

Podcast on Juvenile Justice & Tribal Youth: What Judges & Attorneys Need to Know

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MG: Marshal Galvan, Social Welfare student at UC Berkeley and intern in the Tribal/State Programs Unit at the Judicial Council of California

JUDGE España: Hon. Ana España, Presiding Judge, Juvenile Court Division, Superior Court of California, County of San Diego

JUDGE Lomayesva: Hon. Devon Lomayesva, Chief Judge, Intertribal Court of Southern California

VM: Ms. Veronica Miramontes, Restorative Justice Professional, MILPA Collective

SCRIPT:

MG: My story goes as this. I entered into the foster care system when I was four years old on a dv call, domestic violence. Police responded, they came out and essentially what happened was myself and my sisters and my parents all got arrested. I guess it was a practice that children went to, went into the system in the back of police cars, or at least that was my experience with my siblings.

I'm Ray Mata, the host of this Judicial Council of California Podcast.

Tribal youth are disproportionately represented in both the child welfare and juvenile justice systems, with a 4.4 times higher likelihood of incarceration compared to their white peers. In this podcast, we will hear from Marshal Galvan, member of the Little Shell Tribe of Chippewa Indians of Montana. Who, at the age of four, was removed from his family and permanently placed into the California foster system. At 17 he was sent to a youth detention facility for an altercation he had inside a group foster home. Mr. Galvan will discuss California's tribal history and his experience with the juvenile justice system, highlighting the connection between tribal intergenerational trauma and the juvenile justice system.

Mr. Galvan will then offer juvenile court judges advice on how they can make positive changes within their court.

We have joining us today:

- Judge Ana España, Presiding Judge, Juvenile Court Division, Superior Court of San Diego;
- Judge Devon Lomayesva, Chief Judge, Intertribal Court of Southern California; and
- Veronica Miramontes, who goes by Ronnie, a restorative justice champion from MILPA Collective.

These panelists will discuss issues in the juvenile justice system related to tribal communities and the Indian Child Welfare Act, as well as innovative courtroom practices, collaborative efforts, and community involvement.

Mr. Galvan will begin today by describing California specific tribal history, laws, and policies that continue to impact tribal communities into the present.

MG: Prior to first contact in California, tribal communities thrived in healthy and nurturing family and community centered villages. Tribal communities had established governments where elder women often held significant positions. We had tribal healers for an array of issues, problem solving or justice systems that resemble today's restorative justice practices, economic systems, and spiritual beliefs and practices that were in connection to nature and the community.

First contact with Europeans initially began with a self-imposed entitlement utilizing the doctrine of discovery to steal land from tribal communities by forcible removals and overthrowing the long-established tribal governments and communities.

Each of these eras have the commonalities of land and resource taking, assimilation into the first European ways followed by American ways, family separation, and issues we'll begin further discussing.

In the late 1700's, the Spanish government, Father Serra, and the military led expeditions from Mexico to what is now known as California, to establish the mission system pueblos and presidios. The gold rush in the mid 1800's, which was a result of western westward expansion and Manifest Destiny, further changed California landscape and tribal communities. Each era resulted in family separation, trafficking, forcible removals, overthrowing of already established tribal governments and communities, and genocide by way of violence, murder, and disease.

At the height of the gold rush the general attitude in society was to eradicate tribal communities altogether. And as we see from Governor Peter Burnett, who was California's first governor, in his initial State of the State address in 1851, he declared, and quote: "that a war of extermination will continue to be waged between the races until the Indian race becomes extinct must be expected."

MG: From the late 1800's into the 1900's, Indian boarding schools were created as an assimilation tactic by the US government to sever the ties between tribal communities and their children in an effort to "save the child."

These were not Ivy League schools that provided great care or stellar academic instruction. These schools were meant to force Christianity. Children were taught menial labor skills and minimal academic skills. Families were forced into relinquishing custody of their children, often not being told where their children were taken to. They weren't allowed to participate in ceremony or speak their language and many endured violence by boarding school staff and a large number of children died during this time.

Shared traumatic experiences in tribal communities create historical trauma, as explained by Dr. Maria Yellow Horse Brave Heart, a Native American social worker, associate professor, and mental health expert. Historical trauma is defined as a cumulative emotional and psychological wounding over a lifespan, and across generations, emanating from massive group trauma experiences.

