows"[23] for determining presidents who helped, and presidents who hurt Native Americans.

Tribal Nations have a paramount need to be honored and respected as governments on the same level as states and nations,[24] even if the United States Supreme Court has deemed tribes "domestic dependent nations" within the United States.[25] For a court to properly function, judges and lawyers must ensure that court rulings and proceedings are respected.[26] Unfortunately, some lawyers and judges seek respect but fail to offer litigants the same respect they seek.[27] Likewise, "[s]tanding, respect, and reputation is essentially important in Native American communities."[28]

Several basic judicial concepts that apply across the judicial spectrum can help jurists, lawyers, and other activists wishing to positively impact Indian Country.[29] The first is to remember the advice of Founding Father, Alexander Hamilton, discussing the characteristics of a good judge: "Considerate men of every description ought to prize whatever will tend to beget or fortify that temper in the courts, . . . as no man can be sure

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[20] Carol Chomsky, *The United States-Dakota War Trials: A Study in Military Injustice*, 43 STAN. L. REV. 13, 13, 28 (1990).

[21] For a detailed discussion on the Sibley Commission, see *id*. at 33 (1990).

[22] *Id.* at 27.

[23] Michael Schofield, *Muzzling Corporations: The Court Giveth and the Court Taketh Away a Corporation's "Fundamental Right" to Free Political Speech in Austin v. Michigan Chamber of Commerce*, 52 LA. L. REV. 253, 265 n.65 (1991) (discussing a 1968 case before the Supreme Court that had Alabama Governor George Wallace and the Socialist Labor Party join forces).

[24] Bethany R. Berger, *Williams v. Lee and the Debate Over Indian Equality*, 109 MICH. L. REV. 1463, 1470 n.43 (2011); *accord* 5 CLUSITC § 5-10-2 (Conf. Tribes Code) ("The Tribes find that . . . it is important to recognize and honor the contributions of their tribal Elders.").

[25] Cherokee Nation v. Georgia, 30 U.S. 1, 17 (1831). For a discussion on this case, see NELL JESSUP NEWTON ET AL., COHEN'S HANDBOOK OF FEDERAL INDIAN LAW § 2.05(1) (2012).

[26] Grant Woods, *The Last Word: Respect Yourself*, 47 AZ ATTORNEY 68, 68 (Oct. 2010).

[27] *See, e.g.*, Maria Pabon Lopez, *The Future of Women in the Legal Profession: Recognizing the Challenges Ahead by Reviewing Current Trends*, 19 HASTINGS WOMEN'S L.J. 53, 73 (2008) (describing the challenges women face in the legal field). *See also infra* Part II.

[28] Gregory D. Smith, *The STOP Act Must Yield the Right-of-Way to Grandma's Antique Dream Catcher: A Call to Congress (Summum ius summa iniuria)*, 14 J. GLOB. RTS. & ORGS. 6, 8 (2024).

[29] *Cf.* Vienna Flores, *Cuba: The Last One to the Global Economic Table*, 22 LAW & BUS. REV. AM. 59, 60 (2016), (discussing how individuals and small countries can impact the world economy).

that he may not be tomorrow the victim of a spirit of injustice by which he may profit today."[30]

The Mississippi Supreme Court, besides quoting Hamilton, cites a laundry list of examples where brave and honest federal Supreme Court jurists looked beyond their political party to make decisions in the best interest of the people, at times in direct defiance of the President that appointed the justice.[31] Amongst the list offered is a reference to the backbone cornerstone case of Federal Indian Law, *Worcester v. Georgia*,[32] where "[j]udges appointed by [Andrew] Jackson joined with [Chief Justice John] Marshall and [Justice Joseph] Story in supporting the Cherokee Missionaries against Georgia, in flat opposition to Jackson."[33] Stated another way, instead of following the preferences of their supporters, a judge "must 'observe the utmost fairness,' striving to be 'perfectly and completely independent, with nothing to influence or control him but God and his conscience.'"[34]

A second, related judicial concept that applies in the Indian Country arena is the necessity of transparent objectivity.[35] The United States Court of Appeals for the Sixth Circuit has opined that "[j]udges 'are supposed to follow the rule of law—no matter current public opinion, no matter the views other political branches, no matter the views of the parties that support them.'"[36] It is vital that non-Native outsiders working in Indian Country remember that "although persons who become judges have often followed an intensely political route to the office, once on the bench, the new judge must eschew most political connections beyond voting."[37] Judges and lawyers in Indian Country must not only be honorable, they

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[30] *See* Owens v. State, 98 So. 233, 234 (Miss. 1923) (quoting Alexander Hamilton).

[31] *Id.*

[32] 31 U.S. 515 (1832).

[33] *Owens*, 98 So. at 234. Two Justices from the 1832 *Worcester* decision were appointed by President Andrew Jackson: Justice John McLean (1829–1861) and Justice Henry Baldwin (1830–1844). *See Justices 1789 to Present*, SUPREME COURT OF THE UNITED STATES, https://www.supremecourt.gov/about/members_text.aspx [https://perma.cc/3KCV-MJLN].

[34] Williams-Yulee v. Florida Bar, 575 U.S, 443, 447 (2015) (quoting Chief Justice John Marshall).

[35] Colville Confederated Tribes v. Boyd, No. AP09-007-IA, 2009 Colville App. LEXIS 5, *6 (Colville Confederated Tribes. Ct. App. Oct. 22, 2009) (noting that a Tribal judge must "maintain his or her objectivity at all times" and "respect the roles others have in the cases that come before the judges. The judge, as a tribal leader, must not appear to take sides nor appear to rule based on his or her emotions without regard to what the law is in the case.").

[36] Platt v. Bd. of Comm. on Grievs. & Discipline of the Ohio Supreme Court, 894 F.3d 235, 259 (6th Cir. 2018).

[37] Nat. Rept. on Legal Ethics and Prof. Resp., Op. 91-29, 1991 Ohio Griev. Discip. LEXIS 29 (Dec. 6, 1991) (quoting CHARLES WOLFRAM, MODERN LEGAL ETHICS 986 (1986)).

must *appear* honorable.[38] If a judge loses the appearance of impartiality, even if she remains personally unbiased, her effectiveness as a jurist is compromised.[39] By eschewing political connections, and instead ensuring transparent, respectful adherence to the rule of law, outsiders take the first step towards a viable working relationship between attorney and Tribe. If one focuses on ensuring that all Tribal court lawyers, judges, and activists interact with Native Americans purely with dignity and respect, *true justice* is met.

