

August 12, 2015
 Central Islip New York:
 For the Hearings on Representation of Indigent Persons
 To the Panel, OILS:

Thank you for this opportunity to present concerns impacting the Native American community on Long Island and indeed, across New York State.

I speak as an individual, not in any representative capacity. I do wish to present to you a bit about my background and prior affiliations however:

In this year I celebrate my admission to the Bar of the State of New York 40 years ago. It's been reported that I am the first Native American woman lawyer from and serving on Long Island; I am a Shinnecock Indian. I served for nearly 30 years as a lawyer, often uncompensated and generally part-time, for the Shinnecock Indian Nation. I have contributed COUNTLESS HOURS to pro bono representation of individuals, particularly in criminal and family law matters. I have served as an Assistant Attorney General for the New York Department of Law, as a Principal Law Clerk within the New York Supreme Court system, as a solo practitioner, as I am now, and as an attorney for federal and other governmental agencies. I have encountered Native people and their issues throughout my practice life. I have been a frequent lecturer to the Bar & Bench on matters such as the Indian Child Welfare Act. I participate regularly in the activities of the New York Federal-State-Tribal Courts and Nation Justice Forum. ([nysfed-state-tribal courts forum.org](http://nysfed-state-tribal.courts....forum.org))

I am here to ASSERT THERE IS A NEED FOR COMPETENT LEGAL REPRESENTATION FOR INDIGENT INDIGENOUS PERSON.

Competent Legal Representation, to my thinking, requires that Lawyers be WELL TRAINED AND USE APPLICABLE LAW and they must have and use time to KNOW THEIR CLIENTS, and their personal experiences and social conditions in which they live or to which they are subjected.

There are thousands of individuals on Long Island identifying as Native American - they may be Shinnecock or Unkechaug, Native Nations with acknowledged tribal lands, or they may be affiliated with other communities indigenous to Long Island. Or, they may be individuals who are First Peoples/Native Nation enrollees/Tribal citizens of groups indigenous to other parts of the United States or indeed the Hemisphere. They may indeed be Cherokee or Seminole or Miwok or Paiute or any of the approximately 700 known indigenous ethnic tribal groups. One cannot determine "who is an Indian" by "sight observation" - neither of the physical characteristics of a person nor by the jewelry and dress, hair styles and voice patterns, of the person. It may be the case that English is a Second Language for some Native people.

My mailing address is a Post Office Box; it does NOT reveal that I am a Reservation Resident, nor does my address reveal that I am an enrolled Shinnecock Indian.

THE LAWYER MUST ASK.

The lawyer - whether "assigned or "retained", must be trained to understand the legal and social implications of "being Indian".

My remarks today are "introductory". I believe it is important that the needs of native persons be included, that our people and our needs not remain invisible and underserved. I, and others, including Chief Harry Wallace of the Unkechaug Nation, will certainly be available to assist this panel and legal services providers with additional information and policy commentary. I offer a few "points" to start your thinking

For purposes of determining release or bail, the assigned counsel must know how to "ask the right questions". What are the community ties of the individual - do they live on Reservation? Is there a Tribal Government or other cultural network that may want to "step up" for the person even when there is no immediate family member present? Does the defendant assert that she or he "owns a house"? Do the lawyers and the court understand that indeed that house is on Reservation land and therefore cannot be "put up for bail" - it cannot be the source of cash or to secure "bond"!

Counsel must know whether certain laws deemed generally applicable in Suffolk County are indeed "in applicable" on Tribal lands - for example:

who knows that the interpretation of "public highway" in the Vehicle & Traffic law may not be applicable to certain

Freeman, Tammeka (ILS)

From: Marguerite Smith <msmasesq@gmail.com>
Sent: Tuesday, July 07, 2015 12:07 PM
To: ils.sm.publichearings
Subject: Fwd: Hearings re: Indigent Legal Services

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From: **Marguerite Smith** <msmasesq@gmail.com>
Date: Tue, Jul 7, 2015 at 12:04 PM
Subject: Hearings re: Indigent Legal Services
To: publichearings@ils.ny.gov
Cc: "Hon. Marcy Kahn" <mkahn@nycourts.gov>, "Hon. Marcy Kahn" <mkahn@courts.state.ny.us>, PJ Herne <pj.herne@srmt-nsn.gov>, "Peter Herne (pj.herne@courts.state.ny.us)" <pj.herne@courts.state.ny.us>

It is my understanding that a hearing hosted by your office is set to occur in Islip/Central Islip on August 12, 2015, and I would like to reserve a time slot of 5-10 minutes for testimony. The presentation would be given by myself and/or a colleague working with the **New York Federal-State-Tribal Courts & Nations Justice Forum. We are participating in a project that is exploring bail practices and alternatives as they impact Native Americans facing criminal charges in the various counties of New York State.** We are interested in many matters, including policies & practices such as assuring the availability of informed counsel commencing at time of first appearance, bail practices, alternatives to jail, and pre-trial supervised release programs, with local emphasis on the **county, district and local justice courts of Suffolk County.** Incarceration & criminal convictions that occur because of inadequate legal representation or uninformed prosecutorial or judicial conduct have long-term detrimental effects on individuals and entire communities, and in our particular areas of concern, Indian Reservations. Interruption of existing employment and barriers to future school and work opportunities are among the matters that must be addressed.

A summary of remarks can be made available if requested. For identification purposes, I am a duly-licensed New York State attorney and an enrolled member of the Shinnecock Indian Nation, I look forward to contact in the coming weeks.
Thank you for your good work in conducting these hearings.

Marguerite A. Smith

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