

Working Together
Exploring State and Tribal Court Jurisdiction
In Wisconsin
Under Public Law 83-280
Judge David Raasch
President of the Wisconsin Tribal Judges' Association

In October of 2003 the Wisconsin Tribal Judges' Association (WTJA) embarked on a training project to help both tribal and state judges to better understand the jurisdictional issues created by Public Law 83-280 in Wisconsin. Public Law 83-280 is a federal statute enacted by Congress in 1953. It enabled states to assume criminal, as well as civil, jurisdiction in matters involving Indians as litigants on reservation land. Previous to the enactment of Public Law 83-280, these matters were dealt with in either tribal and/or federal court. Essentially, Public Law 280 was an attempt by the federal government to reduce its role in Indian affairs. This project is the result of the cooperative efforts between the Wisconsin Supreme Court and the WTJA to improve the judicial services provided to the people we serve.



Stockbridge-Munsee Tribal
Judge Kimberly Vele

Once we made the decision to provide these seminars, the difficulties of presenting such a program arose. Much of the credit should go to the Wisconsin Supreme Court, the Director of State Courts, the Office of Judicial Education, the members of the WTJA and the State Bar Association. Their cooperation and support made this project possible. Needless to say, this

idea would never have come to fruition without the expert coordination provided by James Botsford, Director of the Indian Law Office of Wisconsin Judicare. With the help of Professor Carol Tebben from UW-Parkside, and others, the curriculum was designed and submitted for state judicial credits, as well as CLE credits for attorneys. The Wisconsin Supreme Court's Office of Judicial Education approved two continuing education credits for state judges who attended each one day seminar. In addition, the Wisconsin Bar Association has approved 7.5 CLE's for attorneys who attend. With the curriculum approved, the search for presenters began with the idea that we may have to consider national experts. This would have been difficult with the limited resources the WTJA has available, and that these seminars were being provided at no charge to the attendees. We then realized that we have those 'national experts' working in the state/tribal courts, and related areas, right here in Wisconsin. The presenters identified later in this article represented those closely involved in the issues related to state and tribal jurisdiction. Each of them volunteered their time to develop very informative materials and presentations. A popular addition to the binders is the accompanying CD. Judge Raasch took all of the presenter's materials, designed a cover and burned them onto CDs. As some of the cases mentioned can be lengthy, they were only outlined in the binders. However, the cases, in their entirety, were burned onto CDs and included with the binders.



Judge Edward Brunner from Barron County

On January 29, 2004, the first of a three part series of seminars was held at the new Ho-Chunk Tribal Court facilities in Black River Falls, WI. This new facility, with its beautiful Traditional Court room, provided an excellent setting for this new seminar venture. Although this is a new project for the WTJA, it is a continuation of the concepts that arose from the state wide “*On Common Ground*” conference of state/tribal/federal judges held at Oneida in March of 1999. That conference identified the needs for joint seminars on a number of topics. One of those topics was the need for more joint state/tribal training.

This first series was designed to better understand some of the complex jurisdictional issues that confront both judiciaries. Although January 29th was one of the coldest days of the year (-14), the seminar was well attended with over 30 people present. In April this same seminar was presented at Pine Hills Supper Club, and hosted by the Stockbridge-Munsee Band of Mohicans Tribal Court with over 40 attendees.



State Judges take a break

On July 9, 2004, the seminar was repeated in Lac Du Flambeau, WI and hosted by the Lac Du Flambeau Tribal

Court. With 20 pre-registrations, we prepared 30 sets of materials, however 37 attendees showed up. Embarrassingly, we ran out of binders. Through the cooperation of everyone, we were able to accommodate most of those present. To date, the numbers of people who have attended these seminars exceed 130. This number represents state judges, tribal judges, attorneys, tribal court advocates, court clerks, district court administrators, GALs, court commissioners, district attorneys, assistants to the attorney general, as well as tribal government officials and other interested parties.

It was the intent of the WTJA to hold these seminars in different parts of the state to make them more convenient to attend.



Attentive listeners

Although all of the topics were interesting and informative, the topic that generated the most interest and discussion revolved around ‘*The Teague Protocol*’. We were fortunate enough to have presenters who were involved in the drafting of the ‘protocol’, as well as those who were knowledgeable of the case itself. These discussions identified the needs for open communications between state and tribal courts. Communication was the greatest benefit of these sessions.



Bad River Tribal Attorney
Kevin Osterbauer

Overall, this project has been very successful in its beginning stages. It is the hope of the WTJA to make this training project part of the permanent legal training landscape in Wisconsin. Some of the evaluation comments on these seminars include: *“very good!!,” “the materials are better than expected,” “one of the best outline packets I have seen,” “exceeded expectations,” “well done,” “every judge ought to attend a conference like this” “and very informative and enjoyable.”*

The training topics have since expanded to include the Indian Child Welfare Act. This training is designed to give state judges the ‘nuts and bolts’ of handling ICWA cases.



A lighter moment

I would like to thank all of the people who attended these sessions and look forward to seeing more of you at future seminars. However, I would like to especially thank those who helped put this together:

James Botsford
Hon. Edward Brunner
Hon. Robert E. Eaton

Hon. James B. Mohr
Michael P. Murphy
Kevin Osterbauer
Andrew J. Pyatskowit
Hon. Ernest St. Germaine
Paul Stenzel
Prof. Carol Tebben
Hon. Kim Vele
James E. Zorn
The Wisconsin Supreme Court
The Director of State Courts
The Office of Judicial Education
Wisconsin Judicare
The Tribal Courts and their staff that so graciously, and generously, provided the facilities and the lunches.

The WTJA is committed to building positive and respectful working relationships with state courts, as well as continuing to learn how to better provide judicial services to the people of Wisconsin. With the continued support, and sometimes encouragement, we endeavor to keep the lines of communications open.