

Oral History: Abby Abinanti

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Part 1 Doing Justice

Mary Louise Frampton: I'm Mary Louise Frampton. And this morning I have the honor of being in conversation with Judge Abby Abinanti the Chief Judge of the Yurok Tribal Court the first native woman to be admitted to the California Bar, and an icon both in the legal community and in Indian country. So Judge Abby you've spent the last several years making the Yurok Tribal Court reflect the values and the traditions of the Yurok Tribe, and, I think, become a model for tribal courts and courts in general, in this country and abroad. People come from all over to observe this court and I always am reminded as I come into the court that on the front of the building, it doesn't say court, it says Yurok Justice Center. So I wanted to ask you what that means to you, what does justice look like to you?

Abby Abinanti: Well, I think I did not want it named a court because I didn't want people defaulting into what their knowledge of courts were and justice really means to me how you work together in community, to have a fair way of relating to each other and assisting each other and supporting what needs to be done in community toward our common goals. And the CEO at the time, who is still the CEO wouldn't let me name it after my bank-robbing grandfather. So that was a compromise.

Frampton: Why has this been so important to you to spend this time in your life, focusing on building this court?

Abinanti: I never intended to be a lawyer and then I became a lawyer and I thought maybe this is why because now I have the skill set that nobody else has that I can bring home and we need to do some things to get ourselves ready and to move forward and I have the skill set and so to me that is my responsibility, to use that skill set and to complete this work as the best I can.

Frampton: Give me a sense of how justice looks different in your court than in the Western, court?

Abinanti: Well it's very different when I was a state court judicial officer. One of the first rules is that you really can't know the people that appear in front of you. And here I know everyone. And when I first came home, people were like, "Oh you can't be a judge, you know this person and I'm like, "I know everybody and you know me and I know your parents and your grandparents and your aunts and uncles, they said basically, "You watch

too much TV." So that's the benefit of my not being able to turn my known. You have the wrong idea of what we look like I said, "Do you think 200 years ago in our villages that we would run around up and down the coast, looking for a stranger to come in and help us solve our problems. Do you think that's what happened?" They said, "No." I said, "Exactly." And that pretty much has gone away that criticism, 'cause I think people are taught in our education system to default to definitions, and I think that's a dangerous idea because it really limits people's ability to think and to come up with solutions.

Frampton: In observing your court. I see that you encourage the parties always to try to resolve their problems, their issues, their disputes themselves rather than by a ruling from you so talk about that a little bit.

Abinanti: Well, the chances are I remember one particularly difficult situation where the mother of a child had died, and three parties were vying for the custody of the child and everybody lawyered up which is my own personal idea of a bad day. And so they came in and they were preparing to set a trial. And I said, "We can set a trial, I know how to do trials, and then I can give you my opinion I can make a decision." And I said, "As you look around the room, who's the only person who doesn't know this child, who's the only person who's not invested in this child." I said, "That would be me." I said, "I'll make the decision." I said, 'Cause I know how to make him." And I said, "And I might be right." I said, "But don't count on it. Or I can go back in my office. You people here who are the grandparents, the aunty and the father, you have the most investment in this child and you have a responsibility to her dead mother to do the right thing and I would suggest that you do it. So what do you want to do? And they said, "Go to your office." I said, "Fine." I said, "Lawyers, you'll sit in the back, let them talk it out." A couple hours later, I came out and that was like nine years ago, and so far we're doing OK. They worked it out. I said, "It's your responsibility. It's not mine. I'll do it, 'cause if that falls to me I will do it but you have a much better chance of doing the right thing than I do."

Frampton: What's your hope for this court over the next 10 years?

Abinanti: I think we are basically a member of each of these large families that live here, extended family. We have a certain skill set and we can help you because everybody needs help at one time or another. So who do you turn to when you need X kind of help? Now we have certain skill sets that we can bring to you. If you have a brother, who's drinking, if you have a child who's not going to school, if you are in dispute, with your family over how you're going to run the cemetery, bring it here, let us see if we can resolve it with you. Let us try to help. If you're no longer, your marriage, you need to leave your marriage. Then let's work this out, let's work this out here. And that's what we're trying to do is create a place where you can come and figure out a way to get your life back to harmony. And so you can be in community without dispute. We live around each other. All of our ceremonies are large family gatherings. You're on the river with hundreds of people you have to get along.

Frampton: You have what's called a Wellness Court. Talk about that.

Abinanti: Well, the Wellness Court, is really what, it's a collaborative court and many of our people have as a result of the invasion and the aftermath, the invasion picked up some really bad habits and we have to look at those habits ourselves, and go, "What are we going to do? How am I going to get past this bad habit, can I get past this bad habit? Can I walk back down the road that I came to, and make a different choice?" And that's what the Wellness Court is about. And we were talking this morning with some of the wellness staff, when you see a pattern of people starting to have trouble after five or six years, when they've been in a good place for five or six years and we've got a couple, two or three that are doing that now, I want to turn our attention back to those people and go, "Maybe we didn't give them enough support for long enough and maybe we need to stay in their lives longer. And just because they're still not on the docket this is the list of people I need you to go see." Do they need to come back in? Do they need to be back in wellness? Because I know that they're doing things now that they don't approve of themselves. This is not how they want it to be.

Frampton: So this raises the issue of deadlines. In the western courts deadlines are everything. And you have a very different concept of time and what's needed here, in the court.

Abinanti: Well, to me, if somebody is suffering, then the clock starts over and where it ends, is wherever. I'm not too worried about that because I think that when somebody is having a problem, you help them, and if you don't help them, then that's on you and that's wrong.

