

# How an intertribal court system was developed in Washington, post-Boldt decision

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## An ethnography of the Northwest Intertribal Court System

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*Abstract: The Northwest Intertribal Court System (NICS) is a nonprofit organization started in 1979 following the Boldt decision on Treaty rights. The NICS is a consortium of tribes that have joined their resources to share judges, prosecutors and related court services. The NICS assists member tribes in the development of their individual justice systems as well as consultation and court services on a fee-for-service basis to all tribes in the U.S. and Canada. The ethical issues faced by the organization in its relationships with tribes while assisting with their judicial needs is the subject of the research project with a secondary focus on the organization structure and institutional isomorphic change. The founding members of the organization have agreed to have their oral histories recorded. Open-ended questions about the history as well as the research focus are used for quantitative research methodology.*

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## Introduction

The Northwest Intertribal Court System (NICS) is a nonprofit 501c3 circuit court that was implemented following the “Fish Wars” of Washington State, and after the U.S. v. Washington case on fishing rights (***U.S. v. Washington, 1974***). U.S. v. Washington is perhaps most widely known as the “Boldt Decision” where federal Judge George Boldt presided in the case and February 12, 1974 decision. He affirmed the treaty fishing rights of Native Americans to fish in usual & accustomed places sharing in equal with non-native fishermen.

## *Fish Wars*

The Fish Wars were an ongoing series of protests, fish-ins and struggles between tribal members asserting their treaty rights to fish on common ground and the Washington State Fish and Game enforcement officers. The Fish Wars began in early 1960’s lasting until the middle of the 1970’s. Speaking about the Fish Wars at a recent event commemorating the Boldt decision, Ramona Bennett of the Puyallup tribe said “They gassed us, clubbed us, dragged us, beat us. Those were hard times.”

The State of Washington has a long history of infringing on tribe’s treaty rights and asserting the state’s rights over tribes (Figure 1). Beginning with the first court case over fishing rights in 1887 while Washington was still a territory, followed by the new state of Washington’s very first legislative session restricting the use of traditional native methods of fishing, the state of Washington and tribes have been at odds over fishing. (Osawa, 2014). Over the years, the outcome in terms of wins/losses in court cases over fishing rights has flipped back and forth between the state and tribes. When federal policy weakened tribal government, tribal courts lost their funding. States, including Washington, took the opportunity to assert authority without jurisdiction. *Tulee v.*

Washington gave the state the power to treat natives the same as non-natives in fishing. In 1957, there were two important time points – one court decision ruling that treaties continue to be superior to the state, followed by the state legislature passing laws based on the federal policy of termination. In 1963 there were two cases; one gave the state further power (without tribal consent) for jurisdiction and activities on tribal lands, the other upheld the right of the state to subject Native Americans to state regulations. In 1964, the state filed an injunction against the Nisqually Tribe for off-reservation fishing and just a few days later the first protest in the “Fish Wars” began (Chrisman, 2006). As William Mason, Chief Taholah of the Quinault said “We will always have to struggle to keep our fishing” (Osawa, 2014).

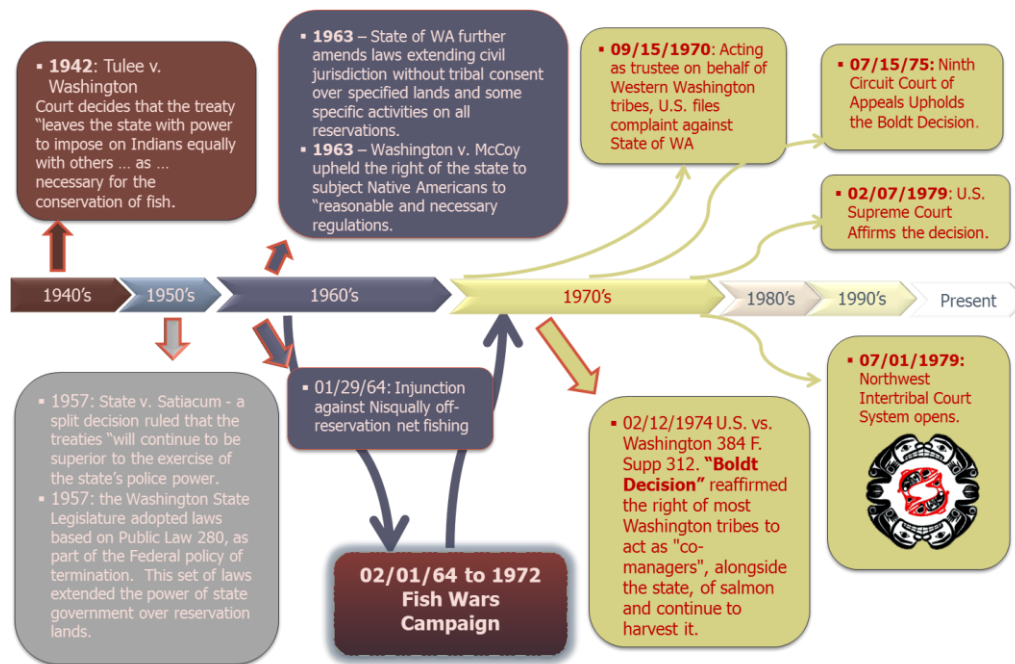


Figure 1: Federal Legislation affecting Indian Country. Federal Legislation Affecting Indian Country. Adapted from: FBI, Indian Country and Tribal Law. <http://www.fbi.gov/stats-services/publications/>. Accessed 04/2014.

The premise behind using a Fish-Ins as a protest mechanism can be traced to the civil rights movement, Martin Luther King, Jr. and the Southern Christian Leadership Conference (SCLC). The SCLC expansion to include economic justice and protest the

Vietnam War along with civil rights issues began in 1967. The SCLC and Martin Luther King planned the Poor People's Campaign as a civil disobedience campaign to occupy Washington D.C. in order to make hunger and poverty visible to the lawmakers (Stanford University, 2014). The Poor People's Campaign asked the National Indian Youth Council (NIYC), an Indian civil rights organization, to act as the Indian Coordinator for the campaign.

