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SOUTHERN UTE TRIBAL PROFILE

Michael J. Anaya¹

The Southern Ute Tribe is located in Ignacio, Colorado, near the southeast corner of Colorado and along New Mexico's northern border. As of June 2007, tribal membership stood at 1,422 people.² The Utes were once made up of seven bands, two of which, the Mouache and Capote, became the present-day Southern Ute Indian Tribe.³

Before the 1630s and 1640s, the seven Ute bands would disperse into small family units for sustainability purposes,⁴ as providing sustenance for a small group of people is less challenging than it is for a large group of people. In the 1630s and 1640s, the Ute began trading with the Spanish in northern New Mexico towns such as Taos and Pecos.⁵ The Ute obtained horses from the Spanish which significantly altered life for the Ute.⁶ Horses allowed the Ute to hunt further for food, including buffalo, evade enemies and live in larger groups under a centralized leader because greater areas could be covered in the search for food.⁷

TRADITIONAL LAW

Southern Ute traditional law does not stem from codes, treatises or a constitution. It exists in symbols, rituals and ceremonies in which tribal members interact. Following are five sources that reflect traditional laws of the Southern Ute.

The Ute Bear Dance has been in existence since the fifteenth century.⁸ This dance comes from a story in which two Ute men observed a bear performing a dance while they were

¹ University of New Mexico School of Law, Candidate for Juris Doctorate May 2010.

² Tribal Enrollment, <http://www.southern-ute.nsn.us/government/enrollment.html> (last visited Mar. 25, 2009).

³ Introduction to the Ute Tribal History, <http://www.southern-ute.nsn.us/history/intro.html> (last visited Mar. 25, 2009).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ Bear Dance, <http://www.southern-ute.nsn.us/culture/bear.html> (last visited Mar. 26, 2009).

hunting.⁹ According to this story, the bear taught one of the men the dance and corresponding song and instructed the man to share what he learned with his people.¹⁰ Now, the Ute people celebrate this dance after the first thunder of the spring.¹¹ Spring is a time to celebrate being outdoors again after a cold winter and also allows everyone to start their life anew.¹² A plume worn by tribal members for the first three days of the dance is left at a cedar tree on the fourth day and symbolizes one leaving his or her troubles in the past.¹³ Also, the Ute regard the Bear as the wisest animal and one that has magical power.¹⁴ Southern Utes believe bears are conscious of their relationship with the Ute people and that this dance strengthens that relationship.¹⁵

The Sundance is the most important ceremony in Ute culture serving both an individual and community function.¹⁶ A Sundancer (traditionally a male) often receives a command through dreams which tells him to participate in the ceremony.¹⁷ As a participant, he represents both his individual-self and his family.¹⁸ This ceremony requires participants to abstain from food and drink over the course of four days.¹⁹ Inside the Sundance lodge the fasting participant must deal with mental and physical rigors in an attempt to commune with the Great Spirit in hopes of obtaining “medicine powers.”²⁰

From a community perspective, the participant’s family erects a Tipi around the Sundance lodge and provides drumming, singing and even silence to encourage and provide strength to the participant.²¹ They also act as a reminder to the participant that although he may gain “medicine power” from the Great Spirit and use it at his discretion, it should be used for the good of the tribal community.²² Thus, the Sundance becomes a ceremony that reminds all tribal

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ BERTHA P. DUTTON, AMERICAN INDIANS OF THE SOUTHWEST 153 (Rev., enl. ed., Univ. of New Mexico Press 1994) (1975).

¹⁵ *Id.*

¹⁶ Aka Nuche, Red Ute & Eddie Box, Sr. The Ute Sundance, <http://www.southern-ute.nsn.us/culture/sun.html> (last visited Mar. 25, 2009).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ Nuche, *supra* note 16.

