

## Judicial Council Podcast

### **Murdered and Missing Indigenous People: What the State Court System Needs to Know**

AA: Yurok Chief Judge Abby Abinanti

GO: Yurok Tribal Police Chief Greg O'Rourke

WH: Humboldt County Sheriff William Honsal

**AA: Part of what people aren't looking at is what other systems are involved? If you look at the data, and you go, OK, here's this murdered woman. What are some of the things that led to this end for her?**

I'm Lee Romney, the host for this Judicial Council of California podcast. Today, we'll be talking about missing and murdered Indigenous people. And why so many cases remain unsolved -- and don't even show up in official data. *Because* of that, this issue may *not* be landing on the dockets of state court judges that often. At least not in an obvious way. But [Indigenous-led research](#) suggests that state courts *do* have a role to play. Cases of missing and murdered Indigenous people, especially women and girls, are often tangled up with domestic and intimate partner violence, child removal from the home, sexual violence and substance abuse. These symptoms of historical trauma have been exacerbated by a deep and ongoing distrust of the state justice system. For healing to happen, Indigenous leaders say, everyone from law enforcement to state court judges must acknowledge that trauma -- and collaborate with sovereign tribes on solutions.

**GO: I've had many deputies and other officers come to me and just ask, why are they that way, why do they act that way when we're trying to help? You know, meaning people on the reservation. And, my response to that's always been, do you want the nice simple answer or do you actually want the real answer?**

*AMBI: Family members, if you have a missing and murdered loved one, somebody that's still missing (DIP UNDER TRACK)*

A grassroots movement has been building in recent years on behalf of missing and murdered Indigenous people, or MMIP.

*BRING UP: In November, President Donald Trump formed Operation Lady Justice (DIP)*

In response, numerous new federal initiatives and state initiatives across the country are bringing much needed attention to the issue and mapping out solutions.

*BRING UP AT: right here in Utah. CROSS FADE/DIP RAMOS UNDER TRACK: To determine the scope of the issue of missing and murdered and missing Native Americans in California.*

That includes legislation [passed in 2020 here in California](#).

*BRING UP AT: identifying barriers to reporting and ultimately issuing recommendations to the state legislature DIP UNDER TRACK that will come to this body will come back to all of us in the legislature to follow through.*

I'll be telling you more about the California legislation a bit later. Because it could lead to changes that will be relevant to state courts. But first, we'll touch on the roots and scope of the MMIP phenomenon.

**AA: Nek 'new Judge Abby, Requa auuck. And what I've just said to you is that my name is Judge Abby, and I live at Requa. I am the Chief Judge of the Yurok Nation, and have been for a number of years now.**

Judge Abby Abinanti -- or Judge Abby as everyone calls her -- says tragedies of missing and murdered loved ones have been a dark part of life in the region for as long as she can remember.

**AA: We have always looked at it as something that, unfortunate happened to this family, to this person, and didn't really realize the magnitude of the issue statewide or, or nationwide. And then you look across the world and go, Indigenous women particularly are at risk just about everywhere.**

Violence has haunted Indigenous communities ever since colonization. According to a [U.S. Department of Justice study](#), more than four in five American Indians and Alaska Natives have experienced some kind of violence in their lives. And on some reservations women are murdered at [ten times the rate of the national average](#). But the true scope -- and the reasons behind the violence contributing to missing and murdered women and girls in particular has been hard to discern. Because law enforcement data is deeply flawed. And the systems in place to protect Indigenous people have failed.

**AA: Once we started looking at that, we really got the idea that this is something that we really need to address on a systemic level, as opposed to an individual level.**

So, in 2019, Judge Abby's court teamed with the Indigenous-led [Sovereign Bodies Institute](#), or SBI, on a two-year research project. [Annita Lucchesi](#), a survivor of trafficking and sexual abuse herself, had founded the California-based nonprofit as a research hub focused on gender and sexual violence

against Indigenous people. From day one, she started building an international database on the murdered and missing -- now up to about 4300 cases in the U.S. and Canada alone. The [collaboration](#) between SBI and the Yurok Tribal Court dug into the specifics of California's landscape, with a special focus on Northern California.

