



Hon. Mark Pouley

Chief Judge and Court Administrator, Swinomish Tribal Court

by N. Lauryn Boston



N. Lauryn Boston is a recent graduate of the University of Colorado Law School where she was active in the Native American Law School Association and president of the American Constitution Society law student chapter. She is currently an attorney in Washington state and is privileged to work for the Muckleshoot Indian Tribe. Previously, she interned as a prosecutor for the city of Greeley and clerked for Hon. John F. Staveland at the Boulder County Court. She volunteers as a domestic violence advocate and hopes to expand her pro bono work to include civil rights and immigration advocacy.

For more than a decade, a visitor to the Pouley household calling out, “Hello, Chief Judge Pouley!” might have been greeted by a dual response. That’s because Mark Pouley, chief judge and court administrator for the Swinomish Tribal Court since 2004, is married to Theresa Pouley, his college sweetheart, fellow lawyer, and accomplished Indian law specialist in her own right who was chief judge for the Lummi Nation and Tulalip Tribes until 2015.

At some point, when both were employed as tribal court judges, people began referring to the couple as “Mr. Judge Pouley” and “Mrs. Judge Pouley.” But in their early college days the Pouleys couldn’t have known their route would take them to the Midwest city of Detroit for six years, or that they would both earn law degrees and eventually return home to Washington state to become respected Indian law practitioners.

Mark Pouley grew up in Yakima, in southeastern Washington, before heading to Spokane to attend Gonzaga University. It was there that he met Theresa, an enrolled member of the Colville Confederated Tribes. They were married and had their first son while still undergrads, resulting in dire predictions from concerned family members. “Everybody warned us that if we got married and had kids in college, we’d quit school and never amount to anything,” he laughed. “And we said, ‘No, we’re still going to do exactly what we planned on doing with our lives.’”

And forge ahead they did. The couple received generous scholarships from Wayne State University in Detroit where Theresa entered law school and Mark pursued his master’s degree with the goal of becoming a professor and college debate coach. Their second child was born while Theresa was still in law school, and the growing family buckled down and demonstrated the diligence and work ethic that would ultimately serve them well in their respective careers. After Theresa landed a job with a firm in Grand Rapids, Mich., Mark Pouley switched his focus to law and enrolled at Thomas M. Cooley Law School in western Michigan. Upon his graduation, the family faced a not-uncommon dilemma: Should they put down roots in Michigan



or return home to Washington state to be closer to family? “It really was a crossroads at that point,” he recalled. “We said, we’re either going to move back to Washington now or not at all. And I’m so happy with our decision, because our kids were able to grow up here with our family, to spend time with my parents before they passed, and to be with Theresa’s family on the Colville reservation and grow up close to their heritage. We would’ve really missed out on all of that had we stayed in Michigan.”

The family settled in Arlington, and Pouley clerked for the Washington Court of Appeals before venturing out to seek employment in private practice. He recalls the experience of being a new lawyer trying to land a first job. “Somebody said, go talk to Bob Cole, he might need somebody.” At the time, Charles Cole and his son Robert comprised the firm of Cole & Cole in Stanwood. They hired the young lawyer immediately. “That’s how those things happen,” Pouley opined. “You go out and look for some connections, and hopefully somebody gives you a chance.” He started out doing small town private practice—dissolutions, estate planning, contracts, property issues, and boundary line disputes. “I was really interested in getting into the courtroom, so anything that looked like it might wind

up in court ended up on my desk,” he said. He spent 12 years with Cole & Cole, eventually becoming a partner.

By this time, the Pouleys had added two more children and Theresa was a solo practitioner doing some enrollment casework for family members. “Because of Theresa’s Native American heritage, she became really interested in doing more work for tribes, and then so did I,” he said. Asked whether he intended on becoming an Indian law specialist, the chief judge laughs. “How does a lawyer become a specialist in anything? Well, you just start doing it, and then you try to become smart, and then people call you and say, ‘Hey, I heard you did this thing a year ago, could you come and do it for me, too?’”