II. CULTURE, NOT CARICATURE

Not all Native Americans look, act, or think alike.[40] Indeed, Indian Country has many unique cultures and individuals.[41] Sadly, Indian stereotypes are commonplace.[42] Examples of unfair Native American stereotypes include the "drunken Indian,"[43] the "merciless Indian Savages,"[44] and the shortsighted presumption that Native Americans are intellectually overmatched by white counterparts.[45] But commentators

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[38] Jackson v. Virginia, 443 U.S. 307, 338 (1979) (stating that a judge's actions can "undermine 'the respect and confidence of the community in applications of the . . . law.'").

[39] *See, e.g.*, *In re* Skenandore, 2000 Oneida Trial LEXIS 40, at *3–4 (Oneida App. Comm. May 1, 2000); *In re* Charge of Judicial Misconduct, 47 F.3d 399, 400 (10th Cir. Jud. Council 1995); Lisi v. Several Attorneys, 596 A.2d 313, 318 (R.I. 1991).

[40] *See, e.g.*, Cindy D. Padget, *The Lost Indians of the Lost Colony: A Critical Legal Study of the Lumbee Indians of North Carolina*, 21 AM. INDIAN L. REV. 391, 391, 398 (1997) (describing the discrimination faced by the Lumbee Tribe for their perceived non-Indian traits).

[41] *In re* Custody of S.E.G., 507 N.W.2d 872, 887 (Minn. Ct. App. 1993) ("Contributing to the problem of the placement of Indian children in non-Indian homes is the failure of state officials and agencies to take into account the special problems and circumstances of Indian families and the legitimate interest of Indian tribes in preserving and protecting the Indian family."). There are 574 federally recognized Indian tribes in the United States. *About Us*, U.S. DEP'T OF THE INTERIOR, https://www.bia.gov/about-us [https://perma.cc/X4K2-LRSX]. There are also several states that recognize Native American tribes that are not federally recognized. *See, e.g.*, *Federally and State-Recognized Tribes Contact Information*, JEFF LANDRY, OFF. OF THE GOVERNOR, https://gov.louisiana.gov/assets/Programs/IndianAffairs/Louisiana-Updated-Tribal-List.pdf [https://perma.cc/YRM6-37QS]. For a discussion of how Native Americans approach science differently than most Caucasians educated in America or Europe, see GREGORY CAJETE, NATIVE SCIENCE: NATURAL LAWS OF INTERDEPENDENCE (2000).

[42] *See, e.g.*, Robe v. Allender, 2012 U.S. Dist. LEXIS 27923, at *8–12 (D.S.D. Mar. 4, 2012) (describing rampant stereotyping in the Rapid City Police Department).

[43] Jasmine B. Gonzalez Rose, *Racial Character Evidence in Police Killing Cases*, 2018 WIS. L. REV. 369, 390 (2018).

[44] United States v. Erickson, 436 F. Supp.3d 1242, 1263 (D.S.D. 2020) (quoting the American Declaration of Independence).

[45] State v. Buchanan, 978 P.2d 1070, 1077 (Wash. 1999) (discussing articulate and insightful Nez Perce leaders); *see also* Allison M. Dussias, *Kennewick Man, Kinship, and the "Dying Race": The Ninth Circuit's Assimilationist Assault on the Native American Graves Protection and Repatriation Act*, 84 NEB. L. REV. 55, 65 (2005); Matthew A. King, *Indian Gaming and Native Identity*, 30 CHICANO-LATINO L. REV. 1, 30 (2011). For other common unfair representations of Native Americans, including inappropriate caricatures in the sports world, see

have acknowledged the strong competence Native Americans show in business and government roles,[46] including the high quality of justice in Tribal courts.[47] Native Americans often approach problem-solving very differently from non-Natives.[48] Accordingly, judges, lawyers, and social activists should appreciate Tribes' unique cultural perspectives and approach working in Indian country as a work environment, not a call for strong-armed religious or philosophical evangelism.[49] Tribal courts too should honor and incorporate the sovereign Tribes'[50] diverse traditions and customs into the Tribal justice system.[51]

A sad example of where the United States government failed to do its cultural due diligence is Ira Hayes. Hayes is depicted helping plant the American flag at Iwo Jima in one of World War II's most famous photographs.[52] The problem is that the photo was staged and used Hayes for U.S.O. War Bonds fundraising tours throughout the United States, which led to Hayes' personal humiliation, alcoholism, and to eventually

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Pro-Football, Inc. v. Blackhorse, 112 F. Supp. 3d 439, 469–471 (E.D. Va. 2015). *But see* Walter v. Ore. Bd. of Ed., 457 P.3d 288, 297 (Or. Ct. App. 2019) (discussing the possibility of school collaboration with Tribes to ensure school mascots depicting Native Americans are respectful).

[46] Scott D. Danahy, *License to Discriminate: The Application of Sovereign Immunity to Employment Discrimination Claims Brought by Non-Native American Employees of Tribally Owned Businesses*, 25 FLA. ST. U.L. REV. 679, 694–696 (1998) (describing the financial success of Tribes); *but see* Ted Shepherd, *Not "Indian" Enough: Freedmen, Jurisdiction, and Equal Protection*, 2024 PEPP. L. REV. 43, 62–63 (2024) (discussing racial bias found historically within the United States Supreme Court decisions, both in yesteryear and today).

[47] Spurr v. Pope, 936 F.3d 478, 487 (6th Cir. 2019) (explaining that a Tribal Supreme Court navigated poorly drafted legal pleading with grace). The Tribal appeals court decision author of *Spurr* was legendary University of Michigan School of Law professor, Matthew L.M. Fletcher, a Native American who is also the Official Reporter for the American Law Institute (ALI) Restatement of Law's *The Law of American Indians*, which is available through LexisNexis. The author of this paper was on the Tribal appeals panel on *Spurr* and wholeheartedly concurs with the Sixth Circuit.

[48] *See, e.g.*, SHAWN WILSON, RESEARCH IS CEREMONY: INDIGENOUS RESEARCH METHODS (2008).

