

Working with Native American Children and Tribes in the Juvenile Justice System

Host

Lee Romney

Participants

AE: Ana España

CE: Carmen Estrella

OJ: Olin Jones

KC: Kimberly Cluff

DL: Devon Lomayesva

DwL: Dwight Lomayesva

DD: Dianne Daniels

KL: Katherine Lucero

Script

[ICWA Retro Report video clip](#)

Woman: Today the Supreme Court voted to uphold a decades-old law that governs tribal adoptions. Man: It's known as the Indian Child Welfare Act, or ICWA. (fade)

Most dependency judges and county child welfare workers in California have experience with the Indian Child Welfare Act, passed by Congress in 1978.

Woman: The story goes back to the 1950s and '60s, when Native children were routinely taken from their families by social workers and placed in white homes.

We *are* going to be talking about ICWA today. But not about dependency, the heart and primary motivation for the federal law. Instead, we're diving into juvenile justice – what some refer to as delinquency. Because here in California, an ICWA statute updated in 2018 requires probation departments to determine the

Indian status of every child – in *every* juvenile justice proceeding. It's a much lesser known obligation.

AE: The inquiry *is* required by the probation department under the statutes. But, they don't know that. They don't know that.

Ana España is Presiding Judge of the Juvenile Court in San Diego. Her county is among the exceptions. You'll be hearing about that collaborative effort, which goes well beyond compliance with ICWA to honor its spirit. Deputy probation officer Carmen Estrella:

CE: We have been trying to really build trust by ensuring that the tribe is not only at the table, but is taking lead on these cases. That helps us have a more meaningful case plan for the youth and helps us keep the youth connected to the tribe.

Identifying Indian youth as soon as they touch the juvenile justice system allows probation officers like Carmen to build that trust. And inviting the tribe to help that young person can make the difference between success or failure.

OJ: When you're involved in your cultural activities and you're figuring out who your ancestors were, the terrible price they paid for you to be here, it seems to talk deeply to your spirit. When you mix history, culture, language – to me that equates to healing.

I'm Lee Romney, the host of this Judicial Council of California podcast. That last voice you heard is Olin Jones. He's had a storied career in state government. Four decades of shaping and improving tribal-state relations. But to start us out, Olin's going to take us back to his years as a probation officer for Yuba County. A junior college professor got him an internship when he was just 18. The year was 1973. And Olin, a member of the Chickasaw Nation of Oklahoma, came to the work with deep cultural roots.

OJ: I was raised in a very traditional Native American home, speaking the language, practicing what my father's idea of being Native was, to practice as much of the old ways as he could to keep himself connected to our tribe.

Olin's internship turned into a paid job. He stayed on, then left to get his bachelor's degree – and came back in 1985. In those years, there *was* no statutory obligation to ask about the Indian status of a child – or loop in families or tribes when crafting a case plan. To Olin it was just common sense.

OJ: I began to notice that when those Native parents or grandparents or aunties came in with those minors, there was just a difficulty with communication. Those Native folks were not comfortable being in the juvenile justice system, they didn't understand a lot of the process that they're getting ready to go through. But there was more to it than that, and I started to figure out that a lot of these older folks that were raising some of these kids had been through boarding school, and that experience, it was like PTSD.

He put those families at ease.

OJ: When they saw me and I came in, they see my mug, and see my face, and I start to talk about, 'Hey, are you Native? What tribe are you?' And you could just see the tension come down.

Olin promised to walk with them through the process.

OJ: I'll be with you. But I need to know, how did this young man or young woman get into this circumstance? What can we do to help 'em?

And if they were headed for wardship or lengthy juvenile hall confinement,

OJ: I really worked with these folks to make sure that what I was putting in the recommendations made sense for that young person, and I tried to make it at that time as culturally appropriate as possible.

But there was a problem. Tribes were fighting for their very existence. Pouring their energy into reviving language, traditional crafts, and sacred ceremonial practices that U.S. policies, including the government-run boarding schools Olin mentioned, had nearly stamped out. Culturally appropriate services that were court approved?

OJ: pretty much nonexistent. I just hated to see those young people go into a system that mimicked boarding school and saw them fail. And of course, I knew why. I knew what it was, it was gonna to be a train wreck. Many of them went from juvenile hall, they were on probation, straight into what used to be called the California Youth Authority. I just saw the failure of the system for these Native kids, and it was heartbreaking. But I never forgot that.