The couple’s shared interest in serving tribal communities grew from there. Theresa became a reservation attorney for Lummi, and they both began serving as pro tem judges for the Lummi courts. “It wasn’t something I planned on doing when I was in law school or starting out as a young lawyer. In fact, I didn’t even know a specialty in Indian law existed,” Mark Pouley said with amusement. “My big plan was to just do appeals. I really liked that kind of writing and argument.” Cole & Cole contracted with the Swinomish tribe to help with their codification project over a two-year period. When their judge retired, the Swinomish Indian Tribal Community appointed Pouley to the bench in 2004. He considers the position, and the trust placed in him by the tribe, a privilege earned over the years spent working closely with tribal members. “Working in tribal communities gives you the chance to work with the people there and build up a trust over time. The community knew they could trust me, knew that I would handle their court properly, and that I respected their culture and their ways.”

Besides serving as chief judge for the Swinomish tribe, Pouley was also chief judge for the Suak-Suiattle tribe from 2006 to early 2015 and currently serves as a justice on both the Colville Court of Appeals and the Lummi Court of Appeals.

But life wasn’t all work and Indian law in the Pouley household. When their children were still young, the family bought a vacation home on the scenic shores of North Twin Lake, located on the Colville reservation, where they could spend time with their extended family. With all of their children grown today, Judge Pouley recalls those days with nostalgia. “My kids grew up there. I think all of them learned to swim in that lake. It was nearly 20 years ago, but it seems like just yesterday.” Now, the Pouleys enjoy the same family vacations at the lake house with their two grandchildren, ages 3 and 1 year. “These are the ages my kids were when we first started coming to Twin Lakes,” he said. “Seeing my oldest son here, with his own kids, starting that cycle all over again and imagining that they’ll keep coming for the next 20 years and grow up the way my kids did—it’s a truly remarkable feeling.”

But he also considers the experience from his wife’s perspective. “Theresa was a child here on the Colville reservation, and her mother and father were children

here, and how many generations of her family going back in time have brought their children here and taught them to swim, to go fishing?” he said. “It’s really remarkable that this place we love so much is not just a nice vacation place. It’s the roots of her family. How many generations before us have done exactly what we’re doing? It’s a very humbling feeling.”

Judge Pouley’s deep connection to the Twin Lakes area led him to turn a casual interest in photography into a lifelong passion. “We spent so much time at Twin Lakes and it’s such a gorgeous landscape,” he said. “What would happen is that we’d be there on vacation, and I’d get up very early in the mornings while everyone else wanted to sleep in, so I needed to find something to do. It was really quiet and very beautiful, so I’d go out and take pictures.” His photos were admired, and he was encouraged to start selling his prints as postcards at the local resorts. “That was my first venture in commercial photography. I wasn’t getting rich, but I was getting better.”

His love of nature is evident in the stunning landscapes he captures throughout the Pacific Northwest, and his talent has been recognized in art shows and, more recently, by his peers. “I was honored to have one of my canvases hung at the Skagit County courthouse last year,” he said. “They invited me over for a consortium meeting and surprised me by having one of my pictures framed and hung in one of the meeting rooms, together with a plaque commemorating that first Tribal State Court Consortium meeting. For me, it was a big shock. I was very honored by it.” Today, his award-winning photography is on display at numerous galleries and exhibits and available on his website, www.twinlakesimages.com.

In addition to his work for the tribes, Judge Pouley has taught a class in tribal governance for several years at Everett Community College in conjunction with the Tulalip Tribes. “It was a mix of history, Indian sovereignty, and law,” he said. Primarily attended by Tulalip tribal members and employees, the class was quite popular and received positive student feedback. “Almost always, the students expressed surprise about what they didn’t know,” Pouley said. “A lot of times people would say, ‘Every employee should take this class.’ They were surprised by the information they were learning and thought it would have a much broader appeal to anyone who works in Indian country, or even tribal members who vaguely understand the history but don’t understand it in context.”

