

Professor Clarkson was quoted in a San Antonio Express-News article about the Kickapoo Tribal Court in Eagle Pass.

Eagle Pass' Kickapoo court starting to mature
By John MacCormack - Express-News

EAGLE PASS — Operating out of a modest prefab gambling hall that once drew bingo-playing tourists and blue-haired ladies, the Kickapoo Tribal Court, complete with metal folding chairs and stained lavender carpeting, is anything but pretentious.

Several times a month, an evolving system of Indian justice is dispensed here in English, Spanish and Kickapoo, with the judge coming from San Antonio, the prosecutor from Oklahoma and the public defender from Eagle Pass.

“We’re doing criminal cases, civil cases and probate cases, all among the tribal members. We also have a juvenile docket and a child-welfare docket,” said Bill White, 69, a former Bexar County Court judge who now serves as the Kickapoo court judge.

“If folks came down from Dallas or Houston and saw this, they’d probably be throwing up their breakfast, but it’s wonderful compared to what we had two years ago,” said White, who years ago established the first family court in Texas.

White said the tribal court is maturing rapidly, having recently held both its first contested criminal trial and its first civil case. In December, it likely will conduct its first jury trial. And sometime soon, it will move into better quarters.

Lady justice here has a particular Indian personality.

According to the written tribal codes, justice always must accommodate Kickapoo culture and tradition. When a question of interpretation or an uncertainty arises, the codes say the testimony of a tribal elder is binding.

The codes also provide for a “peace-maker” alternative in which a tribal elder can mediate a dispute. And when child welfare cases are heard, respected older Kickapoo women sit in, side-by-side with court officials, offering their insights.

“The idea of Indian justice is restorative justice, to bring back healing to the whole tribe. I try to talk to the elders to find out what used to be done,” said the prosecutor, Geri Wisner-Foley, a Muscogee Creek Indian lawyer who commutes from Shawnee, Okla.

“There is more probability of rehabilitation than sending them to jail,” she said of criminal defendants.

The result is a system that’s less punitive, less adversarial and more flexible than commonly seen in mainstream courts.

And while most criminal cases are quickly resolved, White often maintains close supervision for months, just as he did in family court in Bexar County.

Defendants with substance-abuse problems often go to the tribe's newly opened treatment center, "The New Hope Facility." If treatment is successful, their charges often are dismissed.

As the Oct. 8 morning docket call was about to begin, the judge noted four unhappy defendants, clad in orange jumpsuits issued by Maverick County Jail. A few years ago, there would have been far more.

"When I came here, we had 30 people in jail constantly. When I leave here today, all those guys will be in another program. Punishment really doesn't work," White said.

But as events soon would prove, the judge was quite capable of getting tough.

'Vote of conscience'

With fewer than 700 members, the Kickapoo are the smallest of the state's three recognized Indian tribes and the only one with a casino.

The Kickapoo long have occupied a large settlement in Mexico called "El Nacimiento."

They didn't get federal recognition until 1983 and did not own land in the United States until 1986.

Before opening the Lucky Eagle Casino in 1996, the Kickapoo lived in harmonious poverty, relying on migrant farm work and each other to survive. But the hard cash and outside influences that came with the casino opening eventually brought bitter conflict.

This culminated in a dramatic change of leadership in 2002 when, in a public "vote of conscience," more than 200 tribal members ousted leaders they accused of being dictatorial and corrupt.

A federal criminal investigation ensued, leading to multiple charges and convictions. Former tribal manager Isidro Garza, a non-Kickapoo, and former Kickapoo chairman Raul Garza both are serving prison sentences as a result.

One of the first tasks of the new leaders was to establish a credible, functional tribal justice system, including a court and police force. Before then, Maverick County largely had handled those functions.

"It appeared there was no tribal court before then. We worked on the tribal codes for about a year," said Juan Garza Jr., 46, the Kickapoo chairman for the past seven years.

"The court is important to maintain our sovereignty, to govern ourselves," he said, adding, "I would say it has credibility. I haven't heard any complaints."

Lawyer David Riojas, the public defender in Kickapoo Court, was closely involved with drafting the tribal codes and setting up the tribal court, which he said remains a work in progress.

“This is a system that is still evolving. We haven’t run into the full spectrum of problems that other legal systems have. We’re trying to make sure the end result is always beneficial to the tribe, and we may have to make some adaptations as time goes along,” he said.

His tribal clients often differ in temperament from those he represents in state court.

