

Courts on U.S. reservations dealing in 'no frills' justice

By Peter Bakogeorge
Southern News

PUEBLO LAGUNA, N.M. — In Judge Frank Cerno's court, justice comes quickly and with no frills.

The drunks, the brawlers and the impaired drivers sit at the ready in

a modern but spartan hearing room on this northern New Mexico Indian reservation, waiting to have their day in an unusual court.

Germain Romero is one of them, found overnight by the tribal police, passed out in his automobile.

He faces charges, under the tribe's own criminal code, of disorderly conduct and liquor violation.

There are a few quick questions to ensure he understands the charges and knows he is waiving his right to a lawyer; a brief conversation between the defendant and the judge, and then the sentence — a \$30 fine.

There are no prosecuting attorneys, no defence lawyers, no lengthy reading of a police report, no court exhibits.

It takes about 15 minutes from arraignment to sentencing to clear the docket of six cases.

Run by Indians

There are almost 150 courts like this across the United States — run by Indians to handle the less serious criminal offences and a wide range of civil cases on their reserves.

And this system of tribal courts has captured the attention of many native leaders in Canada.

At Manitoba's inquiry into natives and the justice system and again at Ontario's hearings into racism in policing, native leaders and others have suggested that more of the justice system should be turned back to the people on reserves.

Even the Canadian Bar Association has said the idea is worth study.

The two judges conducting the Manitoba inquiry visited tribal courts and talked with U.S. legal experts about the process.

What they saw is a system admired by natives and many others, but still facing critics.

"This provides a sense for the community that we are dealing with our own problems right here," says

Cerno, the first full-time judge on the reservation of about 7,000 Pueblo Indians.

"There would be a certain hesitancy on the part of the public in general if a non-Indian judge came in."

In Canada, natives say they are becoming increasingly reluctant to accept and trust the quality of non-native justice.

Some complain bitterly about what they say is the racist attitude of police and court officials and say the justice dispensed by whites to natives is uneven and often unfair.

They also say there is a glaring lack of communication and understanding between natives and the non-natives who usually work as police officers, court officials and jailers.

U.S. Indians have the right to self-government and tribes have been running their own limited jurisdiction courts for more than 100 years.

Some are tiny; one rivals the size of the Prince Edward Island court system.

The 150-member Pojoaque tribe of the mountains of New Mexico hires an outside judge to conduct court for a few hours once a week.

The Navajo, the largest Indian nation with 200,000 members sprawling across portions of four states, has an extensive system.

There are 13 judges in the trial court, three appeal court justices, and a number of jails.

In the middle is a court like Cerno's, which last year handled about 400 criminal and traffic act cases, another 85 civil disputes and three adoptions.

The court doesn't deal with major crimes such as murder, rape and kidnapping, and tries only Indians who commit offences on a reservation.

Non-Indians find their way into the court only if they file a civil suit against an Indian.

Cerno says the emphasis is on providing justice that recognizes his tribe's culture and traditional values.

1989
That's why many of the civil disputes never make it to him.

Running parallel to his tribal court is the traditional court, which amounts to an informal hearing presided over by the Indian village's elected officers.

Only if their decision is appealed does such a civil case end up before Cerno.

Indian defendants like Romero say they're happy with the system and the kind of justice it provides them.

And many observers say there is a good quality of justice coming out of the tribal courts.

But there are critics.

Says Stephen Pevar, a lawyer with the American Civil Liberties Union, which has looked at justice on reserves: "In certain cases it's terrible. On some reservations it's notoriously bad, and no one disputes that."

For example, Pevar says, after one judge in South Dakota ruled against his tribal council and in favor of an individual Indian, he was immediately removed from office. A new judge was installed, and the decision was reversed the next day.

Injustices alleged

The U.S. Commission on Civil Rights has also reported a number of alleged injustices in tribal courts.

They include the whipping of a defendant by a tribal official, prior to the man being tried on a charge of disorderly conduct, and the refusal of one court to allow a lawyer to appear for his client.

Supporters say those are isolated incidents, and even Pevar says of the tribal courts: "All of them are getting better, all the time."

Toby Grossman, a specialist in Indian law at the University of New Mexico, says it's unfair to condemn a good system because of some problems.

"There are also problems with the American justice system, and I'm sure there are problems with the Canadian justice system," says Grossman, senior attorney with the American Indian Law Centre.

“But the majority of people, whether or not they see problems in it, will still prefer their own system to an outside system.

“They feel more comfortable with their own system, even if it is blemished.”

Alberta lawyer James Gladstone, a native, agrees.

“The present (Canadian) system is not knowledgeable of the attitudes, or even the way of life prevalent on the reserve.

“That means we’re trying to make decisions for reserve matters using values which aren’t applicable on the reserves.”