**AA: Do they identify correctly? Do they investigate correctly? You know, and what resources are put into it? Not very many, frankly.**

The research drew on public records requests, social media searches, tribal rolls, and, perhaps most critically, interviews with family members of victims as well as with survivors of trafficking and abuse.

Researchers unearthed 183 California cases of missing and murdered Indigenous women, girls and two-spirit people, dating back to the year 1900. Nearly sixty percent of these cases were from Northern California. Only about *half* resulted in charges or conviction. And not just because of inconclusive investigations. Law enforcement misclassified about a third of the Northern California deaths as accidents, suicides, or due to natural causes, the report found, when they were clearly suspicious enough to be investigated as homicides. For example, when the women had been badly beaten. Racial misclassification was common among cases reported to state or national criminal and missing person databases. And nearly two-thirds of the California cases weren't reported to any of these databases in the first place. Masking the magnitude of the problem for everyone -- including tribes.

**AA: We can't exercise our responsibility if we don't even know.**

The Sovereign Bodies Institute doesn't just do research. It also provides [direct services](#) to survivors of gender and sexual violence and to family members of victims. The trust that SBI has built helped researchers fill out the life circumstances of a number of Northern California victims. Two

thirds, it turns out, had experienced domestic, family or intimate partner violence. One out of four had experienced sexual violence. And the child welfare system played a role, too. Some victims had been removed from the home as youth. Others had lost their children before spiraling into despair and disappearing. These patterns, Judge Abby says, suggest systemic failures are occurring *before* someone goes missing. Failures that rest in part on the shoulders of the state court system.

**AA: When you have those outcomes, and they start to look significant with the data, then you need to look at what you're doing. Because whatever you're doing is not working. And you need to adjust.**

The report poses an important question: what *can* state court judges do if so many of these cases don't result in criminal charges? The answer: They should view the MMIP phenomenon more holistically and reassess how they respond to cases involving domestic and intimate partner violence, sexual assault, survival sex work, juvenile runaways, substance use and child removal cases. That means learning whether defendants or victims are Native American and whether they are enrolled members of a California tribe. Judge Abby, one of the report's authors, says state courts also need to strengthen their relationships with tribal courts like hers and entrust defendants to them,

**AA: so we can divert them, and the point of the diversion is to work with them because we have a different way of working with than they have, you know and part of our growth is around the fact that we have advocates that then go out in the field and spend a tremendous amount of time with people. And that time helps turn people around. The invasion left us with a lot of problems and we have to resolve those problems.**

Judge Abby's court has pioneered a number of these collaborations -- including a [joint jurisdiction child dependency court in Humboldt County](#).

And programs that [divert domestic violence defendants](#) and those [struggling with substance abuse](#) in Humboldt and Del Norte counties to tribal court programs more aligned with Yurok cultural values. To do all this, Judge Abby needs to know which of her enrolled citizens are landing in the state system as perpetrators. The state system currently doesn't have that information. So, her court staff cross-check Humboldt and Del Norte county jail rosters daily against tribal rolls. It's time consuming, and it doesn't give Judge Abby the information she'd love to have on tribal members being adjudicated elsewhere in California, or on potential victims who've gone missing or turned up at the morgue.

This issue of identification is one area where systemic change may be necessary -- in order to address the issue of missing and murdered Indigenous people as well as other tribal citizens who are cycling through county jails and could later become involved in an MMIP case. [Every MMIP task force and report across the country](#) so far has talked about the need for consistent and meaningful tribal identification, and California is beginning those discussions too, because the haphazard way that it's occurred so far isn't working.