Hank Adams grew up on the Quinault reservation. Adams is an Assiniboine-Sioux from the Fort Peck Indian Reservation whose interest in politics, Indian treaty rights and community organizing began after high school and while volunteering with the Poor People's Campaign. He became the Special Projects Director of the National Indian Youth Council. Adams returned to Washington State and Frank's Landing to lend the NIYC's support for tribal fishing rights as a civil rights issue. Along with Ramona Bennett, Indian fishermen and their families, Adams created a new association to organize the southern Puget Sound fish-ins known as the Survival of American Indians Association (SAIA) (Heffernan, 2012).

Meanwhile, at Frank's Landing on the Nisqually River, Billy Frank, Jr. and other fishermen were being repeatedly arrested and having their catch and equipment confiscated by state game officials. Billy Frank, Jr. (March 9, 1931- May 5, 2014) had been arrested about 50 times over the years for fishing to exercise his tribal treaty rights. Frank's Landing became one of the main camps for the fish-in protests. People across the country became aware of the protests due to media attention when Marlon Brando participated and was arrested at a fish-in.

### *Boldt Decision*

In 1970, the United States, acting as a trustee for the tribes, filed a complaint against the state of Washington. The tribes sought “a declaratory judgment concerning .... Off-reservation treaty right fishing....and for injunctive relief to provide enforcement of those fishing rights as they previously have been or herein may be judicially determined.” (**U.S. v. Washington, 1974**). The Boldt Decision was subsequently appealed to the Ninth Circuit Court of Appeals and then appealed to the Supreme Court. Both courts upheld the decision. The Boldt decision included giving co-management responsibilities of salmon harvest between the tribes and state; and fisheries management responsibility by tribes. The fishing and harvesting aspects are the well-known results of the decision of the case but additionally tribes needed to provide enforcement for infractions, to have systems to prove tribal enrollment and a court system to prosecute violations. Tribes needed to prove that they had the infrastructure and government systems functioning in order to achieve autonomy from the state of Washington. As a result of the Boldt decision, tribes have regained jurisdiction and established court systems (**U.S. Department of the Interior, 2014**).

Judge Boldt continued to remain active in the case after the decision. Tom Schlosser, one of the Small Tribes of Western Washington (STOWW) attorneys involved in the litigation, sums up the decision by saying that “Judge Boldt understood that the issue was way too complicated to be settled by one declaratory judgment” (Schlosser, 2014). Boldt issued the declaratory judgment and said that tribes had the right to take up to half of the fish and then continued to hold hearings to figure out all the aspects to it and how it could be implemented. Alan Stay, attorney for the Muckleshoot Tribe, while speaking at the Boldt 40 event said that “it hardly ever happens that a court

will not only enter in and enjoin the state from [its previous actions] but actually take an active role in making sure that the rules are enforced correctly, legally and in favor of the tribes”.

In brief summary, the Boldt decision’s key pieces stated that tribes retained the right to fish in usual and accustomed areas with a 50% share of the runs, and to regulate their fisheries. In a recent interview for this research project, Michael Taylor, attorney for Quinault at the time of the Boldt Decision, said that Judge Boldt “held that tribal governments in the state of Washington were subject to state fisheries control until they developed government institutions, especially a tribal court system” (Taylor, 2012). Once these institutions were developed and their competence proven (initially to Judge Boldt, then to the federal Government), tribes assumed management of their own harvests, fisheries and courts.

#### *Planning an intertribal court system*

Small Tribes of Western Washington (STOWW) contracted with Seattle Legal Services for attorneys to represent the tribes during the U.S. v. WA case. Seattle Legal Services, which became Evergreen Legal Services, provided federally funded services for civil rights issues and specifically for the Native American Rights Fund. After the Boldt Decision, the idea for a circuit court started to form among some of the attorneys working for Evergreen Legal Services. Through their efforts, the NICS was established in 1979 as a non-profit organization. The NICS was organized as a consortium of tribes joined to share resources for judges, prosecutors and related court services. Evergreen Legal Services provided the attorneys that helped develop the intertribal court system (Figure 2). There were originally fifteen member tribes whose vision for the organization was to assist the member tribes, at their direction, recognizing the sovereignty,

traditions and culture of each of the tribes while assisting them to provide “fair, equitable and uniform justice for all who fall within their jurisdiction” (Russell, 2000).

In addition to providing court services, the NICS assists member tribes in the development of their individual justice systems. They also provide consultation and court services on a fee-for-service basis to all tribes in the U.S. and Canada. The NICS has a governing board composed of a representative from each member tribe which

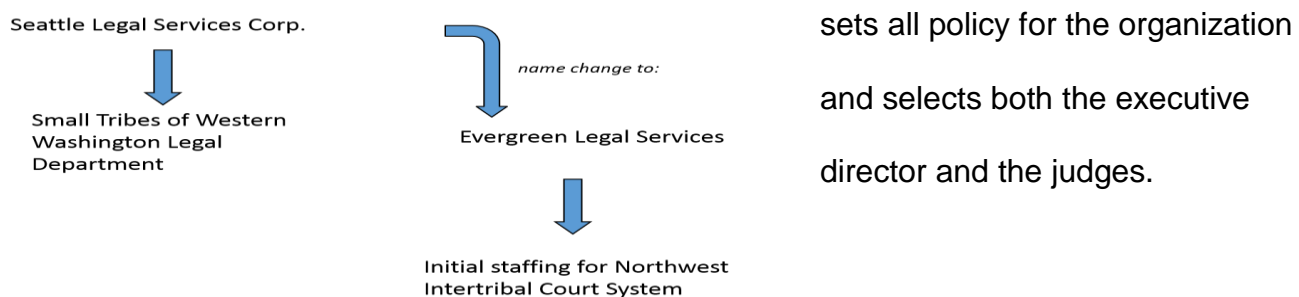


Figure 2: Legal Services. Adapted from interview with Sasha Harmon, PhD. 04/19/14.

