

THE IMPACT OF TRIBAL POLICE DEVELOPMENT ON
RURAL CALIFORNIA SHERIFF'S DEPARTMENTS

Article

By

Lieutenant Douglas Turner
Colusa County Sheriff's Department

Command College Class XXXI

Sacramento, California
November 2001

With unprecedented streams of wealth flowing into Indian communities through proceeds from gaming casinos, many California Native American tribes are contemplating forming their own tribal police forces. Of approximately one hundred California tribes, at least nine already have full-fledged police departments, while many others have security officers or rangers.¹ Tribes have found this necessary as once small residential communities have flourished in population and assets. Casinos on tribal lands bring thousands of people each week into an environment that only a short time ago was relatively quiet, with little need for a full time law enforcement presence.

While providing their own police services may very well be the best solution to their issues, California tribes have encountered numerous hurdles in attempting to establish tribal police departments. The most notable is that tribal police under California law have only authority to enforce tribal laws on tribal members. In cases dealing with non-tribal members or penal code violations they have no more power than ordinary citizens do. They are forced to make a private person's arrest and wait for a response from sheriff's deputies. "We can't chase these criminals off the reservation," said Cabazon Tribal Police Chief Paul Hare, "all we can do is advise other law enforcement agencies [of the crime]. So a lot of people commit crimes and get away."¹ At the heart of the matter is Public Law 83-280 (PL-280), a law enacted by Congress in 1953. Congress perceived that there were inadequate law enforcement services in Indian country in some states, and conferred state jurisdiction over those same states. Indian country is defined by 18 U.S.C. section 1151, to include all areas within a reservation, trust, allotments and dependent Indian communities. Congress held that the effort to provide better law enforcement services for PL-280 states was not intended to deprive tribal governments of

their authority. As California is a PL-280 state, criminal offenses are investigated by the local sheriff's department, and are referred through the county district attorney to a local court system.

An event that would have great impact on California's Indian tribes and state law-makers was the case of the Cabazon Band of Mission Indians in 1987.² In this case involving Indian gaming, the Supreme Court held that PL-280 did not authorize California to enforce its gaming laws in Indian country. The Court distinguished between civil/regulatory laws and criminal/prohibitory laws, thus allowing the states to enforce only the latter in Indian country. The distinction between the two hinges on whether a state completely forbids conduct, or simply regulates it. This decision was the turning point for what has now become a multi-million dollar industry for tribes that have since established gambling casinos.

Many California tribes felt that although PL-280 was adopted to benefit them, it actually produced the opposite effect.³ Federal money that had once been available for law enforcement was pulled back from the states affected, as state and local law enforcement were now tasked with providing those services. Many tribes also considered the law to have a diminishing effect on their sovereign nation status, as it was thrust upon them without their consent. The local sheriff's departments were hard pressed to take on the additional duties with no additional funding provided.

The impact of tribes seeking their own police forces has become a concern to California sheriffs for a variety of reasons. First, and foremost, is the issue of jurisdiction. As mentioned before, with the passing of PL-280, California has jurisdiction of the enforcement of crimes on tribal lands. The jurisdictional issues are two-fold. The first has existed since PL-280 was enacted, and continues to hamper law enforcement. PL-280 basically defines what laws the state or local law enforcement agencies may enforce on tribal lands, and there continues to be

confusion. In tribes who have no form of their own police services, local law enforcement often finds its hands tied when called by tribal members to enforce some laws. An example would be calls to enforce sections of the California Vehicle Code on tribal lands. As most do not fall within the criminal or prohibitory laws under PL-280, there is no provision for this type of enforcement. Drinking and disturbing the peace are other frequent problems that local officers are called to with no capability to enforce state law.

Indian culture that varies from tribe to tribe also makes local officers' duties difficult, as they are normally ignorant of those cultures and customs. In a recent law enforcement training seminar, Keith Taylor, a Native American educator, explained that not knowing the culture of the tribe you are dealing with can make your efforts ineffective.⁴ A lack of understanding in the differences of values, attitudes and beliefs can affect an officer's perception of the situation.

The second jurisdictional issue is, under PL-280 tribes have concurrent jurisdiction on tribal lands but are very limited in their scope of enforcement. They may enforce only tribal law on tribal members, and only upon tribal lands. This makes their duties extremely difficult and gives them not much more authority than private security guards. They must make a private person's arrest for all other violations and rely on the sheriff's department to respond. With the large amount of public now entering Indian country, this makes the tribal police less effective and places a burden on the sheriff's department. Pursuits that are initiated by tribal police must be terminated if the suspect vehicle leaves tribal lands, as the tribal officers cannot by law operate emergency vehicles on public roadways.⁵

Some tribes in California have requested concurrent jurisdiction within the counties in which they are located. While this would seem to be a clear solution to the jurisdictional issue,

California sheriffs have been reluctant to consider this. These sheriffs are concerned for a number of reasons, one being the lack of training standards for tribal police. Tribal police are not required to attend the Basic Law Enforcement Academy as is required to obtain peace officer status for state and local officers. As of this writing, the only way tribal police may act as peace officers off tribal lands is with the deputization of those officers by the county sheriff.