Frampton: So are you thinking about expanding the jurisdiction of the court in the future?

Abinanti: Well, we expand a lot by programs and by subject matter pretty constantly almost every year. This year, we're looking to expand into, I want to look at the issue of missing and murdered native American women, which is the highest of any racial group. We need to look at that, I need to look at the fact that we have the highest truancy rate and absence rate are our kids in schools because that leads to really bad outcomes. So we're looking at expanding into that area, we're going to expand into special jurisdiction over non-natives in domestic violence. If it occurs on the reservation we're half way through that process. So we're constantly expanding and taking on our responsibility. You can't expect everybody else to do things if you're not doing it yourself. And I have to figure out why we have that truancy rate and help these kids get back in school or stay in school.

Frampton: And in thinking about the need... You and I have talked about the fact that there's so little philanthropic attention on tribes and so few resources. Do you have any thought about why that is, and what the need, what the great need is of tribes?

Abinanti: I don't know how that happened. I have often said that we got in line for super powers and pick the invisible and it was a wrong choice. It happens sometimes, because I think that a lot of non-natives really do not understand that we're still alive, that we exist

as a nation here, we're the largest surviving tribe in California. And probably, you could walk down the street of most towns and people would have no idea what tribe that was or if you said the name, they wouldn't even have any idea of it. So, I think now the way that rich people have organized themselves is that they don't really, they have what they think are their causes. And most foundations now are organized on the basis of, "If I ask you, then you can submit an application. If I don't ask you, you can't." And they don't seem to be asking invisible people. That's the conclusion I've come to. And I don't know how to become visible to them. There has to be some reason. There's always a reason and there has to be some answer, I just don't know what it is.

Frampton: And how would resources make a difference?

Abinanti: Well, if you look at how we deliver services, it's very people-oriented and intensive services. Like we were talking this morning about when this person goes to jail I need you to go up there and talk to that person in jail. I need you to go to... You really can't talk to this person or to Weitchpec and talk to this person. Okay, so you go to Weitchpec; there's no phone so you can't tell whether when you go there or not, the person's going to be home. Then you have to search the river so you could spend a whole day not finding that person. And now when there's no power. There's bad water on that end. How are we going to communicate? And there is no power on the eastern end of our reservation yet so it makes it really difficult. The logistics make it hard for us to get that done.

Frampton: I think about the fact that electrical utilities have had such a devastating impact on the river and yet this tribe is the only place without electricity in this whole area.

Abinanti: Well, somebody has a sense of humor.

Frampton: I think about in the western courts how parental rights are terminated, whereas in the tribal court here, you have another way.

Abinanti: Well, you say you can... Your parental rights are terminated, but not... You're still their parent, so you don't lose that identity, you don't have the right to make parenting decisions now and you won't be involved in the day-to-day care, but they will continue as your children, because everything the culture is tied to dance and to relationships with families, so you can't really... And you shouldn't take them out of that. And besides which people can come back from really horrendous things, and if particularly if they are in community, then they can work out a relationship of some sort.

Frampton: So thinking about all those 20 years that you were actually operating in a legal system that didn't reflect your belief system, and then being in a court now that does, moving between these two worlds, what impact has that had on you?

Abinanti: I think I learned a lot of skills on the bench, I think I learned to be more patient, which I could have used earlier, and my position on the two worlds thing is that

I'm really not in two worlds, I'm myself, wherever I am, and I'm not much different there than here, and it's either acceptable or it isn't and I'm not really given to a whole lot of change. The value system I have is the value system I have and I can't really, here's a good example, they had this training and I missed it and so I had to make it up and so I finished it and I went in and I told my boss, I said, "Okay, I finished it." And I said, "I'll just tell you 'cause it was about court security." And the whole thing is geared toward, the bail up is there to protect you, and they will get you out of the court first. And I'm like, "I'm not doing that, I'm just telling you straight up." I said, "I am not running out of a courtroom where there are elders and children in a courtroom to save myself or I'll have no place to go 'cause I would be too humiliated to show my head." And he said, "Let's just hope it's another courtroom." I said, "Fine." Because that's just not what I can do, I'd never do it. It is an unacceptable behavior to me, wouldn't consider it. So I decided, I just want to let you know and he said, so that's how we ended the conversation, he was just, "Fine, let's hope its another courtroom."

Frampton: Well, you know that I bring my students here so that they can think about how to change the western system and really alter their thinking. So that it could be much more of a Yurok worldview and I think that that often happens.

Abinanti: Well, I think part of the mistake this country made was saying, "OK, we're a melting pot." No we're not. You all came from some place, you had a culture, you have a belief system. Let's learn how to get along in that way. You don't have to all be this, for us to get along. That was a decision they made, and I think it was the wrong one. And if you want to look at a major wrong decision to me that's a major wrong decision. You don't do that. You don't say that the price of admission here is that you cannot...

Frampton: Assimilation.

Abinanti: Yeah. You cannot say that it's not right, and it's not good, because now well you've got this craziness, it just doesn't work.

Frampton: We've talked about that your focus is on responsibilities, not rights.

Abinanti: It's just a different value system that underpins this particular culture. I can't imagine me just running up to somebody and saying, "I have a right to da da da." It just isn't how you act. And with the concentration on this, "Is my right to do this, my right to stay silent, my right to this." I'm like, "OK, I get it. I understand the concept." But, you have a responsibility, you need to meet your responsibility, how are you going to do that?