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INDIAN LAW & ORDER COMMISSION FIELD HEARING

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TRANSCRIPT OF PROCEEDINGS

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Tulalip Resort

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10200 Quil Ceda Boulevard

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Orca 3 Room

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Tulalip, Washington

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September 7, 2011

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9:00 a.m.

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24 Reported by: Casey D. Johnson, CSR  
CSR# 2381

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1                   A P P E A R A N C E S

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4 COMMISSIONERS: TROY EID

5                   TOM GEDE

6                   THERESA POULEY

7                   EILEEN GARRY

8                   AFFIE ELLIS

9                   JEFFERSON KEEL

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11

12 ALSO PRESENT: VICTOR PATERNOSTER

13                   TINA SWANNACK

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PROCEEDINGS

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8           COMMISSIONER EID: I want to welcome you to the field  
9 hearing of the Indian Law & Order Commission. It is my  
10 privilege to introduce to you the staff and members of the  
11 Commission and I'm going to start with the gentleman on the  
12 end, Lieutenant Governor Jefferson Keel, who is president of  
13 the NCAI. I thank you for being here. And from Wyoming from  
14 the Navajo Nation our deputy planning director Eileen Garry,  
15 who is on loan to us from the Department of Justice and I thank  
16 you for all the work that you did to get us here to organize  
17 this session. Judge Theresa Pouley, Colville Nation, judge  
18 here at Tulalip and our host. We want to thank all the people  
19 at Tulalip. We want to thank those who run this really fine  
20 resort. It's quite an amazing property, and a chance to stay  
21 here was really a privilege but especially to be in this  
22 community. It's fantastic to be out in this community. We  
23 appreciate the opportunity.

24           Tom Gede from Davis, California and former head of the  
25 council of Conference of Western Attorney's General, federal

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1 and state government and public policy. Good to see you, Tom.  
2 We have over here our staff. We're fortunate to have a group  
3 that will take down your every word. We have a  
4 transcriptionist. We have the ability to put those together  
5 and really appreciate all of our fine folks. There are a  
6 number of distinguished guests. I want to definitely mention  
7 Diane Enos, Salt River Indian Community president. We're very  
8 grateful that you're here.

9 Very briefly before we get underway because I know that  
10 there's a lot to cover, Indian Law & Order Commission was  
11 created by the Tribal Law & Order Act passed, as you know, in  
12 July 2010. It takes a while to get a commission started so  
13 we're very grateful that we are able to commence our field  
14 operations. It's taken a long time to get here. We're in the  
15 process of putting together a lot of things that you'll see in  
16 the next several weeks including a website, things that you  
17 would expect from a legislative commission like ours. We have  
18 our oversight on September 22 and want to thank and acknowledge  
19 the fact that we're actually a legislative commission. We were  
20 created by legislation. Although we have executive and  
21 legislative appointees the Commission is independent, so it's  
22 unlike a lot of commissions that have been created in the  
23 subject matter. You have appointees. Each person was

24 appointed by either a majority of minority member of the House  
25 or the Senate or by the President of the United States and it

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1 is really our commission to take an independent look. We  
2 obviously were created by the Tribal Law & Order Act, but the  
3 sponsors of that, I should be very clear that they expect us to  
4 look beyond the horizon to look at structural changes that  
5 might be needed to strengthen criminal justice policies. Of  
6 course the Tribal Law & Order Act (inaudible) a lot of the  
7 things, some other things but it did not fundamentally change  
8 the structure of the country. It was mostly in an effort to  
9 improve the existing structure. We're trying to look ahead to  
10 understand what we could do to prospectively in the future make  
11 recommendations to the President and Congress for future  
12 legislation and to also tell it like it is. So our goal is to  
13 be very honest and straight up to see that it's working, what  
14 needs to be improved. And so with your help we have an  
15 opportunity to have an unvarnished look at the future and try  
16 to offer some positive suggestions. We are to serve until July  
17 of next year. I believe probably that means that we'll be in  
18 operation until January 2013, then we go out of existence. So  
19 we are not a permanent standing body. We're here to write a  
20 report and be straight shooters, then to go on our merry way

21 and that's what we intend to do. It's possible that will be  
22 extended, but it's possible it won't. We'll do what wherever  
23 we're asked to do. And so welcome everybody here.

24 I wanted to introduce Leah Shearer, also, who is here from  
25 UCLA. We would not be at this point without the gracious

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1 assistance of the University of California Los Angeles grants.  
2 Very early on the federal government began to help us as they  
3 were charged to do by statute and recently stepped out without  
4 being directed and said let's help this commission, let's  
5 provide resources in terms of some of the best experts in the  
6 country. Leah is one of them who's helping us under the  
7 direction of Professor Carole Goldberg, Professor Angela Riley.  
8 And so we really appreciate your being here.

9 So without further ado I want to introduce our first  
10 guests because we want to be able to take testimony. Brent,  
11 are you ready?

12 MR. LEONHARD: It's nice to see you.

13 COMMISSIONER EID: Appreciate that you're here and  
14 we're going to take testimony then we're going to ask  
15 questions. Janice Ellis is the prosecutor here in Tulalip. We  
16 were happy to hear from her yesterday and have a lot of  
17 questions for her today.



18 MR. ANDERSON: I'm Robert Anderson, law professor at  
19 the University of Washington and director of the Native  
20 American Law Center. I've also have a five year appointment as  
21 the Oneida Indian Nation Visiting Professor of Law for Harvard  
22 Law School for one term each year and really honored to be  
23 invited by the Commission to testify. Although, as I was  
24 reviewing notes yesterday and on panel you are the real experts  
25 in this area and even without Holberg I know that there is a

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1 tremendous amount of expertise in this room in this area, but I  
2 thought as I was, you know, reviewing the charge of the  
3 Commission and the agenda for this meeting and in anticipation  
4 of around the country that I would talk generally about federal  
5 criminal jurisdiction and some of the underlying assumptions  
6 that have led us to I think difficult situations we're in in  
7 terms of a lack of effective law enforcement within Indian  
8 country, and then move on to talk about Washington State in  
9 particular since we're here and some innovative steps being  
10 taken in Washington legislature through the leadership of  
11 representative John McCoy, who is in the room here. And I want  
12 to acknowledge his presence and a task force on which I've been  
13 appointed to serve by the governor and the house and senate  
14 leadership which is looking at criminal jurisdiction and

15 retrocession of state jurisdiction in Indian country in  
16 Washington and talk about how that has transpired and suggest  
17 that as a potential model that you consider.

18 And I've got written testimony that I'll be revising a  
19 little bit more today and then e-mailing into the staff so you  
20 can have it if you want to look at it or make it part of the  
21 record. For disclosure purposes, I also sit on the Tulalip  
22 Tribal Court of Appeals hearing civil cases. You'll hear from  
23 my colleague, Ron Whitener, who runs our criminal branch and is  
24 on the next panel.

25 Now, as you know, the primary federal statutes dealing

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1 with Indian country jurisdiction were Indian country Crimes Act  
2 passed primarily in its current form in 1816 to deal with  
3 Indian versus non-Indian crimes within reservations and that  
4 federal statute incorporates Washington State law and had  
5 exceptions, still has exceptions for Indians versus  
6 non-Indians, then we end up with the Major Crimes Act passed in  
7 1886 to provide for jurisdictional enumerated crimes. I think  
8 there are about 17 now over which there's federal criminal  
9 jurisdiction when there's an Indian defendant or Indian victim  
10 or simply Indian for those crimes.

11 I really have to give credit to my friend and colleague

12 Dean Kevin Washburn of the University of New Mexico who did  
13 some tremendous work in this area and you'll hear from him  
14 directly when you get down to the southwest, but I think really  
15 an important article in 2006 in the North Carolina Law Review.  
16 It's those underlying federal statutes and noted, you know,  
17 that this is really the only area in which the modern  
18 self-determination policy has not been implemented. Tribes are  
19 eligible to take over federal programs and such under the  
20 self-governance program and virtually every area of law except  
21 for criminal jurisdiction matters. And the I am position in  
22 the United States Congress unilaterally jurisdiction over  
23 criminal law matters is something that is completely out of  
24 step with the modern self-determination movement.

25 Now, that's not to say that he advocates or that I

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1 advocate for immediate repeal of these statutes and return  
2 full criminal jurisdiction to tribes, but acknowledgement of  
3 that premise of this colonizing policy of taking over the most  
4 important area of tribal self-determination without seriously  
5 considering returning it to the tribe is something that's  
6 wrong, that's amiss and I hope the Commission will consider  
7 that and discuss it in its report. And Dean Washburn's article  
8 did a great job of exploring that.

9       The other side of the coin of course is the Oliphant case  
10    which has created all sorts of problems in its denial of  
11    tribal criminal jurisdiction over non-Indians. We see a very  
12    thoughtful letter from the Department of Justice in July  
13    regarding amendments to the Violence Against Woman Act that  
14    would provide for limited criminal jurisdiction by tribes over  
15    non-Indians who commit offenses against Indian spouses and so  
16    on. So the Department of Justice and Senator Akaka who  
17    followed up with a letter on August 15 of all tribal leaders  
18    exploring the return of at least some criminal jurisdiction  
19    over non-Indians to Indian tribes.

20       I recall that after the Supreme Court's decision in Nevada  
21    versus Hicks which gave the tribe criminal jurisdiction, civil  
22    jurisdiction over non-Indian police officers, NCAI led an  
23    effort to explore returning the jurisdiction to congressional  
24    act tribes over that area and the late dean and our good friend  
25    David Getches played a major role in that development of that

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1    legislation which looked in part to an opt-in approach, and  
2    Professor Getches acknowledged in his writing and in the draft  
3    legislation itself that in order for this to be politically  
4    saleable it might require tribal agreement to be subject some  
5    limited federal court review for due process violations and so

6 on and protection challenges to the treatment of defendants in  
7 tribal court proceedings on the civil side. I think we already  
8 have habeas corpus review under the Indian Civil Rights Act so  
9 there wouldn't be federal court review under the Indian Civil  
10 Rights Act. Confronting that political reality head on would  
11 be a good thing to do as well, so that's the sort of the big  
12 picture idea that I wanted to put on the table.

13 Public Law 280, as you know, establishes six tribes and  
14 six mandatory states to state criminal and civil jurisdiction.  
15 Washington was not one of those six states, but Washington took  
16 up Congress' offer to voluntarily assert jurisdiction over some  
17 criminal and civil matters, which Washington did in 1957 and in  
18 1963. It was done in 1963 unilaterally to all tribes in the  
19 state and your colleague on the condition, Professor Volberg,  
20 of course, is the leading national authority on Public Law 280  
21 and has frequently noted the unfairness, the lack of moral  
22 rectitude, if you will, in terms of asserting that jurisdiction  
23 without tribal consent.

24 In 1968 the Indian Civil Rights Act provided a mechanism  
25 for states to retrocede and to give back to the federal

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1 government jurisdiction and, again, there was no role for the  
2 tribe formally in that process except for the state and

3 Secretary of Interior to determine whether or not jurisdiction  
4 shall be retroceded. Representative Moore (phonetic) proposed  
5 legislation, and I have it in the testimony, is eloquent and  
6 simple. It was simply provide as a matter of state law that if  
7 a tribe wishes to get the state out of its reservation, out of  
8 its Indian country in terms of exercising civil or criminal  
9 jurisdiction it would simply pass a resolution to do so and the  
10 governor, state would be obliged to accept it and forward it on  
11 to the Secretary of the Interior.

12 We have a task force that's going through the US  
13 Attorney's Office. They want to make sure that such a  
14 legislation would pass. It would be an opportunity for the  
15 federal government to be involved before it all happened so  
16 that they plan for law enforcement after the retrocession  
17 occurred, but it really is a step in the right direction  
18 because it gives the tribe some authority to decide who should  
19 have jurisdiction over their reservation the state or the  
20 normal versus United States and the tribe to exercise that  
21 jurisdiction under the criminal and civil statutes.

22 So I think that another amendment to the Indian Civil  
23 Rights Act that would take this approach and allow tribes to  
24 initiate retrocession in consultation with the United States  
25 and with the affected states should be something that could be

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1 something recommended in your report. And I'm not going to go  
2 on any further because my time is up and I'll turn it over to  
3 my colleague.

4 COMMISSIONER EID: Before you begin, are there  
5 questions for Professor Anderson? Any questions from the  
6 Commission? I just want to make sure that we have some more  
7 discussion perhaps when the panel is done on the three issues  
8 that I understood you're raising, the global issue about the  
9 lack of respect for tribal sovereignty that's inherent in the  
10 concept of not modifying federal policy in this area, sort of  
11 general issue, but specifically the issue about Oliphant and  
12 how you would see that working, would it be accompanied by  
13 other things in federal law. Think about this. We'll come  
14 back to this waiver, qualified waiver of sovereignty.

15 For example, what would you do about the many tribes that  
16 are not interested necessarily at this moment in time and in  
17 doing that route, how would you respect their interests in  
18 terms of how it would affect federal government commitment,  
19 existing commitment and then also have some discussion, I'm  
20 sorry Professor Volberg is not here, but this concept of how  
21 mechanically you would implement and accelerate retrocession  
22 concept on your Public Law 280, how would you set that up

23 method and civil rights. We talked about this a lot yesterday.  
24 We really are focused on exactly the kind of issues that you're  
25 describing, Professor Anderson. And we're not here to write a

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1 research report, but we'll depend upon your research, but we  
2 are interested in making these recommendations, so the more  
3 specific we can be there are discussions going on on those  
4 issues. So we can come back to those three issues.

5 MR. ANDERSON: Yeah, I would love to do that. Should  
6 we finish the testimony?

7 COMMISSIONER EID: Yeah. The caveat is we'll have a  
8 group session. Brent, appreciate you being here and also  
9 appreciate your many contributions through your writings for  
10 the ABA and so on. You've really been a leader for those of us  
11 in the field that actually practice law and advise clients.  
12 Without reaching for one of your books a lot of us would be  
13 helpless and I just appreciate what you do, Brent.

14 MR. LEONHARD: Well, it's a real honor to be with  
15 everybody in the Commission. It's a wonderful thing I think  
16 potentially to be part of tribal law and order advocacy and I'm  
17 excited about that and to be able to hopefully change policy on  
18 a broad linking global scale. I want to start by giving some  
19 -- well, first of all, for the record, I'm the interim lead



20 attorney for the Office of Legal Counsel for Confederated  
21 Tribes of the Umatilla Indian Reservation, former lead public  
22 defender of Colville Tribe, former prosecutor for White  
23 Mountain Apache Tribe. I'm also the assistant city attorney  
24 for Walla Walla, have a good deal of experience in prosecuting  
25 cases for the state system especially (inaudible) in the United  
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1 States, and I feel pretty deeply and strongly about issues that  
2 deal with law and order particularly in Indian country having  
3 dealt with various systems.