Another major concern that California sheriffs have regarding tribal police is the lack of liability for their actions. As tribal lands are considered a sovereign nation, they are not subject to civil liability in local courts.

While there have been efforts to grant tribal police officers state peace officer status, these efforts have been met with a cautious approach from the sheriffs for the reasons mentioned above. The latest Senate Bill, SB 911, calls for the same training as all California peace officers, a degree of liability, as well as other provisions.⁶

As a student of the California Commission on Peace Officer Standards and Training Command College and a rural California sheriff's department administrator, the author undertook a project with the above issues in consideration.

The Project

The purpose of the project was to forecast the impact of the development of tribal police on rural California sheriff's departments by the year 2006. For the project, a model was utilized based on the Colusa County Sheriff's Department, in a relatively small county in rural Northern California. The county has two Indian reservations, one having a flourishing Indian gaming casino. That tribe, the Cachil Dehe Band of Wintun Indians, was also used in the model. The

growth of that tribal population and the increasing need for additional police services on its tribal lands was the motivation for this project.

By scanning information from literature, the Internet, and personal interviews with experts and stakeholders, an examination of the history and current status of the project issue was conducted. The examination revealed the historical evolution of law enforcement as it pertains to Indians and Indian country. This study of the history of the issue was necessary to lay a foundation to form a base for futures forecasting and planning.

Information was also reviewed regarding the current status of the issue, including interviews with rural sheriffs and local tribal leaders. A futures forecasting method, or exercise known as the Nominal Group Technique (NGT), was included in the project and was used as a tool to identify trends and events that could impact the future of the issue.

Literature Scanning

During the scanning of literature with regard to the history of the issue, as well as what is happening currently, two things became evident. First, that some California Indian tribes are not satisfied with the level of law enforcement service they receive, and that this has been an issue since at least 1953.⁷ Second, that while California sheriffs are not totally opposed to tribes developing their own police forces, they have major concerns that must be met before they will endorse the granting of state peace officer status to them.⁸

Another issue is that, while the sheriffs may be willing to provide additional police services to the tribes, they will be hard pressed to do this at their current funding and staffing levels. In the case of the agency used for the project model, there are simply no resources to provide police services at a higher level than already exist.

Expert Interviews

The author spoke with four rural county sheriffs and two tribal officials from the tribe used in the model. Each sheriff had a slightly different perspective of the project issue due to the differences in their current relationship with tribes within their counties. All shared the same concerns regarding the movement to give tribal officers peace officer status without provisions being made to hold them to the same standards as all other peace officers. One currently is the only sheriff in the state to have deputized tribal officers, giving them peace officer status within his county. All agreed that if they were to grant concurrent jurisdiction to the tribes to enforce state law, then the tribes should grant their deputies jurisdiction to enforce tribal law.

The tribal officials interviewed were in favor of additional police services being provided by the sheriff's department, as their tribe was too small to make having its own police force practical. They stated a cooperative agreement between their tribe and the sheriff for the police services would best serve their tribal community. They also believed that both the tribe and the sheriff's personnel would greatly benefit from cultural awareness training. They felt so strongly regarding this, that they offered to sponsor the training. As a result of the interviews and subsequent contacts, plans are underway to make that training a reality.

Futures Forecasting

Using the fore-mentioned Nominal Group Technique (NGT) learned from Command College, the author brought together a group of individuals that were experts in their fields and stood to be impacted by the project issue. The group underwent a brainstorming session and came up with a list of trends and events they believed would impact the project issue in the future. Eight trends were identified: tribal political influence, jurisdictional issues, cooperative

plan, culture and law, economic independence, health and education facilities, level of liability, and environmental issues. Seven events were also identified: Supreme Court decision, non-cooperative tribal police, tribal legal system, change in political climate, establishment of tribal nation, tribal disharmony/coup, and economic recession. The group in greater detail further discussed these trends and events. The final findings of the group were recorded to be used later for the building of future scenarios.