Olin moved on. First, he worked for the Governor's Office of Criminal Justice Planning. Then, in the year 2000, he became the first director of the Attorney General's Office of Native American Affairs. He served under four attorneys general – and had a front row seat for just about every major policy and legal issue affecting Indian country. As tribes got more resourced and developed tribal courts, he began offering training to probation departments. He starts with a primer on tribal sovereignty,

OJ: I'm talking about that unique political identification...because you contact their tribe, there could be a program, or a counseling option, or it could be we could transfer this to the tribal court through an MOU.

His classes drill down on core cultural values.

OJ: Elders, our land...our youth. That's why there is an Indian Child Welfare Act, to protect the integrity of our youth, because the youth are our future.

Olin explains that there are upwards of a million people living in California who identify as Native American. And many, including his own parents, were uprooted from out-of-state reservations by the Indian Relocation Act of 1956 – under false pretenses.

OJ: They don't understand many times that you know there was a termination period where tribes were given a one way ticket to the West Coast.

And he stresses the importance of understanding the wildly varied histories of California tribes.

OJ: ... when I start talking about the genocide that occurred during the Gold Rush, and I say that there's multi-generational PTSD, these issues have never been resolved. Then you start to see why the delinquency is disproportionately weighted to this very narrow group of people.

But the main reason to do the work, he tells them, is the payoff – for everyone – that comes with collaborating with tribes to serve that youth.

OJ: There's a much better chance that they're not gonna recidivate or worse, be an adult and go to prison.

We'll get into details on the law in a bit. For now, you should know that there aren't really repercussions for NOT following the duty of inquiry codified in state statute. And for a long time, Olin's expertise was untapped.

OJ: I went for years and years offering to do training for probation departments, and it was always, no that's ok, you know, we'll, it'll be fine.

Then, something shifted.

OJ: They started getting all of these Native American kids on their caseloads and all of a sudden, the people were at my door saying, you know that training you talked about (haha), we want to know what's going on here. What are these people all about?

(pause) ..

Kimberly Cluff, legal director of the California Tribal Families Coalition, takes it from here.

KC: We've had a tremendous change in California from the rethinking of child incarceration altogether, and that is essentially the governor signing orders that have emptied the system.

The legislation that Gavin Newsom signed in 2020 dismantled the state Division of Juvenile Justice – what was once called the California Youth Authority – and passed the responsibility for those kids back to the counties. There are still secure facilities for youth who've committed serious crimes and pose a risk to public safety. But those lockups are closer to home, and they are directed to emphasize rehabilitation. In 2024 they held just shy of 600 youth – down from a high of ten thousand confined by the state in the mid-1990s. The whole system realignment is based on a new philosophy: accountability and healing over punishment, and treatment in community whenever possible.

KC: Now I do want to point out that we have not seen a parallel increase in criminal activity. (laughs) That's just really important, because people think, Oh, we emptied the baby prisons and now we have a bunch of baby criminals running around. That is not the case.

The law also created the state Office of Youth and Community Restoration – OYCR – to implement the vision by promoting “trauma responsive, culturally informed, gender honoring, and developmentally appropriate services.” OYCR partnered with Kimberly Cluff’s organization to survey probation officers about Indian youth.

KC: We got about 55 responses back from around the state. Probation officers said, one, we want to work with tribes. Two, we don't know how to work with tribes. And three, tell us how to work with tribes, and we will do it.

Helping them accomplish that goal, Kimberly says,

KC: is eminently doable.

Ok, time for some quick legal history. When ICWA became federal law in 1978 the goal was squarely on child dependency proceedings – those removals and adoptions that tore Native kids away from their families and communities. Juvenile justice wasn't on the radar. But in California, that thinking evolved. Through rules of court, a state Supreme Court decision that put parameters around the application of ICWA to juvenile justice petitions. And legislative changes to the state welfare and institutions code that enhance and strengthen ICWA.

KC: There was an effort to try and reconcile the fact that the landscape of dependency and delinquency were kind of merging in different ways. Now what we know is that oftentimes that's the same kid.