MG: It is important for you to understand these terms and meanings when you work with tribal communities and families, especially with tribal youth interfacing in the juvenile justice system, because it bridges the gap between the histories of the past and present-day challenges and barriers continuing to occur.

An extension of this historical trauma is “Post-Traumatic Invasion Syndrome,” identified by Dr. Andrew Jolivet.

MG: “Post-Traumatic Invasion Syndrome,” or PTIS, is defined as the unnatural genocidal disruption of entire indigenous systems of cultural knowledge, practice, and self-determination through military, political, and religious exploitation, and oppression.

Mr. Galvan would also like us to consider how racism, colonization, and poverty contribute to incarceration for youth in tribal communities. In California tribal youth have lower intake rates than white youth, but are three times as likely to be detained, adjudicated to adult court, or serve harsher sentences. 60% of the population represented in juvenile facilities nationwide are tribal youth. They make up more than White, Hispanic, and Asian populations combined.

MG: When we start to examine disparities in the child welfare system, we see a common theme of Native Americans over-represented. So, in real time we’re talking about challenges with law enforcement’s involvement with communities and schools, as well as the ways in which we engage with youth who are experimenting or chronically using substances or alcohol. The data shows tribal youth have higher rates of underage drinking than any other ethnic group. But also understanding how Native American communities have the highest poverty rates in the United States. All these things overlap each other and certainly contribute to youth interfacing with the juvenile justice system.

Ronnie Miramontes will now explain how intergenerational trauma impacts a youth’s life and how professionals can recognize and respond to these traumas with cultural humility.

VM: I’ll start off with maybe like the definition of what I understand intergenerational trauma is really about. It is sometimes referred to trans-generational and multi-generational trauma and it’s different as a trauma

that gets passed down from those who directly experienced an incident from following generations. And intergenerational trauma is like a collective trauma affecting the larger community whether it's cultural, racial, ethnic, or other larger groups of population kind of like the historical trauma you mentioned earlier Marshal. And actually, intergenerational trauma was really first identified among the children of the Holocaust survivors, but researchers also identified that also being connected to the Indigenous populations here on Turtle Island and Australia. But yeah, I mean the impact of colonization also just have been ongoing for over 530 years and the tribal youth and their families—the BIPOC communities that live here today—the impacts they have is like a lot of verbal and emotional, psychological, physical, and even sexual violence that comes from that colonial mindset, so the violence can show up in a youth's life in so many ways including poverty, racism, discrimination, and prosecution from law enforcement, so I think it's really important for us as professionals and as a community to do a great service to our youth, by providing them with culturally responsive healing like talking circles and the use of cultural medicine.

Our panelists will now invite Mr. Galvan to share his firsthand experience and insights on the juvenile justice system, aiming to gain a deeper understanding of its challenges and identify areas for improvement within the juvenile courts. The first question comes from the Hon. Devon Lomayesva, Chief Judge of the Intertribal Court of Southern California.

Judge Lomayesva: Marshal, can you tell us and talk about your experiences with interfacing in the juvenile court system?

MG: Yeah, sure, so for me, my story goes as this: I entered into the foster care system when I was four years old, on a dv call, domestic violence. Police responded, they came out and essentially what happened was myself and my sisters and my parents all got arrested. But what preceded that was a lot of different interactions with social workers, different interactions with placements, just a lot of change and turnover in the early years of my life. And then when I was 7, you know my parents had their parental rights terminated, so I was now ward of the court until I was 18 years old, where I emancipated

into homelessness. But when I was 17, and this is what I want to focus on, is when I was 17, I had an experience in one of my group homes, where I was in a lot of emotional distress, right. I mean you can imagine all the years of different experiences that I've had up to this point, and at 17 in this group home, I had a an incident that happened with myself and a staff member. And basically the police showed up and they took me to juvenile hall. I went to juvenile hall with no shoes on. When I left juvenile hall, I left with no shoes on, you know, and during the process of that I really was clueless as to what was going on in general. All I know is, looking back on it, I reflect there was a lot of unhealed trauma there, right, and how this experience amongst all the experiences I had in dependency and delinquency system furthered that harm and reinforced it.