4 It's an effort short of tragic how the federal government  
5 has completely failed to address this issue in a rational,  
6 reasonable and effective manner. But I want to start by giving  
7 my brief testimony into the record and then I'll comment  
8 outside of my written testimony on the issues I address.

9 Tribal governments, like all governments, have a moral  
10 duty to their citizens and guests to ensure the public's  
11 safety. They are also the most appropriate and capable  
12 government to ensure such safety. They employ the local  
13 police, they are the first responders and understand the needs  
14 of their community better than all others. Unfortunately, the  
15 American legal system through legislation and case law has  
16 significantly hamstrung their ability to ensure safety in

17 Indian country. The resultant framework has aptly been  
18 described by Professor Clinton as a maze. And it is a  
19 difficult maze to traverse at that.

20 Jurisdiction is inexplicably shared between tribes, states  
21 and the federal government. Who has jurisdiction can depend on  
22 where an incident occurs, the race of the suspect, the race of  
23 the victim, the type of crime alleged, treaty provisions, and  
24 various state and federal court decisions which themselves are  
25 often either confused or confusing. Last week the Washington

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1 State Supreme Court issued its third decision in a single case  
2 that arose within the Lummi Nation's Indian country. A  
3 non-Indian was driving drunk on a state highway through the  
4 reservation. A tribal officer observed and pursued the vehicle  
5 from on reservation to where it came to a stop off reservation.  
6 The individual was detained off reservation and handed over to  
7 county police. She moved to suppress all evidence claiming the  
8 tribal officer had no authority to arrest her.

9 At the state Supreme Court there was an initial decision  
10 finding the officer had authority to arrest in fresh pursuit of  
11 a crime that began on reservation. It was later reconsidered  
12 and amended but sustained. Last week it was reconsidered again  
13 and reversed. This alone, just the result to have this happen,

14 shows the level and depth of confusion caused by the  
15 jurisdictional maze. The Washington State Supreme Court was so  
16 confused they had to address the issue three times before  
17 coming to what I believe is the wrong answer. And I think it's  
18 not supported by Washington statutes.

19 The effect of this confusion and emasculation of tribal  
20 law enforcement is palpable and dangerous. In its third  
21 decision even the majority opinion of the Supreme Court  
22 recognized its decision could encourage Indians and non-Indians  
23 alike to ignore tribal law enforcement and flee for the border.  
24 This is dangerous for everyone.

25 This danger is borne out by the best available statistics

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1 on the issue. A 2004 Bureau of Justice statistics report  
2 reviewing data from 1992 to 2002 reveals that Indian country  
3 crime rates are significantly greater than the national  
4 average. A significant factor in this is the inability of  
5 tribes to hold non-Indians accountable for their crimes.  
6 According to the study, 66 percent of violent crimes where the  
7 race of the perpetrator was reported, Indian victims indicated  
8 the offender was non-Indian. Over 85 percent of rape or sexual  
9 assault victims describe the offender as non-Indian. 74  
10 percent of victims of robbery, 68 percent of aggravated assault

11 victims and 64 percent of simple assault victims described the  
12 offender as non-Indian. While the study did not indicate  
13 whether a given crime arose in Indian country, it isn't an  
14 inappropriate stretch to assume many of the crimes reported by  
15 Indian victims arose in Indian country.

16 The jurisdictional maze has resulted in the prosecutorial  
17 and enforcement obligation for most non-Indian crime falling on  
18 the federal government. However, for whatever reason national  
19 statistics reveal that crimes referred for federal prosecution  
20 out of Indian country are declined more often than they are  
21 prosecuted. Between October 1, 2002 and September, 2003 of the  
22 cases referred for federal prosecution from the Bureau of  
23 Indian Affairs, 58.8 percent were declined compared to the  
24 national average of 26.1. Between October 1, 2003 and  
25 September 30, 2004 the declination rate for cases referred by

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1 the BIA dropped to 47.9 percent but was still significantly  
2 higher than the national average of 1.5 percent for that same  
3 time period.

4 While statistics are not available, one can reasonably  
5 assume the declination rates for non-Indian crimes are at least  
6 as high as the national declination rates for crimes referred  
7 by the BIA. Anecdotal evidence suggests that non-Indian

8 criminals often feel that they are untouchable in Indian  
9 country.

10 In the Oliphant case itself, Mark Oliphant, a non-Indian,  
11 was observed beating up patrons of Chief Seattle Days on the  
12 Port Madison Reservation. He was arrested and charged in  
13 tribal court. As you all know, he appealed that decision to  
14 the federal courts. What you may not know is that another case  
15 was appealed along with his, the Belgarde case. Belgarde was  
16 driving recklessly on the Port Madison Reservation several  
17 months after Mark Oliphant was arrested. Tribal police pursued  
18 him for some time to no avail. They ended up having to block  
19 his path at which point he crashed into a tribal police  
20 vehicle. With Mr. Belgarde in the front seat of the truck was  
21 Mark Oliphant.

22 We need to fix this mess and the fix is relatively simple.  
23 Empower tribes to have full jurisdiction, civil and criminal,  
24 over all who come into their Indian country borders. We know  
25 the success of tribal empowerment. Self-determination has been

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1 the most effective and positive federal policy toward tribes in  
2 the United States' history. When tribes are given the tools  
3 and ability to govern their own affairs, they do it better than  
4 anyone else ever has. We need to extend this empowerment to

5 the law and order context. With full jurisdiction tribes will  
6 be able to fulfill their moral obligations to their citizens  
7 and guests and make Indian country safe for all.

8 Having said that, it needs to be done intelligently and it  
9 needs to start out in a limited, incremental fashion. And the  
10 reason is, rightfully, the United States Supreme Court is  
11 hostile. I don't know how else to say that. The range was bad  
12 (inaudible) hostile with decisions like Apache Nation which  
13 I've been involved in a little bit, horrible decisions and in  
14 the case of something like (inaudible) it's completely  
15 basically incomprehensible if you understand federal Indian law  
16 prior to that point.

17 But the reason we need to do a limited fashion is you  
18 start out with the Oliphant case and the United States Supreme  
19 Court says that tribes don't have jurisdiction over  
20 non-Indians. If you look at the Duro case, Albert Duro was on  
21 the Salt River Pima Reservation. He was a member of a  
22 California tribe. He resided there, worked there, shot and  
23 killed a 14 year old. He was prosecuted in tribal court I  
24 think for discharge of a firearm. He was also prosecuted  
25 federally for murder. He appealed the jurisdiction of the

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1 sovereign court saying they didn't have jurisdiction over the

2 case on Oliphant because he was now a member. The court  
3 decided in favor of Mr. Duro. Congress thankfully, thankfully  
4 quickly recognized how absurd, how impossible that is to deal  
5 with criminal actions in Indian country if you can't deal with  
6 Indians who might not be members of the tribe. They passed a  
7 fix by amending the Indian Civil Rights Act to make it clear  
8 that tribes had inherent authority to prosecute non-member  
9 Indians for crimes committed within their Indian country. That  
10 left question as to whether or not they could do it.

11 Then came the Lara case, Billy Joe Lara. He was a  
12 Chippewa living on Spirit Lake Tribe and real bad guy. He was  
13 actually excluded from the reservation. He was picked up for  
14 being drunk in public, taken to the BIA jail. Their BIA  
15 officer let him know that he was excluded from the reservation,  
16 gave him a copy of the order. He wasn't happy about it and hit  
17 the BIA officer. He was prosecuted in tribal court and plead  
18 guilty. A short time after that he was prosecuted federally  
19 for assaulting a federal officer. He managed to have it  
20 dismissed on the basis of double jeopardy. That decision was a  
21 decision in which the majority said does have the ability to  
22 expand tribal jurisdiction inherent from jurisdiction.

23 It was a badly fractured decision. It was five majority,  
24 three concurring, two dissenting. One of the concurring was

25 with the majority. Of the majority only two are still on the

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1 Supreme Court. Of the dissents Scalia is still on the Supreme  
2 Court and there were two concurring opinions that concurred in  
3 the result but did not agree that tribe was (inaudible) and  
4 those were -- well, they were Kennedy and Thomas. Kennedy has  
5 this theory that if you subject a United States citizen to a  
6 jurisdiction of another defendant nation you're violating  
7 somehow the structure of the Constitution and you can't do it  
8 unless it's a tribe with regard to their own members.

9 Thomas was even more scary. Thomas really said that  
10 fundamentally he had an issue with the notion that you can have  
11 a sovereign government while at the same time being subject to  
12 the plenary authority of another government. He said that they  
13 were mutually exclusive. It doesn't make sense exactly the  
14 same. Well, almost exactly the same. But he seems to say  
15 there is no such thing as tribal sovereignty.

16 So we need to be very careful in advocating for big  
17 changes to extend jurisdiction, which does need to happen, need  
18 to think carefully about how to do it, how to narrowly tailor  
19 it. And I think DOJ's recent proposal with regard to domestic  
20 violence of how to do it right, it's tailored specifically to  
21 non-Indians who are -- spouses who were Indians, intimate



22 partners who are Indians or dating partners who are Indians and  
23 the offense occurs on reservation. They listened and are doing  
24 that. I think with something that narrowly tailored it might  
25 even get the approval of Kennedy with the DOJ proposal.

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1 Actually, a non-Indian is afforded more rights than they have  
2 under the Constitution. So it's hard to argue that they will  
3 be somehow subjected to a structure that the United States  
4 Constitution doesn't allow for. So that's really what I want  
5 to focus on.

6 We need big changes, but we need to do them smartly and  
7 carefully think through how to do that. If this DOJ does go  
8 through and it's challenged and it's overturned I think the  
9 next step that has to be taken is to seriously push for a  
10 constitutional amendment because these problems are very, very  
11 serious, and unless we fix them in a broad way they will  
12 persist and we need to make Indian country safe for everyone.  
13 Thank you.

14 COMMISSIONER EID: Thank you. I appreciate it very  
15 much. Are there questions?

16 COMMISSIONER KEEL: I have a question. I can wait  
17 until we finish testimony.

18 COMMISSIONER EID: Janice Ellis, prosecutor Tulalip

19 Nation. Thank you for your time yesterday as well. You two  
20 have a very friendly relationship between prosecutor and the  
21 public defender I noticed, a model relationship.

22 MS. ELLIS: Well, certainly something to be  
23 encouraged. And Ms. Cohan is here, and with the Commissions'  
24 permission she can join.

25 COMMISSIONER EID: It's the lion and the lamb.

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1 MS. ELLIS: Now, now, now.

2 COMMISSIONER EID: Molly, if you would like to come up  
3 it would be nice to have you. Molly Cohan is coming up who is  
4 the public defender for Tulalip. And, Molly, welcome. I  
5 understand you've met the rest of this group. I think you  
6 might even know Professor Anderson.

7 MS. COHAN: I worked for Professor Anderson. And  
8 Professor Whitener will be addressing a lot of the public  
9 defense issues so I'll be brief because he's got some good  
10 testimony.

11 MS. ELLIS: Yesterday I --

12 COMMISSIONER EID: Please make sure you talk into the  
13 microphone.

14 MS. ELLIS: Yesterday I teased Molly Cohan and thanked  
15 her for taking 20 of the 15 minutes we had to address the

16 Commission. So today is my turn. Good morning, everyone.

17 Thank you. It's a great honor to be here, to be asked to be  
18 part of this panel. I'm grateful to have Ms. Cohan to my left  
19 and the opportunity to address the Commission.

20 In a group as agust as this I have to say that I think the  
21 perspective that I can bring even perhaps better than Molly is  
22 that infiltrate. So many of you have been involved in  
23 developing the strategy and the response on a national level as  
24 well as a local level to the injustices that have been well  
25 identified by Mr. Anderson and Mr. Leonhard and have struggled

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1 with the reality of court decisions and government responses to  
2 those injustices, whereas we here in Tulalip have the privilege  
3 of fighting ground floor. We are an infantry.

4 As Mr. Leonhard indicated, the ultimate goal here is of  
5 course community safety. Public defenders are equally  
6 committed to principles of public safety as prosecutors are.  
7 We want to ensure that an individual's rights are protected all  
8 along the path of the justice system, the path for all of us  
9 and we don't want to see people wrongfully convicted, certainly  
10 not wrongfully accused and we want to ensure that justice is  
11 done. And that's at Tulalip what we are trying to do.

12 And I think the value of being able to talk about the

13 ground floor perspective to all of you on the Commission and  
14 you in the room is to preach the gospel of we can do this, we  
15 can do this for all of the time, energy, frustration, effort  
16 and despair that has been expressed by Indian nations for  
17 decades and with good cause. There are examples within this  
18 larger nation, United States, that should give us all hope and  
19 I think Tulalip is a grand example of that.

20 Tulalip about ten years retroceded, built literally its  
21 courthouse from the ground up, established code, acquired --  
22 that's not quite the right word -- just built a public defense  
23 system, accessed prosecutorial services, created a police  
24 department, invested in social services, brought everyone  
25 together, nurtured and supported the notion of a healing court,

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1 of a therapeutic court, of a problem solving court where people  
2 who had committed crimes or who had been victims of crime could  
3 be heard and treated respectfully and appropriately in their  
4 conduct and this conduct could be addressed. And here we are  
5 ten years later. That's something that I think is just a  
6 breathtaking sweep of accomplishment in a short period of time.

7 I joined the prosecutor's office, I joined the reservation  
8 attorney's office a little less than two years ago. I came  
9 from the Snohomish County Prosecuting Attorney's Office where I

10 was elected. I served in that capacity for seven years. And  
11 so I bring to my work here the perspective of the non-Indian  
12 community, and I bring the perspective once upon a time as a  
13 line deputy prosecutor who attempted to achieve justice on  
14 behalf of crime victims in Indian country before Tulalip  
15 retroceded and I have to say it was a miserable tenure.

16 The Commission heard me say this yesterday. When crime  
17 occurred here at Tulalip as well as in the other two Indian  
18 communities here in Snohomish County there was a very low level  
19 of trust among the Indian people for the law enforcement work  
20 done by the sheriff's office. There was an equally low level  
21 of trust for the work done by the prosecutors in the Snohomish  
22 County Prosecutor's Office. And it was just tragic to try and  
23 respond appropriately, achieve a measure of success, to try to  
24 attain those goals that Leonhard discussed about community  
25 safety. And again, the Commission heard me say yesterday

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1 through, really through the sheer grit of the Tulalip people  
2 Tulalip retroceded and did all those things that I mentioned  
3 before and to the great benefit of its community and overall  
4 community safety. This is an achievement that doesn't just  
5 benefit Tulalip. Largely they're the greatest beneficiaries,  
6 the people of Tulalip, but the outside community benefits as

7 well because, as has been mentioned, if you get out of the way  
8 and allow people to exercise their rights to self-determination  
9 and their tremendous talents and abilities, good things will  
10 happen and good things have happened.