So, what does the current statute say? Courts *and probation* have “an affirmative and continuing duty to inquire” about the child’s Indian status, starting at first contact. But what if the answer is yes, this *is* an Indian child. When does the meat of ICWA kick in for juvenile justice cases? Noticing the tribe? Allowing them to participate in court proceedings and case planning? And engaging in active efforts to keep that youth in community, with culturally appropriate support? The answer is, not often. Those actions are legally required only if the child is in foster care or at risk of foster care, *AND* one of these three factors is in play: The juvenile justice petition is for status offenses – things that wouldn't be a crime if the youth were an adult; The court has set a hearing to terminate parental rights; or the court has placed the youth in foster care entirely because of harmful conditions like abuse or neglect in the home.

KC: What really does the duty of inquiry mean when it doesn't get followed with a duty to do a bunch of other things? Is it of any utility to just ask and then close your file and walk away? My answer, in a kind of skeptical way, would be like, yeah, that's like, really dumb, because it doesn't result in anything. However, combine that with what the survey told us. It tells me that yeah, if they inquire and they see value in a yes answer, yes, I am Native, then they are going to take additional steps.

Steps like reaching out to the tribe, inviting them to participate in all hearings, honoring what they want for that youth and what they can offer. And, putting a plan in place that keeps that youth connected to their tribes – politically, culturally and socially.

This is important: California's [Foster Youth Bill of Rights](#) requires *all of that* for Indian youth. Under the bill, the cultural and spiritual or religious beliefs of all youth must be honored. But in 2019, expansive protections were added specifically for tribal youth. The bill of rights applies to all youth who are in foster care, on probation and in out-of-home care, or living in a licensed or certified facility or home in the state. But, even if Native youth *aren't* in those placements, best practice is clear: Probation departments, social workers and courts should follow the required steps as early as possible in the life of a case. Because if they don't, complying down the road will be virtually impossible.

The good news: because those steps aren't legally required under the federal ICWA statute, which hasn't been updated since it was enacted in 1978, they're less cumbersome.

KC: On the dependency side, the process actually is kind of laborious. It requires this mailing of documents to this list in the Federal Register, and it can be laborious. But if we're doing it on the probation side, we could pick up the phone, we could send an email. We could take the lessons learned under the dependency construct of ICWA, and we could do better over on the delinquency construct of ICWA.

There are promising examples of this happening in pockets across California – mostly between state and tribal courts. Humboldt, Inyo and El Dorado counties are among them. But a partnership in San Diego County stands out for its teamwork – and the policies and procedures now in place, not just to follow the law but to honor the role of tribes in the juvenile justice process.

KC: The work that Judge España and Judge Lomayesva have done is remarkable. They are kind of an island of, wow, we wish we were on that

island. I'm hoping that there's some really good data that gets produced, and we can take the lessons and see them catapulted into other places.

Next up, the island of wow, where we'll hear from both of those judges. First, Ana España:

AE: I'm currently the presiding judge of the Juvenile Division of the San Diego Superior Court. I was appointed to the bench in 2008 and before that I worked in the child welfare system as an attorney representing kids. I also did a lot of work on the juvenile justice side.

Way back in the early 90s, she was schooled on the history and needs of local tribes by some of the county's first Native social workers.

AE: We did together then a lot of training on ICWA with attorneys that worked in the juvenile court at the time.

DL: My name's Devon Lomayesva. I am from the Santa Ysabel reservation here in San Diego County

Judge Lomayesva is now Judge España's colleague on the Superior Court bench. But before her appointment,

DL: I was the chief judge for the Intertribal Court for about eight and a half years.

The Intertribal Court of Southern California serves about a dozen tribes. Like all tribal courts, it hears a lot of child welfare cases. Judge Lomayesva came into that role with a couple of decades of experience practicing Indian Law. She regularly appeared on behalf of tribes in state court on ICWA matters.

DL: So that's definitely one of my passions.

The two women met at an annual judge's dinner on the San Manuel Reservation. Their passions aligned. Then, in January of 2020, when Judge España was tapped to lead the juvenile justice division, she picked up the phone.

AE: I had a little short laundry list of things; you know this is what I really want to accomplish. One was to establish a stronger relationship with our local tribal leadership. It was at that time that I reached out to Judge Lomayesva, and we got together for lunch, kind of met halfway.

DL: ...just really started talking about, what can we do to collaborate? There really wasn't something that was bringing together tribal leadership and the judges.

