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Wednesday, December 8, 2010

Tribe Seeks Help With Crime

By Pat Broderick

Since President Obama signed the Tribal Law & Order Act of 2010 in July - a sweeping measure designed to help American Indian tribes deal with crime - it has created more questions than answers on how to fund law enforcement on tribal lands.

The Los Coyotes Band of Cahuilla and Cupeno Indians, whose reservation is in San Diego County, is seeking answers. It has filed a lawsuit against the Department of the Interior and Bureau of Indian Affairs for denial of public-safety funds. The outcome could impact tribes throughout California and elsewhere in the country. *Los Coyotes Band v. Salazar*, 10 CV 1448 WQH, S.D. Cal., filed July 13, 2010)



At the core of the lawsuit is Public Law 280, passed by Congress in 1953. It transferred law enforcement jurisdiction from the federal government to certain states, including California, Wisconsin, Minnesota, Nebraska, Oregon, and, in 1958, Alaska. Other states were given the choice to opt in to the law.

"They never asked the tribes," said Dorothy Alther, senior staff attorney for the California Indian Legal Services and Los Coyotes' representative.

The lawsuit alleges that the federal government consistently denied the California tribe's request for public-safety money because of its status under P.L. 280.

'They have not received adequate policing from the federal government, and they have not been getting resources for police and courts.'

Carole Goldberg
UCLA law professor

"We're saying no, they still have responsibility to the tribes in California for law enforcement, and tribes should be eligible like any others in the country, to receive law enforcement funding," Alther said.

The suit contends that the federal government's denial of a contract with the tribe, under the Indian Self-Determination and Education Assistance Act, is in violation of the act itself, as well as the Fifth Amendment, because it denies the tribe law enforcement services while tribes in states not bound by Public Law 280 are accommodated. That, according to the suit, constitutes a breach of fiduciary duty to the tribe to "support, fund and assist tribal law enforcement as required under the Indian Law Enforcement Reform Act."

Officials with the Department of the Interior declined to comment on the suit.

A settlement conference is scheduled Thursday before federal Magistrate Judge Nita Stormes.

The tribe has a valid argument, according to Ann Tweedy, visiting assistant professor of law at Michigan State University College of Law. She taught federal American Indian law as a teaching fellow at California Western School of Law.

Tweedy said that "lawlessness is epidemic on Indian reservations."

"State jurisdiction is rarely adequate to deal with on-reservation crime," she said. "It is not reasonable to refuse federal funding for tribal justice systems in Public Law 280 states and yet provide it to tribes in states not covered by Public Law 280, because both types of tribes retain concurrent jurisdiction over their reservations."

Antitrust & Trade Reg.

Civil Litigators Must Share Evidence

Lawyers in civil cases who get evidence from overseas may have to share it with criminal investigators thanks to a federal appellate ruling Tuesday in a massive class action.

Government

Shakeup in U.S. Attorney's Office

U.S. Attorney Melinda Haag announced Tuesday that she has reorganized the criminal division in her office by combining stand-alone units.

Judicial Profile

Laura Laesecke

Superior Court Judge
Los Angeles County (Long Beach)

Environmental

Water Rights Case May Be Kicked

After mulling over a contentious water rights case for more than three years, it appears the California Supreme Court will punt it back to the trial court.

Native Americans

Tribe Seeks Help With Crime

Since President Obama signed the Tribal Law and Order Act of 2010 in July - a sweeping measure designed to help tribes deal with crime on the reservation - it has created more questions than answers to improving law enforcement.

Immigration

High Court Takes Up Arizona Law

The U.S. Supreme Court will jump into the battle between the Obama administration and Arizona over the policing of illegal immigration today when it reviews the state's law that punishes employers for hiring illegal immigrants.

Government

BofA Settles Multi-State Fraud Charges

Bank of America will pay California \$6 million under the terms of a multi-state agreement in which the bank settled complaints that it defrauded buyers of municipal bond derivatives.

Intellectual Property

Apple Lands Former Tessera GC

Taraneh Maghame, a former acting general counsel for technology licensing company Tessera Inc., has joined Apple Inc. as a senior counsel of patent licensing and strategy.

Government

Lawyers Excluded From Red Flags Rule

The American Bar Association successfully convinced the Federal Trade Commission to exclude lawyers from the "Red Flags Rule," a control to prevent identity theft that the ABA argued would create headaches for the legal industry.

Criminal

Probation Sought for KB Home Witness

Federal prosecutors recommended three years probation for the main cooperating witness in the

She also noted that the 9th Circuit has held that tribes in P.L. 280 states have concurrent jurisdiction.

"Although the federal government frequently declines to prosecute on-reservation crime in areas where it has jurisdiction, evidence suggests that tribes whose reservations are under state criminal jurisdiction may even be worse off," Tweedy said.