The next three questions come from the Hon. Ana España, Presiding Judge, Juvenile Court Division, Superior Court of California, County of San Diego.

Judge España: So how could your juvenile court experience have been better?

MG: I think the first thing is just a due diligence, to ensure that in speaking, you know I am tribal, right, I'm Chippewa Indian. My father is an enrolled member of that tribe, um. And you could imagine, how and why ICWA was not applied in my case is beyond me, but I think just doing a due diligence, you know, to ensure that tribes are aware of the youth that are involved in the system. Right, I often reflect on my own experience, and I, kind of, there's that missing piece there. Well, if my father's an enrolled member of a tribe, why was I never protected under the laws of ICWA? And how that disconnect, learning of culture and heritage and all that now, where did all that go then? And then a commitment to connecting these youth to their tribal ancestry again, drawing on my own experience, you know I didn't have that chance, right, for whatever reason, um and I think that any youth that identifies in the tribal community—tribal identity—should have that chance and it definitely makes an impact, most certainly. And then make sure that youth are aware of what is happening in court, again, even in dependency court, right. I know we're talking about delinquency court, but even in both courtroom settings really having that awareness of what's going on with their case, especially as

they get older and to the teenage years you know. We have brains, they work, right, and we should be allowed to have a voice in what's going on with us; we should be allowed to stand as a as an expert opinion in our own lives. And so, part of that is ensuring that youth understand court processes. And then you know, I reflected on this about that experience I had with juvenile hall and how punitive placement should never be the goal or option, you know. There should be more of a trauma-informed lens, right. And, and that kind of response to my unhealed trauma and my emotional distress—putting me in a cage, really, and then from there going into the children's shelter, and then from there going into another group home— we should bypass the incarceration part of it, and really see how we can bridge that gap from mental health services in those moments.

Judge España: Let's talk about judges then. So what recommendations do you have for judges who preside over cases involving tribal youth in the courtroom?

MG: I think the biggest thing here that I really want to highlight is well, with everything that was said and in addition to all of that, pre and post follow ups, I think, is something that was really missing during the process of going in and out of courts. And I feel like if I was to have, you know, like prior to going into the courtroom, having a couple meetings with a social worker or with anybody related to my case, right, uh about what's about to happen, what's going on, what would you like to happen, would you like to be involved in this process, things like that. And then, after the court, following up. Hey, do you understand what just took place? How do you feel, right? Let's check in with your mental health; let's check in with all of these things. In my experience, through that entire process has been that almost never did a judge look at me, right. Almost never did whatever I said to a social worker be taken into account. And I can only speak from my experience and all of these things matter, right. And so, the biggest recommendation would be to ensure that youth understand that they are a person first, right, and that, to put their lives into context, and where they are, what they're going through, what their history is, what their ancestral history is, right, and how all of that plays into the big, bigger picture in that present moment.

Judge España and Judge Lomayesva will now share their insights on how they design the physical layout of their courtrooms in order to minimize trauma for youth.

Judge España: Our courtrooms look like a typical courtroom, but what I do do is add youth art and youth poetry in my courtroom. And if you come into my courtroom, you'll see art that reflects diversity that's hanging in my courtroom and poetry that young people have written, or and actually in all the art in my courtroom is by youth. So that's part of what I do to really try to help make people comfortable when they come in. I think when interacting with youth, I use the youth's name. I ask the attorneys and the probation court officers to use youth friendly language. So, a few years ago, just speaking to that, our probation court officers will announce who's in the courtroom, and so I asked the court officers change the word, the verbiage from before where they would call, "the ward is present," "the ward is present," and changed it from the word ward to youth, and trying to bring some sense of comfort and warmth into the courtroom experience.