## Guided Research Question

**How an intertribal court system was developed in Washington, post-Boldt decision.**

### Purpose of the Study

This research is an explanatory ethnography presenting the perspectives of some of the founding members of the NICS through the use of archival materials, interviews and videos. The central question for this ethnography and research is in looked at through the lens of system theory: the ethical challenges faced by the NICS in its relationships with tribes; and the institutional isomorphic change of the organization and member tribes as a result of the intertribal court system. System theory, in the study of organizations, is concerned with relationships, structure and interdependence (Katz &



Kahn, 1966). The creation of a system requires interdependence and interlinking of

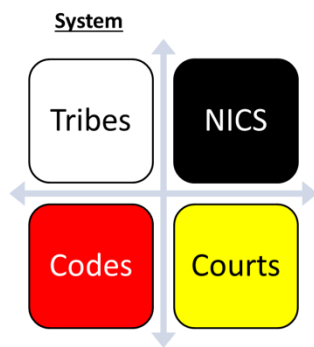


Figure 3: Interdependence / Interlinking

subsystems. Using this perspective to describe the intertribal court system and its stakeholders, while understanding that a system is always looking for equilibrium or homeostasis within its boundaries, we can look at the ethical and isomorphic pressures

introduced into the system and analyze the effect of these pressures on the intertribal court system.

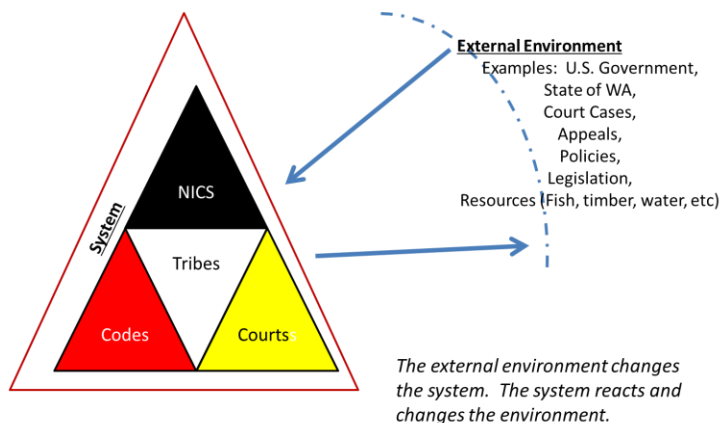


Figure 4: Open System Theory

## Literature Review

The conceptual framework for looking at the development of an intertribal court system relies on systems theory, specifically open systems theory, to illustrate the connectivity in the organization of the court system. Open systems theory looks at how organizations interact with their external environment rather than being isolated or independent. The system receives inputs from the external environment (outside the organization) and delivers output back to the external environment. A system has subsystems which are interdependent and interlinking as well as the tendency toward

equilibrium in the system (Katz & Kahn, 1966). By looking at the NICS as the system and tribal courts as the subsystems, the tendency toward equilibrium may be the laws and codes used within the court systems. The outputs to the external environment are the court decisions.

Looking back a few decades to DiMaggio and Powell's work on institutional isomorphism, we can also see that there has likely result of homogeneity of the member tribe's codes through the work by NICS on codes, decisions and legal systems (DiMaggio & Powell, 1983). DiMaggio points out those disparate organizations in the same line of business are forced by powerful internal and external forces to become more similar to each other. As the NICS has successfully assisted tribes in managing court cases and tribal court systems, the gaps in the tribes' codes to address various civil and criminal charges have been added or modified, often with the assistance of the NICS, to meet these charges. And while the mission (and major challenge) to the NICS is to "recognize the sovereignty, individual character, and traditions" (Northwest Intertribal Court System, 2009), of necessity is there similarity in codes to successfully address civil and criminal offenses that stand up to appeal in both tribal courts and external court systems? Additionally, is the way each tribe's court system structured, managed and run have similarities that have been put in place to accommodate the judges and personnel sent in by the NICS to work in the court?

Using the global community, for example, there is literature regarding public policy in The European Union (EU) and their role in transferring policies from one country to another. An important thing to note while reading about these policy transfers is that the role the EU plays in the transfer is not seen as legitimate while the

role of the sovereign state that is 'copying' policy is legitimized by its rules and procedures. I think this can be compared to tribes adding codes to their legal system by using the codes from other neighboring tribes. Additionally, the role of ethics in the involvement by the NICS can be compared to that of the ethical issues faces by the EU when they play a role in policy transfer between countries. The EU has developed a charter which recognizes the sovereignty of each country while following an agreed on charter of fundamental rights (European Union, 2000), similar to the United States Bill of Rights and its overriding effect on tribe's sovereignty in that these rights must be upheld within each tribe's codes. DiMaggio and Powell developed predictors of isomorphic change (DiMaggio & Powell, 1983) which predict change on an organizational level and external or field levels. What the authors have termed field level predictors include the predictors that "the more interaction... with the state, the more isomorphism; and the "more professionalism in the field, the more isomorphism". Given these predictors, is it likely that isomorphism may be an unavoidable consequence of a multi-nation organization such as the EU or the NICS?

Rakesh Anand writes that "In America, law is a cultural practice....[which] cannot be reduced to an equally strong devotion to a moral form of being" (Anand, 2008). The school of thought that the first principle of legal order is "The People" rule and that a lawyer's first obligation is to serve "The People" is the recognition that the community drives the development of legal ethics as well as law. This is an important concept as it is applied to working with tribes and their sovereign status. Sandra Day O'Connor, Supreme Court has said that tribal courts "must provide a forum that commands the respect of both the tribal community and the non-tribal community, including courts,

governments and litigants” (Day O'Connor, 1997). The native and non-native communities’ values and morals must be recognized and reflected in the laws imposed on those communities and carried out ethically by government.

