



IRENE BLACK, DISTRICT COURT JUDGE,  
ANETH DISTRICT COURT, NAVAJO NATION,  
ANETH, UTAH

*Irene Black serves as District Court Judge for the Aneth Judicial District, one of ten judicial districts within the Navajo Nation.*

*Interviewed by Brett Taylor<sup>1</sup>*

**How would you describe the fundamental differences between tribal courts and non-Indian or Western courts?**

The different approach that I see is in making decisions. I see holistic approaches made by the Indian courts; it's kind of like a circle. Everything is related to you; we have relationships with everything. That's the same way we deal with court proceedings.

In the adversarial system it's individualistic. It only deals with the individual—there's no relationship. It's an assembly line process. You just come before the judge, you're not looked at as an individual, you're looked at as a number. That's the difference I believe.

The Indian approach involves everybody. We want the person to come back into the circle instead of isolating him and punishing him separately. We want to bring him in that so he can begin to heal and return to the circle in a healthier approach.

**When you say “circle” are you meaning your community?**

Community, everything. Like I explained, the holistic approach.

**Is that why you use peacemakers<sup>2</sup> in your court?**

Yes.

**Most Western people don't realize how diverse Indian tribes are from each other. How do the tribal court systems share practices and innovations that are going on in the tribal courts? Do you think that's happening?**

I think that's happening, and each separate tribe has its own way of dealing with their problems in the community. Most of the tribes that I know of have the same kind of system the Navajo have—peacemaking.<sup>3</sup> They call it something different, have different names for it—“talking circles,” or something like that.

**Maintaining tribal law—how important do you think that is to maintaining your tribal culture?**

I believe it's very important to the Navajo Nation because we recently enacted the Navajo Fundamental Law<sup>4</sup>, which is going back to the root of your culture, using narratives of the genesis period of the Navajo people and using their experiences to govern each generation. Do you understand what I mean?

**Yes. You're saying that by maintaining the tribal law, that that's helping you maintain the historic culture that your communities have had. Is that somewhat accurate?**

It's been said that it works for us because we've always used that process; we know how to do those things.

**Regarding the federal government's shifting policies on tribal courts: how important is it for the Navajo to be self-governing in that respect?**

It seems as though the Navajo have always self-governed. When the BIA [Bureau of Indian Affairs] came out with their CFR [Code of Federal Regulations]<sup>5</sup> and they wanted the Navajos to have numbers [of court cases] and they wanted them to do it in a certain way, the Navajo did generate the numbers. But they were utilizing their own laws and resolving problems. The BIA agent was not aware of that, but the numbers of cases were going in, so he was satisfied.

**So he was worried about the processing of cases and not the effect of how you were treating the people?**

Right. As long as the offender didn't reoffend or anything like that ... and during this time the judge was using Navajo customary practices to get the offender in line.

**So that leads to my next question, which is about innovation in court systems. In the Western courts, innovation is very hard to put into court systems. How common is it to use innovation in the tribal court system such as you've explained? Do you think that's something that's easier for a tribal court to adapt?**

I believe so. We've always been able to adapt and adopt even as our traditions change. Early in the narrative of the holy people, that's how the Navajo people moved up into each level ... up to the fifth, which is known as the "glittering world." We came from first world, then second world, third world, and each time there was some kind of disagreement or disharmony that took place or something that required a change of laws as they went into the next level.

**So, in a certain sense, it's actually your history and your culture to be innovative and to change.**

Yes.

**There've been some very preliminary collaborations between state courts and tribal courts. How important do you think it is that that trend continues?**

Being in the Aneth District Court I haven't seen any of that, but I have seen and heard of that trend in other districts. For example, in Crown Point, they're working with the state and are coming up with new ways to work together. We have yet to start to do that in our court and I think the last time—the only time we have met with the Monticello

Court, which is the 7<sup>th</sup> Judicial District, which is the State of Utah, was when we had our dedication for the building and since then we have not seen or talked with one another again. Probably because we haven't contacted each other to sit down and talk about it, but I think that it would take place if requested.

**So could you see yourself being the one that makes that request at some point?**

At some point, yes.