11 I don't have the statistics to back up this observation,  
12 but I believe it to be true that Tulalip today is a much safer  
13 community than it was ten years ago, that it can -- while like  
14 every community, it struggles with certain things. Drug  
15 addiction is something that this community struggles with. But  
16 there's so much more positive to focus on. There are great  
17 achievements in terms of education, stability within families,  
18 housing, community resources, a sense of pride in the history  
19 and traditions and values of the Tulalip people.

20 And it's a great privilege for me as a non-Indian to be  
21 part of this, hopefully to be part of what is I think a  
22 solution for any community which is to be able to exercise the  
23 rule of law in a just and honorable way that respects everyone  
24 involved in the system including the defendant, the victim and  
25 the families and traditions from which they come. Ms. Cohan.

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1 MS. COHAN: Again, I'll be fairly brief. Professor  
2 Whitener (inaudible).

3 COMMISSIONER EID: Molly, could you speak in the

4 microphone.

5 MS. COHAN: Sorry. I'm not going to repeat everything  
6 I said yesterday. I also am a non-tribal member working in  
7 Indian country. I have to shout out to someone, I didn't  
8 expect to see her today, which is Deborah Moras (phonetic) who  
9 is present and she was my intern at the Defender Association  
10 many years ago. She is a member of the Blackfoot Tribe. She  
11 then interned and Ron Whitener was her intern. She, for years  
12 she told me to get involved in tribal work. But she's here  
13 today and I hope that she does also address some of the issues  
14 because Deborah spent many years doing criminal law in the  
15 state system and also has some very interesting, special,  
16 unique observations about sort of justice in Indian country  
17 too. I'm going to put her on the spot to get all of that.

18 What I would like to just say is that when one talks about  
19 community safety whether it is in a tribal community or another  
20 community you can't just talk about law enforcement. And I  
21 think when people talk about problems in communities they  
22 think, oh, we need more police presence, we need more  
23 aggressive prosecution of crimes, we need to go get those  
24 folks, et cetera. When you're talking about community safety  
25 you're not just talking law enforcement. You're talking

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1 prosecution, you're talking public defense, you're talking  
2 judicial expertise, you're talking probation, you're talking  
3 social services. If you're going to address justice problems  
4 you have to do it globally. Justice systems are dynamic  
5 balanced systems that have to be carefully designed and  
6 carefully monitored. I share with Ms. Ellis in probably  
7 absolute delight that we are privileged enough to practice at  
8 Tulalip.

9 What is amazing to me about the Tulalip community is that  
10 the leadership of this community understands all of this,  
11 everybody from counsel, I see Representative McCoy, folks on  
12 the elders panel, citizens. Everybody really understands that  
13 to build a good justice system you have to have all the moving  
14 pieces and that at every position point you have to have  
15 competent and well-trained personnel. And I have never seen a  
16 community that understands that as much as does Tulalip. And  
17 I, again, spent many years in the state system trying to fight  
18 the fight and make people understand that you can't just have  
19 police and prosecutors, you have to all all of the players. So  
20 I commend Tulalip for doing that. And I think when people talk  
21 about justice they have to talk about this global picture and  
22 make that very obvious to the funders. There's got to be  
23 public defense in this meeting.



24 I just want to say two other things. I am aware of some  
25 of the other tribal communities locally and nationally and do  
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1 have some very interesting approaches and thoughts about public  
2 defense. I see Judge Mark Pouley here today in a court that we  
3 practice in where we find a right to public defense in tribal  
4 constitution which is a pretty seminal decision. There's also  
5 a very interesting older decision Navajo that was written by  
6 Chief Yauzee (phonetic) in Winter Rock where he found Navajos  
7 do not have a formal constitution, however, he found under  
8 traditional Navajo law a right to have a public defender. He  
9 found under the traditional way of dispute resolution that  
10 people that were accused of a particular behavior had a right  
11 to have an advocate. It's a wonderful decision and I can send  
12 that along with Judge Pouley's decision to the members of the  
13 committee. I think they would be very helpful in this regard.

14 I'm not going to say anything more about defense because  
15 there's going to be a whole panel about that. I just can't  
16 stress enough -- it always frightens me when I hear -- I've  
17 seen this over the years. I remember when Seattle ramped up  
18 criminal prosecution. We've got DUI problems. We've got to  
19 prosecute DUI's. What they failed to think about was how are  
20 we going to charge with these criminals. There was a time of a

21 few months where all these cases were flooding in and they  
22 funded DUI patrol, funded prosecutors, forgot public defenders  
23 so guess what because they didn't have the competent people and  
24 then got around to, got to increased public defenders  
25 (inaudible) all of you. When you talk about ramping up some

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1 part you've got to think about ramping up all of the parts.

2 COMMISSIONER EID: Thank you to both of you.

3 Questions from the Commission? Governor Keel?

4 COMMISSIONER KEEL: I have a question of Mr. Leonhard.

5 Brent, you had mentioned obviously confusion in the I guess  
6 criminal justice system in Indian country. You talk about  
7 basically race playing a role in either the prosecution or the  
8 justice system as it is and it gets to the point of having a  
9 racial bias tone in the law itself and you mentioned tailoring  
10 law, you know. In some ways isn't that contradictory?  
11 Should we not have a tailored law in Indian country to protect  
12 Indian people? We're talking about community safety, we're  
13 talking about I guess enforcing the law in Indian country. How  
14 do we do that?

15 You mentioned also a constitutional amendment. How would  
16 that constitutional -- how would we amend, how would we bring  
17 that about, get it to that point that would in effect tailor

18 the law in Indian country? How would we do that?

19 MR. LEONHARD: I guess you mentioned two issues, one  
20 of which is race and fundamentally at the heart of federal  
21 Indian law and particularly criminal law, and you're absolutely  
22 right. I'm on the Attorney General Holder's task force for  
23 domestic violence, federal and tribal task force and we're  
24 drafting a chapter for criminal jurisdiction statutes. One of  
25 the issues is who is an Indian and the fundamental to that

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1 question is the 1800's which it's clear that who is an Indian  
2 gives a race-based decision. It basically dealt with a  
3 non-Indian who is a member of the Cherokee Tribe and didn't  
4 care about what other tribes did, but the federal court said,  
5 well, the federal courts care -- even if the tribe a member, a  
6 citizen of the Cherokee Nation they point to blood. So I think  
7 it's fundamental to the issue of federal Indian law.

8 I think it's deeply problematic on that basis. The  
9 federal courts worked around it by saying essentially it has a  
10 political component to it, too, when you try a federal  
11 relationship as such and political components, but I don't  
12 think that does away with the fundamentally racial undertones  
13 that are problematic. In effect deal with it if it affects  
14 jurisdiction and there's no racial issue whatsoever and

15 everybody within Indian country.

16 In terms of tailoring absent a constitutional amendment I  
17 think you've got to go incrementally stepping towards it. I  
18 don't really personally like that idea in many respects, but I  
19 think it's the reality particularly with the current Supreme  
20 Court and federal decisions out there. I think it's still  
21 unclear whether or not Congress has the authority to be able to  
22 extend the metes and bounds of tribal jurisdiction despite this  
23 issue because of how few of the majority are still on the  
24 Supreme Court, how many of the dissent are on the Supreme  
25 Court.

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1 Having said that, I think that it's absolutely a correct  
2 decision. I think clearly Congress has the ability to adjust.  
3 It makes no sense to me that Congress has the authority to,  
4 one, create tribes in a sense by recognizing them, giving them  
5 inherent authority to exercise it; two, terminate eliminating;  
6 three, recognizing after having terminated it so that they now  
7 exercise in their authority again but somehow they can't do  
8 anything in between there. It makes no logical sense. And I  
9 think Clarence Thomas talks about sensible in his saying that  
10 you can't have a (inaudible) at the same time. It makes no  
11 sense because if it's true the states -- because states are

12 subject to federal government, albeit they can't statute  
13 accepted within the bounds of the Constitution but can be done  
14 by Constitution. They can adjust the metes and bounds of the  
15 state authority whatever they want to. Probably not under  
16 constitutional process. So clearly they aren't exclusive.

17 So I think that we need to go step carefully until the  
18 federal law is clear, but if it gets to the point of the United  
19 States Supreme Court can take away sovereignty of tribes, but  
20 they can't give it back, at that point we all need to go to  
21 Congress international and push for more constitution that  
22 recognizes sovereignty of tribes and to have full authority  
23 over everyone within their boundaries. I think it's necessary  
24 primarily for public safety for everyone, Indian, non-Indian in  
25 Indian country because without that authority we'll continue to

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1 piecemeal issues and problems are going to get worse and worse  
2 and worse.

3 COMMISSIONER EID: I hate to rush, but as usual we  
4 don't have enough time for questions, but we'll do the best.  
5 Judge Pouley.

6 COMMISSIONER POULEY: I just have a follow-up question  
7 on Commissioner Keel's. So are you proposing a constitutional  
8 amendment that will make tribes a state? What does this

9 constitutional amendment sort of look like?

10 MR. LEONHARD: Well, that's an interesting question.

11 First treaty with the tribal and the United States became the  
12 United States with Wyandot, had that idea with them that the  
13 Wyandots might get together with other tribes, they would be a  
14 state and have recognition in Congress and also passed a  
15 territory bill in the union conference in the 1800's. I don't  
16 know -- and to be honest with you, I'm not Indian, I'm not a  
17 member of the tribe, I'm the last person that should be saying  
18 what that should look like. But I suspect it can be done on a  
19 limited basis recognizing the Indian country as a tribe and  
20 being very broad and just saying full jurisdiction, sovereign  
21 and criminal.

22 COMMISSIONER EID: Commissioner Gede?

23 COMMISSIONER GEDE: I guess this is either for Mr.  
24 Leonhard or Professor Anderson. In your view what kinds of  
25 limitations would be appropriate or not appropriate if there

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1 were a fix, limitations of the sort that were put into the  
2 Tribal Law & Order Act 2010, in the Indian Civil Rights Act,  
3 you know, added things such as recorded proceedings and  
4 long-term judges and things of that sort. To what extent are  
5 those kinds of limitations offensive or helpful or necessary

6 and are there other limitations that we should be considering?

7 MR. ANDERSON: Well, I mean, I don't think that there  
8 are many limitations that are legally required by the approach  
9 that the Supreme Court took in Lara, but I think as a practical  
10 matter if you get somebody who is not -- you're going to need  
11 the sorts of protections that you see in the Law & Order Act.  
12 I think that the notion that this could be an opt-in is  
13 something that would be necessary in order for tribes to  
14 support it. Frankly, I mean, many tribes may not wish assert  
15 criminal jurisdiction over non-Indians within their  
16 reservation. That has to be a tribe-by-tribe decision.

17 I think that in the Nevada versus Hicks there is going to  
18 have to be some sort of federal court review for due process.  
19 And, you know, Professor Getches worked heavily on that and I  
20 know that NCAI, they did that after the Nevada versus Hicks  
21 because there was not a broad support within the national  
22 tribal community to carry on. But I think that reversing  
23 Oliphant is permissible, should be tribe-by-tribe. The NICWA  
24 approach is a good one. It's increment and it's necessary in  
25 something that seems politically saleable, but you know, the

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1 idea that if you reverse Oliphant in a sense and the Supreme  
2 Court overturns it as a matter of constitutional law based on

3 one of the theories I think there's going -- if that's  
4 encountered I think a constitutional amendment is really not  
5 likely, be admirable to approach the effort and to suggest it,  
6 but I don't think it would be done.

7 I mean, you know, couldn't pass Equal Rights Amendment for  
8 women in the '70's. So I think that's unlikely. But I think  
9 that something that we haven't discussed that might be  
10 considered is the notion of delegated federal authority. I  
11 mean, that's how the criminal jurisdictional statutes involving  
12 liquor are dealt with which it's offensive. I think state law  
13 is also made applicable within Indian country with liquor laws,  
14 but nevertheless, there is that acknowledgement of the notion  
15 of delegate authority there and Clean Air Act and Clean Water  
16 Act incorporating inherent tribal governmental authority in  
17 approving that in that statutory scheme.

18 So I think there's a range of options that should be put  
19 on the table underlying that being some reversing Oliphant and,  
20 you know, a menu of options that might be considered that  
21 tribes would have to debate to determine whether or not they're  
22 going to support such an effort.

23 COMMISSIONER EID: Thank you, Professor Anderson, for  
24 responding.

25 COMMISSIONER POULEY: What kind of federal review do



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1 you sort of advocate for, Professor Anderson? You said federal  
2 review. Do you mean like federal court of appeal, like -- I  
3 mean, is there a --

4 MR. ANDERSON: Right now we have -- excuse me. Right  
5 now we've got the habeas corpus review under the Indian Civil  
6 Rights Act. You could leave that in place with the waiver of  
7 tribal immunity to the extent that you've got jurisdiction to  
8 test the -- maybe it's not a suit directly against the tribe,  
9 but it's in effect the same thing. So you could take that  
10 avenue.

11 Others might advocate for a more vigorous federal review  
12 with a standard outline to be followed by the federal courts so  
13 that there are statutory levels of review. Maybe it's the same  
14 as a federal court reviewing state board judgements under the  
15 area of habeas corpus provisions and amendments that have been  
16 put in place over the last ten years, federal court review in  
17 state board decisions. Somehow I feel that the underlying  
18 racism and mistrust of the tribal governments would push  
19 Congress to be more vigorous in reviewing tribal court  
20 decisions. I don't see why that should be the case, but I have  
21 a feeling that, you know, there would be a strong undercurrent  
22 for that approach.

23 COMMISSIONER EID: We're up on 10 o'clock right now.

24 I want to ask the last question, if I may. I want to bring  
25 these two paths together into one and the pause is that the

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1 Anderson/Leonhard law will some how materializes through  
2 immaculate conception or enlighten policy or whatever it may be  
3 and suddenly Janice and Molly have to live in this world. What  
4 protections are needed for the defendants, that's Molly, and,  
5 Janice, your ethical duty goes way beyond just representing the  
6 government, you have a duty to do justice. The highest duty in  
7 the judicial system the prosecutors do in terms of making sure  
8 that before you even bring a case that the whole system is  
9 going to be respected.

10 So what issues do you see for us to understand in terms of  
11 protections for civil rights for those involved? Molly?