## **Methodology**

### *Research Standpoint*

My family has played many roles in the development and governance of intertribal organizations. One of my aunts was a judge at Muckleshoot in their tribal court. My grandfather was likely the first Native American senator in the State of Washington and his brother, my great uncle, founded the Northwest Federation of American Indians which was a precursor to the Intertribal Council of Western Washington, which folded into the Affiliated Tribes of Northwest Indians (ATNI). I currently serve on the board of directors for Small Tribes of Western Washington (STOWW) which played an active role in the support of the litigation during the U.S. v. WA case and in developing legal strategies to implement the Boldt decision. One of the primary things that make this project so fascinating to me is the intersection of Western organization and common law concepts, and Coast Salish or local Indigenous culture. Indigenous methodologies, ethics, and organizational theory are some of the subjects that I have studied as part of the MPA, Tribal Governance cohort and are applicable to this capstone research. My work life includes research, primarily quantitative data so the opportunity to do a qualitative research project and expand my skill set has been important to me.

My assumptions for this research project: (were) that the people involved in developing this intertribal court system were guided by their own cultural backgrounds,

both as lawyers and as non-natives. In order to be considered valid and garner respect, the NICS needed to structure tribal court services in the Western manner. The NICS has tried to meet the needs of different sovereign nations as well as the legal requirements of the U.S. and State of Washington in the aftermath of the Boldt decision. By including elders courts, family inclusion and other traditional Coast Salish peacemaking within the intertribal court system structure, (Mansfield, 1993) the NICS believe they are respecting the values of the communities that they were serving while at the same time meeting the federal requirements for dispute settlement. I questioned whether the opposing epistemologies of the native and western dispute resolution processes (family pressure or conciliation models v. adversarial, precedent-based model) coexist within an organizational structure without one model completely absorbing the other. In other words, whether institutional isomorphism occurred; and what the ethical considerations were in preserving the culture and sovereignty of the involved tribes, if institutional isomorphism was occurring. The need for making decisions based on ethical and cultural considerations is vast. Add to that the potential of tribes participating with the organization giving up pieces of their sovereignty or becoming homogenous in their legal codes, policies, and procedures makes this relevant to my studies.

## Glossary

**Ethics:** Moral principles or values that determine a person's or group's behavior. Ethics deal with conduct, motives and character. A higher standard than that of the law. (Roth, 1994)

**Institutional Isomorphism:** Organizational structure develops within constraints imposed by government, technology and professions to the point where an organization becomes homogenous in nature with other comparable organizations.

**Mimetic** – imitative change due to the belief that the imitated structure is beneficial

**Normative** – change driven by professional standards or inter-organizational networks.

**Coercive** – change forced by external forces

**Indigenous Methodology:** Information gained through respectful relationships as the source of research data which includes sharing the processes and results with the communities that the research involves.

**Law:** That which is ordained or established. A system of rules of action which differs from ethics. Former Supreme Court Justice Potter Stewart said that difference between ethics and the law is “knowing the difference between what you have a right to do and what is the right thing to do.

**Open Systems Theory / Organizations:** active adaptive change within the organization and the communities that influence them / are influenced by them. A change management strategy that is heavily influenced by adapting to changes required by their relationships with the community and external environment.

**Organizational ethics:** culture, trust, processes, outcomes, character. denoting a way of acting, not a code of principles. A common purpose and shared set of values such as the mission and vision statements, an organization's 'image'. (Gorlin, 1994) The ethics process serves as a mechanism for organizations to address ethical issues regarding financial, business, management and relationship decisions.

**Organizational populations:** organizations that are similar in some respect; that operates in similar institutional environments and share the same political, regulatory or cultural structures.

**System:** A set of principles or procedures according to which something is done; an organized scheme or method; a form of social, economic, or political organization or practice. Merriam- Webster Dictionary

## Methods

The research is looking at a single unit of analysis which is the NICS organization however the data collected is being cross verified through multiple sources of the data, where possible. The interview content was analyzed for key themes and perspectives. The interviewees are relying on memories of events that occurred 30 to 45 years ago so it was important to confirm validity by finding consistencies through more than one source. Methods included using in-depth recorded teleconference interviews with pre-defined interview questions (Attachment C) with pre-selected founding staff and members from the organization and saved in mp3 format. Documents and archives from the NICS, its governing board and interviewees have been obtained, scanned and analyzed for timeline, key stakeholders and relevant data.

On February 5, 2014 an event to commemorate the Boldt decision was held at the Skookum Creek Event Center at the Little Creek Casino near Shelton, WA. This event, titled "Boldt 40", was videotaped by the Northwest Indian Fisheries Commission (Commission, 2014). Additional interviews with selected speakers, and attendees with a connection to the original events of the Boldt decision, were done by Peter Boome and videotaped by The Evergreen State College (TESC) (Crampton, 2014). Three of the speakers from the TESC videos had some of their comments transcribed for this project along with comments from other videos taken at the event.

Upstream Productions previewed Part I of a documentary titled Usual and Accustomed Places on May 17, 2014 (Osawa, 2014). The documentary profiles Indian people behind three major court cases relating to fishing rights prior to the U.S. v. Washington case and subsequent Boldt decision. Extensive notes were taken during

the video viewing and in the question and answer period with the documentary's director for purposes of this research.

## Findings

The NICS is not one court system but rather a circuit court of different court systems for each member tribe. Each member tribe has its own constitution, and codes and remedies to address infractions. A governing agreement, including an estimate of the nature and extent of services that the tribe requires is signed by the tribe's governing body and submitted to the NICS. The member tribe submits constitution and pertinent code sections for use during the circuit court. Table 1 describes the responsibilities, as planned in 1979, to be assumed by tribes and by the intertribal court system. The NICS has not changed its structure since its formation. The responsibility for government policies, procedures and codes stays within each tribe, however the NICS is available to assist with codes and provide legal advice as needed. The NICS provides judges, prosecutors and defenders covering the circuit and functioning as judicial officers for the tribal court they serve. As well as judicial services, the NICS provides technical services to its member tribes. The judges, attorneys and court clerks working in the intertribal court system need to work with each tribe's codes in each location on the court circuit. Each case that a NICS judge takes the bench on is subject to that tribe's constitution, codes and laws.