AE: We set up a meeting to involve other justice partners including child welfare and probation representatives. It was still all during COVID, and I remember sitting in my backyard and doing this meeting and one of the questions Judge Lomayesva asked is, how many tribal youth do we have on the juvenile justice side?

As chief judge of the Intertribal Court, Judge Lomayesva had been puzzling over this question for a few years. Because she and her husband, Dwight Lomayesva, were working to piece together a branch of the court specifically for youth. You'll meet Dwight a bit later.

DL: We started noticing that a lot of juveniles were coming in under peace and security codes for minor vandalism, drinking in public, things like that. And there wasn't really much that we had in the way of the tribal laws to offer them other services. We'd give them a fine that they probably don't pay, their parents may or may not pay, or their caretakers. Then we hear that they're just in the system now. So how do we stop that?

They did a lot of research while crafting their vision for the youth court.

DL: We really wanted to know what the numbers were.

But the data just didn't exist. And it was key to understanding how many youth local tribes were losing to the juvenile justice pipeline, in most cases with no notice. The probation department's answer didn't line up with what either judge was seeing anecdotally.

DL: We knew that number couldn't be right. So, let's fix it.

To be clear, this was not a problem unique to San Diego County Probation. It runs deep in every corner of law enforcement because tribal identity is not the same thing as ethnicity or race. It's that sovereign status.

AE: How they determined who was a tribal youth was just if something was read in a police report or written in a police report, or if the parent or the child said something, you know, I live on a reservation, or I'm a member of a certain tribe.

DL: That information isn't always volunteered to governmental agencies. You know, in my family as well... you don't tell people who you are, and that carries down.

Both judges credit probation officials at the table for being extremely receptive. They understood the implications.

DL: By the time you get to a case in court, a lot of damage has been done, and a lot of prevention opportunities have been lost because the correct inquiry wasn't provided.

AE: So, probation went back and really developed their processes to follow what the law is, and we talked a lot about section 224.2 of the Welfare and Institutions Code, which requires this initial inquiry.

Collective brainstorming led to an approach full of safeguards. When youth first come into juvenile custody, they're asked if they or their parents are members of a tribe or eligible to be members, whether they live on a reservation and so on. Most kids in the system aren't incarcerated, though. So, for them, probation does that

initial inquiry at its first meeting with the youth and family. Public defenders are also responsible for doing it. When they appear in court,

AE: they'll confirm the information, or they may tell us, you know the mother thinks there might be a tribal member and so then we'll follow up more.

At the disposition hearing – or what we call sentencing in adult court – probation is required to do it again.

AE: And they'll provide that information in the social study report.

Then there's the court's obligation at the initial hearing or the detention hearing

AE: I actually have one of these on our bench

That sound is Judge España waving a laminated cheat sheet

AE: just to help our judges remember, these are the kinds of questions that you ask. We did all this in collaboration with a partnership and again it starts with Judge Lomayesva's question about how many justice involved youth there are!

It didn't take long for the numbers to double.

DL: So, we know it worked. And it wasn't being accusatory or pointing fingers, it was like, how do we move forward and get this done? And I think if we all come in with that mindset, it's gonna make our caseloads better, and it's gonna protect Indian families which is the point of the ICWA.

This is important. Remember that the statutory obligation under ICWA to go beyond inquiry in juvenile justice cases is limited. Well, in April of 2022, Judge España [signed an order](#) emphasizing the importance of tribal and cultural ties when the letter of ICWA does *not* apply. It urges judges to welcome tribes to participate as a resource in dependency *and* juvenile justice matters – whether or not they are federally recognized. That includes addressing the court, examining documents,

receiving notice, and guiding judges when it comes to culturally appropriate placement and services.

AE: We ended up making that a local rule of court as well.

Thanks to that early identification, she says

AE: the judge is more fully informed, which is important. But also, if there is in fact a disposition hearing, we can order that our youth be connected to tribal services that are available in their community. And probation can make those connections as well.

To be clear: Only federally recognized tribes are protected under the state and federal ICWA statutes, which recognize tribal sovereignty and the political relationships between tribes and their members. So, when it comes to non-federally recognized tribes, judges have discretion. But we know that cultural connection and belonging are key to the success of all children. And best practice is to give all tribes that wish to contribute to the process an opportunity to do that. Judge Lomayesva stresses that all tribes can offer invaluable support.