Judge Lomayesva: So, as far as the physical appearance of the courtroom, I think, in our case, the most important thing is that we are on one of the local reservations; we are in the tribal community. So, I think that's for us the most important aspect of bringing youth here, or to make them feel more comfortable, that they're in a setting that's familiar. At the same time when we are putting together our youth peer court, we thought about the different models that we had looked at in the Native and non-Native community of peer courts. And it's important to create a balance, where you're not intimidating and trying to scare people into submission, but it's still also important to keep in mind that it is a court and it's a proceeding and there's a purpose for being here and that there needs to also be a semblance of authority. So, you have to really find that balance and what works for you. I have to tell you, in going into many dependency and delinquency courtrooms, when you go in the one where there's nothing on the walls and it's just the walls and the judge sitting up there, I'd rather be in Judge España's courtroom any day. So, it does make a difference and it helps settle people a little bit. And I think it helps settle the

attorneys and the social workers, too, because it's intimidating for everyone when you have a courtroom that just— it's all about business and we're about getting you in and out the door and on to the next place.

Judge España: Well, let's talk now about services. What services do you think could have helped you when you were going through the juvenile justice system?

MG: I think exposures to different kinds of opportunities, you know college, exposures to college opportunities, exposures to trade school opportunities, exposures to mental health practices, right, just independent living skills. All of these things we know, but when they're actually practiced and implemented and really driven home to the youth who's actively going through a crisis, they need those outlets. They need those—I don't want to say interventions—but they need those kind of preventative options, that can take them on a different path. Such was the case for me much later in my life. After I had got done going to jail and I had, you know, got into acceptance about my life and where it led and where it was, all of that could have been avoided in my teenage years had someone took the time out to really walk me through these processes. And I think that that's something that is missing in a lot of ways and, and so one thing could be like cultural mentorship, right. I didn't have that. I had a CASA worker, but that CASA worker wasn't privy to my case. They weren't privy to my culture, really making those efforts to intertwine the youth's culture.

Next Judge España asked Mr. Galvan if he had a mentor or significant support person with him during the court process and, if not, would somebody like that have been helpful to him?

MG: Well, going back to like the exposure part of it, I think one of the things that really helped me in the latter part of my life, that I didn't have when I was a youth, was positive influential role models. A role model being a man, being a father, being a productive member of society, being someone that has already had experience in college. You know just all these different things and

the things that a lot of our youth are lacking now is having those positive outlets, those positive influential role models in their communities.

VM: So, Marshal, just given your experience to restorative justice practices, how could it have been useful for you in your past?

MG: You know restorative justice practice, surprisingly, is something that is new for me, within the last few years of my collegiate education. I've been learning about restorative justice, which goes to show you know how important it is, right, that we begin to school our young people on this topic when they're young. And so, I really want to just introduce, take this time to introduce, this idea of a brave space and it's defined as a co-created space, which is informed by agreements adopted by the collective. So, who's ever involved in this space is who creates this agreement, and then it's a restorative justice approach for collaborative meetings. To answer Ronnie's question, if the structure was closely followed in interactions I had growing up as a young teenager engaging in delinquent behavior, I believe outcomes could have been drastically different. While implementing these spaces, we are able to promote accountability, inclusion of all voices, and an awareness of power and privilege at all times and how that awareness can support or hinder rapport building. The next thing is to acknowledge that, in these spaces, we are all learners, we all make mistakes, and no solution is perfect. And finally owning intent and impact and knowing what that looks like. This is done by validating experiences, recognizing that meaning well doesn't always translate to doing well, and where there are deficiencies, being brave enough to sit with uncomfortable feelings together.

Based on the values of sharing, respect, and honor, the talking circle is one way for Indigenous People to communicate about their lives. The purpose of a talking circle is to create a safe, non-judgmental place where each participant can contribute to the discussion of difficult and important issues. Next, Mr. Galvan asks Ronnie Miramontes if a talking circle is possible for a courtroom setting.

VM: Yeah, I definitely think it is, you know the courtroom setting is, you know, originally designed for an imbalance of power and a circle setting

allows everyone involved to be at the same level in a safe space if structured correctly. They can see each other honestly and openly, and just like restorative justice practices, it would be a voluntary process. So, for it to work, like everyone would have to agree that I want to give a circle a try and then you can dive into the dialogue and the conversation and talk about what happened, how it made you feel, and how to make it right. So you're still holding people accountable; the shift is just that it's just structured differently. Youth can still come into the space and those that want them to feel like, you know, they're being held accountable, can. It's just really about having that space redesigned. So I see it promoting, you know, really accountability, repairing harm, and acknowledging empathy. And all of this is within our Indigenous practices and has evolved into like the term the coin of restorative of values. And studies even have found like a reduction in recidivism when systems do shift to meet the community and cultural needs.