Table 1: Planned responsibilities (1979)

	<b>Tribes</b>	<b>Intertribal Court System</b>
A	Codes and Laws: Fishing, civil, criminal, juvenile	Codes: Assist with procedures
	Court procedures	



	Writing Court Procedures into codes	
B	Administration: Court room, library, audio recording	Judge: selection, training, ethics
	Personnel: Clerk / judicial officer, Court administrator	Personnel: Prosecutor, clerk-secretary
C.	Law Enforcement: Officers, jurisdiction agreements, jail provisions.	
	Treatment facilities: drug and alcohol, juvenile homes, etc.	
D.	Funding: LEAA, BIA, etc.	Overall administration

### Ethics findings

It is expected that some (or many) decisions made through the court system are challenged or appealed. The NICS, as an organization, faces ethical issues in helping tribes develop codes that will stand up through appeal to multiple courts (ex: county, state, federal). The interpretation of the tribe's laws and the court's decision and how the decision is to be implemented must be consistent with traditional practice and also be able to stand up to appeal, if necessary. Not all tribal codes clearly state the tribe's customs, or context for the wording of the codes. The nature, context and history of traditional law is customarily shared orally so the NICS asks for input from the community that it is serving. The NICS also must balance Western jurisprudence while honoring the tribes' culture and community traditions for input on the case and outcome. Each tribe is entitled to its own unique interpretation of codes, sovereignty and jurisdiction and it becomes the judge's responsibility to interpret tribal law individually and impartially.

The NICS judges follow the Code of Conduct for United States Judges, a set of guidelines for conduct in order to uphold the integrity and impartiality of the court (Administrative Office of the U.S. Courts, 2014). The five judicial Canons (Table 2)

make up the code of conduct which applies to anyone who is an officer of the federal judicial system authorized to perform judicial functions.

**Table 2 Judicial Canons**

Canon 1	A Judge should uphold the integrity and independence of the judiciary
Canon 2	A Judge should avoid impropriety and the appearance of impropriety in all activities
Canon 3	A Judge should perform the duties of the office impartially and diligently
Canon 4	A Judge may engage in extra-judicial activities to improve the law, the legal system, and the administration of justice
Canon 5	A Judge should refrain from political activity

During the formation of the NICS, the attorneys from Evergreen Legal Services and other stakeholders tackled the issues of separation of power, limiting court's role in tribal government actions. Their work on these issues demonstrate the multitude of ethical issues that were tackled prior to the first intertribal court case. The work that was done to structure the intertribal court system was for three primary reasons. Without an emphasis on the order of the reasons, the first was to ameliorate or minimize the potential for tribes to hold the NICS accountable for problems or issues arising that should be tackled within their own governments. Second, to expedite the confidence level of the tribes and individuals using court services in the integrity of intertribal court system. The third reason was to support the sovereignty of the member tribes.

The NICS governing board consists of a representative from each member tribe. The governing board reviews the administrative procedure manual as well as the employee handbook annually. A review of the original NICS employee policy manual reflects Western and federal mindset in its non-discrimination policy. The non-discrimination policy is narrow in its definition of "Native American" by only including those from federally recognized tribes. The amendment to change wording of the policy

to “enrolled members of ... federally recognized United States Indian Tribes” occurred 05/17/1991, replacing the 1982 non-discrimination policy that used the wording “Native Americans” with no other qualification as to identity. The NICS is located in the urban/suburban landscape of the Pacific Northwest where the majority of Native Americans live off the reservation but their employee policies are similar to reservation – based tribal organizations. It is likely this is due to the influence of their governing board which consists of a member of each federally recognized tribe that it serves and which reviews and approves the employee handbook.

#### Isomorphism findings –

After the Boldt decision, small tribal courts had to take on important functions before rules of court procedures or even ordinances defining the court’s scope and authority were developed. On the advice of their attorneys, some tribes adopted rules of court procedures written for federal, state or other tribal courts (coercive isomorphism); or hastily prepared rules without the input and coordination with the community (Harmon & Irvin, 1980). The NICS wanted to develop a set of uniform procedures to ease the demands on NICS judges and prosecutors. The awareness of the potential for undesirable infringement on tribal self-government is present in the meeting agenda and minutes for the discussions on developing a uniform code. Additionally, the questions that the NICS tackled were questions of policy which rightfully should be answered by tribal leaders, but were brought forth to help identify the issues and options for tribal leaders as they developed their court systems. Ultimately, a uniform set of court rules was developed for tribes to adopt (normative isomorphism). The NICS developed a Court Clerk’s Manual out of which the Tribal

Criminal Court Clerk's Manual from the National Tribal Justice Resource Center was modeled (Doucet, 2003) and an example of mimetic isomorphism.

Court appeals (based on Western legal system) have led to a compendium of Indian case law used as precedents; and used to amend tribal legal codes which in turn leads to the question of whether there is similarity (or isomorphism) among tribes.

Tribes, frequently with the assistance of the NICS, have redrafted codes and laws to clearly articulate matters, both civil and criminal, affecting family protection, juvenile justice, commercial licensing, taxations, zoning, gaming, and environment. Evidentiary objections are seldom made and in fact there is a broader allowance of all types of

evidence. An attorney from NICS has said that the informality found in tribal courts results in fairer trials.

Indian courts are fairer, not influenced by special interest groups and lobbyists says attorney Tallis

Woodward. (Aweeka, 1991)

#### Early Funding for tribal courts

One of the specific requests of the NICS in regards to the research for this project was to determine early funding sources for the development of the intertribal court system. Senators Warren Magnuson and Henry Jackson obtained federal funds to implement the Boldt decision which were distributed through the Bureau of Indian Affairs (BIA).

