

Dec 13-82

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MEMORANDUM

TO: PURCELL POWLESS, TRIBAL CHAIRMAN
ONEIDA BUSINESS COMMITTEE

FROM: JERRY HILL, TRIBAL ATTORNEY *JH*

DATE: December 12, 1982

RE: Tribal Court Judge Plan

The following is an outline with comments and time frame considerations for developing a plan. The means for selecting judges for the Oneida Tribal Court will be a critical part of implementing the system. As I noted before, the Tribe is free to make its own determination as to qualification, selection and removal. I have visited Tribes with lay judges, the majority, and those that hire local attorneys to preside when the court is in session.

I. QUALIFICATIONS

- A. Education/training
- B. Experience
- C. Age
- D. Residence
- E. Examination
- F. Tribal Membership

II. SELECTION

- A. Body to determine qualifications
 - 1. Oneida General Tribal Council
 - 2. Oneida Business Committee
 - 3. Judicial Commission(or Committee or Board)
 - 4. Personnel Selection Committee

This body would determine the qualifications of all candidates for Tribal Judge.

B. Election. Some reservations elect judges at large by popular vote. The qualifications are usually established by Business Committee resolutions or ordinances. Where here the Tribal law inadequately prescribes term or it is too short, one or two years, or subjects judges to political pressures from the Business Committee, problems of continuity and turnover undermine the Court's credibility as well as the judges.

C. Appointment. Judges may be appointed by the Oneida General Tribal Council or the Oneida Business Committee. If appointment is the manner desired, then a procedure for developing a pool of qualified applicants must be developed. Such procedure should also specify the manner in which an applicant is appointed, by whom they are appointed, the term of appointment, as well as removal for cause.

III. TRAINING

Assuming that lay judges will be chosen, training can occur as follows after selection/election.

A. Initial Law Training-The length of this period will depend upon the individual but presumably, as an initial familiarization process, it should be complete within one month.

This training can be provided by me or an outside consultant.

B. OFT. Some reservations use on the job training. This works well where there is an established system. The major drawback is the subjectiveness of such approach if it is to be used exclusively.

C. Consultant Training. An attorney or otherwise qualified person may be chosen to come in and train judges. The drawback to this method is expense.

D. Organizational Training. There are various organizations that provide judicial training. Some of these are private consultant organizations, some are governmental and some are combined.

1. AILTP
2. AILC
3. NARF
4. IDIL
5. NAICJA
6. BIA
7. Management Concepts

Most of this training will be in service training for sitting judges. After the initial training, this phase will probably be continuous with occasional special training offered for particular purposes.

IV. TIME/PLAN

We had originally planned to have adoption of the Tribal Court by October, 1982 and sessions of the Court by early 1983. Because of the recent removal problems, this schedule was not adhered to. The following is a tentative schedule for the above.

January 1983.....Adoption of Tribal Court by Oneida General Tribal Council.
Creation of responsible body
Plan to be adopted by the Oneida Business Committee with positive recommendation to Oneida General Tribal Council

February 1983.....The procedure for selection of applicants to be developed.

March, 1983.....Judicial candidates selected

April, 1983.....Initial Training of Judge candidates

May, 1983.....Final Selection of Judges

June, 1983.....1st Session of the Tribal Court

July, 1983.....1st report to Oneida General Tribal Council on the operation of the Oneida Tribal Court.