“I find the Kickapoo very receptive to what the court imposes. They are a noble people and respectful of authority,” he said.

Limited justice

But just as “tribal sovereignty” is a wishful misnomer, since the federal government has ultimate authority over many tribal matters, Indian justice on the 200 or so reservations that have their own courts also is limited.

Federal law limits Indian courts in the kinds of cases they exclusively can handle. It also blocks Indian courts from having jurisdiction over non-Indians, even for crimes committed on Indian land.

By federal law, the maximum sentence an Indian court can impose is a year, and certain serious felonies, like murder and rape, may also be prosecuted federally.

The result makes for legal anomalies, said Gavin Clarkson, a Choctaw who teaches Indian Law at the University of Houston. To make his point, he offered a hypothetical example.

“Say you and I got down to the Kickapoo reservation. We’re sitting at the poker tables at the casino. Someone cheats. We get into a fistfight. We bloody each other up. We assault each other. And the tribal police come,” Clarkson said.

“The tribe can prosecute me because I’m an Indian, but they can’t prosecute you because you are non-Indian. So, the only person who can protect me from you on the Kickapoo Reservation is the U.S. attorney,” he said.

As the Oct. 8 docket call unfolded in Kickapoo Court, most cases were far less dramatic, instead pertaining to inhalant abuse and public intoxication, two of the tribe’s most vexing problems.

Waiting with the accused drunks and paint-sniffers was a more prominent defendant.

Juan Gonzalez, manager of the Lucky Eagle Casino and one of the most influential tribal leaders, was charged with assaulting a Kickapoo woman in August. To some, his mere presence in court reinforced its legitimacy.

“It would show more credibility to the tribe that even the big honchos would be taken to court,” said Garza, the tribal chairman.

Eventually Gonzalez pleaded not guilty to the three charges he faces and requested a jury trial, which will come in December. But because the tribe is so small and so many members are related, seating a panel of six will be a daunting task.

“I’ve never had anyone request a jury trial. You almost can’t do a jury trial because everyone knows everyone else,” White said.

Since double jeopardy doesn’t apply, the tribal police also have referred the Gonzalez assault case to an FBI agent and a federal prosecution might result.

Nuances of Indian law

As the docket call progressed, nuances of Indian law were revealed.

About a half-dozen defendants were missing, leading to the issuance of warrants. Some, it was reported, were attending tribal religious ceremonies, which usually trump all other obligations.

“It is quite normal for folks to wander off to a ceremony and assume that court will be delayed until they get back,” said White, who usually accommodates them.

One tiny woman, Jovita Flores, was allowed to postpone her inhalant abuse case by a month so she could finish building her cattail house in Mexico.

“We’re letting her go back to Nacimiento to build her traditional house, but she still has to obey court orders. She can’t drink, she’s not supposed to do paint, and she’ll be back next month,” White said.

Another defendant, Thomas Jimenez, who faced charges ranging from assaulting a police officer to public intoxication, had his hopes of being set free dashed after spending several months at the New Hope Facility.

“He relapsed. He hasn’t finished the program,” reported Queta Diaz, director of the rehabilitation center.

A disappointed Jimenez was sent back for another four weeks.

“If there is no problem, you should get out and go back to your job on Nov. 4,” the judge said.

The last defendant to appear Oct. 8 was George Salazar, dressed in Maverick County orange and charged with inhalant abuse.

After an avuncular pep talk from the judge, and a demand for a \$300 bond payment by Friday from the prosecutor, Salazar was set free with orders to sin no more.

“I want you back wearing that gray suit you were wearing when you led the parade,” White said.

But six days later, Salazar was back, dressed again in county jail tangerine.

According to the police report, he had gotten high on inhalants and bitten a police officer while being arrested Oct. 8, the same day he had been released by White.

This time, there was no friendly pep talk.

“You were here last Thursday. We came to a deal. We shook hands,” began the judge somberly.

Since Salazar was no longer welcome at the tribe’s rehab facility, the judge sent him back to Maverick County Jail, with plans to place him in a more restrictive rehabilitation center.

Before leaving, Salazar offered his personal assessment of tribal court.

“The way I see it, tribal court is OK, but they give you a lot of time for inhalant abuse. In the county it would be only one month, time served,” he said, as two tribal police officers waited to put him in shackles.

“But it’s all right for the tribe to have its own court. We take care of our own problems here. We get counseling. We don’t have to go to town. We do it here,” he said.