12 MS. COHAN: I think that there would have to be a lot  
13 of work done on standards and some sort of codification of what  
14 protection would be. I have half of my office, the book  
15 shelves are full of standards that are used in various  
16 jurisdictions. You have to get a lot of work done on that, and  
17 I think you have to get a lot of people who understand about  
18 this type of work to do that, but you'd have to really put some  
19 teeth into those and I think you would have to also standardize

20 those. A lot of that work is being done in the tribal  
21 communities and I think that there's also case law.

22 COMMISSIONER EID: Quickly define standards. What are  
23 you talking about?

24 MS. COHAN: Practice standards, level of experience,  
25 level of training, types of cases that have been handled. You  
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1 have to put -- there would have to be some real understanding  
2 of what is necessary to create a competent advocate, whether  
3 it's a spokesperson or an attorney, to represent all these  
4 folks, and I think that's going to have to be across the board.  
5 I think you're going to have to -- ideal world you're going to  
6 have to the Indian Rights Act to allow justice for tribal  
7 defendants to have the right to free counsel. Currently under  
8 the Act they have a right to counsel, but it's not at public  
9 defense. You have to change expense. You have to change law.

10 MS. ELLIS: I would speak to concepts like charging  
11 and disposition standards. The trust is an essential element  
12 in any system that is based on law and if the litigants do not  
13 trust the court or the people who are working within the court  
14 to exercise their discretion appropriately the system will  
15 fail. And one way in which the prosecutor's office tries to  
16 enhance public understanding that the law is evenly applied to

17 all courts is through charging disposition standards. And so  
18 in this perfect world in which Tulalip Tribal Court now has  
19 jurisdiction over criminal offenses that occur here within the  
20 boundaries of this reservation by non-Indians as well as  
21 Indians, I think it would be very handy for all defendants to  
22 know through the offices of their public defender that, you  
23 know, the way you're being treated by the prosecutor is no  
24 different than anybody else who would be prosecuted in this  
25 court whether that person is Indian or non-Indian. And I want

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1 to also second Ms. Cohan's comment about public defense.  
2 Public defense is an essential element of a balanced and  
3 effective criminal justice system.

4 COMMISSIONER EID: Thanks. I apologize. Commissioner  
5 Ellis had a question.

6 COMMISSIONER ELLIS: Thank you, Mr. Chairman. I just  
7 have a quick question. And thank you, everyone, on the panel  
8 for being here today. We've talked about incremental steps  
9 you're trying to achieve. I was wondering if the first step  
10 meaning looking at Oliphant fix and if the next step is  
11 violence against women and addressing that. Do you see another  
12 issue that's an incremental step or I'm just curious about  
13 other issues we might be overlooking that might get some

14 attention when it comes to addressing Oliphant and tribe  
15 jurisdiction over non-Indian.

16 MR. LEONHARD: I don't know if it would give much  
17 attention. The reality is that trespass is a huge one as well  
18 as DUI and public intoxication. When you have casinos with  
19 frequent visitors that's a serious issue and it's extremely  
20 combative when you have a tribe case situation where you have a  
21 non-Indian who is frequently intoxicated and you trespass them  
22 from the tribe's casino. They keep coming back. The feds  
23 aren't likely to take that case to federal court and tribes  
24 don't have the ability to deal with it. So it's a persistent  
25 problem, won't get much attention, but it's a real problem.

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1 MR. ANDERSON: I guess I would add that groups that  
2 are probably second to wife beaters popularity would be gangs  
3 and drugs. You know, we've got serious meth problems in rural  
4 areas. Those would be targeted areas like the federal Indian  
5 liquor laws where there is precedent for strong tribal control  
6 in those areas and jurisdiction over non-Indians.

7 COMMISSIONER EID: I want to thank you all for your  
8 time. It's been an excellent panel. Wish you well. Please,  
9 would like to look to you in the future for continued comment  
10 and dialogue. So thank you very much for taking the time to be

11 here with us today. We really appreciate it. I would ask if  
12 you have any written testimony, whatever you have, you can  
13 please make sure that Tina and Victor have what you have or  
14 make arrangements for that. I'd like to take a 15 minute  
15 break.

16 (BRIEF RECESS TAKEN)

17 COMMISSIONER EID: We're going to reconvene here. And  
18 I wanted to introduce two distinguished presenters and thank  
19 them very much for taking the time to be with us today. Ron  
20 Whitener is the director of the Tribal Court Criminal Defense  
21 Clinic and he's a professor at the University of Washington and  
22 really he's got lots of titles here. He needs no introduction.  
23 He's one of the true leaders in the profession. Jennifer Yogi  
24 is the staff attorney for the Native Northwest Justice Project  
25 and, Jennifer, thank you for being here. I really appreciate

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1 everything you're doing. And I think we'll start off with  
2 Professor Whitener, if that's all right, then we'll go to you  
3 and if you can try to keep your remarks to 15 minutes. We  
4 really want to be able to ask questions of you in this session,  
5 but we need to catch up but not be as rushed for questions. So  
6 I know you have a lot to offer and we're very grateful. Thank  
7 you so much.

8 MR. WHITENER: Thank you, Chairman, and thank you,  
9 Commission, for this opportunity to provide testimony. I'll  
10 keep my comments within the 15 minutes and I have submitted  
11 written testimony as well.

12 COMMISSIONER EID: We need to make sure we use the  
13 microphones.

14 MR. WHITENER: Can you hear me okay?

15 COMMISSIONER EID: That's good.

16 MR. WHITENER: So my name is Ron Whitener and I am a  
17 member of the Squaxin Island Tribe of Indians which homelands  
18 occupy the southernmost extent of Puget Sound in Washington  
19 State, and I'm the assistant director of the Native American  
20 Law Center with Bob Anderson and a member of the Tribal Court  
21 Defense Clinic which has been in existence since 2000. I'm  
22 also the chief judge of the Chehalis Tribal Court down in  
23 southwest Washington. The clinic -- I always have to thank  
24 Tulalip because the clinic was really the brain child of Mike  
25 Taylor, lead attorney here at Tulalip, and Tulalip has every

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1 year provided us the funding for this clinic to exist since  
2 2002. We enroll 16 students a year who work under myself,  
3 Professor Cohan, Professor Williams. We also have two staff  
4 attorneys. They really dedicate themselves to this clinic.

5 They are in this clinic for a full academic year, four credits  
6 per quarter, so a total of about 12 hours each dedicated to  
7 practicing tribal defense. We act as the primary public  
8 defender here at Tulalip. We also provide primary public  
9 defense for the Squaxin Island, Port Gamble Tribe and I think  
10 we'll go in and out Sauk-Suiattle Tribes and hope to be back in  
11 soon. We are talking about other tribes which I think is a  
12 good indication of trend that we're on in the area of public  
13 defense.

14 As you know, most tribes in self-determination era we've  
15 seen a very large growth in tribal sovereignty, tribal  
16 authority of the tribal governments and with that the tribes  
17 are prosecuting Native Americans vigorously in this country. I  
18 think most tribes, tribal courts practice provide some sort of  
19 criminal prosecution in those courts.

20 Since the clinic started back in 2000 we've seen a  
21 significant increase in Washington State of public defenders,  
22 but as you know, there is no Sixth Amendment right to counsel  
23 in tribal courts. The Civil Rights Act does not provide for  
24 that right to counsel except under the new provisions for more  
25 than three years and more than one year potential

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1 incarceration. Civil Rights Act mentioned (inaudible) other



2 tribe member acts like (inaudible) own interpretation of the  
3 Indian Civil rights Act finding a due process clause when the  
4 Act is silent as to specific right to counsel. Due process  
5 requires public defense when there's a prosecutor on the other  
6 side. My tribe the right of counsel occasionally among the  
7 tribe but the general rule that the tribes doesn't have to  
8 provide it here at Tulalip. It's a statutory right. It's a  
9 right created by the board of directors here at Tulalip.  
10 That's policy that we operate for indigent counsel.

11 Unfortunately, when we look at tribal representation it's  
12 still a difficult area to practice. Tulalip is an unusual  
13 situation. We often see in those places that have defenders  
14 those defenders are lay advocates which are often not trained  
15 because they're in the training for public defense. And we  
16 also see with the Tribal Law & Order Act the right to counsel  
17 in those cases of more than one year. The counsel -- you know,  
18 I've been at various things and I've heard that the TLOA  
19 requires that it be an attorney under the state bar association  
20 license. However, when we look at the Senate for it, it  
21 appears that Congress sort of talk about tribal governments  
22 being licensing agencies as well and they would decide what the  
23 standard is. So I'm not sure exactly where that will fall out  
24 when we start taking challenges, if there are, to right to

25 counsel under TLOA.

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1 The funding is of course a big issue. TLOA did not  
2 provide any funding. It changed the base funding language in  
3 25 USC to state that public defense is one of the last of  
4 funding but generally there's not enough funding for the judge  
5 and the prosecutor. And the other thing, and what we see, that  
6 when they're faced with those choices of only having that base  
7 funding public defenders is usually not provided for out of  
8 that limited money. We also see that those tribes that are  
9 increasing public defenders usually have unrestricted funding  
10 coming from sources such things as gaming. And, again,  
11 unfortunately, only 13 percent of the tribes have 66 percent of  
12 the gaming revenues. Many tribes still do not have any  
13 restricted funds. So it's very difficult for them to hire  
14 public defenders when there is a no funding.

15 The other problem we have is retention of attorneys. Many  
16 tribes are very rural and finding attorneys who are licensed  
17 and experienced to practice in those jurisdictions can be  
18 difficult for many of our more rural tribes and the contention  
19 even that there is funding can be difficult. Now, the problem  
20 is that while tribal governments are the only governments in  
21 the United States that are not required to provide indigent

22 counsel, the population in those courts, they are probably the  
23 most vulnerable. If you look at the statistics the health  
24 statistics for tribal members are horrible. We see suicide  
25 between 2.5 and three times the national average. We see  
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1 accidents at three times the national average, we see gross  
2 disparities, sexual assault. And, unfortunately, this plays a  
3 bad role within the way an adversarial system is designed.  
4 It's designed to have prosecutors and defenders.

5 And with that balance in mind, United States Supreme Court  
6 and other courts have allowed in the area of interrogation and  
7 in the area of search and seizure leeway for police officers to  
8 engage in as the Supreme Court has stated, dirty business,  
9 which allows informers, accessories, accomplices, false friends  
10 betrayals, but stating that that's required in order for a true  
11 investigation of criminal activity. But that assumes that on  
12 the other side of criminal prosecution is a defender to look  
13 through a constitution lens or a statutory lens of those  
14 activities of law enforcement to balance to the system.

15 Unfortunately for tribes we have law enforcement officers  
16 who are trained by the United States in those methods of  
17 interrogation, consent to search when there is a no right to  
18 search and then no review by public defenders to make sure that

19 those cases are balanced exercising that dirty business. The  
20 problem with that is that those health disparities that I  
21 talked about, when we look at the research what we see is most  
22 people believing that, for instance, amongst the tribal  
23 defendant population the highest in fetal alcohol spectrum  
24 disorder, the highest rating of post-traumatic stress disorder,  
25 traumatic brain injury and other avenues that really feed into

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1 that.

2 For example, fetal alcohol spectrum disorder which often  
3 more usually masked by other mental illness will result in  
4 somebody who is much more likely to be complicit in  
5 interrogation who doesn't -- who's brain is damaged and really  
6 doesn't understand and has been measured to really not  
7 understand cause and effect so that if they say they did  
8 something they don't really understand the effect of false  
9 confessions. And most experts in this area believe that we  
10 have a large number of people with fetal alcohol spectrum  
11 disorder whose confessions are either not correct or have had  
12 facts in them that didn't happen or may in some cases be  
13 completely false. That sort of highlights the need for this  
14 review by public defenders in an adversarial system.

15 The other -- and what I consider to be really a lack of

16 fundamental fairness in these tribal systems has in effect gone  
17 beyond just the rights of the defendant. In the area where I  
18 practiced where there is no right to counsel there is in those  
19 communities often distrust of their court system. We need to  
20 be fair to our own members. They're the ones that are really  
21 being harmed where there is not a public defender. It's a bad  
22 situation, but we know that there are situations where the  
23 court becomes the political tool of the tribe to go after  
24 individuals and there is no public defender there to provide  
25 balance. We see that pointed out by non-Indians who are in

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1 this discussion who live on reservations or near reservations  
2 who are obviously relevant to discussion as to whether or not  
3 the tribal courts should have jurisdiction. This provides them  
4 a sign to show that these systems are not fair and it becomes a  
5 poster child for the other side of that discourse. And because  
6 of that, you know, I don't think the tribal courts very easily  
7 can proceed even with their own members as a place they really  
8 want to come to adjudicate their disputes.

9 The one thing we see at Tulalip because Tulalip has made  
10 this commitment, as Judge Pouley can tell you, over time we've  
11 seen in our clients that in the beginning they didn't trust the  
12 tribal court and in the beginning they didn't want to go to

13 Tulalip Tribal Court. They didn't think it would be fair. But  
14 what we've seen is over time with those resources, with that  
15 balance being put in the system tribal members here in Tulalip,  
16 they bring their issues to the court, they bring their disputes  
17 to the court. The families come in with them to talk with the  
18 public defenders. We work well with the prosecution. And we  
19 see this rising trust amongst both the community and the  
20 non-Indian community outside and inside the Tulalip  
21 reservation.

22 So I'm going to leave with just some recommendations  
23 because the obvious response is, well, okay, what do we do  
24 about all of these problems. I don't know all of the answers,  
25 but I think we do need to make funding of public defenders as

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1 high a priority as jails, prosecutors, law enforcement. We  
2 need to support more funding for technical assistance to those  
3 tribal and public defenders that are operating out there. It's  
4 a wasteland really for them to be able to access services.  
5 We're starting to see some ramps to provide for some technical  
6 assistance to tribal and public defenders but those are short  
7 term.

8 We need to see a push for long systemic funding of centers  
9 for support for tribal and public defenders. We need to look

10 at creative solutions like providers, loan repayment programs  
11 so that interns who go into law schools like my students, we  
12 turn out 16 people a year who could go in and if there was a  
13 loan repayment program they could then have a stipend and loan  
14 repayment for going and taking turns at our most vulnerable  
15 reservations to service public defenders and then using  
16 technology to reach back to their institution for us to provide  
17 the support for students. Jennifer Yogi had a clinic student  
18 2001, 2002. So that they have someone and a variety of peers  
19 that can support them. We also would be able to -- we are  
20 working out a plan right now without any support.