According to congressional findings, less than 3,000 tribal and federal law enforcement officers patrol more than 56 million acres - less than half of the police presence in comparable rural communities nationwide. This, combined with the complex jurisdictional oversight of sovereign American Indian land, "has a significant negative impact on the ability to provide public safety to Indian communities," the findings indicate, pointing out that the situation has been exploited by criminals.

Carole Goldberg, a professor of law at UCLA and director of its joint degree program in law and American Indian studies, said California tribes get the short end of the stick.

"They have not received adequate policing from the federal government, and they have not been getting resources for police and courts," she said.

The Tribal Law & Order Act should help, Goldberg said.

"It doesn't command the bureau to fund law enforcement," she said. "But the Tribal Law & Order Act tries to create conditions to support claims for federal funding by introducing the possibility of concurrent jurisdiction and by promoting agreements between tribes and the BIA law enforcement."

Separate from its lawsuit, the Los Coyotes Band also is asking the U.S. attorney general's office to reassume jurisdiction concurrently with the state and the tribe. According to Jessica Smith, a spokeswoman for the U.S. Department of Justice, the agency is in the process of consulting with tribes across the country, including Los Coyotes, on the possibility of reassuming jurisdiction, but she declined to comment further.

"If the federal government comes back in concurrent jurisdiction, we'd have to sit down and figure out what this means for the local police out there, what it would mean for the FBI and the U.S. attorney's office," said John Madigan, who serves as the tribal liaison for the San Diego County sheriff's office, and as a judge pro tem, handling civil cases in the tribal court. "Anytime someone can get extra help in public safety, I'd be hard pressed to argue it. If they feel this is in their best interest, let's sit down and see what we can do."

He said the Sheriff's Department hasn't been able to afford to increase staff in that area to help the tribe.

The reservation is located in a remote area of San Diego County, covering 40,000 acres of land. With a population of about 120, which doubles or triples during tribal functions, Los Coyotes has one peace officer, who holds a special law enforcement commission through the Bureau of Indian Affairs.

According to the lawsuit, "Since 1934, the reservation has been plagued with murders, thefts, shootings, narcotics, trespass and other violent and nonviolent crimes" involving both tribal members and nonmembers "who see the remote reservation as a safe haven from law enforcement."

The tribe is seeking \$746,000 initially to expand its public safety facility and staff, with the goal of providing round-the-clock coverage.

Alther, who represents the tribe in the lawsuit, is optimistic that the Tribal Law & Order Act will bring about positive change, from requiring federal officials to meet and consult with the tribes to filing annual reports to Congress on funding methodologies.

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KB Home criminal stop options backdating case, a more lenient punishment than expected.

Riverside Sees Massive Gang Sweep

A barrage of local, state and federal law enforcement authorities Tuesday arrested 105 suspected gang members in Indio and surrounding desert cities as part of area's largest gang sweep.

International

Japan's New Jury System Introduces

Difference Perspective on Trial Advocacy
In an effort to increase transparency, Japan has instituted a lay judge system similar to the U.S. jury trial. By **Sidney Kanazawa** and **Sabina Helton** of McGuireWoods.

Insurance

Californians Say Goodbye to a Portion a Proposition 103

A recent state appellate decision may force consumers to rely on agencies to dispute illegal insurance rate hikes. By **Brian S. Kabateck** and **Lina B. Melidonian** of Kabateck Brown Kellner.

Admin/Regulatory

S.D. County Calls for Sempra Investigation

The county's Board of Supervisors Tuesday voted unanimously to ask state and federal regulators to investigate allegations made by the former controller of Sempra Global in Mexico.

Insurance

Putting an End to the Game of Chance in Insurance Rate Making

Why the roles of insurance litigators and regulators should remain separate. By **Sam Sorich**, Association of California Insurance Companies and **Kimberly Dellinger Dunn**, Personal Insurance Federation of California.

Law Practice

Web Headline

A federal jury late Tuesday convicted a former Republican congressional candidate of obstruction of justice in connection with letters sent to 14,000 Latino voters warning them away from the polls in the fall of 2006.

Immigration

Vision 2020: Democracy and Women's Equality

Women and men need to work together to move the nation toward meaningful equality. By **Mary-Christine (M.C.) Sungaila** of Snell & Wilmer.

It Is Time to Root Out Sex-Based Stereotypes in Immigration Law

The time has come for the U.S. Supreme Court to strike down discriminatory provisions in immigration law. By **Jennifer M. Chacón** of UC Irvine School of Law.

Entertainment & Sports

Two-Front War Declared on Web Videos

Websites like YouTube and Veoh give users around the world the ability to upload and view free content. Copyright holders are waging appeals in two appellate courts to stop that now-common practice.