



Indian Country
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Troy Eid, Indian Law and Order commissioner

Troy Eid on Why Tribes Need Control Over Their Justice Systems

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Troy Eid, a former U.S. attorney for Colorado who's now a lawyer with Greenberg Traurig, was pretty surprised when he was asked by Democratic Senate Majority Leader Harry Reid in 2011 to serve on the Indian Law and Order Commission. Not because he didn't know these issues well, but because Eid is a Republican, he's not Native American, and he's never met Reid before. In fact, he had been asked to write a letter of recommendation for someone else to serve on the commission, and the next thing he knew, he was selected to join and then to chair the group.

"I think it shows that these issues are not partisan issues," Eid says. "I didn't have to sacrifice any of my values or my philosophy to serve on this. That's the really encouraging part of this work. You can come together on some issues, look at the status quo and realize it's not acceptable, then work together to make it better."

*Last November, the commission released a report, *A Roadmap for Making Native America Safer*, intended to spur federal, state and tribal action to address shortfalls in Indian safety and well-being. Eid shared his insights in a recent interview with Indian Country Today Media Network.*

Explain how the commission and report came to be.

The commission was created in 2010 by the passage of the Tribal Law and Order Act. There are nine of us who served without compensation who were appointed by the president, the majority, and the minority leadership in Congress. We had a very active and energetic group of people. The feedback we got when we submitted our report to Congress was very positive. Some there told us they expected it to be maybe 20 pages. It ended up being 324 pages. We benefitted from the low expectations of our era. [Laughs] In all seriousness, it's the most comprehensive report on this topic since the Meriam Report, and that was deliberately our goal. Not since 1928 had there been an attempt to really try to drill into this area. We also committed ourselves early on to not just kicking the can down the road. We felt very strongly that just framing the problem was not going to be very useful. That's why we have 40 substantive recommendations. We did not flinch from the hard issues.

Out of those 40 recommendations, what would you say the priorities should be?

While it's tempting to say all of the report is important, the juvenile justice part is new. Native American juvenile justice issues have not been the focus of a comprehensive federal report since 1938. The worst features of Indian country jurisprudence and criminal justice are magnified in the juvenile context. The current system is indefensible, so we really drilled into it in both Indian country and Public Law 280 states. It just really can't be sustained the way that it is. It's really fertile ground for legislation.

Why is the juvenile justice for Native children worse than it is for other children?

Juveniles who happen to be tribal citizens and who are alleged to have committed offenses on tribal lands end up automatically transferred into federal criminal jurisdiction under a 1938 law. The federal justice system lacks parole, drug courts, and diversion programs; it has never been designed to provide for the needs of juveniles. The sentences in the federal system are also about as twice as long for a Native American committing the same offense on Indian lands as opposed to anybody else off Indian lands. It's terrifying, and it's a historical legacy facing Indian young people. The whole concept of Indian citizens being under federal jurisdiction for local crimes is an anomaly. It's a legacy left over from the late-19th Century. It predates the entire concept of the Indian Reorganization Act, let alone the modern era of tribal sovereignty and self-determination. While so much of Indian country has been revisited in terms of federal law – often through the energetic efforts of tribal advocates – it has not happened on the criminal justice side. It's quite astonishing to me.

Another unique part of the report focuses on Alaska Native justice issues.

We didn't duck on Alaska. It's our second chapter of the report, and it's been front-page news in Alaska. From what we can tell, it's the first time that a national justice commission has focused on criminal justice issues for Alaska Natives. There have been various efforts in Alaska, but this is the first time that there has been a federal commission that looks at these issues there. And there are big issues. You've got domestic violence rates that are 10 times the U.S. national average, and you have a system that is so dysfunctional that you have only one women's shelter for all the Alaska Native villages—and there are no juvenile shelters. It's a system that just cries out for being revisited. It's definitely a national problem, not just an Alaska problem.

What has made the justice situation so bad for Alaska Natives?

The state of Alaska is based on a termination era justice system model. The Alaska Native Claims Settlement Act of 1971 was passed before U.S. termination policy was reversed under

President Richard Nixon. It institutionalized a latter-day allotment process. While there is a debate over how much Indian country is left in Alaska, the bottom line is that the state has taken an exceedingly narrow view of what Indian country exists there. We recommend that Congress clarify the law to expand the definition of Indian country in Alaska so that Alaska Native villages can ultimately have control over justice matters. The tribes need concurrent authority to be able to make their communities safe through their own laws, police and justice institutions.

How can state officials there look at the crime data and go about the situation as if it is okay?

It's hard to paint a monolithic view of the state's position, but the current administration of Gov. Sean Parnell (R) is focused on a very narrow definition of Indian country and has a strong concern against creating anything like the Indian reservation system in his state. We think they are on the wrong path, and what ought to happen is an environment that recognizes and supports local authority and control.

This report also makes some strong recommendations regarding tribal jurisdiction.

One of the statutory directives that we have is to try to clarify jurisdiction, and we really sought to do that. We propose that the United States moves to a system where, on the one hand, tribes can opt out entirely from federal jurisdiction and congressionally authorized state jurisdiction (Public Law 280 states). The tribes should be able to decide for themselves if and when they get out of that system. Except for laws that apply to every U.S. citizen, we propose that tribes be able to get out of the system if they so choose and not have to go through some certification process to do so. They have their own laws, their own institutions, and they figure out how to enforce them. It's a key recommendation. We also make sure we have a federal judicial appeal out of tribal court for any constitutional rights claims that come up. If someone has a federal constitutional claim, they out to be able to go to tribal court first and they should have to exhaust the remedies there. Then they would go into federal court on appeal.

You haven't pulled any punches in saying that the federal government is to blame and deserves the blame for the Indian public safety epidemic in this country—were you nervous at all about stating that so plainly in the report?

We felt it was important to make it clear that the basic system failure is that the federal government in different ways is saying that local people can't be trusted to make laws and be governed by them. This problem exists throughout our country, and it just has to end. It's not the basis that the rest of us in our communities off the reservation understand. We just need to understand that local people can govern themselves. It is possible to design a system that respects individual rights.

You make strong arguments that so many Indian justice areas are ripe for reform—why are there not tons of people rushing to fix this?

It's a great question. I don't know the real answer. Part of the answer is that the system is intimidating and complicated. Another factor is the lack of familiarity. Outside of a handful of people, there's just not a lot of awareness of this system. When I tell my friends and neighbors about what I'm doing and explain that Indian juveniles and adults are part of the federal criminal justice system, they are stunned, they don't understand. Very few Americans understand that the local justice system for Native Americans was taken away and never restored.

When will it be restored?

I'm not jaded about how long these things will take, and I'm very hopeful about the political landscape for these issues right now. In some cases, maybe it happens in five, 10 years. Maybe it takes 50 years. But we have to move in the right direction. We are talking about people's lives. I don't see how you have tribal sovereignty in the 21st Century for any length of time unless you have the ability to make and enforce your own laws.