21 Finally, we need to do more funding for intervention for  
22 our defendants and our clients to deal with those issues that  
23 underlie the criminal activity. Assistant U.S. Attorney in  
24 South Dakota told me a story of a multi-million dollar jail at  
25 Pineridge but nobody can get treatment and that disparity

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1 between treatment and incarceration has to be dealt with.  
2 There has to be some sort of attempt to rehabilitate. So we  
3 need to see more intervention for clients and we need more  
4 research into these underlying cost and these health  
5 disparities.

6 Then finally, the gold standard would be extend the right

7 to counsel to any criminal case which carries the risk of  
8 incarceration. I know that there's many tribes that can't  
9 afford it, there's many tribes that would prioritize it if they  
10 have to. There's various small tribes like Sauk-Suiattle when  
11 it becomes something they have to do they do it. I think we  
12 should just bite the bullet, provide funding and do it. I know  
13 that that may be a ways down the road, but we need to work  
14 toward that goal. Thank you.

15 COMMISSIONER EID: Thank you, Professor Whitener. Any  
16 questions right now from any of the Commission? Commissioner  
17 Ellis?

18 COMMISSIONER ELLIS: Thank you, Chairman. I had a  
19 question about funding. Obviously we looked at providing  
20 funding for a variety in Indian country. Are you aware of any  
21 tribes that we should be looking at that really are  
22 self-sustaining in providing funding for their own public  
23 defenders?

24 MR. WHITENER: Well, you know, a tribe like Tulalip  
25 Tribe. We see tribes who have public defenders like Colville

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1 Federated Navajo looking at how they've sort of found funding  
2 within their own structures to do it. Again, I think that  
3 there is an option to try to create public defenders if they



4 really look at their funding and sort of, you know, rob Peter a  
5 little bit to get Paul an attorney. I think they would do that  
6 if they had to in many cases especially if there was a way to  
7 retain somebody and provide that attorney support.

8 COMMISSIONER ELLIS: Thank you.

9 MR. WHITENER: I also think that's there's  
10 opportunities for technical assistance if there was a push  
11 really to really partner federal money with private money.  
12 There are a lot of institutions out there that really support  
13 the issue of providing justice, and really this issue of tribes  
14 and the lack of right to counsel is something that most people  
15 don't know about.

16 COMMISSIONER EID: Thank you. Commissioner Gede.

17 COMMISSIONER GEDE: I have a two-prong question.  
18 Thank you for coming. In the event Congress were to entertain  
19 some sort of Oliphant fix with restrictions do you see any  
20 difference as to non-Indian offenders needing counsel as  
21 opposed to Indian defendants needing counsel in tribal courts?  
22 And then secondly, do you see this as potential leverage for  
23 some sort of Oliphant fix, that public defender angle?

24 MR. WHITENER: Well, I don't know about leverage for  
25 an Oliphant fix. I think that it would make an Oliphant fix

1 much more powerful to many people. This is really something  
2 that people point to. Whenever somebody says Oliphant fix they  
3 point to, well, there's no right to an attorney. And I think  
4 that if that happened would make Oliphant fix more palatable to  
5 many people. In terms of what would be different for  
6 non-Indians, I don't know. I mean, again, I believe what's  
7 good for non-Indians should be good for Indians. And there are  
8 many things that I think need to be talked about that a lot of  
9 people don't talk about. We need to talk about the issue of  
10 separation of powers. I mean, I think that that is also a  
11 concern to tribal members having some sort of independent  
12 tribal judiciaries, but many of them have created statutes  
13 relative to constitutional amendment at the discretion of the  
14 council.

15 I tell people that I have a shelf life. At some point I'm  
16 probably going to be removed by resolution when I do something  
17 that they don't like. There's a chance of that. And for many  
18 of our judges that's not a great way to expect justice to be  
19 administered. So I think separation of powers is important.  
20 Transparency of the law. I think even for defenders it is  
21 often too hard to access what the law is. I don't know if  
22 that's through a fear of judgement from it, but it's difficult  
23 to expect me as a public defender if I don't know that the code

24 that I have in front of me is the real code or has been amended  
25 or not. That's something that I think is really important for  
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1 -- I would urge you to talk about that issue of helping tribes.  
2 I know you've heard to provide to modify their codes, provide  
3 codification and updating of their code books. That's  
4 something that hasn't been a focus and it really is severe.

5 COMMISSIONER EID: Thank you so much. Really  
6 appreciate it. Jennifer, if you would please tell us a little  
7 bit about your background and tell us about the Northwest  
8 Justice Project so we all understand the good work that you do.  
9 Welcome. It's really an honor to have you here.

10 MS. YOGI: Sure. Thank you all for giving me the  
11 opportunity to be here today and to the Tulalip tribes for  
12 hosting us. My name is Jennifer Yogi. I'm the staff attorney  
13 at the Northwest Justice Project, NJP, which provides free  
14 civil legal services to low income people throughout the state  
15 of Washington. And in addition to 13 field offices scattered  
16 throughout the state we also have a Native American units in  
17 Seattle which I'm part of legal aid to Native clients living in  
18 both tribal and urban Indian communities in a wide variety of  
19 issues. These include homelessness, foreclosure or eviction  
20 defense, determination of public housing, preservation, access

21 to public benefits, consumer rights, family law and many more.

22 We provide assistance to these clients in tribal, state and

23 federal forums.

24 The issues addressed by the Tribal Law & Order Act and

25 this Commission are very important to ensuring greater safety

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1 in Indian country, in particular for the clients that we

2 represent who are often at an increased risk of harm. So

3 today I just want to highlight the great need that exists with

4 respect to representation of parents and children in tribal

5 court dependencies and the critical issues that are at stake in

6 these cases.

7 And in Washington State there's 26 tribal courts and of

8 these only a handful of tribes offer free or low-cost legal

9 representation to parents or children involved in dependency

10 cases, and even in those instances legal assistance is limited

11 to members of that tribe. As a result, NJP regularly receives

12 calls from parents involved in tribal court dependencies, also

13 from family members who are trying to assist who are looking

14 for assistance in these cases. I provide limited advice and

15 services in my capacity as a staff attorney on intake advice

16 and referral line and have also represented parents for two

17 years when NJP received a grant that allowed us to do that work

18 in two different tribal courts. So my comments are coming from  
19 that perspective.

20 I would just add to Professor Whitener's statement that  
21 private attorneys is really, is really a serious problem  
22 because NJP has very limited resources when we are providing  
23 advice and knowing that there is a client who is going to need  
24 more than an hour's worth of advice. There are very few  
25 clients in these cases that might -- in the absence of special

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1 funding we are able to provide representation to only a  
2 fraction of the parents and children involved in these cases.  
3 And just to give you an example, my colleague Steve Robbins is  
4 the sole attorney in our Port Angeles office. He's serving all  
5 of Clallam and Jefferson Counties which they are geographically  
6 large areas and there are at least five tribes in those areas.  
7 He works in every single one of those tribes in addition to  
8 generally serving the populations of those counties. And so  
9 we're stretched very thin in many organizations right now.

10 But I really want to emphasize that while most litigants  
11 are at a disadvantage in the legal system, the parent  
12 defendants in these cases are less likely to be in a position  
13 to effectively represent themselves and advocate for their  
14 family's needs. Legal counsel is often necessary to help the

15 parents determine what steps they need to take in order to keep  
16 their children or have their children returned to their care.  
17 The parents that I worked with struggle with problems including  
18 chemical dependency, undiagnosed or untreated mental health  
19 problems, homelessness and some of the cognitive and health  
20 problems that Professor Whitener touched on earlier. Many of  
21 my clients were physically or sexually abused as children and  
22 many of them were still in relationships involving domestic  
23 violence. And always these issues pose significant barriers to  
24 adequate self-representation. None of the clients that I  
25 worked with were able to afford a lawyer even though they

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1 faced, you know, possibility of permanently having their  
2 children removed from their custody. Parents in this case are  
3 largely on their own to navigate what is to most people a  
4 complicated legal process. In addition to the benefit of  
5 having a trained advocate help represent them through that  
6 process I believe that the availability of counsel helps  
7 diminish the sense of powerlessness that parents in  
8 dependencies often have. Having an advocate eases parents'  
9 communication with tribal child welfare staff and facilitates  
10 efforts to improve parenting skills and begin relationships.

11 In my experience just having the support of someone that

12 you know is just there to advocate for your interests a lot of  
13 parents really step back and really examine what's needed and  
14 they are able to hear that better. You know, I feel like in  
15 the cases that I took on many of the clients had chemical  
16 dependency problems and not because I was a especially  
17 talented, but because I was the one that they could trust to  
18 say, look, this is something that the family needs in order for  
19 you to get your children back. It was a very dynamic coming  
20 from the outside from a social worker saying you need to do  
21 this and I think that they're better able to really take any  
22 advice for those families to succeed, help resolve things more  
23 quickly and that's an outcome that I think is too infrequent.

24 Native American children enter the foster care system at a  
25 as a disproportionately high rate. The Washington State Racial

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1 Disproportionally Advisory Committee found that Native American  
2 children are disproportionately adversely impacted at numerous  
3 decision points in the child welfare system. They're more  
4 likely than white children to be referred to the system, more  
5 likely to be tagged as high risk and more likely to be removed  
6 from their homes. Whether that case is eventually heard by a  
7 juvenile state court or transferred to tribal court,  
8 involvement in a dependency proceeding, the results on the

9 child are significant and lasting. When a child is removed  
10 from home that can also mean that she is removed from her  
11 extended family, her school and tribal community. Due to a  
12 lack of sufficient foster homes in tribal communities children  
13 are sometimes placed off the reservation and sometimes hours  
14 from parents and family.

15 This one case that I represented she had an only child and  
16 that child was placed -- I'm sorry -- she was in Auburn, her  
17 child was about a three hour drive and that was if you had a  
18 car. She did not have a car. So the prospect of getting  
19 public transportation to another rural area from her rural area  
20 was incredibly difficult and even had the funds been there  
21 anyway it was a significant burden. And I don't think that  
22 that's an usual situation.

23 Further, many children are in placement that fall through.  
24 I think this happens routinely. Children who spend years in  
25 multiple foster homes are substantially more likely than other

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1 children to face emotional, behavioral and academic challenges.  
2 A child's mental, emotional and physical health needs may go  
3 unmet for significant periods of time impairing the child's  
4 development. As adults they are more likely to experience  
5 homelessness, unemployment, to be criminally involved and other



6 problems. The impact of separation and loss affects these  
7 individuals and families for years and for generations into the  
8 future. The consequences for these children who are the  
9 subject of a dependency are well-documented and grim.

10 Professor Whitener explained in more detail, but to the extent  
11 that a case can be resolved quickly or avoided at the outset,  
12 the family may escape the repercussions of involvement in the  
13 system.

14 The Commission has an opportunity to positively impact the  
15 well-being and safety of individual tribal members, children  
16 and their families by advocating for the importance of keeping  
17 Native families together. This is in keeping with the Tribal  
18 Law & Order Act's goal to improve public safety and justice  
19 systems in Indian country. Northwest Justice Project urges  
20 this Commission to include in its recommendations that  
21 increased funding for legal representation for parents and  
22 children who are involved in a tribal court dependency cases  
23 and also for the remedial and social services that are  
24 necessary in order for families to be successful. Thank you.

25 COMMISSIONER EID: Thank you, Ms. Yogi. It was very

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1 eloquent. Any questions for either of the panelists? Judge  
2 Pouley.

3           COMMISSIONER POULEY: Jennifer, the racial  
4 disproportionate, that's King County.

5           MS. YOGI: It's state. It was provided by the  
6 Washington State Legislature.

7           COMMISSIONER POULEY: Did that study -- do you have  
8 any sort of rationalization, number of Native kids in  
9 dependencies who ended up in detention facilities was  
10 disproportionate? Do you remember that particular finding?

11          MS. YOGI: I don't recall that, but I would be happy  
12 to supply the information.

13          COMMISSIONER POULEY: Do you know sort of the  
14 relationship and, actually, if you do either, Professor  
15 Whitener, the relationship between children who end up in the  
16 dependency delinquency system because there's at least --  
17 there's a pretty huge overlap.

18          MS. YOGI: Yes.

19          MR. WHITENER: Yeah. The percentages in a dependency  
20 they're likely to be involved in a criminal justice system goes  
21 up a lot. I don't know what the statistics are. I remember  
22 reading the disparity between the number of Natives in both  
23 detention and incarceration. As to other races -- I don't know  
24 if it's the highest, but it's higher than average. And other  
25 people here I think can talk about it. Professor Cohan is

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1 waiting. She was part of this disproportionately project when  
2 she was at the defender agency in King County.

3 And so unfortunately I think that's an area that I know  
4 that you have been tasked with to look at is being able to  
5 collect those statistics in tribal courts because that's an  
6 area we don't know. If we look at statistics for the number of  
7 state children who are in detention the disproportionately is  
8 higher when you look at national reports, but what they don't  
9 take into account is that they don't have the numbers for the  
10 children who are in detention with the tribal court. So if you  
11 coupled detention in tribal courts with detention in state  
12 courts you would see the disparity going higher. We don't even  
13 know what that number is with regard to Natives. It's always  
14 tough to get a true handle on, but it's almost always --

15 COMMISSIONER EID: Thank you. Other questions? I  
16 have a question in terms of funding, Ms. Yogi. You talked  
17 about the importance of providing funding for the services and  
18 your point is well taken. One of the issues that we have in  
19 this situation is how the funding works currently. We have  
20 been implored by many including Deputy Associate Attorney  
21 General Tom Bradley, his one instruction to us, if you will,  
22 was why don't you guys look at the funding system because it's

23 broken and really didn't understand how to improve it. I'm  
24 just curious. Let's think about how legal services are funded  
25 in terms of what you see ultimately when you're in the field

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1 doing this very important work. Do you have any thoughts about  
2 what we might be able to do to change the funding system? We  
3 have grant programs. We know that the vast majority of grant  
4 monies are not used now, they're allocated in certain agencies.  
5 Any thoughts that you have about how to actually get money to  
6 where legal services are being consumed?

7 MS. YOGI: Okay. I haven't put a lot of thought --

8 COMMISSIONER EID: Don't mean to put you on the spot.  
9 I do teach law so I can call on anybody in this room.

10 MS. YOGI: I guess my initial reaction is that while  
11 we do this work, legal services isn't necessarily the best  
12 entity to find to do the work. I think, actually think the  
13 model that Professor Whitener had in his comments --

14 MR. WHITENER: No. We claim a little bit of  
15 authority. Corey Holman (phonetic) who is the parent advocate  
16 but really that is Tulalip funded and supervised program.  
17 We've been in extended discussions with some tribal what we do  
18 into the dependency but at this point weren't approved that.