Figure 5 – Source: NICS archives

Member Tribes	
■	Chehalis
■	Hoh
■	Muckleshoot
■	Nisqually
■	Nooksack
■	Port Gamble S'klallam
■	Sauk-Suiattle
■	Shoalwater Bay
■	Skokomish
■	Squaxin Island
■	Tulalip
■	Swinomish
■	Upper Skagit
■	Quinault
■	Puyallup
■	Suquamish
■	Lummi
■	Stillaguamish*
■	Quileute*
■	Lower Elwha*

These funds were used to build fisheries, hire biologists, attorneys and other staff to implement the decision. The BIA also funded a research project to determine the

feasibility of a Court of Appeals and Trial Court Systems for Indian Tribes in Western Washington (Northwest Intertribal Court Systems, 1978). The Law Enforcement Assistance Administration (LEAA) was a federal agency that promised funding for the NICS but the agency was phased out at the end of 1979.

The Small Tribes of Western Washington (STOWW), a non-profit representing a number of tribes, formed a legal team to work on the decision on behalf of the tribes using attorneys from Seattle Legal Services, a legal aid clinic. Grants that were sizeable for the late seventies era was obtained from a (now-defunct) foundation called the Akbar Fund, based in Albuquerque, NM, for both STOWW and NICS for complementary projects. The Akbar Foundation was reportedly enthused by the Boldt Decision and the potential to make a significant impact on justice programs. One of their primary funding partners was the heir to the Maytag appliance fortune and was greatly interested in civil rights issues, including Indian justice issues. The grant was the seed money to form the intertribal court system - a unique circuit court system which was the first of its kind in the nation. Additional funding for the startup organization came from the Legal Enforcement Alliance of America and the Bureau of Indian Affairs. The Ford Foundation, who provided funding to establish the Native American Rights Fund, also provided significant funding in the early years following a fund raising trip to New York by NICS administration and attorneys.

### Intertribal Cooperation

As mentioned in the earlier, the Native Indian Youth Council (NIYC) played a significant role in organizing and participating in the protests for the Fish Wars. The NIYC, the nation's second oldest national Indian organization, may also be given some

credit for fostering an environment of intertribal cooperation and the sharing of resources to accomplish a specific goal although earlier intertribal organizations within Western Washington such as the Northwest Federation of American Indians and the Intertribal Organization of Western Washington are also examples of intertribal cooperation and support. As a civil rights organization, the NIYC has partnered with communities to tackle issues affecting Indian people and their rights. The NIYC's work in the Fish Ins and development of the Survival of American Indians Association set the stage for continued intertribal work in fisheries, fishing management and the intertribal court system. Looking at the involvement of the NIYC and subsequent organizations in the fight for recognition of treaty rights as an open system; and then by looking more closely through the lens of open systems theory, the interaction between the individuals, tribes and these organizations were changed by other organizations (i.e. the state of Washington) which exerted economic and political force leading to the changes. A key feature of open systems theory is that the environment provides key resources that sustain the organization and lead to change and survival. Certainly it can be said that the work of many individuals and tribes in the fifteen years between the first fishing protest and the implementation of the Boldt decision that has resulted in shared fishery management and an intertribal court system is the direct result of the sharing of resources and led to significant change and survival in the struggle for self-determination and recognition of treaty rights.

## Discussion

### *Limitations*

The main focus of this research was to examine ethics and institutional isomorphism. There are limitations associated with this project. The interviews, whether live discussions or from videotapes obtained for this project were based on people's memories of events occurring decades ago. Another limitation is on reliability. The emphasis on examining ethical decisions and actions leading to isomorphism led to some carefully framed responses by interviewees. This raises the question of whether the entire story was told or altered to protect the organization; whether accuracy was sacrificed in order to portray people and events in the best possible light. Despite the limitations, the relevance of this project is the result of having obtained oral histories and stories that link the history of the fish-ins and Boldt decision to the development of an intertribal court system. Future research could include the oral histories and stories from people not directly involved in the protests, Boldt decision or intertribal court system, perhaps gaining greater insight into the effects of institutional isomorphism on the tribes as well as ethical issues.

### *Additional Findings*

Along the way, I was led to new ideas through the intriguing stories and stories given to me during the videos, interviews and archival reviews. An interesting juxtaposition in looking at the issue of judicial ethics is that the Supreme Court is exempt from the Code of Conduct for U.S. judges. Sandra Day O'Connor, Supreme Court writes "that tribal courts are where the tribal government's legitimacy is challenged and demonstrated".

Throughout this project, a consistent recognition of the women that were leaders within the fish-in movement, of the women that were instrumental in organizing the court systems and intertribal court system organization was made. In my interview with Rob Wilson-Ross, he named a number of women that were instrumental to in garnering intertribal cooperation, regaining sovereignty through judicial systems and reclaiming treaty rights through protests and advocacy. When Wilson-Ross was hired, he traveled to each of the tribes to talk about the intertribal court system concept and to garner support. He was welcomed and was listened to with respect but did not receive any confirmation or commitment from tribal leaders to participate until Anne Pavel began accompanying him to meet with tribal leaders. She spoke to other women about the need for the court system and in turn, they met again with tribal leaders and garnered commitment to take the concept to the next level. Billy Frank Jr. said “women make the best leaders” (Boldt 40 videos). Along with Hank Adams, Ramona Bennett founded the The impact that these women had in the 1960s into the 1980’s – Anne Pavel, Ramona Bennett, Darlene Maloney, Sasha Harmon and many others is worthy of continued research and documenting for future generations. It has also been said by at least three people during the course of this research project that this was the greatest generation of true leaders – Guy McMind, Joe Delacruz, Billy Frank, Hank Adams, Annie Pavel, Ramona Bennett, many more – who put action to the ideas and followed through. They honored the sacrifices of our ancestors, built bridges to move us from the past and planned for better futures for our children. The theme was prominent during the many tributes and eulogies for Billy Frank Jr. in that his “generation of leaders were our transformational leaders” (Scott, 2014).