**AA: It's like, you know if they don't *look* Indian whatever that is, we're not gonna classify 'em. To me, I'm looking at nation status, sovereign status and a relationship. And with that relationship for us comes a responsibility.**

Tribes may be reluctant to hand over their membership rolls to state justice system entities, and besides, cross-checking those rolls for California's 109 federally recognized tribes and more than five dozen unrecognized ones would be burdensome. Instead, Judge Abby suggests that law enforcement, jails, district attorneys, courts and entities like county child welfare departments could request the information from defendants or from victims'

families. And then, notify tribes right away. So they can exercise their responsibility. In cases of the murdered and missing, Judge Abby says,

**AA: I believe that our police department could help with the investigation because we have and are building with our chief a different kind of relationship. We need to have the information back, and then we need to process and work with our infrastructure, and also with the families and the victims.**

Next up, we'll look at the need for greater stateside collaboration with tribal police, and how that could help solve MMIP cold cases, and prevent new cases. It's a complicated topic. California is a so-called [Public Law 280 state](#). In most of the country, federal law enforcement is responsible for enforcing major criminal laws on tribal lands. But in 1953, Congress foisted that responsibility on state law enforcement in California and five other states. Meaning, county Sheriffs Departments. To this day, there's a lot of jurisdictional confusion and misunderstanding that results from Public Law 280. The research conducted by SBI and the Yurok Tribal Court found that to be a significant cause of the low solve rates of MMIP cases. Beyond that, there is a deep legacy of distrust.

**AA: You have a climate, meaning a history, where there has been poor relationships between our community and law enforcement, and all of those things need to be healed before we can move forward. And that's a gigantic task.**

## **BREAK**

The lack of trust in law enforcement, and jurisdictional confusion that needs to be resolved -- those are downstream issues for state courts. But they are important ones. And they are crucial to understanding the MMIP problem.

Plus, as on-the-ground partnerships between state and tribal law enforcement grow, the state courts should be seeing the results in their caseloads.

The other thing I need to explain: We will *not* be introducing you today to a family member living with the pain of a murdered or missing loved one. That's because their experiences with stateside law enforcement are almost universally negative. Every single family member and survivor interviewed for the report by SBI and the Yurok Tribal Court spoke of "being unheard, ignored, neglected, left behind, and forgotten" by law enforcement. They felt abandoned, compelled to launch their own investigations. Many of these cases remain unsolved -- and we did not want to bias potential future judges in the event that they make it to court. Instead, you'll be hearing next from a man who is working to rebuild that deeply broken trust.

**GO: My name is Greg O'Rourke. I am a Yurok tribal member from the villages of Morek, Noch-Kue, Kep'-el and Pecwan.**

He's also the Yurok Tribal Police Chief. And he's a bridge -- a cop who's worked both sides and knows that mutual understanding and greater collaboration between tribal and state justice systems will lead to healing. Chief O'Rourke worked briefly for the Yurok tribal police when the force was newly created, then jumped over to the Hoopa Valley department, just over the mountain.

**GO: In Hoopa I really learned how to be a peace officer there and learn how to be a cop working on a reservation and with native people.**

After a stint there, he signed on with the Humboldt County Sheriff's Department, where he spent the next dozen years

**GO: to build my career, build my contacts, build my base of knowledge, and then bring that back. So this has always been my end goal.**

He comes home with deep ties to the Humboldt and Del Norte County Sheriffs departments.

**GO: I've had many deputies and other officers come to me and just ask, why are they that way, why do they act that way when we're trying to help? You know, meaning people on the reservation. And, my response to that's always been, do you want the nice simple answer or do you actually want the real answer? 'I want the real answer.' OK. And I'll explain that this mistrust of law enforcement comes not from you but from generations ago.**

His efforts to educate almost always start with the Yurok word for police officer.

**GO: K'ley-go'-mee-no', and it translates to, he goes and gets people.**

His colleagues, he says, are generally blown away by what he tells them next. They never knew.