²² *Id.*

members of the spiritual bond they all share.²³ Its practice from generation to generation assures the survival of the Southern Ute people.²⁴

The Southern Ute tribal flag is filled with symbols reflecting traditional law. A peace pipe is one symbol that can be linked to traditional law. The peace pipe represents the Southern Ute as a peaceful people who try to live in harmony with their neighbors.²⁵ A leaf/branch lies next to the peace pipe on the flag, also symbolizing peace. Finally, the red willow used in the Sundance ceremony can also be found on the flag.²⁶

Sam Loganberry, a Sioux, introduced peyote rituals to the Southern Ute in Ignacio, Colorado.²⁷ Unlike their Ute Mountain neighbors, the Southern Ute officials and shamans did not support peyote rituals and such rituals are limited to a small number of Southern Ute people.²⁸

Pow Wows are a traditional dance celebration practiced by the Southern Ute and other Native American tribes.²⁹ Originally, Pow Wows had many different functions: celebration of a good hunt, weddings, or the welcoming of a guest tribe.³⁰ The Pow Wow has, however, been modified over the passage of time and is now a gathering of many different tribes in celebration.³¹ For some tribal members, the Pow Wow is a way of remembering the old ways and continuing the tribe's traditions.³²

LAW OF GOVERNANCE - TRIBAL GOVERNMENT

A. Membership

In 1936, the Southern Ute adopted a constitution which calls for governance by a six-member tribal council; this remains in effect today.³³ The Constitution is made up of fifteen

²³ *Id.*

²⁴ *Id.*

²⁵ Russel Box, Sr., Tribal Flag, <http://www.southern-ute.nsn.us/government/Images/seal.html> (last visited Apr. 1, 2009).

²⁶ *Id.*

²⁷ Marvin K. Opler, *The Character and History of the Southern Ute Peyote Rite*, 42 AM. ANTHROPOLOGIST 463, 470 (1940).

²⁸ *Id.* at 469.

²⁹ Pow Wow, <http://www.southern-ute.nsn.us/culture/powwow.html> (last visited Apr. 1, 2009).

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ DUTTON, *supra* note 14, at 151.

articles, and sets up a framework for governance of the Southern Ute Tribe.³⁴ Article II, Section 1 of the Constitution sets forth Southern Ute membership requirements.³⁵ It requires at least one-quarter degree of Southern Ute blood for children born to tribe members.³⁶ Section 4 gives all authority in determining eligibility for membership to the tribal council and does not recognize the opinion of any non-tribal court that attempts to determine membership in the tribe.³⁷

B. Tribal Council

The Tribal Council is comprised of seven members, a chairman and six councilmen, all of whom are elected by enrolled members.³⁸ Three year staggered terms apply to all elected council members.³⁹ Article VII enumerates the powers of the Tribal Council.⁴⁰ Article VII, Section 3 provides that the Tribal Council may be delegated further powers by the U.S. Secretary of the Interior or U.S. Congress.⁴¹ In order to be elected to the Tribal Council, a candidate must be at least 25 years old, must not have been convicted of a felony and must have resided within the borders of the Southern Ute reservation for at least 90 days.⁴² The Tribal Council, as a collective, is the leader of the tribe and is delegated a substantial amount of governing power by the Constitution.⁴³

Although the Tribal Council functions as a collective, the Chairman and the officers (Vice-Chairman and Treasurer) have specific duties related to governing.⁴⁴ A Chairman establishes committees, subcommittees or boards as needed, subject to the approval of the remaining Council members.⁴⁵ The Vice-Chairman's greatest responsibility is to assume the duty of the Chairman whenever he or she is absent.⁴⁶ Finally, the Treasurer is required to inform

³⁴ See generally SOUTHERN UTE CONST. amend. 1975., available at <http://thorpe.ou.edu/constitution/utecons.html>.

³⁵ *Id.* at art. II, § 1.

³⁶ SOUTHERN UTE CONST. art. II, § 1(b).

³⁷ SOUTHERN UTE CONST. art. II, § 4.

³⁸ SOUTHERN UTE CONST. art. III, § 2.

³⁹ *Id.*

⁴⁰ See SOUTHERN UTE CONST. art. VII.

⁴¹ *Id.* at § 3.