**That's going to lead me to my questions about Red Hook. You recently were at the Red Hook Community Justice Center<sup>6</sup> in Brooklyn, New York. How did you come to visit Red Hook?**

I didn't expect anything on my first visit because I was called upon to take the place of another judge who had a death in his family so he couldn't go. I left a day later than the other group that went ahead of me. So I didn't really get to know what to expect. I had no information at the time.

**So with that background of not really expecting much or not knowing what to expect, what were your impressions of the Red Hook court?**

When we got to Red Hook Community Court, they explained the purpose of the visit and I was able to, from there on, understand what the trip was for, the purpose of the trip. We immediately talked with people there and we went to the court. We were able to observe a court proceeding and other meetings they had, I think it's called the listening meeting. I was really impressed with the building; it had every resource available for the people to get their ... what do they call that, "one stop shop"?

**That's pretty much it.**

That's what I saw. People didn't have to wait days to receive the resources and the assessments and all that, and they had the resources for child care right there. The children can wait while they get assessed or to do the counseling. Everything was just there, you didn't have to wait. The time period here for a person to get assessed would take months and by that time the person may have reoffended, but in this case there's no time for them to do that [get assessed and receive services] while they're remorseful about their conduct. [In Red Hook], they immediately go to the resource that would help them.

The other thing that I saw which was good was that the judge communicated with the person who came before the court. There was a sense of respect. The communication had some compassion in it. The judge may have a stoic face, but you could see the respect received from the person and they respond to in a way ... they're humanized I guess is what I'm saying.

**You mean that the court humanizes the defendant?**

Yes, rather than just calling them defendants. They call them "Mr." You know, a title of respect...tell them, "You're a person." Things like that.

**I think you told me the last time we spoke that you liked the fact that there was respect both ways. Is that accurate?**

Yes, that's accurate.

**You mentioned about how you were surprised about how the small crimes were dealt with. What surprised you about that?**

I guess just the immediacy of receiving the assessment and everything being taken care of there ... that one day. You're immediately sent upstairs to enroll in something.

**You also mentioned that you felt the judge was not too "Westernized" and I'm taking that you meant that as a term of respect. Can you explain what you meant by that?**

In our culture, even though we're upset or disappointed with someone, we still use humor to open up the communication and I saw that in Judge Calabrese while he was communicating with some of the defendants. So there's not that atmosphere of too much formality and I think that when there's too much formality, people withhold information that they may want to share. Do you get a sense of what I'm trying to say?

**Absolutely. Something I've experienced for the years I've worked here. I also remember you being impressed with the acknowledgement of success and the way the judge would mention those successes to the people and have the whole room acknowledge that. Can you explain that any further, about the sense of accomplishment that you would see?**

The sense of accomplishment to me seems to be very important. I guess it's just being praised for your accomplishment that gives you a sense of continuing that process. I mean you're recognized for your accomplishment, whereas maybe in the past you were always told "You won't accomplish anything." I've seen people who went through there who were heavy users of drugs and they had a picture ... one woman they showed her mug shot of when she first came in and they showed it to her and told her, "This is how far you came." And when she was there she was so different from what she looked like in the picture. She was very surprised and when they applauded her and when they showed her the picture, I believe she was emotional.

**You are in the planning stages of creating the first ever community court in Indian Country. What made you agree to be part of this?**

The success that I saw there at Red Hook, and because the court here at Aneth District court is still very young. I feel that when something is in a young stage you can condition it and watch it develop. For example, if the court had been in place for the last 25 years, it would be hard to start a new project, a new way of doing things. It would be hard to start it like that and I thought that this is a new, a different concept and something almost similar to what we do down here as far as tradition goes and customary practices go in resolving problems. I thought it would be a good pilot project for the Aneth court.

**And after visiting Red Hook, did that make you even more enthusiastic about starting it?**

Yes.

**Was there anything that you saw in the Red Hook court that you thought you could use or have started to use already in your practice?**

The way the courtroom is situated. I tried to design my court that way. I wanted to put it in a circular setting where the judge sits and the people sit at one eye level, rather than the judge sitting in a higher place looking down on the people and the people looking up. I try not to wear the black robe all the time, but to wear turquoise or Navajo bracelets to show that we practice tradition.

**And is that why you have the seal of the Navajo Nation in the courtroom? To remind them of that?**

Yes. To remind them of the four directions and what sustains our livelihood. And the different colors, which represent the four directions and the concepts in each of the four directions. And the rainbow signifying sovereignty, with the arrowheads representing the chapters of the Navajo Nation.