**GO: The [Indian Termination Act](#), the [Indian Assimilation Act](#), Public Law 280 in and of itself are legislative pieces that were designed to assimilate Native people into the dominant culture. Part of that, you know, '[kill the Indian to save the man](#),' was forcibly removing Native children to go to [boarding schools](#). And so, I would ask deputies, if some government entity came to your house to try to forcibly take your kid, would you fight? Oh hell yeah I'd fight. Well, yah, they fought back then, too. And so, social workers who would come to pick up Native kids would need protection, and the people that they brought with them to protect 'em was uniformed law enforcement.**

Forced assimilation, he then explains, led to loss of culture, loss of identity. More trauma.

**GO: Can you imagine just that confusion and hurt, not being able to fit in two places, the one where you're born to belong and the one where you were raised to belong. How do most people cope with that type of stress and rejection? A lot of them turn to alcohol, a lot of them turn to drugs.**

The traumas of colonization, slavery, forced assimilation have also led to plenty of other problems in Indigenous communities on and off reservations, including high rates of domestic and intimate partner violence. Remember, fully two-thirds of the victims in Northern California's missing and murdered cases had experienced it.

**GO: What we're seeing here I believe with the MMIP movement is just one facet, one symptom of the dysfunction that native people have, based off of the trauma that we've experienced.**

Chief O'Rourke says the state criminal justice system has compounded that trauma, not because he thinks that individual deputies or officers are racist. But because so many inequities are built into the system.

**GO: Now that I'm in this position at an administrative level, I am finding more and more the flaws and the gaps and the holes that Native people fall through that in my opinion truly does give credence that there is systemic racism.**

Let's go back to the history. The goal of Congress when it enacted Public Law 280 nearly 70 years ago was assimilationist -- an attempt to compel county sheriffs to exert more control over Indian lands, to keep them in check. State law enforcement didn't ask for or agree to that responsibility and

got no funding for it. Especially in rural counties, that means they must patrol enormous geographical areas -- without a tax base to contribute to their coffers. As for tribes, who didn't have a say in PL 280 either, the law cut off steady federal funding for *their* own justice systems. Tribes like the Yurok that have managed to develop a justice infrastructure have only done so by constantly hustling for grants.

The end result: tribal lands have historically been under-policed and unsafe. When stateside law enforcement does engage, the experience is often negative. In interviews for the SBI and Yurok Tribal Court report, family members of the murdered and missing spoke of pervasive victim blaming by law enforcement and that was on and off tribal reservations. They felt that not only were their loved ones maligned or discounted, they were too. A lack of awareness of history, Chief O'Rourke is convinced, is at the root of the problem. He believes the solution, for state and tribal law enforcement, is [trauma-informed policing](#).

**GO: Having an idea of how trauma impacts that community may dictate a different approach. So when we -- law enforcement, the criminal justice system -- is forced to intervene, there's at least some compassion and understanding of why we're involved.**

Chief O'Rourke is starting at home, with his own tribal police officers, Native and non-Native alike, working to re-make their image as guardians of the collective good.

**GO: Traditionally, the Yurok tribe didn't have a warrior class or a warrior society. But we did have a village protector, that person whose role it was to make sure that the village was safe that everyone in the village was taken care of. They made sure that everybody had a plate, everyone had a safe place to sleep for the night, to a point where they would eat last, they would, you know, go to bed last. So just to make sure**

**that the village was safe. And that's the archetype that I want to bring to this police department.**

Public Law 280 also created a ton of confusion around the jurisdictional authority that tribes *do* retain. And that confusion has fouled up plenty of investigations. Courts have affirmed that tribal police have the inherent authority to be able to provide protection to the reservation. That is, they have [concurrent jurisdiction](#) if the perpetrator and victim are Indian, or if a non-Indian commits a specific type of violent crime against an Indian intimate, domestic or dating partner. They can also [hold a non-Indian](#) suspected of violating state criminal law until deputies arrive. But,

**GO: We just don't have the powers of arrest...**

That is, unless they seek out partnerships with state or federal law enforcement. The most common state partnership is a deputation agreement with the local county Sheriff's Department.