[49] *See, e.g.*, Quick Bear v. Leupp, 210 U.S. 50, 81–82 (1908) (discussing using public funds to bankroll a Catholic Indian boarding school); *cf.* David Kennedy, *New Approaches to Comparative Law: Comparativism and International Governance*, 1997 UTAH L. REV. 545, 570 n.34 (1997) (discussing that Indian sovereignty was honored by 18th-century government officials in Australia, so long as the Australian Natives accepted Christianity).

[50] *See In re* K.P., 242 Cal. App. 4th 1063, 1070, 1074 (Cal. App. 2015) (deferring to the juvenile court's analysis of Pala Band as a sovereign Indian nation with its own governing documents). Other courts sometimes reference Native American tribes as "quasi-sovereign." *See, e.g.*, Fisher v. District Court, 424 U.S. 382, 390 (1976).

[51] Philipp C. Kunze, *Remaining Silent in Indian Country: Self-Incrimination and Grants of Immunity for Tribal Court Defendants*, 93 WASH. L. REV. 2139, 2167 (2018). For a discussion of various Tribes and how they used the American court system to strengthen and protect Tribal sovereignty, see CHARLES WILKINSON, BLOOD STRUGGLE: THE RISE OF MODERN INDIAN NATIONS (2005).

[52] United States v. Erickson, 436 F. Supp.3d 1242, 1269 (D.S.D. 2020).

Hayes' death at age thirty-two.[53] Hayes was depicted as a hero;[54] but Hayes, who suffered from "extreme PTSD and survivor's guilt,"[55] saw himself as a fraud.[56] The military's decision to instrumentalize Hayes' service as "a horizontal plane upon which equal national identity is unified and upon which the tremendous inequalities that exist in society as well as America's history of conquest and genocide are forgotten,"[57] rather than see his suffering, is a stark example of the costs of caricature. No one saw Hayes was "about to crack up thinking about all [his] good buddies" that were "better than [him] and . . . not coming back."[58] One federal District Court noted "the Court has to be careful about lapsing into unconscious stereotypes of Indian activities."[59] The point to be made here is that Native Americans have unique views on life, land, and camaraderie that judges and lawyers working in Indian Country must learn to respect.[60]

An example of how one cannot presume what a Native American looks like is Texas icon Sam Houston. John F. Kennedy, Jr., in his Pulitzer Prize winning text, *Profiles in Courage*, explained Houston's path to greatness, saying: "When still a dreamy and unmanageable boy, [Houston] had run away from his Tennessee frontier home, and was adopted by the Cherokee Indians, who christened him *Co-lon-neh*, The Raven."[61] After a very short-lived political marriage in Tennessee, prior to Houston relocating to Texas, "[h]is mind and spirit shattered, Houston had abandoned civilization for the Cherokees, drunken debauchery and political exile."[62] President Kennedy's depiction of Sam Houston as a man of "irreconcilable" contradictions, "a mystery to the careful historian today" consigns his time with the Cherokee as a mere sideshow,[63] failing

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[53] Huie v. NBC, Inc., 184 F. Supp. 198, 199 (S.D.N.Y. 1960); *see also* Robert S. Chang, *(Racial) Profiles in Courage, or Can We Be Heroes, Too?*, 66 ALB. L. REV. 349, 368–369 (2003).

[54] Proclamation No. 6847, 60 C.F.R. § 214 (1995).

[55] Major W.G. Perez, *Flags of Our Fathers*, 168 MIL. L. REV. 227, 232 (2001).

[56] *Id.*; *see also* Harrison v. LaVeen, 196 P.2d 456, 459 (Ariz. 1948).

[57] Chang, *supra* note 53, at 367.

[58] Bill DeMain, *Music History #11: "The Ballad of Ira Hayes,"* MENTAL FLOSS (Oct. 19, 2012), https://www.mentalfloss.com/article/12791/music-history-11-ballad-ira-hayes [https://perma.cc/AL4U-ZJHE] (describing the history of The Ballad of Ira Hayes).

[59] Perkins v. United States, 2018 U.S. Dist. LEXIS 123946, at *37 (W.D.N.Y. July 24, 2018).

[60] *See, e.g.*, Press Release, DOI USFWS, Secretary Norton Announces $14 Million in Grants to Tribes to Help Fund Fish and Wildlife Conservation Projects (Jan. 27, 2004).

[61] JOHN F. KENNEDY, JR., PROFILES IN COURAGE: ILLUSTRATED EDITION 127–28 (1st ed. 1984).

[62] *Id.*; *see generally* History.Com Editors, *Sam Houston*, A&E TELEVISION NETWORKS (Feb. 27, 2025), https://www.history.com/topics/19th-century/sam-houston [https://perma.cc/7UHD-K6MW].

[63] KENNEDY, JR., *supra* note 62, at 126–17.

to consider how the man's greatness might've been impacted by his Tribal "Father," Cherokee Chief Oolooteka, or his "surrogate family" in the Tribe.[64] Sam Houston's biography and history, as well as that of his Tribal family, are marred by the inability of historians and even President Kennedy to look beyond the stereotype of the drunken Indian; Houston's history as told by Kennedy assumes Houston was escaping to the Cherokee as a sign of personal weakness or despair instead of investigating the positive influence of his Cherokee family. For the sake of responsible history, stereotypes simply must be rejected in Indian Country.

Moreover, not all "Indians" look alike. The Lumbee Tribe of North Carolina reminds us that some "Indians" have blonde hair, blue eyes, and light skin.[65] Don't presume that a Native American fits into a cigar store mannequin "cubby hole."[66] Native Americans are federal judges,[67] astronauts,[68] and Heisman Trophy winners.[69] Native American "Indian tribes are not a homogenous group and have a remarkably diverse range of cultures, languages, and ideologies."[70] It is a mistake for any judge, lawyer, or other public servant (Native American or not) to embrace prejudged caricatures of Native Americans.[71] Each case, each Tribe, each litigant is unique and should be treated as such. The case a judge hears or lawyer presents in Tribal court is likely the most important case to the litigants, and they deserve the highest degree of justice possible.[72]

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[64] Thomas Kreneck, *Houston, Sam*, TEX. STATE HIST. ASS'N (Nov. 9, 2020), https://www.tshaonline.org/handbook/entries/houston-sam [https://perma.cc/2L33-M6J5].

[65] Margo S. Brownell, *Who is an Indian? Searching for an Answer to the Question at the Core of Federal Indian Law*, 34 U. MICH. J.L. REFORM 275, 303 (2000) (noting "some have African-American features" as well).