⁴² SOUTHERN UTE CONST. art. IV, § 5.

⁴³ See generally SOUTHERN UTE CONST. art. VII.

⁴⁴ See SOUTHERN UTE CONST. art. X.

⁴⁵ SOUTHERN UTE CONST. art. X, § 1(b).

⁴⁶ SOUTHERN UTE CONST. art. X, § 2.

the Tribal Council about the expenditures and receipts at regular meetings and upon request of the Tribal Council.⁴⁷

The Saving Clause in the Southern Ute Constitution firmly establishes the Constitution as the primary governing document with which any ordinance or resolution passed by the Tribal Council must comply.⁴⁸ The tribal court system is briefly addressed in the “Case Law” section of this work.

C. Constitutional Amendments

Article XIII of the Constitution governs constitutional amendments.⁴⁹ The Tribe itself cannot unilaterally amend its own Constitution.⁵⁰ Instead, the Southern Ute must seek the approval of the United States Secretary of the Interior, when a minimum of four Tribal Council members submit an amendment proposal or at least twenty percent of registered tribal voters sign a petition.⁵¹ The Secretary of the Interior may approve an election at which the amendment may be voted for or against.⁵² Thus, Article Twelve indicates the critical role a third-party, non-tribal entity plays in governing the tribe. This vital involvement of a non-tribal entity also suggests that the autonomy of the Southern Ute tribe is constrained. Article XIII is analogous to the Supremacy Clause of the United States Constitution in that it establishes the Tribal Constitution, not Tribal Code, as the highest law of the tribe.⁵³

ENACTED LAW

The Southern Ute Tribal Council enacts ordinances and tribal codes.⁵⁴ As with amendments to the tribe’s Constitution, the power of the Tribal Council to enact laws and codes is subject to the approval of the Secretary of the Interior.⁵⁵ The Southern Ute Tribal Code contains several titles, but only a few are highlighted in this section.

⁴⁷ SOUTHERN UTE CONST. art. X, § 3(a).

⁴⁸ SOUTHERN UTE CONST. art. XIII.

⁴⁹ SOUTHERN UTE CONST. art. XII.

⁵⁰ *See generally* SOUTHERN UTE CONST. art. XII.

⁵¹ SOUTHERN UTE CONST. art. XII, § 1.

⁵² *Id.*

⁵³ *See* SOUTHERN UTE CONST. art. XIII.

⁵⁴ SOUTHERN UTE CONST. art. VII, § 1(e).

⁵⁵ *Id.*

Title 2 of the Code sets forth Rules of Civil Procedure in Southern Ute Indian Civil Court.⁵⁶ The rules resemble the Federal Rules of Civil Procedure with the requirement of a formal complaint, answer, amended complaint and discovery.⁵⁷ Unlike the United States' Federal Courts, the Southern Ute Indian Tribal Court has a standard form to be used for interrogatories during the discovery process.⁵⁸ This form sets out six questions that must be answered and filed with the Court and failure to do so may result in a citation for Contempt of Court.⁵⁹

A. Reflections of Traditional Law

The Exclusion and Removal Code identifies who may be removed from the tribe and the procedure for removal.⁶⁰ A person can be removed for the following: repeat violations of tribal ordinances, interference with tribal ceremonies, abuse of privileges or misuse of tribal land and other acts which threaten the Southern Ute Indian Tribe.⁶¹ Traditional law lies at the heart of the Exclusion and Removal Code. Clearly, the Southern Ute take seriously any actions that negatively impact who they are as a people whether the actions are by a tribal or non-tribal member. Any person facing removal and exclusion is given due process in the form of a hearing before the Tribal Court.⁶² At the hearing, the Tribal Court hears evidence and may ask for supplementation of the evidence before determining whether exclusion or removal should commence.⁶³

The Southern Ute Indian Tribal Code includes a Children's Code which has eleven purposes of which three are highlighted. First, the Children's Code strives to preserve and strengthen the cultural and ethnic identity of tribal children.⁶⁴ This language indicates that the public policy of maintaining traditional law and custom is a high priority. The second purpose applies to children that have to be removed from their home and placed in another. In these

⁵⁶ See generally SOUTHERN UTE TRIBAL CODE tit. 2 (1989) [hereinafter "CODE"] (The Southern Ute Tribal Code relied on is the most current copy available and was provided by the Southwest Intertribal Court of Appeals).