Future Scenarios

Utilizing the information developed through the literature reviews, interviews and the results of the NGT, three separate scenarios were developed, each indicating a possible future for the project model. The most probable of the three was identified and used as a basis for future planning as it pertains to the issue. That scenario is:

It is January 1st, 2006. New Year's Eve at the Summit Valley Indian Reservation had been a wild one. The casino had a concert that was attended by a large crowd and the party lasted through the night. Security Supervisor Joseph Rivers and his shift of officers had been very busy handling the crowd. In the housing area of the tribal community there had been several incidents, including a large fight. The Foothill County Sheriff's Department had responded and made several arrests. Rivers heard over the police scanner when the deputies had called for additional help. Other units had arrived shortly after and the deputies gained control. Rivers would have gladly assisted the deputies, but was confined to the casino area. Rivers knew that in many other counties in the state, the tribal police force for the reservation would have handled that call. His tribe was too small to have its own force and relied on the county sheriff to provide law enforcement services.

About two years ago, the State of California, after long consideration, made provisions for tribes to form their own police forces, with the officers having state peace officer status. The tribes and the county sheriffs had finally reached an agreement that met the concerns of each group. The tribal officers, in tribes who wished to have them, were trained at the same level as all other peace officers in the state. In essence, the Indian reservations with police forces were now given the same considerations as any other municipality.

For the tribes not large enough to warrant having their own force or for some other reason it was deemed impractical, the county sheriffs were still responsible for enforcement. The sheriff's personnel were now much more effective in their duties as most of the tribes had enacted ordinances that gave the sheriff authority to enforce those violations not covered by Public Law-280. A proactive effort to give the non-Indian deputy sheriffs cultural training had proved very successful, leading to a much improved relationship between sheriff's deputies and Rivers' tribe. The tribal council had reached an agreement with the sheriff to partially fund a deputy position who would spend part of each shift dedicated to patrolling the reservation.

While Rivers would have liked to have been a member of his tribe's own police force, he was content to work as a security guard while he attended classes in law enforcement. His intentions were to put himself through the Basic POST Police Academy, and then seek a job with the Foothill County Sheriff's Department. His next goal would be to request assignment to patrol the reservation where he was born and raised. He thought to himself, "Things could be better, but they are not bad."

Strategic Plan

Using the above scenario and model sheriff's department, the author next developed a strategic plan that would enable the department to prepare for the future. The plan took into consideration the present situation of the department, as well as an examination of the department's strengths and weaknesses and the external opportunities and threats (SWOT) that the department must deal with. Also considered for strategic planning was the identification of stakeholders in the issue. As mentioned before, the sheriff's department used as a base for the model department was the Colusa County Sheriff's Department. The SWOT analysis and present situation is based on that department.

Statement of the Issue

The Foothill County Sheriff's Department (FCSD) is located within a county that has a population of nearly twenty thousand, and is situated near the foothills of the Coastal Range of Northern California. The county is sparsely populated with only two incorporated cities, and the rest of the population is spread over its one thousand square miles. The county financial base is primarily agriculture, with some tourism from outdoor recreation. With agriculture as its primary industry, the county's work force and employment rate fluctuates with the growing seasons. Unemployment runs at high levels on the state average. With no real increase in different types of industry, the county economic base remains static. The ethnic makeup is primarily White and Hispanic. The county is considered to be extremely conservative and traditional in its outlook. A Board of Supervisors governs the county, with each member representing one of five districts.

The county sheriff's department is responsible for providing law enforcement services to the unincorporated areas, which accounts for nearly two-thirds of the population. This includes six townships. The department consists of thirty-seven sworn, and thirty-nine non-sworn personnel. While small in size, the department is considered to be progressive in its operational tactics and training.

As California is a Public Law-280 state, the FCSD is responsible for law enforcement services on Indian lands within the county. Currently, the FCSD is providing these services without any additional funding with a department that is under-staffed. There is current legislation pending that could see tribal police in California gain full peace officer status. While this may be seen as either a positive or negative possibility by those affected, there are those counties who have tribal populations not large enough to warrant their own forces. Currently, Foothill County falls into that category.

SWOT Analysis

A strengths, weaknesses, opportunities and threats (SWOT) analysis regarding the FCSD was conducted. The reason was to identify the department's strengths, weaknesses and the external opportunities or threats that might impact the strategic plan.

The analysis revealed that the department's strengths were that, although small in size, the department was extremely proactive, utilizing modern policing techniques and training. Weaknesses noted were staffing shortages, lack of experienced deputies and supervisors, and a lack of cultural awareness concerning Native Americans. Opportunities were identified as grants, cultural awareness training, and an outstanding relationship with the media, and that the largest Indian tribe in the county is making an effort to improve tribal-law enforcement relations.

Threats included a Senate Bill currently being considered to grant peace officer status to tribal police, while the sheriffs of the state have yet to agree to its provisions. Also identified as threats were state and federal grant funding resources drying up, public opposition to Indian gaming, younger tribal members resenting an improved relationship with law enforcement, and tribal environmental issues.