[66] Diane E. Hoffmann & Karen H. Rothenberg, *Judging Genes: Implications of the Second Generation of Genetic Tests in the Courtroom*, 66 MD. L. REV. 858, 878 (2007).

[67] Carl Tobias, *Curing the Federal Court Vacancy Crisis*, 53 WAKE FOREST L. REV. 883, 911 (2018).

[68] *See, e.g.*, Sarah Kuta, *Nicole Mann Becomes the First Native American Woman in Space*, SMITHSONIAN MAG. (Oct. 6, 2022), https://www.smithsonianmag.com/smart-news/nicole-mann-becomes-the-first-native-american-woman-in-space-180980906 [https://perma.cc/N4P7-G7CP].

[69] *Star Cherokee Football Player Wins Heisman Trophy*, INDIANZ.COM (Dec. 15, 2008), https://indianz.com/News/2008/012421.asp [https://perma.cc/53QZ-QD38] (discussing Sam Bradford, a member of the Cherokee Nation who was named the Most Outstanding College Football Player for 2008).

[70] Evan Neustater, *Litigating for the Homeland: An Indian Treaty Framework to Climate Litigation in the Wake of Juliana*, 10 MICH. J. ENVTL. & ADMIN. L. 303, 305 n.10 (2020).

[71] *See, e.g.*, Renee Ann Cramer, *The Common Sense of Anti-Indian Racism: Reactions to Mashantucket Pequot Success in Gaming and Acknowledgment*, 31 LAW & SOC'Y INQUIRY 313, 335–336 (2006) (discussing African American blooded Native Americans being rejected by their own tribe as not "Indian enough" by blood to be tribal members).

[72] *See* Vincent Martin Bonventre, *Issues Facing the Judiciary: Judicial Activism, Judges' Speech, and Merit Selection: Conventional Wisdom and Nonsense*, 68 ALB. L. REV. 557, 562 & n.24 (2005).

III. LISTEN, DON'T LECTURE

Judges and lawyers, among other high achievers, tend to place lofty regard on their own opinions![73] As noted by one of history's greatest judges, King Solomon, "humility comes before honor."[74] Native Americans often hold (and sometimes display) an inherent, justified distrust of Tribal outsiders[75]—especially United States governmental representatives.[76] As noted by one commentator, "[t]here is already a distrust between Native communities and the government."[77] This distrust of government couples with Native Americans priding themselves on being self-reliant.[78] The inherent and historical distrust Native Americans have for the United States government dooms many judicial, governmental, and social programs—irrespective of whether the program could help or hurt Native Americans.[79] Distrust of government by Native Americans spills over to both the federal and state justice systems.[80] This barrier between Native Americans and non-Natives is bluntly explained: "native communities demonstrate a strong of the federal government; this, unfortunately, somewhat separates non-Indian Americans from the problems occurring on Indian reservations."[81] These are just a few of the

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[73] *See, e.g.*, Henry J. Wise, *It's Only an Opinion: An Appraiser in Court*, 93 FLA. B.J. 56, 56–57 (Nov./Dec. 2019), *reviewed by* Gary S. Gaffney (noting that conflicting and opposing expert opinions in court are commonplace and expected).

[74] *Prov.* 15:33 (New International Version, Zondervan 1978).

[75] *In re* Gold King Mine Release in San Juan Cnty., 2022 U.S. Dist. LEXIS 164532, at *12 (D.N.M. Sept. 12, 2022); Breanna Delorme, *Indian Law: Criminal Law Panel*, 97 N.D. L. REV. 319, 322 (2022).

[76] *In re* Dependency of G.J.A., 489 P.3d 631, 649 (Wash. 2021) ("generational trauma has instilled a deep sense of distrust of government workers in Native communities"), *quoted with approval in* Mona J. v. State, 511 P.3d 553, 563 n.34 (Alaska 2022); *see also* Shannon Rogers, *Giving Meaning to Empty Words: Promoting Tribal Self-Governance by Narrowing the Scope of Jury Vicinage and Venue Selection in MCA Adjudications*, 13 WYO. L. REV. 711, 736 (2013).

[77] Robert O. Saunooke, *The Battle to Enfranchise Indigenous Voters***,** 48 HUM. RTS. 18, 19 (2022).

[78] Celia M. Rumann & Jon M. Sands, *Lost in Incarceration: The Native American Advisory Group's Suggested Treatment for Sex Offenders*, 16 FED. SENT'G REP. 208, Pt. IV n.20 (2004).

[79] Olivia Meadows, *Self-Determined Health: Reevaluating Current Systems and Funding for Native American Health Care*, 48 AM. J. L. & MED. 91, 106 (2022); *accord*, Kennedy Ray Fite, Haaland v. Brackeen*: The Decision That Threatened the Indian Child Welfare Act's Protections of Native Families in Illinois*, 54 LOY. U. CHI. L.J. 1109, 1161 (2023).

[80] Maggie Logan, *Human Trafficking Among Native Americans: How Jurisdictional and Statutory Complexities Present Barriers to Combating Modern Day Slavery*, 40 AM. INDIAN L. REV. 293, 294–95 (2016).

[81] Abilene Slaton, *Federal Statutory Responsibility and the Mental Health Crisis Among American Indians*, 40 AM. INDIAN L. REV. 71, 72 (2015–16); *see also* Wendy Nelson Espeland, *Colonialism, Culture, and the Law: Bureaucrats and Indians in a Contemporary Colonial Encounter*, 26 LAW & SOC'Y INQUIRY 403, 422 (2001) (explaining how it was a moral decision to exclude the federal government's legacy of breaking promises to Indigenous groups in documents proposing a forced resettlement of the Yavapai).

many reasons that non-Native judges, lawyers, and social activists must approach the work in Indian Country as a humble servant,[82] not as a condescending tyrant.[83] *Justice* requires *listening*![84]

The first stage of effective communication is to *listen.* As Justice Ruth Bader Ginsberg has noted, if people listened better, perhaps history would not have to repeat itself.[85] Native Americans have endured major life-impacting events, including the decision of whether or not Native Americans should be United States citizens, without anybody bothering to ask the Native Americans if they *actually want* to be "*'Mericans*."[86] This is an example of Congress' "plenary power,"[87] where Congress can create

[82] Stefanus Hendrianto, *The Last Testament of Justice Scalia: On Aquinas and Law*, 34 NOTRE DAME J. L. ETHICS & PUB. POL'Y 197, 208 (2020) (discussing how Justice Antonin Scalia and theologian/philosopher/Saint of the Catholic Church, Thomas Aquinas, shared views that a "good judge" is a humble servant).