Now Ronnie Miramontes and Judge Lomayesva will offer practical advice on fostering positive relationships between tribal communities and system agencies, highlighting the importance and benefits of such collaborations.

VM: Yeah, I mean with tribal communities, and I feel like this for ourselves as well, we're experts of our own individual lives, and so are they. So, trusting to know what who they are and how they live is really important to respect that. In the building the relationships, so learning about their culture and etiquette as well is very important. I know, when I think that continuing of staying connected and being consistent is important too, because you don't want to just be seen as another system of power that's just there because it's on a piece of paper, or you are like required to go and make a site visit, or something of that sort. So, just making sure that there is a continued relationship building within that is really important, I think. In regards to systems of agencies, there's a balance there as well, and a lot of it also has to do with communication uh and being able to really understand the requirements of systems through their policies and laws. And start unfolding and presenting aspects of potential future changes and maybe planting those seeds on like, how this could, you know, work or shift. And I know for me as a board member and in other seats of policies or political, like a city council, for

example, it's really great to come and share public comment and share your concerns, but I feel people hear more once you also connect that with sharing a story of someone who's impacted because of this policy or law. And then also following up with some ideas and solutions and shifts to changing that, because if you ever do want to take something away, it's very important that we replace it with something that's better. So, I think those things it's just a really important balance to understand when you're speaking to tribal communities and with systems and agencies.

Judge Lomayesva: I'll just add that, you know, get to know the community. I can't underscore that enough, that you need to know the history of the communities that you're working in. You need to know what those tribes went through. Who are those tribes related to? You know in San Diego, our tribes have a lot of gatherings and events that are for the most part open to the public. So, isn't it better to see someone in a in a good environment and meet them for the first time, than when it's going to be an adversarial?

As we conclude this podcast, each panelist will highlight some restorative justice best practices they have seen locally or nationwide.

VM: MILPA is a part of an initiative that was created and led by ourselves and our partnership with the Vera Institute of Justice; it's called Restoring Promise. So, this is a nation, a national wide initiative in the focus of creating housing units grounded within prison systems that are focused on dignity for young adults and we our core values are race equity, community and family partnership, and culture healing and restorative justice. And really our big biggest goal is to end mass incarceration. And that's just something that's, you know, driven within our nation. So, holding workshops and healing circles, getting doing data collections as well, has actually founded and provided support through restorative justice. And this initiative is something where institutions have to apply to be a part of, so we don't seek them, they seek us, and we make sure that they are qualified enough to do the work and do the work right.

Judge España: In San Diego there are cases that with for which there is agreement between the district attorney and the defense counsel for particular youth to engage in in a restorative circle, restorative practice with a local program. A victim definitely has to be, you know, willing to participate in that and so, the youth participates and is successful than then it can result in the case being dismissed in court, so that's a good thing. And then the San Diego diversion program, they incorporate restorative practice as well into that program. And the nice thing about the diversion program is because wherever you can divert kids from the system, you want to do that, and there's a lot of science and support for diversion programs. But the San Diego diversion program can actually take low level felonies and again incorporate as part of their program of restorative practices as well.

Judge Lomayesva: From what we've seen and what we've learned from the different programs that we visited is that you really are trying to create a wraparound of services for the youth. And one of the primary things is to not forget the family involvement, the parents, the guardians, that extended family, and Native families. So we really tried to develop a program where it's bringing in, you know, those immediate needs for your mental and physical health, but also talking about higher education or trades, and then having them do life skills, like you know, making dinner with your family, having chores, doing community service. And so, you know, with that we hope that having choice, but also having structure, is going to be something that, for our restorative justice model, prove successful for our community.

That concludes our panel discussion. We extend our gratitude to our esteemed guests for sharing their valuable insights on juvenile justice and tribal youth. You can learn more about the Indian Child Welfare Act and California Tribal Communities at the Judicial Council of California website. This podcast is a production of the Judicial Council of California. It was edited and produced by me, Ray Mata. Music by Astro Frequency. Thank you for listening.