**Okay. So the tough question is this: you're trying to implement a new style of court that is basically Western-style justice. You are trying to put a Western-style court into a very traditional culture. How is that being received and what kind of barriers, if any, do you see in trying to do this with your court?**

I think the very traditional people do not understand the Western style of adjudication. When they come to our court they understand the decorum, like when people rise when I come in, and there's that bar that separates the audience from the parties before the court, and they understand that they can't speak at any time because they are not a part of the proceedings and when they do, they may be warned. And if they continue to ask to speak they might be found in contempt of court. They're not allowed to speak. They try to express their relationship to the person, but they're not allowed to say that, so that's the hard part. I explain to them why it is that way and at the time when that happens, I proffer peacemaking where everybody involved may be able to participate in a session.

**Do you think they're warming to the ideas that you're trying to implement?**

I believe they will. This is what I will explain to them when I present the Community Justice Court at the chapter meetings.<sup>7</sup> I will be going out to the chapter houses and presenting to them. The few people that I spoke with about the project, they were very receptive of it.

**Center for Court Innovation staff has come out to Aneth twice, in October 2009 and May 2010. Has that helped at all or has that not had much effect at this point?**

They have helped; they have helped a great deal. When they came out we were finally able to go out and meet with the community resources which we hadn't done before, so it opened our door to their doors.

**And do you sense that law enforcement has been receptive to this?**

We've been having a hard time meeting with them, but when we did meet with them, they showed a lot of enthusiasm. We recently spoke with Captain Tsosie<sup>8</sup> who is the hardest person to find. We found him in the middle of nowhere and told him, "Hey,

do you want to come to New York and see the real community court in action?” And he said, “Yes, I’d love to.” He’s going to come to New York, and he’s going to come to our resource meeting to talk about jail facilities and also to talk about the community court as well.

**What are your concerns are about the community court coming to your district? You’ve talked about how the community has lost trust in the other courts that they’ve had before. Are you still worried about that or do you think they may start to regain trust?**

I think that it will shift toward regaining trust the more we use the community court project’s way of handling problems. It’s almost similar to our own culture’s problem-solving. I’ve used some of these practices here and they’ve been very successful. For example, we have one person, who’s a mother and she has seven adult children she’s in disharmony with. They were continually filing pleadings, filing petitions against one another. It just kept going and finally I got them all together and talked to them about the problem and told them that they need to go to peacemaking or they talk among themselves if they want to and resolve this using the traditional practice, which is kinship, and just reminding them of who they are and where they came from. It helped. I used Navajo words, Navajo concepts, and at the same time I let them know I was listening to them, I sympathized with their problem and wanted them to restore harmony and that I was sure that all of them felt that same way, but it was a give and take situation with all of them. They finally resolved it. I haven’t heard from them for three months now.

**Well that’s a good thing. We’ve also talked before about traditions and you’ve mentioned that some of the past things that have happened to your community, such as boarding schools, had conditioned your people to reject the culture and how that has had some effect on how people look at the justice system. Can you explain that a little bit?**

I grew up in boarding school for most of my elementary years because my mother was consistently ill and away to hospitals in Albuquerque, and my father had substance abuse issues and would always leave us with my grandparents who were elderly and didn’t have enough food, so they placed us in boarding school. Then work took my parents to Colorado. In boarding school you’re told not to speak your language. It’s kind of like the military: you have details, you march to school, you march to cafeteria, you march back to the dorm, you do your details and you go to bed at a certain hour and do certain things at a certain hour. It’s all according to time and marching. So you’re conditioned to do these things and you’re taught that your way of life is not the right way and to become Westernized where you become conditioned to time, and to doing for yourself not your family or anybody else. So the only person you think about is yourself. We were taken away from the teachings, just being in school. We stayed there nine months out of a year and I think that during the time I was in boarding school there were a lot of students that were that way and they moved away from their tradition. These are the people that I see ... a lot of the people that come before the court. Their children are the ones that are offenders. When I ask them questions during sentencing or read the pre-

sentencing report, they have no traditional teachings at all. They don't understand what I'm talking about.