[83] *See* Doe v. Univ. of Mich. (*In re* Univ. of Mich.), 936 F.3d 460, 461 (6th Cir. 2019).

[84] Kimberly A. Thomas, *New Dimensions of Citizenship: Beyond Mitigation: Towards a Theory of Allocution*, 75 FORDHAM L. REV. 2641, 2676 n.185 (2007) (discussing United States v. Li, 115 F.3d 125, 131–32 (2d Cir. 1997), where a federal judge refused to listen to a non-English speaking defendant because of the judge's lack of patience for the broken English offered in an allocution). Along these same lines, the Author of this paper opens his first Federal Indian Law class every semester at the Lincoln Memorial University Law School by presenting a Korean preacher who speaks to the dumbfounded students for five minutes in Korean to show the students how early Native Americans would feel as English-speaking government officials unfairly "negotiated" treaties that relieved Native Americans of land and rights in an unknown foreign language.

[85] Orit Gan, *I Dissent: Justice Ginsburg's Profound Dissents*, 74 RUTGERS U. L. REV. 1037, 1088 (2022) (discussing Justice Ginsburg's dissent in Epic Sys. Corp. v. Lewis, 584 U.S. 497, 553 (2018) in which she admonishes the majority decision for painting an "ahistorical picture" and warns that the decision would bring back the *Lochner* era in allowing an employment contract with a forced arbitration clause which could have a "cooling effect on workers' collective actions and might hinder employee's rights").

[86] *See, e.g.*, 8 U.S.C. § 1401(b); Angelique Townsend EagleWoman, *Bringing Balance to Mid-North America: Re-Structuring the Sovereign Relationships Between Tribal Nations and the United States*, 41 U. BALT. L. REV. 671, 675 (2012); Jessica A. Shoemaker, *Like Snow in the Spring Time: Allotment, Fractionation, and the Indian Land Tenure Problem*, 2003 WIS. L. REV. 729, 735 n.24 (2003); DeAnna Marie Rivera, *Taino Sacred Sites: An International Comparative Analysis for a Domestic Solution*, 20 ARIZ. J. INT'L & COMP. LAW 443, 456 n.69 (2003); Laura Nader & Jay Ou, *Idealization and Power: Legality and Tradition in Native American Law*, 23 OKLA. CITY U. L. REV. 13, 18 (1998).

[87] One court explains the term "plenary power" as: "Plenary power means that 'all * * * determinations [are left] to the General Assembly's broad discretion to adopt the means it deems "necessary and proper" in complying with the constitutional directive.'" Woonsocket Sch. Comm. v. Chafee, 89 A.3d 778, 791 (R.I. 2014); *see also* Hualapai Indian Nation v. Mukeche, 1998 SW Intertribal App. LEXIS 6, at *4 (S.W. Intertribal Ct. App. Aug. 10, 1998) (discussing Congress's power with respect to tribal sovereign immunity); Cherokee Nation v. Hitchcock, 187 U.S. 294, 308 (1902) (holding "[t]he power existing in Congress to administer upon and guard the tribal property, and the power being political and administrative in its nature, the manner of its exercise is a question within the province of the legislative branch to determine, and is not one for the courts").

(*or negate*) rules, policies, and daily life in Indian Country.[88] And the failure of government officials, such as the Bureau of Land Management (BLM),[89] to listen to Native Americans when setting policy stagnates progress in Indian Country.[90] On the other hand, when government officials take the time to listen before making policy, all parties can find a win-win scenario.[91]

Days after finishing this paper, the Author joined other members of Tribal Issues Advisory Group (TIAG), a permanent committee of the United States Sentencing Commission,[92] empaneled to advise on how the Federal Sentencing Guidelines overly impact Native Americans for federal sentencing calculations.[93] TIAG is tasked with information gathering in Indian Country.[94] TIAG held public hearings at the Muscogee (Creek) Nation in Tulsa, OK, on January 30–31, 2025.[95] Congress has accepted several previous recommendations from TIAG that impact the application of the Sentencing Guidelines to Native Americans.[96] TIAG listened to Native Americans share their cultural experiences with the legal

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[88] *See* Natsu Taylor Saito, *Asserting Plenary Power Over the "Other": Indians, Immigrants, Colonial Subjects, and Why U.S. Jurisprudence Needs to Incorporate International Law*, 20 YALE L. & POL'Y REV. 427, 429 n.10 (2002) (discussing the author's analysis of plenary power in "federal Indian law," and how it has come to mean "(1) exclusive power. (2) power capable of preempting state law, and (3) unlimited power, with respect to Indians").

[89] Tribal members often distrust representatives of BLM due to its neglect of its duties to Native Americans. *See, e.g.*, Pit River Tribe v. U.S. Forest Service, 469 F.3d 768, 772 (9th Cir. 2006) (holding that BLM, among other agencies, "did not take 'hard look' at the environmental consequences of the 1998 lease extensions and never adequately considered the no-action alternative").

[90] *See, e.g.*, Kenneth H. Bobroff, *Retelling Allotment: Indian Property Rights and the Myth of Common Ownership*, 54 VAND. L. REV. 1559, 1603 (2001) (discussing how the "Friends of the Indian" failed to consider what Indians thought about allotment).

[91] *See, e.g.*, Jon Reyhner, *Promoting Human Rights Through Indigenous Language Revitalization*, 3 INTERCULTURAL HUM. RTS. L. REV. 151, 180 (2008) (discussing how Lyndon B. Johnson sought to involve Indian voices and perspectives when crafting Indian policy in his "War on Poverty" resulting in the Office of Economic Opportunity helping to fund two successful programs aimed at developing locally controlled Indian education—the Rough Rock Demonstration School and Navajo Community College).

[92] Kristen Matoy Carlson, *Judge Murphy's Indian Law Legacy*, 103 MINN. L. REV. 37, 62 (2018).

[93] *See* United States v. Begay, 974 F.3d 1172, 1175 (10th Cir. 2020); United States v. Lasley, 832 F.3d 910, 918 (8th Cir. 2016).

