



## THE HARVARD PROJECT ON AMERICAN INDIAN ECONOMIC DEVELOPMENT

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John F. Kennedy School of Government • Harvard University

### HONORING NATIONS: 2005 HONOREE

#### **Choctaw Tribal Court System Choctaw Tribal Court Mississippi Band of Choctaw Indians**

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*The Mississippi Band of Choctaw Indians has created a vibrant economy, and one of the underpinnings of its success is its court system. Organized independently of elected leadership, the court provides an arena for the fair, reliable resolution of disputes. Intent on not becoming just another adversarial court of law, the Choctaw Tribal Court strives to incorporate traditional Choctaw values into its law and practices, to help both victims and offenders, and to pay particular attention to tribal youth. In so doing, the Mississippi Choctaw have developed a comprehensive judicial system that responds to the needs of all its citizens.*

The Mississippi Band of Choctaw's economic track record is widely viewed as the standard of excellence against which other Native nations measure their success. Over the last thirty years, the Band has deliberately engaged in business development through partnerships, tribal enterprise, and entrepreneurship that has transformed the community. In 1994, the already-thriving economy was given a further boost when the Band government entered the gaming market; today the Mississippi Choctaw own two casino-resorts in addition to their many other joint ventures and enterprises.

With this dramatic increase in economic activity, growing pains were inevitable. In particular, increased interactions between the tribal government, on- and off-reservation businesses, consumers, the Band's several thousand employees, and its 10,000 citizens heightened the demand for robust and capable tribal institutions for dispute resolution. The Mississippi Band of Choctaw has long had a tribal court, but by 1997 it became apparent that changes were needed if the court system was to be able to efficiently and effectively manage its ever-growing caseload (including disputes which ranged from minor traffic infractions to complex commercial litigation). Strain on the system threatened to compromise the integrity of the Band's judicial system and its commitment to Choctaw principles of justice. As a result, tribal leaders decided that the tribal court system needed to grow but to do so in a way that was consistent with self-determination.

Critically, these changes were initiated from a position of strength. Shortly after the Mississippi Band of Choctaw organized under a constitution in 1974, the tribal council passed a statute establishing the court, creating balanced oversight by both constitutional branches of government (the executive and legislative branches). Specifically, tribal judges must meet the qualifications laid out in the Choctaw Tribal Code. The Band's Chief has authority to

nominate candidates for the bench, but the Tribal Council Committee on Judicial Affairs and Law Enforcement approves them, and the entire council must confirm a candidate with a two-thirds vote. Both tribal judges and court personnel are further bound by statutory Rules of Ethics and Conduct. Together, these provisions help ensure the tribal court's independence and make it possible for the court to serve the justice and related economic and social development needs of the nation.

Building on this base, opportunities were identified for improvement across all components of the court system. The goal was to become a full-service court system capable of handling a wide variety of cases effectively, to deepen the system's grounding in Choctaw practices and law, and to grow the pool of prospective court personnel, so that the supply of Choctaw court services could keep pace with rising demand. Specifically, they created a four-branch court system (civil, criminal, peacemaker, and youth divisions), initiated a video history project focusing on Choctaw law, and began a summer internship program.

Prior to the 1997 court reform, the Mississippi Band of Choctaw Tribal Court had three divisions, youth (handling juvenile offender and child welfare issues), civil, and criminal. The heavy caseload, particularly of misdemeanor, youth, and family-related disputes, slowed the process of justice. By creating a new division and adding diversion programs, the Peacemaker Court, can streamline operations, better match court personnel and programs from other departments (like Behavioral Health and Victims Services) to case types, and apply Choctaw law in a culturally relevant way for the parties appearing before the court. The Peacemaker Court is available to parties who agree to handle their dispute through a traditional process in accordance with the traditional Choctaw values of cohesion, cooperation, and peace as opposed to the more Western and adversarial process available in the tribe's civil and criminal courts. Teen Court makes it possible for many of the less complicated juvenile offenses and disputes that would normally be heard in formal Youth Court to be heard by a panel of the defendant's peers, further spreading the caseload and training youth in the practice of Choctaw law.