## *Conclusion*

A final point, in looking at the history of the legal system, policy and governance surrounding the Boldt decision, is that the court case was precipitated by revolutionary actions of individuals and small groups of people. The evolution of intertribal and intergovernmental cooperation came about because individuals, acting in defiance of existing law and policy, and without the public support of their tribal governments, became the catalyst for this enormous change to Indian sovereignty (Heffernan, 2012). At the time of the protests and fish-ins, the fishermen activists were thought of as renegades and outlaws, breaking state laws and acting without tribal government approval. In one aspect, nothing has changed. Tribes and tribal courts still interpret treaty fishing rights as belonging to the tribe, not the individual tribal member. Tribal governments do not support individuals fishing outside of the law using 'treaty rights' as a reason; however this was never the issue behind the individual fishermen claiming their treaty rights and fishing in violation of state laws. Without the civil disobedience of the outlaw, renegade fishermen such as Billy Frank, Jr. against tribal government, and county, state and federal governments where would this region, its tribes and all of Indian country be today? Without the grass roots community organizing of Hank Adams, the NIYC, the SAIA, the SCLC, the Poor People's Campaign and others, what would the current laws look like? The changes that occurred to the existing system of fishing are an example of Open System theory. External forces changed the system and vice versa, the system has changed the external environment.

Professor Charles Wilkinson, author of more than one of the articles and texts that we were assigned to read in the MPA program says that "the transcendent meaning of the Boldt decision was to uphold the treaty rights of Northwest tribes, but it was also a

national case about national obligations and values. The decision was a gift to all of America.

*“When I was a young kid and drifting on the Nisqually River, I always wondered who is going to take care of us? I look over here at the sportsmen and the game department – they take care of them,” Frank said. “But I look at us Indians and nobody takes care of us, no infrastructure or anything. Well, today we have an infrastructure with the Northwest Indians Fishing Commission and all of our tribes.” Billy Frank, Jr.*

## Attachments

### Attachment A

#### Human Subjects Review

1. How would you summarize, in the form of an **abstract**, the **nature** and **purpose** of your research project?

*The Northwest Intertribal Court System (NICS) is a nonprofit organization that started in 1979 following the Boldt decision on Tribal fishing rights. The NICS is a consortium of tribes that have joined their resources to share judges, prosecutors and related court services. The NICS assists member tribes in the development of their individual justice systems as well as consultation and court services on a fee-for-service basis to all tribes in the U.S. and Canada. My proposed research will look at the ethical issues faced by the organization in its relationships with tribes while assisting with their judicial needs. A secondary focus will be on the organization structure and institutional isomorphic change. The NICS desires an intensive review of their history, including interviews with people involved in the founding of the organization. I will be recording oral histories by the founding members that will consist of open-ended questions about the history as well as my research focus and I am reviewing and scanning archival records, newspaper and organization documents to develop a comprehensive history and timeline for the organization.*

2. What are the **procedures** to which humans will be subjected, i.e., questionnaires, interviews, audio or video recordings, etc.? When, where, and how will these procedures be carried out? **In the case of questionnaires or interviews, please attach a copy of the questions you will be asking.**

*I plan to schedule and record (via web teleconferencing audio recording application) 4-8 comprehensive interviews with the attorneys, administrators and other key players in the formation of the Northwest Intertribal Court System. The web teleconferencing application is being provided by the Northwest Intertribal Court System using an existing subscription to their web conferencing service. The selected interviewees no longer all live in Western Washington so teleconferencing has been determined to be the best method to reach and record their responses. Consent will be obtained by email. The letter to the subject and consent will be inserted into emails with a response requested from the participant that either approves or refused consent for the interview.*

3. How will the **recruitment of human subjects** for your proposed project be carried out? Include your recruitment criteria and procedures. Attach copies of any advertisements, flyers, announcements, or messages you will use to recruit participants.

*The initial four interviews have been selected by the Northwest Intertribal Court System due to their historical involvement in the development of the organization. Additional interviews may be scheduled upon recommendations from initial interviews.*

4. What are the possible **risks to the human subjects**? Specify possible kinds and degrees of risks, e.g., minimal, emotional risk in the form of distress or embarrassment. Outline the precautions that will be taken to minimize these risks, including methods of ensuring confidentiality or obtaining a release to use collected material and information.

*The risks are minimal however emotional discomfort or distress could occur based on their memories of events and/or ability to recall these events and the people associated with them. Oral interviews will have non-leading, open ended questions to minimize any perception of bias from the interviewer. The survey data will be contained in an encrypted, password protected environment with full access only to me, my faculty sponsor and the NICS, if requested.*

5. What are the specific, anticipated **benefits** to be gained by completing the project? These may be at an individual, institutional, or societal level. How do these benefits justify the risks identified in question 4?

*Documenting the early days of this organization and the intergovernmental efforts by tribes to meet the requirements of the Boldt decision and how this has contributed to each of the member tribe's sovereignty is important history to be captured. The story of this organization would not be complete without some analysis and discussion on the ethical hurdles of providing service within the constitution and laws of many different sovereign nations. Additionally, the member tribes' institutional isomorphic change that resulted from sharing judicial services through the NICS may be useful to examine as each tribe strives to retain their culture, self-determination and sovereignty within the dominant culture of the U.S.*

6. **How will the information derived from this activity be used?** To whom will the information be distributed, and if made, how will the promise of **confidentiality** be kept or carried out in the final product?