For me, I was fortunate. I was sent away to a Mormon placement, which is back in the '70's. The Mormon churches allowed Native Americans to go out of the reservation to attend out-of-state schools, such as in California or Salt Lake City, where there are a lot of Mormon families. I went there for a couple of years and while I was there, most of the people wanted to know about the Navajo way of living. They would ask me questions about my culture, and I didn't know anything about my culture. When I came back, I came back angry and I started looking for what I was about and luckily I started working for a law firm and there were a lot of articles on the Navajo custom, the Navajo law, things like that. I started reading. I started going out to chapter meetings, learning about my culture. That's how I'm kind of a self-taught learner from books and asking a lot of questions. I was fortunate to do that but I don't know about the other people. I do see some of these people from this time period who went to boarding school; they don't want to have anything to do with this tradition. They'll say, "That was back then, this is now."

**Would you say you're helping those who don't know their tradition learn it through your role as the judge?**

Yes, I believe that. I see that when I refer them to peacemaking and I describe to the peacemaker, "This person committed this type of crime. This is what he did and this is what he said and this is the victim and this is her story. And based on this information I want peacemaking to teach this individual about the role and responsibility of being a young adult person: the taboos, the custom, and all the relationships that need to be given to this person." Sometimes I placed the person on probation for two years to receive that teaching and if there are recommendations for ceremonies, then I'll do it ... whatever is necessary to assist this person in getting information about his culture.

**Is there anything else you'd like to see accomplished by starting a community court in Aneth?**

We now have the structure being planned, but we don't have infrastructure, such as a building. Our building is getting too small and it's not really ours; it's just loaned to us from the chapter house. We're having land issues to find a courthouse. I think there's going to be a 30-bed [jail] facility that's going to be looked into. This is what Captain Tsosie wanted to talk to us about and I'm hoping that maybe his effort in finding land would also help our court. Maybe we can build the whole thing in one place.

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<sup>1</sup> Brett Taylor is deputy director of the Center for Court Innovation's Tribal Justice Exchange.

<sup>2</sup> Peacemakers provide traditional methods of dispute resolution in addition to or in conjunction with the judiciary. In 2003, the Navajo Nation Council instructed peacemakers to provide traditional teachings, education, and advice to judges, court participants, and the public at large. Currently 242 peacemakers serve the Navajo Nation. The Navajo Nation Peacemaking Program, <http://www.navajocourts.com/indexpeacemaking.htm> (last visited Aug. 11, 2010). See also James W. Zion, *The Dynamics of Navajo Peacemaking*, 14 J. CONTEMP. CRIM. JUST. 58 (1998), available at International Institute for Restorative Practices, [http://www.iirp.org/library/nacc/nacc\\_zio.html](http://www.iirp.org/library/nacc/nacc_zio.html).

<sup>3</sup> See *Id.*

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<sup>4</sup> Navajo Fundamental Law, or Diné bi beenahaz'aanii, consists of Traditional, Customary, Natural, and Common Law. It is applied to all Navajo Nation statutory laws and regulations, and it is used when statutes or regulations are silent on a matter. Attorneys are expected to argue and apply Navajo Fundamental Law to cases before the Navajo Nation Courts. Courts of the Navajo Nation, *Public Guide to the Courts of the Navajo Nation*, January 2010, available at <http://www.navajocourts.org/publicguide.htm> (last visited Aug. 9, 2010).

<sup>5</sup> The Code of Federal Regulations codifies the general and permanent rules published in the Federal Register by the executive departments and agencies of the Federal Government. GPO Access, Code of Federal Regulations (2009-2010), available at <http://www.gpoaccess.gov/cfr/index.html>.

<sup>6</sup> The Red Hook Community Justice Center (RHCJC) is a demonstration project designed and operated by the Center for Court Innovation in partnership with the New York State Unified Court System. As the country's first multi-jurisdictional community court, the RHCJC has been the site of important innovations in criminal justice for more than 10 years. For more information about this project, including articles, photographs, and research results, visit [www.courtinnovation.org](http://www.courtinnovation.org).

<sup>7</sup> The Navajo Nation is divided into 110 local government subdivisions known as Chapters. Each Chapter generally has a Chapter House, which serves as an important center for community meetings.

<sup>8</sup> Ivan Tsosie serves as Captain of the Navajo Tribal Police and leads the police's Shiprock, New Mexico office. The Shiprock office also serves the areas Aneth, Utah, about 55 miles away.