19 MS. YOGI: I guess the reason that I started by saying

20 that NJP or organizations like NJP are not the best ones is  
21 that I think that this is an area of law that requires  
22 expertise and it's such a small amount of what we do in the  
23 state system, people in Washington dependency representation in  
24 the state. So I think there is a learning curve. If it were  
25 to become a larger part of the practice and more consistent  
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1 part of our practice that might be different, but I guess my  
2 initial reaction would be to have that money go through a  
3 different entity.

4 COMMISSIONER EID: That's helpful. Professor Whitener  
5 smiling at the thought of funds coming in.

6 MR. WHITENER: I think one of problems is that legal  
7 services or organizations like NJP, and I worked in the legal  
8 services essentially in Jen's job before I moved to the UW,  
9 they're so tailored to state law. Everything that they do is  
10 in the state courts almost. So in that Native American  
11 practice attorneys sort of float without really a group above  
12 them that really understands what they do and also looks at  
13 everything through the state lens. They're the state  
14 understanding of due process and how tribes interpret it. They  
15 made them very uncomfortable. Even though the state of  
16 Washington interpretation of due process may be very different

17 than Montana's without -- they're very state focused.

18 And then occasionally you have Steve Robbins who wants to  
19 practice in tribal courts and makes that a priority. Not  
20 enough of the other attorneys do and where they -- you know,  
21 it's not the Washington State Rules of Evidence, it's not the  
22 RCW's. We find that many of them are uncomfortable to do that.  
23 The other this is we see a lot of funding for legal services  
24 but some states receive a lot more funding per capita for their  
25 Native citizens than other states and I'm not sure why that is,  
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1 but it sort of goes back in the history of legal services that  
2 everybody should be brought up to a standard.

3 COMMISSIONER EID: Governor.

4 COMMISSIONER KEEL: I just have a question, more of a  
5 clarification than a question. It occurs to me that when you  
6 describe the legal services you were talking about the child  
7 welfare cases or those type of cases that you assist, and it  
8 occurs to me that the legal services that you're providing is  
9 more of an advocacy rather than any type of defense or advice.  
10 Many of these families who come to you or come to your office  
11 for assistance really can't afford an attorney.

12 MS. YOGI: Correct.

13 COMMISSIONER KEEL: So the advice that you give them

14 is what they should do or how to engage in the system rather  
15 than representing them in court. You can't represent them. So  
16 there seems to me there's a little bit of a contradiction here.  
17 You advise them of what they need to do, but then they can't  
18 afford to do that because they can't afford an attorney.

19 MS. YOGI: Right. In some instances we're advising  
20 them that there's no other resources available for that person  
21 so it's just going to be you have this hearing tomorrow, here's  
22 what we're looking at, here's the law that applies, you know,  
23 helping that person prepare for that day or maybe -- that's  
24 just an example. Other times it might be more extended service  
25 helping a client draft a response to a motion.

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1 COMMISSIONER KEEL: My clarification is most of these  
2 types of actions take place in state court rather than the  
3 tribal court?

4 MS. YOGI: No. In the examples that I was talking  
5 about today I am just talking about the tribal court  
6 dependency.

7 COMMISSIONER EID: Any other questions? I want to  
8 thank you both for taking the time. We're honored that you're  
9 here and we wish you well in your endeavoring. We'll be  
10 calling upon you, I'm sure, in the future for your continued

11 advice and counsel. If you have any written remarks we welcome  
12 that now or later. If you want to call, e-mail or call we're  
13 available.

14 MR. WHITENER: Thank you.

15 MS. YOGI: Thank you very much.

16 COMMISSIONER EID: We now are going to move into the  
17 next panel and do that without a break, if we can, in the  
18 interest of time. Actually, we're right on schedule. So I'd  
19 ask the next group of panelists to please come forward. Carma  
20 has graciously agreed to join us. So here on my left is the  
21 program director at the Lewis and Clark Law School. Good to  
22 see you again. And also want to introduce Chorisia Folkman who  
23 is the attorney for the Tulalip Tribes. She was gracious  
24 enough to speak to us yesterday but I wanted to make sure that  
25 you explain it in a way that is better than what I just did.

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1 David Simmons is the director of Government Affairs. Thank  
2 you, Mr. Simmons, for making time. So I guess what we'll do is  
3 we'll go, from Carma Corcoran we'll go to Corey, if we can do  
4 that, then come to you Mr. Simmons, if that's all right.  
5 Welcome, Carma.

6 MS. CORCORAN: Thank you very much. So a little bit  
7 about myself. I am so fortunate to be the director of the



8 Indian law program at Lewis and Clark Law School. So in that  
9 capacity I do everything from develop curriculum really taking  
10 a look at the emerging needs in Indian country. Fortunate  
11 enough to hire -- I'm out reach to the Native. I also work  
12 with two Native American non-profits in Portland. The most  
13 significant being Red Lodge Transition Services.

14 We serve all of the Native American women incarcerated in  
15 the state of Oregon. We have ancillary services to all of the  
16 state mens prisons in the state of Oregon and we work with the  
17 juvenile Native youth incarcerated. This is a really big job.  
18 But the core of our mission is to reduce recidivism, to work on  
19 intervention and also prevention. So we're so fortunate in  
20 that we are very successful. We are program people. I am a  
21 program person. And so the women that we serve we have an 85  
22 success rate meaning that 85 percent of the women that we serve  
23 do not re-offend. Those are hard numbers for anybody to touch,  
24 and the reason that they're successful is because we offer a  
25 culturally specific traditional program to our women. So

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1 that's what I'm hear to talk with you about today.

2 I'm going to share you with why I do this work. I'm  
3 Chippewa. I'm from Rocky Boy Indian Reservation and I'm one of  
4 18 children. I have 16 brothers. All 16 who have reached

5 adolescence served time. I have 50 nieces and nephews.  
6 Two-thirds of my nieces and nephews cycle in and out of prison.  
7 Many of my nieces and nephews are old enough now to have  
8 children of their own. Of those children half are involved in  
9 the juvenile justice system. So it's so important to take a  
10 look at what are the needs of juveniles in Indian country, how  
11 can we address that and my recommendation is programs.

12 So I'm going to give you a few statistics. These are  
13 national statistics. Juveniles represent 17 percent of all  
14 arrests. Juvenile arrests disproportionately involve minority.  
15 Minority youth are six times more likely to be tried as adults.  
16 There's a growing number of studies and reports that have made  
17 it clear that minority youth in general are more likely than  
18 white youth to be arrested, adjudicated and incarcerated in the  
19 juvenile justice systems around this country. And I'm just  
20 going to share a brief story with you.

21 I'll show you this picture. This man's name is Jesse.  
22 He's a Native American man. This was a recent news article as  
23 of last week in the Portland Oregonian. Jesse just received 20  
24 years in prison because he was involved in a drunk driving  
25 accident that killed another individual. Jesse was referred to

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1 treatment 17 times in the last 23 years. Jesse was heavily

2 involved in the juvenile justice system. His blood alcohol was  
3 three times the legal limit. Jesse's a father. He grew up in  
4 a cycle of physical abuse, alcoholism and as a juvenile  
5 defender. When describing Jesse for sentencing the district  
6 attorney stated all of those things and said that this is who  
7 Jesse is.

8 There are studies by Williamson in a positive relationship  
9 between a juvenile and adult arrest is confirmed in the studies  
10 of adult crime indicating that juvenile delinquency is the most  
11 common pathway to adult criminality. Psychological issues,  
12 physical environment as well as family structure and  
13 relationships are significant risk factors in determining an  
14 individual's propensity for dealing with adult criminal  
15 behavior.

16 The first factor demonstrates the relationship between a  
17 child's home and the likelihood of that child engaging in  
18 criminal activity from a psychological perspective. Genetics  
19 play a role, psychological traits such as anger, low self  
20 control, thrill seeking, self-esteem, environment, abuse,  
21 neglect, poverty. The fact is that both of these factors  
22 compound the situation and increase the likelihood of criminal  
23 activity in adulthood. That being said, no one is destined to  
24 become a criminal regardless of the psychological issues,

25 physical environment or the family structure that's presented

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1 in line.

2 So my recommendation is programs, parenting classes,  
3 domestic violence programs, conflict resolution training,  
4 something that we have found as we work with the women in  
5 Coffee Creek, which is the only women's prison in the State of  
6 Washington, is one of the first things to require them to do is  
7 conflict resolution training with us. As you can imagine,  
8 prison does not help them with their conflict resolution skills  
9 and most of them didn't have it to begin with.

10 Drug and alcohol programs. We all know that drug and  
11 alcohol runs deep within our families. We have to meet their  
12 basic needs, housing, food, jobs. Education is key. As  
13 everybody knows, we have the highest dropout rate of any ethnic  
14 minority in this country. Over half of our children do not  
15 graduate from high school much less go on to higher education.  
16 Access to community. And by community we mean their elders,  
17 community members, the traditional, spiritual ways of knowing.  
18 They need to have access to cultural traditions and their  
19 elders.

20 One of the things that we're so pleased to do every year,  
21 which believe me, is not easy, is put on a sacred first foods

22 feast at Coffee Creek. It's the one time of the year where  
23 there's a huge feast and we bring in certified Longhouse  
24 members from Warm Springs, we bring in elders and healers from  
25 all over the state of Oregon. These women respond greatly to  
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1 that experience. For some of them it's a return home to  
2 cultural, spiritual traditions. They may never experience that  
3 because of their lifestyle. Many, many were in foster care in  
4 white families. Also, I strongly advocate for a restorative  
5 justice system particularly when it comes to juveniles. The  
6 outer dominant society has a difficult time thinking about  
7 traditional restore justice when it comes to adults, but  
8 they're more open when we're talking about juvenile. So  
9 healing circles, that traditional circle of taking  
10 responsibility for your action, the community deciding what  
11 does justice look like, feel like to them where justice is not  
12 in the form of incarceration for juveniles, instead programs.

13 So my recommendation of what is needed is mentoring. I'm  
14 so fortunate and exhausted to mentor about six Native women at  
15 a time, four of whom came out of Coffee Creek. They're all in  
16 community college now. They've gotten their children back.  
17 They're working. They're doing really well, and most of all,  
18 they have not re-offended and they're becoming transformative

19 leaders within their community. Volunteering. You know, some  
20 of us volunteer our brains out daily and there's always a way  
21 to get.

22 Designing and leading. I would say that one of the great  
23 things about this lodge is we address a problem and we're  
24 taking a look at leadership and how we can be part of the  
25 process. We sit on the advisory board with the Department of  
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1 Corrections, but it's so important for us to have a seat at  
2 that table and to be advocating for the need of prisoners in  
3 the state of Arizona. Designing an innovative program based on  
4 traditional (inaudible) and certainly being innovative using  
5 things like the Internet.

6 Most of the women that I mentor Facebook me every day, so  
7 I do have one-on-one meetings with them, but I hear from them  
8 almost every single day so I get information and resources to  
9 them via e-mail and Facebook and things like that, so they  
10 don't have to be sitting right next to me. We all have that  
11 responsibility to be good parents, grandparents, aunties and  
12 uncles.

13 Providing access to elders. Without their wisdom, their  
14 tradition, their passing on our spiritual beliefs and  
15 traditional ways we can not possibly help these youth. And

16 someone earlier mentioned gangs. As we all know, especially in  
17 the border towns, gangs are huge and the reasons why Indian  
18 children and young people respond to gangs is the same as any  
19 inner city kid. They're doing it for identity. So we need to  
20 provide that cultural experience and knowledge so that they get  
21 their identity from a traditional way of being.

22 Certainly fundraising came up last time and that's another  
23 way to be innovative. Public funding to be able to collaborate  
24 and fundraise programs together so that not one entity is  
25 completely responsible for a programs have stability that when

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1 you do lose that public fundings and, as we know, every single  
2 election we are always at the whim of legislature. And  
3 certainly donate whether it's time, whether it's money. Most  
4 of all your skills and your energy makes a huge difference in  
5 these programs and this is why we do it.

6 These are the children of Rocky Boy. They need to have a  
7 future. These children do not have to become offenders. So my  
8 recommendation is to embrace programs and to find a way to  
9 partnership and funding. Thank you very much.

10 COMMISSIONER EID: Thank you so much, Carma. Are  
11 there questions? Just want to thank you for coming. I'm an  
12 admirer of your work and also to say the law school is

13 phenomenal. You have been a guest a couple of times in the  
14 last years. We really appreciate the -- the students brighten  
15 up whenever you appear and you're doing great work.

16 Commissioner Gede.

17 COMMISSIONER GEDE: Congratulations, by the way, on  
18 your success rate with women. What about men, do you have any  
19 kind of specific thought about young men entrapped in these  
20 cycles?

21 MS. CORCORAN: Some of the things that we do with both  
22 the juveniles that are in the facilities in Oregon which is  
23 MacLaren which is just between Portland and Salem and all of  
24 the state prisons. We unfortunately just have not made it to  
25 the federal prisons. I think there's 14 state prisons. So we

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1 do make it to every state prison every year, but one of the  
2 things that we do is we do workshops on domestic violence. Of  
3 course while we're there no one is going to raise their hand  
4 and say, you know, I'm an abuser, but it's amazing the letters  
5 that we get. I'm actually mentoring one young man through the  
6 mail right now. He is wanting to reunite with his wife. He is  
7 an abuser. And so we talk about traditional ways about who he  
8 needs to associate with to gain knowledge. We also encourage  
9 all of the men that we're involved with to go through the



10 various parenting classes that are available at all of the  
11 prisons.

12 Another thing that we do is we do workshops on historical  
13 trauma which is really a huge learning curve for the men, but  
14 it also gives them that opportunity to study their culture,  
15 what their experience was or their parents' experience was, to  
16 address those issues that we feel are part of what the society  
17 problem has become because domestic violence was not in a  
18 traditional way of being in any Native experience. So we do  
19 work with the men, too, and we're on the road pretty much every  
20 single weekend doing something. So thank you.

21 COMMISSIONER EID: Other questions? Ms. Folkman,  
22 thank you so much for being here and we look forward to your  
23 comments. Thanks for your time.

24 MS. FOLKMAN: My name is Chorisia Folkman. I am the  
25 managing attorney of the Tulalip legal aid which is a federally

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1 funded program through the Department of Justice, Bureau of  
2 Justice. I've also served as the full-time Tulalip Tribe's  
3 dependency advocate attorney since 2008. So prior to us being  
4 able to process legal aid I was the in-house public defender  
5 for Tulalip Tribes in most of the hearings involved in tribal  
6 dependency cases at the Tulalip Tribal Court. Prior to that I

7 was with the Equal Justice Team, an organization involved with  
8 children here in Snohomish County. I represented youth aged 12  
9 to 18 in civil legal matters when they were involved in issues.