The Teen Court is a particularly notable aspect of the Choctaw court system, as it not only facilitates smoother Youth Court operations but also results in peer-to-peer community building. For this upcoming generation of tribal citizens (and especially for prior offenders who complete their sentences and join the Teen Court), interactions with peers through court service generates a set of common experiences and a shared sense of accomplishment. In the words of court personnel, having teens that might not otherwise interact come together to decide on appropriate sentencing helps break down walls between youth with different backgrounds, goals, and experiences, heading off divisions that might otherwise persist through adulthood. Youth community building also occurs through mentoring. As new youth join the Teen Court, the more senior members mentor them, stressing the idea that Teen Court proceedings can genuinely affect the lives of the youth offenders (who are also their peers).

Other measures initiated by the Choctaw court system include the Indigenous Law Library and the Summer Internship Program. The library project compiles video-taped interviews with the nation's elders, generating and archiving records of traditional values. The tapes are referenced by the Court and content is applied for judicial direction. In 2003 the internship program provided the opportunity for citizens who are currently enrolled in law school to shadow clerks. In 2004, intern work expanded to all departments, including the judicial branch. The internship program included Teen Court participants in 2005.

Evidence that this multi-part court system is working comes from many quarters. Critically,

Choctaw citizens are pleased with their better-functioning court, stressing that the structure leads to the timely adjudication of cases. While it does not speak directly to the rapidity at which cases pass through the system, data on the number of cases heard suggest that Mississippi Band of Choctaw Tribal Court is operating at a very high level: from September 2003 to October 2004, the court (with a staff of 25) heard over 9,400 cases (4,077 criminal cases, 2,831 civil cases, 2,201 juvenile cases, 306 peacemaker resolutions, and 14 Supreme Court cases). The decisions of non-tribal courts provide impressive additional evidence. In 2002 the United States Court of Appeals ruled in favor of tribal jurisdiction in the case *Choctaw Tribe v. Bank One*. More recently, the local county court system referred a proceeding to the Band's Peacemaker Court. Both decisions implicitly acknowledge the Choctaw Tribal Court's capacity and quality. But perhaps most striking is the evidence provided by ongoing economic development. As shown in research conducted by the Harvard Project on American Indian Economic Development and others, a fair, effective, and independent dispute resolution system is critical to economic growth: Mississippi Choctaw's continued economic boom would not be possible without a well-functioning tribal court.

Choctaw Self-Determination is the motto on tribal government employees' business cards and the guiding principle behind all the tribal government initiatives. The nation puts the motto into practice by making decisions, funding activities, and governing its territory on Choctaw terms. Likewise, the reorganization of tribal court system in 1997 reflects this overall philosophy, as changes equipped the court to deal with any disputes arising under tribal jurisdiction. Today, and as a result of those changes, the Mississippi Choctaw judicial system is able to meet the complex needs of the nation. Through its structure and rulings, the court is able provide assurance to business interests, tribal citizens and families, and neighboring communities that the Band and its judicial institutions are fair and equitable to all. And, it is a fundamental, everyday mechanism by which the nation demonstrates its ability and authority to advance tribal self-determination and development. The Tribal Court System of the Mississippi Band of Choctaw Indians stands as a testament to the necessary power that consistent, competent, and culturally appropriate justice systems provide to support and promote a Native nation's community and economy.

#### Lessons:

- The Mississippi Choctaw Tribal Court System embodies the Band's desire to adjudicate disputes in self-determined and culturally appropriate ways. Such justice systems complement tribal norms and values and reinforce a Native nation's overall efforts to deliver effective governance.
- Progressive tribal justice systems are able to adapt to the evolving demands of their communities while still protecting and promoting tribal values and customs. This competence and flexibility is especially important as Native nation governments increase the scope of self-determination and self-government.
- As Native nation economies continue to grow and expand, disputes arising from increased economic interaction will inevitably occur. The Mississippi Choctaw experience reinforces the finding that providing unbiased and effective dispute resolution helps secure development within tribal jurisdictions.