**GO: Yurok Tribal Police is deputized in both Humboldt and Del Norte County. I insist that my officers be able to be deputized in both counties.**

That means his officers must complete the same field training as county Sheriff's deputies, and in O'Rourke's view, not just meet but exceed state standards. Then, they can enforce state criminal laws on and off the reservation. They can also enforce federal law, under an agreement with the Bureau of Indian Affairs known as a [Special Law Enforcement Commission, or SLEC](#).

So what does this have to do with murdered and missing Indigenous people? A lot. Because part of the solution lies with the expansion of professional culturally responsive tribal police. One day, O'Rourke hopes, state legislation will grant tribal police independent powers of arrest. But until then,

**GO: If we want to enforce state law, we are beholden to the Sheriff's office for deputation. The goal is to move away from the reliance that we as a community have on the Sheriff's office. But I don't believe separating from the Sheriffs Office will achieve that. I think integrating with the Sheriffs office will achieve that in a much more collaborative way.**

Mutual trust and respect. Equal partners. So, when a deputy knows that a Yurok officer is handling a case, they'll let that officer run with it.

**GO: They got it. They know what to do.**

## **BREAK**

With the two-year MMIP research project conducted in partnership with SBI complete, Judge Abby says, the Yurok Tribal Court is now working to put it all to use.

**AA: We're gonna concentrate on developing protocols and MOUs that we hope will lead to some extent to prevention and also to address some of the issues around cold cases.**

She has hired a prosecutor and is now raising funds to hire an investigator who would work MMIP cases in collaboration with tribal, local, state and federal law enforcement. She knows that many tribes don't have the same capacity, but..

**AA: We're hoping that as we move forward, and we create a way of doing things, a pilot project, that other nations can benefit from that. And also that the state realizes, they have a better way of doing this. We need to adjust to that. We need to go, 'Okay, they are good partners, and other tribes will be good partners too in resolution of these problems.'**

She and Yurok Police Chief Greg O'Rourke also share a vision, about how they might help beyond the confines of their own tribal nation.

**GO: All up and down the north coast, we have ties to other reservations, and we have familial relations on other reservations. But jurisdictionally speaking, it's very segmented and regimented to one agency.**

One solution would be for the new investigator, working with the tribal police department

**GO: with deputation in two counties and our federal law enforcement commission through a SLEC**

the Bureau of Indian Affairs mechanism that grants tribal police federal law enforcement powers

**GO: can travel to a different county to a different reservation... Investigate some of these cold crimes, and then be able to be that bridge between the two different entities in the counties. I think we'll be better received on reservations, because they'll see a tribal police patch.**

And, he says,

**GO: we'll have a better insight of what those familiar connections are, and establishing a rapport and trust with the people in the community and other reservations. I don't know if that's a possibility, but just think of what if**

In the meantime, Chief O'Rourke has begun teaching an instructional block on Public Law 280 at the North Coast's police academy.

**GO: Never had it. There is so much misunderstanding around Public Law 280. Last class, I think the 127th class, something like that, was the very first time that they did.**

This is not just academic. There are ten tribes and rancherias in Humboldt and Del Norte counties alone, meaning officers, cadets and trainees who attend the academy are sure to have contact with tribal lands and tribal residents.

So what do the Yurok Tribe's state law enforcement partners think? Well, Humboldt County Sheriff William Honsal, for one, is an eager and willing partner. He has [deputation agreements](#) not just with the Yurok Tribal Police, but with the Hoopa Valley Tribe and Blue Lake Rancheria as well. He's into it.