10 I graduated from UC Berkley with my master's in social work and  
11 law degree in 2006 focusing on the representation of children  
12 and working with families.

13 My pleasure to be able to testify. There's a lot that I  
14 can speak on that was addressed in the last panel so I don't  
15 mean to take us in a different direction, but I do want to  
16 respond to a couple of the questions and comments that were  
17 asked in the last panel. So I think I'll just touch on what  
18 the focus of my presentation is which is access to counsel and  
19 quality counsel for youth and children in juvenile cases. When  
20 I say that what I'm referring to juvenile delinquency cases,  
21 juvenile dependency cases and also cases and different things,  
22 but children in need of services, are at-risk youth, truancy  
23 status.

24 I'm going to start, however, with dependency cases and I  
25 know that a lot of this was already discussed in the last

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1 panel, so I'm not going to go into a lot of detail about that.

2 But I want to start with dependency because, as we discussed  
3 earlier, a child's involvement in a dependency case at whatever

4 age greatly increases the likelihood that they will become  
5 involved in a delinquency case later in life which may also  
6 lead to adult offending. I was able to find some statistics on  
7 this, of course nothing on point for tribal communities in  
8 general but a child's involvement in the dependency system  
9 statistics show that they increase their likelihood up to 40  
10 percent more likely to be involved in going through the system  
11 later in life. Some were a little bit less and some were a  
12 little bit more than that but in the higher 40 was the average.  
13 This is of course in state jurisdiction. My guess is that in  
14 tribal jurisdictions that rate is even higher.

15 So I'm starting with dependency because I can't think of  
16 another legal proceeding that pertains to children that has  
17 such a major affect on their life than a child welfare case.  
18 Courts in abuse and neglect cases dramatically shape a child's  
19 entire future with the decisions that are made on what is going  
20 to happen to them once their parents are alleged having abused  
21 or neglected them. The court decides where the child is going  
22 to live, how far from their tribal community and family they  
23 might be, the level of contact they might be able to maintain  
24 with their tribal community and family, where they're going to  
25 school, what services they receive, how often they're checked

1 on. Everything is affected by that system. And the outcome of  
2 abuse and neglect cases have drastic implications on the parent  
3 and the family unit as a whole, not only the nuclear and the  
4 larger tribal family, but it most especially affects the child  
5 because it's only a child's physical liberties that's  
6 threatened in a child abuse and neglect case. It's the child  
7 who is removed from their home.

8 So what I would like to talk about is the importance of  
9 counsel and I'm going to focus on counsel for children, but I  
10 will also touch on counsel for parents in child abuse and  
11 neglect cases. There's a really dynamic movement going on  
12 nationally right now with improving the quality in counsel for  
13 children in dependency cases. I hope that that movement  
14 extends to tribal courts and to tribal system. Like what Ms.  
15 Yogi said earlier, this specialized practice of law and the  
16 specialized understanding of both children and families and the  
17 legal issues and social service needs that surrounds every  
18 single case to ensure that when families enter the child  
19 welfare system needs are being met appropriately, quickly and  
20 hopefully that family is able to reunite as swiftly as  
21 possible.

22 Lawyers of children in the proceedings directly affects  
23 their lives. Children who are represented by an attorney often

24 feel that the process is more fair because they've had a chance  
25 to participate, understand and be heard in the proceeding that  
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1 directly affects their lives. As a result, I think you  
2 especially see this with teenagers. The youth may feel that  
3 they're more likely to accept the decision of the courts  
4 because they feel that it's fair and they have a voice in that  
5 process. Requiring lawyers to represent children in abuse and  
6 neglect cases is also consistent with federal law.

7 The Child Abuse Prevention and Treatment Act, CAPTA,  
8 requires the appointment of a guardian ad litem for a child as  
9 a condition for proceeding with child abuse prevention and  
10 treatment program. Now, I know that that is different in the  
11 way that they arrange their funding through the federal  
12 government for child welfare programs, but regardless of  
13 whether or not current jurisdiction there still is that trickle  
14 down funding. Certainly violation of that provision of CAPTA,  
15 but it's something to be mindful of and I think it's something  
16 that the federal government can be working on in the future.  
17 Providing an attorney or best interest guardian ad litem is  
18 consistent with CAPTA.

19 So just last month the American Bar Association adopted  
20 the Model Act governing the representation of children in these

21 neglect dependencies cases and it's set standards that it is  
22 hopefully going to be able to adopt, guidelines and standards  
23 for attorneys in any sort of jurisdiction to provide quality  
24 representation for children of dependency cases. Similar  
25 standards have been created to represent parents in dependency

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1 cases as well. So they're trying to provide more of what it  
2 means to represent a parent, child in a child welfare case and  
3 how best practice shows good outcomes can come of their  
4 involvement and the advocacy that, you know, whatever  
5 jurisdiction for the representation.

6 So in the Model Act it describes what duties a child  
7 attorney has for the child and so I'm just going to touch on  
8 them. Attorneys can identify legal issues regarding child  
9 clients, use their legal skills to ensure the protection of  
10 their client's rights and needs and advocate for their clients.  
11 Attorneys need to maintain as normal as possible an  
12 attorney/client relationship with a child so that they can  
13 share privilege and confidential information on case issues and  
14 ensure a trust. Trust in my experience representing children,  
15 this is key.

16 As an attorney you're the one person that can say that  
17 whatever they talk about with you is confidential. They can

18 use that trusted adult to talk to them about what's really  
19 happening in their lives and help them make a good decision  
20 whether that decision is to report abuse or neglect to CPS or  
21 to come forward about something that's happened to them, they  
22 might be scared. It's a unique relationship that no one else  
23 that might be working with that child has. And we see that in  
24 delinquency cases which I'll talk about in a minute. An  
25 attorney can ensure the child (inaudible) related to the court

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1 are effectively presented but they can not explore other  
2 options when those express interests aren't a possibility for  
3 the court to order.

4 An attorney can educate an abused and neglected child of  
5 their legal rights in a dependency proceeding, what they can  
6 expect to happen, what might happen if they make certain  
7 decisions. They can file briefs, appeal, cross examine when  
8 necessary, advocate, ensure the best educational placement for  
9 their client and I think this is key when we look at the poor  
10 educational outcomes of Native youth and how those poor  
11 educational outcomes when you look at foster youth combined  
12 with Native youth are really very quite frankly scary when you  
13 think about how our Native youth are comparing in their own  
14 educational commitment.

15 And finally, an attorney can ensure that when a child is  
16 about to be emancipated out of the appropriate services and  
17 financial resources to try to be successful. And I'm sure the  
18 last panel talked about how statistically youths who come out  
19 of foster care are more likely to be involved in criminal  
20 justice system to be victims of domestic violence, the outcomes  
21 are horrific. So having another advocate to make sure that  
22 every option whether it's tribal, state or federal is being  
23 explored to make sure that child is well prepared. It's key in  
24 preparing that child to be an adult.

25 So I'm going to talk about the funding piece of this in a

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1 second, but I want to make sure that it's discussed that  
2 dependency attorneys are key whether or not it my belief is  
3 whether or not the child is five or the child is 16 it's  
4 important to make sure that in our child welfare cases the best  
5 interests of the child, as well it should be, and that there is  
6 an advocate there looking out for a legal rights and needs of  
7 that child and helping to support that child.

8 Now, in relation to juvenile justice and juvenile  
9 delinquency movement has been underway in developing of --  
10 Gault (phonetic) case came down in the '70's and was nationally  
11 recognized that direct tribal, state and local jurisdiction and



12 proper advocacy for youth in delinquency cases. Many of the  
13 same issues that I just talked about in dependency cases are  
14 relevant in delinquency cases. Juvenile defense attorneys have  
15 to have another criminal defense attorney, but in addition to  
16 that they need to have a good solid brain development, family  
17 dynamics, an understanding of the community that the child  
18 lives in and the social services available to that child. They  
19 need to be able to work collaboratively with the child's family  
20 or guardians, the probation officer. It's important that we  
21 try to devise a dedication for that child once it has become  
22 involved in the delinquency system.

23 So I think it's very important, you know, every  
24 jurisdiction is different but it's so important that all these  
25 Native children have counsel and, number two, for those counsel

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1 to be properly trained and specialized. So I just got the  
2 three minute mark. I could go on and on about rights of  
3 counsel.

4 So I do want to talk about, however, a couple of issues  
5 that were touched upon in the last session. One question was  
6 raised in regards to funding streams to fund counsel for  
7 children. I think what we have going on right now as far as  
8 I'm aware is tribal courts do have the opportunity through the

9 grants that our office have tribal civil and criminal legal  
10 assistance grants to the Department Justice to fund just these  
11 things. Counsel for kids to fund criminal defense counsel and  
12 I'm sure that extends to juvenile delinquency cases, and this  
13 is an amazing, wonderful knew opportunity.

14 What I see is a problem with this is two-fold. One, I  
15 don't know that a lot of tribal organizations are aware of it  
16 still. There is money there and I think it can be distributed,  
17 but quite frankly, if we did it for all Native children I'm not  
18 sure if there's another funding to ensure there is going to be  
19 quality counsel that has the equal of like investigator, social  
20 workers, legal assistants that you might see in other public  
21 defense.

22 Second is the funding stream requires a non-profit apply  
23 for that grant and we all know that different jurisdictions  
24 work in different ways. Some jurisdictions may contract with  
25 non-profit organizations, but some may have it in-house through

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1 a tribal government. And we received information that the  
2 tribal governments are not allowing directly to receive this  
3 funding and that's going to be a barrier for a lot of tribal  
4 jurisdictions to make non-profit available for access as  
5 funding.

6 I think it would be helpful, though, if more funding RFP  
7 (inaudible) were from the federal government to try to improve  
8 court system by improving access of quality and counsel. So I  
9 think that's a big issue both in the dependency system and  
10 delinquency.

11 A second issue that has come up in my mind is practicing  
12 in the field to me -- I'm a member of the Cherokee Nation.  
13 It's always been important for me to work with Native youth in  
14 this field, but honestly there's not that many Native students,  
15 I'll say, out there that know they want to work in child  
16 welfare either as social workers or as attorneys. So we need  
17 to make a concerted effort to recruit more Native students to  
18 commit to going to law school and work in this field or commit  
19 to a master's in social work or counseling degrees and work in  
20 child welfare become specialized understanding practices and be  
21 able to achieve these educational goals so they can come back  
22 into our communities.

23 And we do see interesting funding like this, for example,  
24 California where I got my master's in social work they have a  
25 Title 3 program where you're committed to work I think five

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1 years in child welfare system your tuition was paid for by the  
2 state. Something like that would be very helpful to make it

3 possible for young people to be able to undertake that sort of  
4 study, then be able to come back and take that education to the  
5 community. Those are my two points on the last topic. Thank  
6 you.

7 COMMISSIONER EID: Thank you. Are there are questions  
8 from the Commission at this time? Yes, Ms. Ellis.

9 COMMISSIONER ELLIS: Thank you. With the Department  
10 of Justice grant that you mentioned and tribes not being  
11 eligible, is that just an internal rule the Justice has?

12 MS. CORCORAN: The tribe in Nevada that was mentioned  
13 the liaison let us know that tribes are considered non-profits.  
14 I don't remember the code for that. But why can't the tribal  
15 government apply for this grant and the attorneys advising the  
16 Department said that, no, under legislation it has to be a  
17 non-profit which applies for the funding.

18 COMMISSIONER ELLIS: Thank you.

19 COMMISSIONER EID: That's helpful. Thank you so much.  
20 Other questions at this time? Thank you so much. Appreciate  
21 it. Mr. Simmons, we're honored to have you and look forward to  
22 your remarks. Thank you very much for being here.

23 MR. SIMMONS: Thank you very much and I appreciate the  
24 opportunity. Thank you, Chairman and Commission members. This  
25 is a topic of great importance to the National Indian Child

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1 Welfare Association by giving testimony on behalf of the  
2 issues.

3 The National Indian Child Welfare Association is  
4 headquartered just down the road in Portland, Oregon just south  
5 of here. We're an Indian organization. We're a non-profit  
6 organization with an all-Indian board of directors who are  
7 comprised of tribal leaders, tribal service providers, tribal  
8 people who have worked in state local and federal government  
9 agencies, and also people who have been community advocates,  
10 people who understand community dynamics like this in tribal  
11 communities around issues like this on juvenile justice, child  
12 abuse and neglect and so on.

13 Our work is on different levels. We work both in the  
14 communities to do community development working at the request  
15 of tribes to help promote ways to organize programs, ways to  
16 develop those relationships and partnerships that are needed  
17 and also to train the workforce. We also do work that we call  
18 administrative work as well and training work where we're  
19 actually going in and training both Indians and non-Indian  
20 people on ways to improve skills to work in Indian Children  
21 Affairs.

22 Another level of work which I'm most involved with is our

23 Government Affairs work. I'm the director of Government  
24 Affairs and the last 20 plus years we've been working with  
25 policy at the federal and the state level to try and identify

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1 and help raise awareness about issues around juvenile justice  
2 system and where some of the funding and the policy issues lie,  
3 and to be able to help put together a coalition of people,  
4 willing people who want to advocate and improve services. Our  
5 motto is we're willing to work with anybody that wants to do  
6 something for the American Indian children.

7 Most recently we were involved in the Foster Connections  
8 Act passed and the tribal provision of that put into place  
9 which gives tribes for the first time in over 20 years the  
10 opportunity to be able to apply for their own Title 40 while  
11 securing adoption assistance funds. These funds are critical  
12 for tribes be able to reduce their own capacity to be able to  
13 the services and have those services come from people who know  
14 those kids and families the best.

15 So we look at issues like juvenile justice. We come at  
16 it, first of all, thinking about why do we have children or  
17 youth in the juvenile justice system. And the word that comes  
18 to mind is trauma. Whether it's historic trauma or other kinds  
19 of trauma we're talking about things that have happened to

20 families, generation of families over time and have happened to  
21 youth more recently and they often are unresolved trauma.  
22 That's the issue here. So Carma was saying predict we're going  
23 to be involved in the juvenile justice system just by looking  
24 at a rap sheet, looking at their family history, but we can  
25 tell what people are at risk, and part of that being at risk is

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1 having unresolved trauma.

2 We know that the Native population in this country, and I  
3 provided a national perspective, is the young population. And  
4 we know that if we intervene earlier enough about these  
5 communities and families and we do it in a correct way, we'll  
6 be able to reduce the at-risk behaviors and environments that  
7 do lead to (inaudible). We also know that there are other  
8 things that are exposed to trauma that are also related by  
9 accident rates. You've got American Indian, Native American  
10 accident rate is over almost three times of that in other  
11 communities across this country. There are safety issues as  
12 well that can be treated and put at-risk or reducing the risk.