Judge Pouley believes that such a curriculum incorporating historical facts with contemporary Indian community challenges could be beneficial for tribal members in general. “Tribal members know their history and know what has happened, in terms of how they got to where they are today. Certainly they have a better understanding than the general population. But I think that being provided with that information in context makes a lot of sense. For instance, there is a great deal of information about the historical trauma that Native Americans have suffered, because it’s generational, it’s significant, and it’s

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widespread—it affects many other things. One of the things I've learned is how educating people about those kinds of traumas gives them power over the trauma itself, in an important and powerful way. This is also true for things like PTSD, where part of the treatment lies in actually understanding what the cause was."

His passion for empowering communities through sharing knowledge extends beyond Indian law to other arenas involving equality and fairness. In 2012, he was appointed to the first of two four-year terms as a member of the Washington State Supreme Court Gender and Justice Commission. The focus of the commission is promoting gender equality and eliminating gender bias in the legal profession, as well as within the law and justice system. One of the first projects Judge Pouley was involved with was the Tribal State Court Consortium (TSCC), a group that seeks to bring together tribal and state court judges in a regular, consistent, and organized manner.

One of the key elements of TSCC's success lies in bridging the common problems and common goals encountered by judges in both court systems. "What we've done every year since 2013 at the Washington Judicial Conference is to bring together the tribal court judges and the state court judges at the state and regional levels for an educational element that would be of interest to all judges. We also have roundtables with the judges themselves so they can discuss issues of importance to their regions. We're engaging in comprehensive information sharing and culture sharing—putting faces to names and saying, 'Here are the issues where we have more in common than what separates us.' You start to work together as peers," he said with enthusiasm. "We have so many common interests and common clients, and tribal courts might sometimes be better suited to hearing certain cases, which takes the burden off of the state court." Support for TSCC is strong at the state level and has grown among the tribes, with the Associated Tribes of Northwest Indians recently passing a resolution in support.

Judge Pouley relishes his role as a tribal court judge, particularly because tribal courts and tribal law are at the forefront of emerging jurisprudence. "As tribal court judges, we have both the luxury and the disadvantage of the fact that our laws are still evolving," he says. "We're still building our law." He sees both the challenges and the advantages tribal courts face. Tribes

are flexible in adopting rules to meet their needs, as well as to fit their unique culture and community goals.

Looking back at the changes that have transpired for tribes under the eight years of the Obama administration, he sees positive advancements. "When I started out as a judge in 2004, it was extremely challenging to get things done in tribal courts due to the limitations in jurisdiction, in particular," he observed. "To be honest, I didn't think that we would see, while I was on the bench, the passage of things like the Tribal Law & Order Act or the reauthorization of the Violence Against Women Act." Both pieces of legislation provide tribal courts with an unprecedented level of autonomous authority and demonstrate a renewed respect for Indian sovereignty. These advances in the justice system were accompanied by equivalent advances in other areas such as health systems for Indian nations.

Judge Pouley is optimistic for the future of government-to-government relations between native tribes and state and federal governments. "What I hope happens is that there is a recognition that tribal courts are people-partners, that they are part of an entire system. Just as district and superior courts have their role, tribal courts also have a role at the state level. We can work as partners. We can respect each other's work. We can work together on common problems but we can also sometimes handle problems on our own."

He believes that a renewed focus on local control could empower tribes and tribal courts to exercise greater self-governance. That was one major finding of the Indian Law and Order Commission's report,¹ according to Judge Pouley. "When the federal or state government tries to run the system for us, it ends up being a cookie-cutter, 'one-size-fits-all' arrangement," he observes. "By turning power and authority back over to the tribes, tribal governments can adapt laws and policies to fit their needs and fit their culture." That combination of optimism, pragmatism, and years of judicial experience spent listening to the needs and aspirations of tribal communities makes Judge Pouley a valued ally in empowering Northwest tribes through the strengthening of their tribal court systems. ☺

Endnote

¹Indian Law & Order Comm'n, *A Roadmap for Making Native America Safer* (Nov. 2013), available at <http://www.aisc.ucla.edu/iloc/report>.