**WH: Some sheriffs just basically ignore tribal entities and do their own thing on tribal land and don't include input from tribal government. And I think we're seeing a real shift. I think, overall, the state sheriffs are looking to collaborate.**

Sheriff Honsal is even working to promote state legislation that would give tribal police independent law enforcement authority across California, so they wouldn't be so reliant on deputation agreements.

**WH: POST certification which means that they adhere to all of the Police Officer Standards and Training that California state law has provided, they're a part of the government code, and in the penal code, and recognized as state peace officers. So we're looking for that [law change](#) this next year.**

Sheriff Honsal has also brought two detectives out of retirement to work a new Humboldt County [cold case unit](#) and seek out new leads. He says he wants all the help he can get from tribal partners.

## **BREAK**

*JR: (gavel sound) At this time we'd like to call to order the Select Committee on Native Affairs (DIP DOWN)...*

Assemblymember James Ramos is a lifelong resident of the San Manuel Indian Reservation in San Bernardino County and the first Native American ever elected to the California legislature. In the fall of 2020, his bill on the crisis of missing and murdered Native American people was [signed into law](#).

*AB3099 that would bring policing and resources to tribal communities DIP UNDER TRACK throughout the state of California.*

It creates what's been called the Tribal Assistance Program, to be administered over the next five years through the California Department of Justice Office of Native American Affairs

*My name is Merri Lopez-Keifer, and I serve as the director of the Office of Native American Affairs at the Office of Attorney General Bonta, DIP UNDER TRACK... California Department of Justice. ...*

At a legislative hearing in August of 2021, Lopez-Keifer laid out the details of the new law. It's a two-pronged thing.

*The first component addresses the complexities that remain in California Indian Country regarding the inconsistent implementation of PL 280..*

That means training to clear up uncertainty around criminal jurisdiction and make tribal lands safer. State and tribal law enforcement will also get guidance around crime reporting, crime statistics, and investigative tools to improve the quality of criminal investigations on Indian lands.

*The second component of AB 3099 DIP DOWN the subject of this hearing....*

And then there's the piece that's specific to MMIP, or what this law calls MMNAP...Missing and Murdered Native American People.

*BRING UP AT Particularly women and girls....DIP DOWN AGAIN.*

It requires the state DOJ to deliver a report back to the legislature that lays out the scope of the problem, on and off reservation lands, identifies barriers to proper reporting on, and identification of missing and murdered native people. And,

*ways to create partnerships to increase cross-reporting and investigation of missing and or murdered Native Americans in California between federal, state, local and tribal governments, including tribal governments without tribal law enforcement agencies.....*

Ramos and other lawmakers have promised that more legislation will follow, based on the report's recommendations. Listening sessions will be starting in late 2021 with urban, rural, tribal, state and federal stakeholders, and special consideration for the families of victims and for survivors. So, Humboldt County Sheriff William Honsal, Yurok Tribal Police Chief Greg O'Rourke and Yurok Chief Judge Abby Abinanti will all have plenty of opportunities to share their ideas.

**AA: It's a good start, you know in the sense of a recognition, and now we can flesh it out. They're trying to do something, and we have to step up and help them try.**

In the future, she added, no MMIP family member should have to feel that they're unsupported by the justice system, going it alone.

**AA: We have to do better, period. And by we I mean their government, our government, everybody. It's on us to fix it.**

A big thank you to everyone who participated in this podcast. And especially to Yurok tribal member Laura Woods, who served as research assistant. Our engineer is Gabe Grabin. And I'm Lee Romney

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## **RESOURCES:**

- If you are an Indigenous survivor of violence or a family member of a missing or murdered Indigenous person, and you need services or a referral to services, call or text the Sovereign Bodied Institute rapid response line 24/7 at (707) 335-6263 or click [here](#) for more information.
- Read the SBI/Yurok Tribal Court Year 1 report [here](#).
- Read the SBI/Yurok Tribal Court Year 2 report [here](#).