[94] Neil Fulton, *All Things Considered: The Effect on Tribal Sovereignty of Using Tribal Court Convictions in United States Sentencing Guideline Calculations*, 46 AM. J. CRIM. L. 241, 253–54 (2019). Fulton, the Dean of the University of South Dakota School of Law, is a sitting member of TIAG at the time of this writing.

[95] *See* Email from Shari Derrow, to Gregory Smith, Chief Justice, Pawnee Nation Okla. (Jan. 24, 2025) (on file with publisher).

[96] *See* United States v. Jojola, 608 F. Supp.3d 1050, 1058–59 (D.N.M. 2022).

system.[97] One person that told his story was Norman New Rider, a Pawnee Indian who, as a junior high student in the early 1970s, was forced to have his hair cut due to an administrative school rule without the school district considering the cultural aspect of the haircut.[98] Injunctions were sought by New Rider's mother and this case was almost accepted for certiorari by the United States Supreme Court with two justices, William O. Douglas and Thurgood Marshall, dissenting from the denial of certiorari in a written dissent authored by Justice Douglas.[99] Douglas pointed out that Mr. New Rider's hair length "never caused a disruption in the school."[100] It took fifty years, but Norman New Rider was finally allowed to tell his story about why the United States should consider culture in Native American policy making such as sentencing, a concept that causes conflict amongst federal circuit courts.[101] While justice delayed is justice denied, sometimes late justice is better than no justice at all.[102] As one commentator observed, "It is essential that the parties are being heard. They want to let off steam and express their anger."[103] Litigants of all kinds yearn to be heard,[104] (even attorneys and judges[105]), especially when they have been systematically ignored by courts. Allow them to express themselves.[106]

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[97] For several strong discussions on various aspects of Indian culture in criminal court situations, see CARRIE E. GARROW & SARAH DEER, TRIBAL CRIMINAL LAW AND PROCEDURES (Rowman & Littlefield eds., 2d ed. 2015). The index of this book offers multiple examples of culture impacting Tribal cases. Garrow, a professor at the Syracuse University School of Law, is the Chief Judge of the St. Regis Mohawk Tribal Court. The Author of this paper is the Chief Justice of the St. Regis Mohawk Court of Appeals and is honored to serve with Chief Judge Garrow. Sarah Deer teaches at the University of Kansas School of Law and is the Chief Justice of the Prairie Island Indian Community Court of Appeals.

[98] *See, e.g.*, New Rider v. Board of Education, 480 F.2d 693, 695–96 (10th Cir. 1973).

[99] New Rider v. Board of Education, 414 U.S. 1097 (1973).

[100] *Id.* at 1099 n.2 (quoting the petitioners).

[101] *See* Jason F. Carrene L. Valladares, *A Renewed Call to the Sentencing Commission to Address Whether Cultural Factors Can Serve as a Basis for Downward Departures*, 14 FED. SENT'G REP. 279, Pt. IV (2002).

[102] ADS Associates Group, Inc. v. Oritani Savings Bank, 219 N.J. 496, 533 (N.J. 2014) (Albin, J., dissenting) ("Justice delayed is better than a complete denial of justice."); Bryan v. City of Cotter, 303 S.W.3d 64, 68 (Ark. 2009).

[103] Andreas Reiner, *Bridges Between Mediation and Arbitration the Mediator as Arbitrator? / The Arbitrator as Mediator?*, 10 CROAT. ARBIT. YEARB. 231, 248 (2003).

[104] Kevin Burke, *Rule of Law Symposium Understanding the International Rule of Law as a Commitment to Procedural Fairness*, 18 MINN. J. INT'L L. 357, 359 (2009) ("Research has shown that litigants have a powerful need to express themselves during court proceedings.").

[105] Douglas E. Abrams, *Writing It Right: Writing in Law Reviews, Bar Association Journals, and Blogs (Part 1*), 72 J. MO. B. 22, 23 (Jan./Feb. 2016).

[106] *See, e.g.*, United States v. Wilson, 614 F.3d 219, 227 (6th Cir. 2010), where the court opined:

> The defendant must see his attorney stand up and speak on his behalf, and he must see the judge listen to what the attorney has to say and explain why he is

IV. USE THE RIGHT TOOLS

One consistent, and frankly insulting, presentation mistake made by lawyers appearing in Tribal appeals courts is attorneys failing to use the correct legal tools.[107] By incorrect tools, I mean non-Native lawyers that frequently present entire appellate briefs without citing a single ordinance or case from the Tribe where the case originates.[108] Commonly, attorneys cite state law from the geographic jurisdiction in which a reservation sits as controlling law in the outcome of Tribal court decisions.[109] However, state court rulings and state statutes are irrelevant jurisprudence that do not apply in Tribal court unless the Tribe has specifically passed an ordinance adopting state law[110] as either direct or persuasive law.[111] On the other hand, Congress can pass federal law that directly applies to Tribal courts.[112] Further, some tribes do not have their own Tribal court system,

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> or is not persuaded by the attorney's argument. The final result will be whatever it will be--all that is required is a reasonable sentence--but the process must feel genuine. There is no minimum or maximum on what the judge must say, no list of magic words or phrases, no easily replicable formula or recipe for a "meaningful" sentencing hearing. Instead, all that is required is a dialogue that will allow the defendant to walk away from the hearing knowing what happened and why . . . .

[107] Courts insist on using correct legal tools when addressing cases. *See, e.g.*, United States v. Bowers, 2024 U.S. Dist. LEXIS 163249, *4–5 (D. Md. Sept. 10, 2024); Madison v. State, 205 Md. 425, 431 (Md. App. 1954).

[108] *See, e.g.*, Mayorga v. Aguilar (*In re* J.M.A.), 2024 Puyallup App. LEXIS 5, at *6, *9 (Puyallup Ct. App. Dec. 5, 2024) ("Appellant has cited no ***Puyallup*** tribal statute or case law that makes either action mandatory by the Tribal Court.") (emphasis in original); Lambert v. Fort Peck Tribes, 2024 Mont. Fort Peck Tribe LEXIS 2, at *6–7 (Fort Peck Ct. App. April 10, 2024).

[109] *See* Ho-Chunk Nation v. Steindorf, 2000 Ho-Chunk Supreme LEXIS 7, at *6 (Ho-Chunk Sup. Ct. Sep. 29, 2000).