DL: Resources can include knowing the family or where the family is. The tribe can work with the family to say, you know what you need to get to court, you need to get this paperwork. And they are able to have a relationship that I think a lot of times the courts aren't able to develop. And especially in delinquency where placement is very different than it is in dependency. You're talking, are you going to treatment, are you going actually to placement where you're gonna be locked up? Are you going to be able to go back home with mom under certain conditions?

Tribes can help with all of this.

DL: It's all about what is best for the child. So really why not? Why would you turn away resources that are staring you right in the face?

(pause)

CE: My name is Carmen Estrella. I'm a Deputy Probation Officer with San Diego County probation. My assignment is with Juvenile Field Services, and I've been in this position for about 12 years.

Carmen was part of the team in 2021 that crafted all those new policies you just heard about, full of safeguards to make sure that inquiry happens. Her office modified its case management system to make sure they were documenting results. And they added an ICWA section to their court reports. At that first meeting with a young person,

CE: We obtain information about the family, where they live, about their Indian heritage. They are able to provide us with contact for the family members, their tribes if they know.

Carmen works out of Vista, close to a large cluster of reservations that make up some of San Diego County's 18 federally recognized tribes. But the youth on her caseload could be from anywhere. For contact information, Carmen and her colleagues turn to the Bureau of Indian Affairs registry. And to their own newly-created spreadsheet.

CE: When we created this process, we took initiative and contacted all of our local tribes, to make sure that the contact information that appears on the registry was correct. Our officers have access to that.

Then, after probation officers received training on history and culture from local tribal leaders, Carmen got to work on that delicate task of trust building.

CE: In the past you know there has not been any preexisting relationships. We know that our tribal families have endured historical trauma, and Indian children have seen higher number of removals than other populations, and so distrust is to be expected.

So far, Carmen has worked most closely with three local tribes. With contact established and Native status documented, her office is prepared to get on it when

the letter of the law *must* be followed. But Carmen and her colleagues work to put tribal input at the forefront in *all* cases, including those involving tribes that aren't federally recognized.

CE: We want to honor their cultural and spiritual beliefs. That helps us have a more meaningful case plan for the youth.

When a kid is in custody, Carmen loops in the tribe to plan for potential *future* services. And, she's been thrilled with what tribes have been able to offer when it comes to culturally appropriate residential treatment.

CE: I've worked with several youth that have required out of home placement, possibly due to their mental health, substance abuse, and so they have access to programs throughout the state and even outside of the state led and run by tribal members or people that have knowledge of their history of trauma. The kids tell me that they do basket weaving and they take nature walks. And they still stay connected to their tribe, their families, because the goal is always to get them back home.

Carmen has also collaborated with one tribe that has its own court. They wound up opening their own case and sending the youth to the treatment program they selected.

CE: From what I've heard he's doing great.

Carmen's suggestion for other probation departments?

CE: Just be open, to learn, and to see what best works for the different families that we work with. I am very passionate about this and I'm happy that we are doing not only what we need to do but what is right.

Next up, a visit to that Youth Court run by the Intertribal Court of Southern California – the project that spurred that question about justice involved youth, and helped push this whole policy shift into being. The court is up and running now. The San Diego County District Attorney has started referring cases for diversion.

The Probation Department has an MOU in place with the Youth Court to do the same. It's a beautiful example of tribal justice – less adversarial and individualized than U.S. constructs of law.

DwL: The ideas of, OK, everyone has a right to an attorney. In Indian Country you have a right to join the community, and the community is where you want to be at.

That's Dwight Lomayesva. When he worked at UCLA, he developed a program that steered Native high school students into college level Indian law courses.

DwL: I didn't think they would even pass

Rigorous mentoring helped

DwL: We worked with them and bam

Dwight later replicated that effort at UCSD and San Diego State University. As he and Judge Lomayesva were conceptualizing the youth court, the lightbulb went off. His idea?

DwL: To bring in kids, right, as a jury. Well, let's try this peer thing because if you involve the peers, you're actually trying to tell that one court participant, look, your peers are saying this. Second if you involve the peers, you involve their parents because parents always want to know what the kids do, especially in Indian Country.

It took a while, but the concept took shape

DwL: Let's train the kids about tribal law, have 'em sit on a jury. Let's have a court participant right here for diversion to bring back into the community and wellness. Those were kind of like the founding blocks of what we were doing.