⁵⁷ CODE §§ 2-1-102 to 112.

⁵⁸ CODE, Southern Ute Civil Form #5.

⁵⁹ *Id.*

⁶⁰ See generally CODE tit. 10.

⁶¹ CODE § 10-1-102.

⁶² See CODE § 10-1-104.

⁶³ CODE § 10-1-104(2).

⁶⁴ CODE § 6-1-101(4).

instances, all placements are executed pursuant to the Federal Indian Child Welfare Act when placement of the child outside of their original home becomes necessary.⁶⁵ As with the Constitution, we see the influence of the United States federal government in the everyday life of the tribe. Finally, the Children's Code establishes a Children's Court system on the reservation.⁶⁶ The rules and structure of the Children's Court resemble federal and state courts found throughout the United States.⁶⁷

B. Jurisdictional Matters

Gaming is addressed in Title 16 of the Tribal Code. The Southern Ute own and operate the Sky Ute Casino in Ignacio, Colorado.⁶⁸ Gaming committee members, the Tribal Council and Gaming Division employees are in positions of public trust.⁶⁹ These positions are (i) restricted from having any interest in or from being employed by any person with a gaming-related contract with the Tribe; (ii) restricted from receiving any thing of value from any person with a gaming-related contract with the Tribe (to include immediate family of the Gaming Committee, Tribal Council and employees of the Gaming Division); and (iii) restricted from participating in gaming.⁷⁰

The Code protects Gaming Division employees to a greater extent than the Tribal Council and Gaming Committee members. Employees acting in their official capacity while on duty are exempt from certain provisions of the Gaming Code.⁷¹ Finally, the Gaming Code makes clear that any person who issues, suspends, revokes or renews any license for any personal pecuniary gain or anything of value engages in unlawful behavior.⁷²

Wildlife conservation on reservation land is subject to the jurisdiction of the Southern Ute Indian Tribe.⁷³ All wildlife on the reservation, other than wildlife that is privately owned, is

⁶⁵ CODE § 6-1-101(10).

⁶⁶ CODE § 6-5-101.

⁶⁷ *See generally* CODE tit. 6, art. 5.

⁶⁸ Sky Ute Casino & Resort, <http://www.skyutecasino.com> (last visited on Apr. 2, 2009).

⁶⁹ CODE § 16-4-101(1).

⁷⁰ *Id.*

⁷¹ CODE § 16-4-101(2) (exempting employees acting in their official capacity while on duty from the provisions set forth in section 16-4-101(1)(b)(c)).

⁷² CODE § 16-4-104(1).

⁷³ CODE § 13-1-101(1)(b).

property of the Tribe.⁷⁴ It is the policy of the Southern Ute Indian Tribe to preserve the Indian respect for all life forms in both the traditional manners of hunting fish and in the preservation of game and fish.⁷⁵ Southern Ute tribal members may hunt any type of wildlife not limited by regulation, i.e. big game, at any time without a license or permit.⁷⁶ Non-tribal members must, at all times, possess the appropriate Southern Ute non-member hunting license.⁷⁷ Also, the spouse or any other non-member of the immediate family of a tribal member who is hunting can accompany the tribal member on a hunt but may not carry any weapons at any time during the hunt.⁷⁸ These strict provisions for non-members allow the Southern Ute Indian Tribe to carefully enforce their policy of conservation and respect for wildlife on reservation land.

Treaties directly impact the privileges and restrictions a tribe has on its own lands as well as non-tribal lands. In the case of the Southern Ute Indian Tribe, the 1874 Brunot Agreement signed between the Tribe and the United States allows the Southern Ute Indian Tribe to hunt on the non-tribal Brunot region of Colorado under tribal regulations.⁷⁹ The hunting requirements described earlier in this section apply to tribal members within the Brunot region.