Stakeholders

Stakeholders were identified who would play a part in the impact of the project issue. First were the sheriff's department personnel who would have an internal perspective. Those personnel were administration, front line supervisors, and line personnel. A second group of stakeholders external to the sheriff's department was identified as tribal leaders, local government officials and the general public.

Strategies

Taking into consideration the description of the situation, the SWOT analysis and the analysis of the stakeholders, strategies were developed which would bring the project model to the desired future state. The strategies follow: 1. Promote the need for an improved sheriff's department role in providing law enforcement on tribal lands; 2. Encourage better understanding of both the culture of the tribe and the needs of law enforcement; 3. Develop Community Oriented Police type programs, placing deputies on tribal land versus just responding to calls for service; 4. Adopt a concept between all concerned of working a program that benefits all.

Transition Management

Considering the group of stakeholders, the sheriff was identified by the author as having the leading responsibility role for the successful implementation of the selected strategies. He/she might have the ultimate say regarding what services are provided and to what degree. The sheriff must also serve as the middleman between the tribe and local government. The sheriff must sell the plan to two very different entities, both of which will have their own concerns. Members of the sheriff's administration staff will be tasked with assuring that the implementation of the program goes forward once approved. The Tribal Council will also have to show a commitment to the program, making the needed effort to ensure the entire tribe, including the younger members, realize they are part of it. The County Board of Supervisors must also show their commitment to their constituents, and send the message that the program is a partnership with all involved benefiting from it.

Conclusion

This project explored the issue of how rural California sheriff's departments will be impacted by the development of tribal police within their counties by the year 2006. Research indicates that there is a definite proactive effort by many tribes within the state to form their own police forces. There is currently a Senate Bill on the floor addressing this very issue. The California State Sheriff's Association has taken the position that they have concerns regarding tribal police having full peace officer status, without those officers having the same standards as all other California peace officers. Issues of training and liability are foremost in those concerns.

The author's project explored the issue by first examining the history of law enforcement and Indian tribes, as well as what is happening now. By utilizing futures forecasting methods and model alternatives, futures were identified and strategies to make them happen were formed.

Through all the processes examined in the project, it is clear that law enforcement does have a way to influence the future. The project revealed that county sheriffs do have choices in how the development of tribal police will affect their departments. If they choose to not think outside the box, the future will still happen. If they are proactive and willing to look beyond tomorrow they can play a major role in what the future brings.

BIBLIOGRAPHY

Alarcon, SB 911, California Senate, February 23, 2001

A Second Century of Dishonor: Federal Inequities and California Tribes, Chapter One. Internet,
<http://www.sscnet.ucla.edu/indian/ca/Tribes1.htm>

Brennan, Debra Sullivan, "Tribes Seek More Power for Their Police Forces." Los Angeles Times. December 27, 200, Internet. <http://www.latimes.com/cgi>

California v. Cabazon Band of Mission Indians, 480 U.S. 202 (1987)

California Vehicle Code, Section 165, (b)(1), 2001 Edition

"Indian Country" is defined by 18 U.S.C. sec. 1151 to include all areas within a reservation, trust allotments and dependent Indian communities

Taylor, Keith, American Indian Cultural Awareness Training, Section 3, p. 5

Warner, Nick, California State Sheriff's Association, Capitol Wrap, p.1, February 5, 2001

NOTES

¹ Debra Sullivan Brennan, "Tribes Seek More Power for Their Police Forces." Los Angeles Times. December 27, 2000. Internet. <http://www.latimes.com/cgi-bin/print.cgi>

¹ Debra Sullivan Brennan, "Tribes Seek More Power for Their Police Forces." Los Angeles Times. December 27, 2000. Internet. <http://www.latimes.com/cgi-bin/print.cgi>

² California v. Cabazon Band of Mission Indians, 480 U.S. 202 (1987)

³ A Second Century of Dishonor: Federal Inequities and California Tribes, Chapter One. Internet. <http://www.sscnet.ucla.edu/indian/ca/Tribes1.htm>

⁴ Keith Taylor, American Indian Cultural Awareness Training, Section 3, p. 5

⁵ California Vehicle Code, Section 165, (b) (1), 2001 Edition

⁶ Alarcon, SB 911, California Senate, February 23, 2001

⁷ A Second Century of Dishonor: Federal Inequities and California Tribes, Chapter One. Internet. <http://www.sscnet.ucla.edu/indian/ca/Tribes1.htm>

⁸ Nick Warner, California State Sheriff's Association, Capitol Wrap, p. 1. February 5, 2001