With those in place, Dwight hired Dianne Daniels as the Youth Court coordinator. She monitors each participant's wellness plan.

DD: Making sure they're getting to their appointments, seeing what kind of community service they might be interested in, if they're already interested in cultural activities we can just have them continue with those but get them more signed off in a formal way and then if there's any life skills mom and dad or any of the guardians want to see them at, we can just fix our plan to, you know, see growth throughout that short time that we're with them.

Life skills could involve a drunk driving program, for example, or something as simple as learning how to write a letter or show up on time. The hub of the wheel

DwL: is that cultural component in which they build identity and if you build identity you build self-esteem. After self-esteem you build empowerment.

Ambi: So first we're gonna read the mock trial scenario and then we're gonna go into our scripts. Jacob is a senior at Oak Tree High School. He recently moved off the reservation (dip under track)

When Dianne came on board, she got to work running through scenarios with her prospective jurors, known as peer decision makers. Mock trials like this one, which I happened to catch on a recent visit.

Bring up: Before tryouts started, Jacob's shoes were not in his basketball bag, and he found them in the trash can. (dip under)

This was more of a demo for Native high school students, to give them a feel for the court. In this scenario, Jacob was bullied by another team's captain, and he lashed out, started a fight. The captain was suspended for three days,

and Jacob has been diverted to tribal youth court.

Judge Pro Tem Angela Medrano presides over the actual Youth Court. Along with the Lomayesvas, she played a key role in shaping it. She plays herself.

This hearing is a restorative one, aimed at understanding the incident, restoring relationships and guiding Jacob forward... (dip)

Jacob tells his side of the story. Then his grandma speaks, and two cousins, an uncle, his school support person, his basketball coach, his team captain. There's *a lot of input* before the peer decision makers huddle up.

We're looking for a consensus so you must all agree with the same wellness plan...

The students were in a rush. (*you have ten minutes*) They had to catch a bus back to their schools. But they deliberated and came up with a mix of life skills hours, community service, cultural activities, some anger management and general counseling thrown in too. (fade)

In real life, as the court started working with actual participants it quickly became clear that a piece was missing.

DD: There's a lot more education component that we didn't initially see as being part of our plan but that's huge, because a lot of them are struggling in school and that's why maybe they're having trouble outside of school.

An education wellness advocate monitors participants' grades, communicates with their schools, and visits with each youth in person about three times a week. The court is also bringing in outside tutors – college students who double as role models. The whole thing is holistic.

DD: We get the parents involved. We have some of the siblings attending some of the courses that we're sending our participants to, so our plans are very well-rounded, individualized, we try to, you know, touch as much as we can in their lives when we have them and if we need to keep them in a little longer than maybe we initially planned we're seeing that now too.

There's a lesson here. Tribal programs are more nimble than state and county bureaucracies. And they aim to heal not just the individual, but the family and the community. Once the District Attorney referrals started trickling in, Dianne and her team flexed again to accommodate an urban youth with Cherokee heritage – who was completely disconnected from culture. Not anymore.

DD: That's been really cool just kind of getting them some kind of Native connection whether it's through the college pow wows or, you know, the Native centers around that they can go and participate in. They made moccasins, they were painting gourds, the fact that mom asked for the schedule beyond the end of his program so they can go she said a couple times a week and that's also one of the cases where she was sending a couple of her other kids there. It did seem to make a difference as far as him opening up at those sessions. We heard you know back from the directors there and our girls who would actually go and supervise him while he was there.

Agencies like probation tend to contract with established providers for diversion services. Dwayne and Dianne say they're working on how they might fit into that set-up. Meanwhile, the Youth Court is getting inquiries about how they can help,

DD: to be, like, co-case managers where we could just infuse some Native services or hook them up with some Native resources.

Judges España and Lomayesva say they're committed to the project and are in support of efforts to divert youth as early as possible in the process, before their cases even land in court. Meanwhile, Judge Pro Tem Angela Medrano, Dianne, the peer decision makers, wellness advocates – and Dwight – are flexing to meet the moment.

DwL: We've created so many contacts, when we have the universities working with us, when we have American Indian Health, three different health clinics down here working with us, when we have juvenile courts working with us. And then working with the tribes on that. There is so much going on within this project that allows us to be successful.