*The results of my research will be presented during TESC MPA Capstone presentations May 30-June 1. Material for use in the NICS website on the history of the organization will be written and provided to NICS for their use after the Capstone presentation and the NICS will be provided with the audio files of the interviews / oral histories and scanned copies of archival materials. Interviewees and other interested community members will be provided with the final report and data, if they wish. The names of the interviewees will be used with their permission in the final product. If permission is not granted, specific information on their involvement that may identify them will be withheld. Likewise, if information is revealed in the interview that they do not wish to be identified with, their identity will be suppressed.*

Attachment B

## **Informed Consent**

### **Letter to Subjects and Consent Agreement**

Dear Participant:

I am a student at The Evergreen State College enrolled in the Master, Public Administration / Tribal Governance program. For my Capstone project, the final requirement for completion of the degree, I'm working with the Northwest Intertribal Court System (NICS) which has identified you as an important part of the organization's history. The goals of this project are to document the history of the founding of NICS; to examine the ethical issues faced by the organization in its relationships with tribes while assisting with their judicial needs; and to analyze the organization and its impact on tribes. The final products will be material for the NICS' website, my capstone presentation to the college community and a research paper.

This project will gather information about the NICS from archival documents, newspapers and videos about the formation of the organization. I will also be doing select interviews with a few key people involved in the organization. The interviews may take 60 minutes to complete as I'm looking for recollections and stories about the early days and important milestones for NICS. Your name may be used in the presentation or written history. If you request, your connection to specific recollections or information will be suppressed and your identity held confidential. So that you may consider your responses in advance, I've included the questions I'd like to cover at the bottom of this email.

Participation in this interview should consist of minimal risk, with the risk likely being nothing more than mild discomfort from sharing your recollections and memories on this subject. There will be no compensation of any kind available for your participation, which is completely voluntary. You may withdraw your participation at any point or skip any question you do not wish to answer without penalty. I may share all or part of the data gained from the interviews with my faculty advisor, Linda Moon Stumpff as well as the NICS. The data will be kept in encrypted electronic storage that is password protected.

At your request, I will provide you with a copy of the final draft of my research paper and/or my capstone presentation. The paper will not be published, but it will be read by our faculty members.

If you have any questions about this project or your participation in it, you can email me at either [halsuz18@evergreen.edu](mailto:halsuz18@evergreen.edu) or [sue100194@gmail.com](mailto:sue100194@gmail.com) or call me at (206)276-3148. The person to contact if you experience problems as a result of your participation in this project is John McLain, IRB administrator at The Evergreen State College, Library 2211, Olympia, WA 98505; Phone 360.867.6045.

Thank you for your participation and assistance!

Sincerely,

*Sue Hall*

**Sample email Informed Consent Agreement for the interview:**

**(Please respond to this email confirming or refusing to participate)**

**Dear Sue:**

I agree to serve as a subject in this research project on the formation of the Northwest Intertribal Court System. I have read the information above on the purpose which is to gather information about the early days and milestones of the Northwest Intertribal Court System, the ethical issues faced by the organization in its relationships with tribes while assisting with their judicial needs; its organization and impact on tribes. The research activity I will participate in is an interview that will may last 60 minutes.

I have been informed that the information I provide will be used for a research paper and presentation by the student researcher at The Evergreen State College. I have also been informed that material gathered will be used on a NICS website page about their history and that my responses may be reported in the paper, presentation or website but that I may request my identity be kept confidential in connection with all or part of my data. The student has agreed to provide, at my request, a copy of the final draft of her paper and/or presentation. I understand that the risks to me are minimal, and would likely be nothing more than discomfort from sharing my recollections about the NICS. I agree to be interviewed, and to have that interview analyzed for this project.

There will be no compensation of any kind available for my participation. I have been told that I can skip any question or stop the interview and withdraw my full participation from the study at any time without penalty. I understand that my participation in this project is completely voluntary, and that my choice of whether to participate in this project will not jeopardize my relationship with The Evergreen State College. I am free to withdraw at any point before or during the survey.

If I have any questions about this project or my participation in it, I can email [halsuz18@evergreen.edu](mailto:halsuz18@evergreen.edu) or [sue100194@gmail.com](mailto:sue100194@gmail.com) or call (206)276-3148. Likewise, the person to contact if I experience problems as a result of my participation in this project is John McLain, IRB administrator at The Evergreen State College, Library 2211, Olympia, WA 98505; Phone (360)867-6045.

**(Please respond to this email confirming or refusing to participate)**

I have read and agree to the foregoing and by virtue of this email response agree to participate.

**Interview Questions:**

Researcher states names and date for the audio record.

Research confirms agreement to participate.

Biographical Questions:

- What time frame were you involved with the organization?
- What was your role with the NICS?

History :

- Describe what the organization was like when you first became involved.
- How did it change over the years?
- What was behind the changes?
- Describe an important accomplishment (by you or the organization) during your tenure.
- Describe one or more challenges faced by the organization during your tenure.
- Do you have, or know of any old documents from the early days of the organization?

Culture, trust and relationships:

- How do you think trust between tribes, tribal representatives and the NICS developed?
- Was trust tied to common culture or shared background experience? (Coast Salish tribes or Fishing Rights protests or other?)
- Were the relationships between the NICS judicial or organization staff and tribal representatives personal relationships or strictly professional?
- How were decisions made by the governing board? (consensus building or Robert's Rules of Order or other?)
- Describe the communication between tribes and tribal representatives? (example - willingness to share ideas and information freely)
- How was dissent or friction handled? Do you have any examples?
- What kind of confidentiality issues needed to be addressed?
- Were there discussions on how to handle sensitive issues?

Formal organizational structure:

- How were jobs or tasks coordinated between tribes?
- Was there preferential hiring at NICS in terms of AI/AN affiliation?
- How was cost-sharing for the organization's services between the tribes determined?
- How were policies and procedures for the organization developed?

Last Question

- What did you do after you left the organization?

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Snohomish tribal council

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Tia Higano, MD (my boss at work)

Nicole Bond, BA TESC class of 2014

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Jenny Serpa

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Mike Taylor

Rob Wilson-Hoss

Doreen Maloney

### *Northwest intertribal Court System Staff*

Michael Rosotto, Appellate Dept. Director

Tim Rybka, Prosecuting Attorney

### *TESC Media Engineering Department*

#### **Boldt40 Interviews**

Peter Boome, Interviewer

Dave Crampton, Video Producer

Meskerem Johnson, Camera

Charles Seeholzer, Audio

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