[110] *See, e.g.*, Pub. L. No. 280, 67 Stat. 588 (codified as amended at 18 U.S.C. § 1162 and 28 U.S.C. § 1360) (granting state jurisdictional authority for Indian Country cases in California, Nebraska, and parts of Minnesota, Oregon, and Wisconsin); Jones v. Mohegan Tribal Gaming Auth., 1998 Mohegan Gaming Trial LEXIS 1, at *2 (Mohegan Gaming Disp. Trial Ct. March 10, 1998); Sage v. Lodge Grass SD No. 27, 1986 ML 1, at *P56 (Mont. Crow Ct. App. 1986); *accord*, Brenner v. Bendigo, 2013 U.S. Dist. LEXIS 148140, at *9 (D.S.D. Oct. 15, 2013).

[111] Delgado v. Tohono O'Odham Gaming Off., 2024 Tohono O'Odham Jud. LEXIS 3, at *3 (Tohono O'Odham Jud. Ct. Aug. 20, 2024); Colville Confederated Tribes v. Sargent, 2022 Colville App. LEXIS 12, at *2–4 (Colville Conf. Ct. App. March 21, 2022).

[112] *See, e.g.*, Lesperance v. Sault Ste. Marie Tribe of Chippewa Indians, 2016 Sault Ste. Marie Chippewa App. LEXIS 5, at *28 n.52 (Sault Ste. Marie Ct. App. July 18, 2016); *In re* Est. of Murray, 2016 Mont. Salish & Kootenai Tribe LEXIS 2, at *10 (Conf. Salish & Kootenai Ct. App. May 24, 2016); Ashkii v. Kayenta Family Court, 2013 Navajo Sup. LEXIS 5, at *12 (Nav. Sup. Ct. Aug. 19, 2013).

so they use the United States Department of the Interior's Court of Indian Offenses,[113] which uses the Code of Federal Regulations.[114]

A standard rule of thumb for applying law in Tribal courts should follow this jurisprudence application priority:

1. Tribal Constitution;[115]
2. Indian Civil Rights Act (ICRA);[116]
3. Tribal Ordinances;[117]
4. Tribal case law *from the Tribe*;[118]
5. Controlling federal statutes and case law;[119]

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[113] These courts are often called "CFR courts" or the "C.I.O." *See* Oliphant v. Suquamish Indian Tribe, 435 U.S. 191, 196 n.7 (1978); Holly v. United States D.O.I., 2024 U.S. Dist. LEXIS 182288, at *26–27 (D. Nev. Oct. 7, 2024); Day v. CFR Court of Indian Offenses for the Choctaw Nation, 168 F.3d 1207, 1208 (10th Cir. 1999). For a detailed discussion on the Court of Indian Offenses and the Court of Indian Appeals, see Chief Judge Gregory D. Smith & Bailee L. Plemmons, *The Court of Indian Appeals: America's Forgotten Federal Appellate Court*, 44 AM. INDIAN L. REV. 211 (2020) (reprinted in 1 PLASSEY L. REV. 42 (2020), as the showcase article for the initial edition of the University of Limerick (Ireland) School of Law's law review).

[114] Am. Check Advance & Title Loan v. Root, 2000 SW Intertribal App. LEXIS 4, at *6 (S.W. Intertribal Ct. App. for Ute Mtn. C.I.O. Ct. 2000); 25 C.F.R. § 11.503 (applying the Federal Rules of Civil Procedure in C.I.O. courts); 25 C.F.R. § 11.114 (explaining criminal jurisdiction mandates for C.I.O. courts); 25 C.F.R. § 11.116 (explaining civil jurisdiction mandates for C.I.O. courts); 25 C.F.R. §§ 11.313(b) (explaining that C.I.O. courts are bound by the Federal Rules of Evidence); 25 C.F.R. § 11.314(a) (establishing a criminal defendant's right to jury trial); Soto v. McCulley, 2002 SW Intertribal App. LEXIS 4, at *1 (Sw. Intertribal Ct. App. for Ute Mtn. C.F.R. Ct. Sept. 2002) (explaining that the judges on the case were appointed pursuant to the CFR).

[115] *E.g.*, *In re* Election Held on July 09, 2022 Pokagon Band Tribal LEXIS 1, at *2 (Pokagon Trib. Ct. July 21, 2022) ("The Tribal Constitution, as the supreme law of the Band, is always the starting point for the Court's resolution of matters pending before it.").

[116] 25 U.S.C. §1302. ICRA basically applies the protections of the United States Constitution's Bill of Rights, with a few slight exceptions, to Indian Country. *See* Hualapai Nation v. D.N., 1998 SW Intertribal App. LEXIS 12, at *3–4 (Sw. Intertribal Ct. App. 1998). For a general discussion on ICRA, see STEPHEN L. PEVAR, THE RIGHTS OF INDIANS AND TRIBES 65 (4th ed. 2012); *see also* Kekek Jason Stark, *The Utmost Rights and Interests of the Indians: Tribal Law Interpretations of the Indian Civil Rights Act*, 30 TEX. J. ON CIV. L. & CIV. RTS. 270 (2025) (cataloging Tribal interpretations of ICRA).

[117] *See* Synowski v. Confederated Tribes of Grand Ronde, 2003 Grand Ronde App. LEXIS 3, at *4–5 n.3 (Grande Ronde Ct. of App. Jan. 22, 2003). *See also* 15 GTBC § 708(a) ("To the extent reasonable, this Ordinance shall be read and interpreted in a manner that is consistent with the Tribal Constitution, but in the event of any inconsistency, the provisions of the Tribal Constitution shall control.").

[118] *See, e.g.*, Nez Perce Tribal Code § 2-9-13(b)(3) ("***(b)*** A Motion for Reconsideration is an extraordinary remedy . . . . A motion for reconsider may be presented on the following grounds and no others: . . . (3) that the decision is in direct conflict with the Code, other tribal ordinances, regulations, resolution, controlling case law, or fundamental principles of Indian law").

[119] *See, e.g.*, White v. Metoxen, 2024 Oneida App. LEXIS 6, at *1–2 (Oneida App. Comm. Oct. 7, 2024).