Pause

There's something I want to stress. Tribes don't have to have a court or lots of tangible resources in order to make a significant contribution to a case. But persuading juvenile judges and probation departments in every California county to get on board – and exceed their legal obligations – will be challenging. Kimberly Cluff, of the California Tribal Families Coalition:

KC: We're going to have to achieve that through policy and practice until we can change the statute. This is deeply entrenched. This is hard. However, there is such a pivotal moment in California right now because of the deconstructing of the juvenile delinquency system. If there's a time to do the work, it is now. There is no question. Now is the time to do this work.

Katherine Lucero agrees. She's a former longtime judge and the inaugural director of the Office of Youth and Community Restoration (OYCR) – that state agency that brought in Kimberly's organization to survey probation officers. One of the first things she did when she started the job in early 2022 was visit tribes and listen.

KL: I really heard over and over again, we need to know where our kids are. That the tribes once the youth are arrested don't know what has happened to the youth.

Director Lucero's mission is to promote culturally appropriate healing for youth offenders in their communities, near their families, faith leaders, coaches – and elders. After her listening tour, she posted an explainer on the OYCR website about the legal ICWA obligations in juvenile justice matters – and all the reasons to go beyond. Because tribal involvement works. Including, she stresses, for youth who have committed very serious crimes. In one case she heard about – in a county other than San Diego – the tribe

KL: was key to having the youth step from an SYTF – a secure youth treatment facility – home on WRAP services, and part of their care team involved the tribe and the tribal elders. The community is the cure.

When youth in these most restrictive lockups are nearing release, she says, it's crucial that tribes are looped in, so they can be present at significant hearings and take part in what's known as the personalized rehabilitation plan

KL: That should be a fully participatory event for our tribal communities.

But probation departments, she says, can't be expected to change policy on their own. That falls to judges.

KL: Juvenile court judges have a very special obligation that is laid out in our judicial standards of administration, and that is to be leaders and to make sure youth are getting what they need. And so, I would say, be brave like Judge España.

That order Judge España signed, which became a local rule of court, well, it's now a state rule of court. It creates a presumption that a tribe that wants to be involved should be involved, whether or not they are federally recognized – or whether ICWA itself formally applies. The Foster Care Bill of Rights guarantees those protections as well. The bravery that judges must demonstrate, Director Lucero says, is vigilance – to make sure they and probation departments are protecting those rights. After all, it's the only path forward that works for everyone.

KL: Let's again reflect on the rights of the Indian child to be with their family and their community. So, they can heal and emerge from that carceral setting safe and welcomed and supported. That's what we want. We all want our communities to be safe and this is how we get there.

For tribes, the stakes couldn't get any higher. Olin Jones:

OJ: If we don't do these things, we are asking to be erased.

That's it for today. A big thank you to everyone who participated, and to Ann Gilmour and Vida Castaneda of the Judicial Council, who helped me understand this complex landscape. Also, to Yurok Tribal Elder Laura Woods, for her help

with research on this podcast. And Gabe Grabin, for engineering and musical scoring. I'm Lee Romney

RESOURCES

Note: The opening audio clip about ICWA comes from this [educational documentary](#) created by the nonprofit RetroReport.

Legal Obligations and Best Practices for Courts and Probation

- Judicial Council of California: [Probation Departments Requirements](#)
- State Rule of Court ([see subsection g on discretionary tribal participation](#))
- Office of Youth and Community Restoration. [ICWA: How to do it Right and Why it Matters](#)
- Judicial Council of California ICWA Information Sheet: [Discretionary Tribal Participation in Juvenile Cases](#)
- San Diego County Superior Court Judge Ana España's [April 2022 order](#)
- San Diego County local rule of court ([see 6.1.12](#))
- San Diego County Probation Department ICWA [policies](#)
- Judicial Council of California: ICWA [Information Sheet](#): Delinquency – Child's Indian Status, Right to Political and Cultural Connections, ICWA Requirements
- [Foster Youth Bill of Rights](#)

Other Resources

- Learn more [here](#) about the Youth Court run by the Intertribal Court of Southern California
- For California data on disproportionate law enforcement interaction with Native Americans, see the 2025 Racial and Identity Profiling Advisory Board report [executive summary](#)
- Access the Indian Child Inquiry Attachment form [here](#)