In 2009, the Southern Ute Indian Tribe will begin exercising its rights under this agreement.⁸⁰ The rights under the Agreement always persist as long as there is game to be hunted and as long as there is peace between the Southern Ute and the white man.⁸¹ Developing a wildlife management plan has, in the past, been a higher priority for the Southern Ute which is why their rights under the Brunot Agreement had not been exercised.⁸² There are two reasons why the Tribe began exercising its rights under the Agreement: (1) access to animals for hunting purposes and (2) protecting tribal rights established in the Agreement.⁸³

⁷⁴ CODE § 13-1-101(1)(d).

⁷⁵ CODE § 13-1-101(1)(f).

⁷⁶ CODE § 13-2-101(2).

⁷⁷ CODE § 13-2-102(1).

⁷⁸ CODE § 13-2-102(3).

⁷⁹ Dave Buchanan, *Southern Utes, feds strike accord on 134-year-old treaty*, THE DAILY SENTINEL, Oct. 18, 2008 [hereinafter Treaty Article] (on file with author).

⁸⁰ Buchanan, *supra* note 79.

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

CASE LAW

The Southern Ute Tribal Court falls under the Office of the Tribal Chairman.⁸⁴ The Indian Law Reporter publishes some tribal court decisions.⁸⁵ Appeals from the Tribal Court are heard in the Southwest Intertribal Court of Appeals (“SWITCA”) which provides appellate services to tribes located in New Mexico, Arizona, Colorado and West Texas.⁸⁶ At the appellate level, precedent plays a critical role in making judgments. SWITCA cases dealing with appeals from the Southern Ute Tribal Court rely on prior SWITCA decisions, federal court decisions, prior Tribal Court decisions, and the Tribal Code.

The Tribal Court hears cases dealing with violations of or provisions in the Tribal Code. Cases involving name changes are announced in *The Southern Ute Drum*, a tribal newspaper.⁸⁷ In Colorado, drivers can be charged with driving under the influence (“DUI”) or a lesser charge of driving while ability impaired (“DWAI”).⁸⁸ The Tribal Court does not recognize this distinction, instead the court treats them the same when sentencing occurs.⁸⁹ Typically, the Tribal Court reports DUI/DWAI convictions to the Colorado Department of Motor Vehicles (“DMV”), however the Tribal Code dictates that traffic convictions for drivers under 18 years of age cannot be reported to the DMV.⁹⁰ Perhaps this Code provision is in place because the Tribe still views an 18-year-old tribal member as a child who deserves an opportunity to learn from his or her mistakes.

FINAL COMMENTS

This profile intends to touch upon the different types of law found within the Southern Ute Tribe. The laws discussed are not all inclusive and should not be seen as more significant or less significant (with the exception of the “Traditional Law” section) than the unmentioned laws.

⁸⁴ Tribal Divisions and Departments, <http://www.southern-ute.nsn.us/government/divisions.html> (last visited Apr. 1, 2009).

⁸⁵ See, e.g. *L.K. v. M.E.T.*, 17 Indian L. Rep. 6005-7 (1990) (reporting S. Ute Tr. Ct. Case, 1989).

⁸⁶ Our Work-SWITCA, <http://www.ailec-inc.org/SWITCA.htm> (last visited Apr. 2, 2009).

⁸⁷ See, e.g. THE SOUTHERN UTE DRUM, Sept. 25, 2009, available at http://www.southern-ute.nsn.us/DRUM/PDF%20FOLDER/090925DRUM/090925SUDRUM_PDF.pdf (last visited Nov. 18, 2009) (on file with author).

⁸⁸ See THE SOUTHERN UTE DRUM, Nov. 22, 2006, previously available at <http://www.southern-ute.nsn.us/DRUM/Default.htm> (last visited Apr. 2, 2009) (on file with author).

⁸⁹ *Id.*

⁹⁰ *Id.*