6. Persuasive federal, state, or other Tribal law.[120]

Practitioners and judges should remember that the United States Constitution technically does not apply to Tribal court proceedings.[121] The United States Supreme Court has held that Tribal courts can offer due process without requiring Tribal courts to do so in exactly the same way as state and federal courts.[122]

Westlaw and LexisNexis both have solid Tribal law online libraries, but some Tribes' cases only appear on one of the databases. Most Tribes have their Tribal Law & Order Codes online[123] or on the Native American Rights Fund website.[124] Research in Indian Country is remarkably similar to online research for state and federal databases. Respect for the "rule of law"[125] and attorney rules of professional responsibility mandate that attorneys present to the court controlling law *from the Tribe's own precedents* in order to show the level of competence necessary.[126] These are the same ethical requirements as for attorneys in state[127] and federal courts.[128] One should treat working in Tribal forums with the same vigor as presenting a case in a state or federal court.[129]

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[120] Ho-Chunk Nation Gaming Comm'n v. Ho-Chunk Nation Ethics Review Bd., 16 Am. Tribal Law 112, 117 (Ho-Chunk Sup. Ct. Nov. 29, 2017).

[121] United States v. Cavanaugh, 680 F. Supp. 2d 1062, 1073 (D.N.D. 2009). The Honorable Judge Ralph R. Erickson, who wrote the opinion in *Cavanaugh*, now graces the bench of the United States Court of Appeals for the Eighth Circuit. Judge Erickson is also the sitting chair of TIAG.

[122] United States v. Bryant, 579 U.S. 140, 158–59 (2016).

[123] *See, e.g.*, *Navajo Nation Code*, NAVAJO NATION OFF. OF LEG. SERVS., https://www.nnols.org/navajo-nation-code [https://perma.cc/FYD2-H4XF]; *Tribal Court*, NOTTAWASEPPI HURON BAND OF THE POTAWATOMI, https://nhbp-nsn.gov/tribal-court [https://perma.cc/9SVY-4BJJ].

[124] *See, e.g.*, *Tribal Courts*, NAT'L INDIAN LAW LIBRARY, https://www.narf.org/nill/bulletins/tribal/2025.html [https://perma.cc/AUG7-F3BT].

[125] *In re* P.M.R., 2023 Salt River Pima-Mar. App. LEXIS 2, at *8 (Salt River Pima-Maricopa Ct. App. Dec. 15, 2023) (explaining the concept of "rule of law.").

[126] *See, e.g.*, Rivers v. Cudzilo, 2014 MI Ottawa Trib. LEXIS 1, at *18 (LRBOI Ct. App. Jan. 27, 2014) (Champagne, J., dissenting); Biscup v. Kayenta Dist. Court, 2021 Navajo Sup. LEXIS 1, at *9–10 (Navajo Sup. Ct. May 28, 2021); *In re* Amendment & Adoption of Sup. Ct. Rules & Procs., 2019 Cherokee Nation Supreme LEXIS 4, at *54–55 (Cherokee Sup. Ct. Aug. 14, 2019).

[127] *See, e.g.*, TEX. DISCIPLINARY RULES OF PRO. CONDUCT PREAMBLE (Tex. Bar 2022); Burke v. Home Depot Store #6828, 2018 U.S. Dist. LEXIS 239372, at *16 n.36 (S.D. Tex. Jan. 31, 2018).

[128] MODEL CODE OF PRO. RESP. r. 1.1 (AM. BAR ASS'N 2025).

[129] *See, e.g.*,; Haynes & Boone, LLP v. NFTD, LLC, 631 S.W.3d 65, 79 (Tex. 2021) ("[z]ealous representation must occur not just in litigation, but in 'all professional functions' of an attorney"); Gallaher v. Colville Confederated Tribes, 2000 Colville App. LEXIS 1, at *2 (Col. Conf. Ct. App. March 7, 2000) (directing "attorneys appearing before it provide adequate representation for their clients."); Beck v. Little Traverse Bay Bands of Odawa Indians, 2017 MI Odawa App. LEXIS 3, at *3–4 (LTBB Ct. App. Feb. 13, 2017).

CONCLUSION

Native American Tribal courts and reservations offer plenty of work for attorneys, judges, and social activists. The federal government has funds to assist in training judges and lawyers working in Tribal courts.[130] There are several fairly inexpensive (by law book standards) Federal Indian Law texts that can be purchased, new or used, online for the inexperienced Tribal judge or lawyer.[131] While these books' concepts will need updating with computer research, these books offer a legitimate starting point. Those interested in entering the legal workforce of Indian Country will find challenging and interesting aspects of the law that offers many opportunities for the person wise enough to realize that respect comes in action, not mere words.[132] It is hard to trust a hypocrite;[133] prove yourself trustworthy, then apologies and promises will carry greater weight.[134] Hopefully, President Biden's apology to Native Americans is the start of the healing process, not the end.

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[130] *E.g.*, *Tribal Civil and Criminal Legal Assistance (TCCLA) Program*, U.S. DEP'T OF JUST. (Mar. 14, 2023); 25 U.S.C. §§3561–3666.

[131] *See, e.g.*, CONF. OF WESTERN ATTYS. GEN., AMERICAN INDIAN LAW DESKBOOK (2016 ed.) (a yearly update of controlling Indian law); WILLIAM C. CANBY, JR., AMERICAN INDIAN LAW (IN A NUTSHELL) (5th ed. 2009) (a general overview of Federal Indian Law); MATTHEW L.M. FLETCHER, PRINCIPLES OF FEDERAL INDIAN LAW (CONCISE HORNBOOKS) (2017) (a basic overview of Federal Indian Law).

[132] *Accord* Robinson v. Ardoin, 37 F.4th 208, 220 (5th Cir. 2022) ("Actions speak louder than words.").

[133] Jessica Isserow & Colin Klein, *Hypocrisy and Moral Authority*, 12 J. ETHICS & SOC. PHIL. 191, 201 (2017); *see also* Seneca Nation of Indians v. United States, 338 F.2d 55, 57 (1964) (Moore, J., dissenting): ("'Great nations, like great men, should keep their word.' (Mr. Justice Black, dissenting, The Chief Justice and Mr. Justice Douglas, joining, in F.P.C. v. Tuscarora Indian Nation, 362 U.S. 99, . . .) Now, by curious anomaly, it is the Government which is the Indian giver and the Government which breaks its word.")

[134] *See* Princeton Ins. Co. v. Vergano, 883 A.2d 44, 65 (New Castle Del. Ch. 2004).