13 So what happens when we don't address unresolved trauma.

14 Well, brain research tells us very clearly that unresolved  
15 trauma especially at a young age is that children as they  
16 develop, become a little older adolescent and what they do is

17 they move past more milestones and they can't go back  
18 necessarily. So what we're doing is we're lobbying those  
19 youth, those people, their individual opportunities, their  
20 potential by not addressing those traumas at an early age.  
21 This is critical research and this applies across the board.

22 We heard testimony already about how being in the child  
23 welfare system puts you at risk for being part of the juvenile  
24 justice system later. Why is that. Well, part of the reason  
25 is that's there's unresolved trauma. We also know that

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1 American Native children who are in the child welfare system  
2 often don't get the full benefit of those rehabilitative and  
3 supportive services that other families might get. So we're  
4 talking about trauma here or we're talking about unresolved  
5 trauma and alternatives to incarceration. We do know that  
6 there are communities, Native communities through our  
7 investigation but most often they're in state and federal  
8 facilities. Currently they're over represented at huge numbers  
9 especially in different states.

10 Four states just here in Indian country have rates of  
11 incarceration of American Natives between 29 to 42 percent.  
12 None of those states has more than 17 percent of the population  
13 were American Indians or Alaska Native. When we look even more



14 closely in some of those places than others we find that there  
15 are examples of extreme abusive behavior that has occurred and  
16 the victims have been the American Alaskan Natives.

17 In 1999 the South Dakota Youth Law Center found that there  
18 was a death of a young woman in one of their boot camp  
19 facilities and conducted an investigation. Now, they came into  
20 this thinking about the allegations around just generalized  
21 sort of abusive practices. What they found, though, is that 40  
22 to 50 percent of the youth in that facility who are American  
23 Indians Alaska Native in that 90 percent of those youth who  
24 were in the most secure confinements were American Indians  
25 Alaska Native. They also found out -- I have a video tape in  
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1 the back, testimony I'll hand out to you later. They put  
2 together a video and it shows that American Indian youth were  
3 receiving the harshest punishment. The use of restraints,  
4 pepper spray or doing things like talking in their own language  
5 which was forbidden in that facility and also for even  
6 questioning and asking for some of their own cultural practices  
7 to be brought in, being able to see members of their family and  
8 members of their community.

9 Now, these are pretty extreme examples and it is, but we  
10 know from anecdotal evidence in other parts of the country

11 American Alaska Indians youth do receive harsher treatment  
12 often times and have less access to diagnosis and treatment in  
13 those same facilities. What else complicates these issues.

14 Well, multiple jurisdictional complications occurs where the  
15 activity occurs which means that at any one time just like in  
16 child welfare we can have one, two or three different  
17 governmental entities involved, state, tribal or federal and  
18 possibly the county. So we've got those kinds of issues that  
19 need to be addressed. We need to be able to clarify how they  
20 should be involved.

21 The Indian Child Welfare Act which has been a model for  
22 trying to help in the area of child welfare has some relevance  
23 in juvenile justice. So if a child is removed or youth is  
24 removed from their home a parent can't just have their child  
25 returned upon demand and then likely that the Indian Child

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1 Welfare Act will apply, but if the reason for the removal  
2 related to some criminal action then the Indian Child Welfare  
3 Act doesn't apply.

4 Why is this important? Well, because one of the three  
5 things that the Indian Child Welfare Act does that are most  
6 important, actually, to the parents, the independent custodian  
7 and also to the tribe as then it notifies them of their

8 opportunity to intervene and be a part of that. What has  
9 evolved over time is more and more tribes are involved in not  
10 only the court proceedings, but they're involved in the case  
11 planning, the rehabilitation, the treatment that goes on. So  
12 they're essentially co-case managing with the state and federal  
13 officials in these cases.

14 We also know that active efforts require as part of NICWA  
15 welfare where you can't just run a family in and say we're  
16 going to turn you (inaudible), you know, that you've made  
17 efforts to try and rehabilitate the family. We don't have  
18 anything like that in the juvenile system. And also the other  
19 thing that NICWA does and is they support these things because  
20 it recognizes that the tribes resources in all of this scheme  
21 that they have an important role in being able to determine  
22 good outcomes and processes for these youth that we're talking  
23 about, and not only helps funds some of these tribal resources  
24 in the development and operation, but it also helps recognize  
25 that agreement and collaborations are an important part of that

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1 and bring something to the families that are involved. So as a  
2 family engagement and a tribal engagement model there is  
3 something that has been possible.

4 It's been shown as early as 2005 JO report shows that

5 there are good things happening. We need to think very  
6 seriously about what can we do to involve similar uniform  
7 definitions and rights of families and tribes similar to what  
8 maybe HIPAA provides in the juvenile justice center. That's  
9 one of our goals on our advocacy agenda. We hope that you'll  
10 work with us.

11 Tribes and families need additional support and policy to  
12 ensure their participation. We know that in order for children  
13 or youth who are in the system to be able to rehabilitate they  
14 need access to their culture. It's a lonely place in those  
15 facilities. Access to their elders, to their family members,  
16 to family tribal services programs is critical to their ability  
17 to rehabilitate in a timely way and in an effective way. What  
18 does that mean. Well, we have engage the tribe and the  
19 families.

20 I was talking -- I was reading some testimony from a  
21 chairman from San Carlos Apache, and he was talking about how  
22 even though it's a violation of federal regulations youth are  
23 detained and then incarcerated, they're placed more than two  
24 hundred miles away from the tribe and our family members don't  
25 have transportation or income to get their youth warehoused in

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1 the confinement facilities without really much access to either

2 their families and even the tribe finds it difficult to be  
3 involved at a distance like that. So when we look at things  
4 like that we look to see there's also not a collaborative  
5 training in training staffing these facilities to be able to  
6 help promote more effective relationships.

7 I mean, this is about relationships. Relationships help  
8 heal the trauma and then cause of the relationships when  
9 they're missing we don't do any of -- do them a disservice.

10 So we need to find ways to set up more for state and federal  
11 facilities, more ways to help engage and get families involved,  
12 help support them if they want to do that.

13 On the child welfare side, it's taken a long time but  
14 there are several provisions that recognize how critical  
15 relatives are. They've gone as far as to say relatives to be  
16 educated and participate in the process when their relative  
17 children are removed from their home, and even better, to make  
18 it easier for them to get licensed to be those care providers.

19 We're going to mandate federal law. So there's a recognition  
20 on that and I think recognizing how necessary that the family  
21 is.

22 We also know that probably the most direct way to be able  
23 to help these youth is empowering and improving tribal  
24 capacity. Now, that also begs the question of funding. What

25 are we going to do. There have been programs out of which have

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1 been very helpful in helping in developing those programs in  
2 Indian country, but there's more that needs to be done. Tribes  
3 are coming up with new innovative ways where there's  
4 restorative justice, therapy, other kinds of team work trying  
5 to help youth maintain that connection to their culture.

6 Our own organization, Purdue University and also with the  
7 child welfare in America on research and our research clearly  
8 shows that Native youth all over the country the last couple  
9 years, that one of the most important things that a youth can  
10 have to help them avoid and prevent delinquency is access to  
11 their culture, most importantly, speaking their language. So  
12 those are the kinds of things we know on the front end can help  
13 us reduce those disproportionate numbers as well and we need to  
14 support those things in the future.

15 I wanted to end just by saying that Chairman Winsler  
16 Nosey (phonetic) in and his 2008 testimony before the Senate on  
17 Indian Affairs said it very clearly. He said we believe that  
18 we need to provide a safety mechanism for our communities for  
19 those juvenile defenders that are violent and are apt to harm  
20 others, but we never give up on rehabilitation, we never give  
21 up on the family or the youths and those connections are life-

22 long regardless. So he said we need to do more than just jail  
23 our youth. We need to make sure to do things to make sure that  
24 when we're talking with the tribes that they have an  
25 opportunity to involved at a level that they can be involved

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1 and we want to make sure that the youth know that we value them  
2 and that we are there for them and we are never going to give  
3 up.

4 I wanted to let you know about that. I think Winsler  
5 says a lot of what I feel and I think what our organization  
6 probably out there feels. We have to give them something that  
7 says this is bigger than themselves, that these are troubles,  
8 these are problems that are serious, but we have to give them a  
9 bigger than themselves. So I appreciate the opportunity to be  
10 here. Some of the more recent reports and publications are  
11 also in the end of our testimony and I encourage you to read  
12 some of that. There are some great recommendations there too.  
13 Thank you very much.

14 COMMISSIONER EID: Thank you, Mr. Simmons. Questions?  
15 We have all three of the panelists here.

16 COMMISSIONER POULEY: I know that NICWA requires we  
17 keep track of youth in dependency case. I have to tell you  
18 point blank, we do not get notification of status when our kids

19 are going to jail because they are not going to school or  
20 status events. Sometimes we keep dependencies open to make  
21 sure that they get legal support. So my question is despite  
22 the things that NICWA -- do we have suggestions about how we  
23 might enforce those requirements because I know it doesn't have  
24 any internal enforcement mechanisms? So what might we  
25 recommend to make sure that good practices are followed?

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1 MR. SIMMONS: I have a couple of ideas. This is part  
2 of what we're working on, too. I think you hit the nail on the  
3 head when you talked about the lack of enforcement mechanism.  
4 One of the things that we struggle with as a national  
5 organization is just the lack of data. And I don't know how  
6 many people know this, but this is the only federal child  
7 welfare law that does not have a regular review attached to it.  
8 We don't have a review, we don't have data and when you don't  
9 have data there is no enforcement mechanism that is stronger  
10 than something saying you have to start with at least a review.

11 Now, there are other types of review or compliance  
12 mechanisms, sanctions, things like that. I think what we  
13 really need to start with is we've got to get our heads on  
14 what's really going on out there on the practice side. Each  
15 state, each municipality jurisdiction to be able to understand



16 better what the real issues are. And I think that in juvenile  
17 justice we're just starting to understand. We've been actually  
18 advocating that there be a -- last year Juvenile Justice  
19 Coalition told us what we should be working on. We just need a  
20 little bit of money so we can get some studies so we can have a  
21 better idea and more authority to say that we know what is  
22 going on out there. And unfortunately, they weren't even able  
23 to give us that. So we're trying to build it better here, but  
24 we do need more support for that research over time.

25 COMMISSIONER POULEY: Any other panelists?

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1 MS. CORCORAN: I just want to comment on the  
2 notification. With the women of Red Lodge you can imagine many  
3 of them have lost their children. The bulk of their children  
4 are in foster care, unfortunately, not always with relatives.  
5 And we find all the time that we get calls about, you know, I  
6 just found out that my child is not even in an Indian family.

7 We just went down and advocated about a young woman who  
8 was out in Eugene because she was notified that they were going  
9 to terminate her parenting classes. She was going to parenting  
10 classes. She's been clean and sober for a year, da-da-da and  
11 had a really difficult time getting everybody to the table.  
12 She's not from an Oregon tribe trying to get some tribal

13 advocacy going. The DHS person was just not interested in  
14 talking to us. And so finally the day of the hearing we were  
15 able to talk to the judge and get a little more time in this  
16 case because we were able to prove she was doing all of those  
17 things. Notification is a huge issue and certainly when it  
18 comes to the juveniles that we serve nobody ever gets notified.  
19 We just get a call my son's in trouble, can you get down to see  
20 him.

21 MS. FOLKMAN: I don't have any comments.

22 COMMISSIONER EID: Additional questions? I have sort  
23 of a global question here. The latest DOJ funded report came  
24 out in July, and forgive me, I can't remember the name, but  
25 it's entitled "Tribal Juvenile Justice." You may have seen

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1 this report. One of the findings is that there really is a  
2 dramatic reduction in federal prosecution of juveniles. And  
3 having been a United States attorney I have a sense of how  
4 difficult it is to prosecute juveniles. There's not a lot and  
5 so on.

6 My question is should the federal government be doing  
7 more? Have you thought alternatives about the federal  
8 government taken out of the juvenile justice business entirely  
9 for troubled youth entirely or opt out or any of the big issues

10 here about where we go because, on the one hand, I heard a lot  
11 of testimony about the importance of tribes that comes with a  
12 cost, but I also know that you talked, Mr. Simmons, about the  
13 importance of culture, teaching tribal culture to anyone. And  
14 so I'm one wondering where you see this going?

15 Do you expect more freedom and more federal services or do  
16 you see a transition of let's move more toward the tribal side,  
17 fund that and get out of this or not? I'm just curious as we  
18 look ahead on where are we going with this and particularly --  
19 I start with that presumption, this very pronounced shift away  
20 from prosecuting on the juvenile side by US attorneys. There  
21 is a lot of debate in the scientific world for what it is. I  
22 can tell you it's just a very simple issue of we're not good at  
23 prosecuting juveniles. The system doesn't fit. We don't have  
24 services. We don't have parole. They tend to be sentenced as  
25 adults disproportionately which raises issues with our judges.

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1 Go ahead, Mr. Simmons.

2 MR. SIMMONS: You're right, that's a global question.

3 As I said in the beginning of our testimony, our focus really  
4 is trying to reduce punitive sort of measures side of the  
5 juvenile justice system and trying to increase the  
6 rehabilitative side. So, you know, I can't say that we have a

7 position on your specific question, but I would guess that as  
8 we were discussing these issues and we have discussed, you  
9 know, the multiple jurisdictional maze that's out there that it  
10 doesn't do anybody any good in child welfare either for that  
11 matter to have different entities prosecuting young people,  
12 young families when they aren't equipped to do it and to do it  
13 sensitively and do it will full knowledge and participation of  
14 tribes. So I think that we have to get back to trying to put  
15 more resources into the tribal side.

16 I think a lot of the issues, I mean, where we see like --  
17 I'm really impressed with Carma's program. I mean, when there  
18 is funds and when there is effort there we can do a lot more.  
19 Now, having said that, there are issues around community safety  
20 and I'm not going to be able to speak to those, but I think in  
21 child welfare we are seeing more and more tribes take on these  
22 issues and exercise their sovereignty, do more, given more  
23 authority and they have great success in this. And I don't  
24 have any reason to believe that they couldn't do more on the  
25 juvenile justice side.

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1 CHAIRMAN EID: Ms. Corcoran.

2 MS. CORCORAN: Yes. I would take the stance is to  
3 reduce the number of juveniles tried as adults. Children don't

4 belong in prison. What are they going to learn there. They're  
5 going to learn more acts of criminality. So having that  
6 answer, stepping back I think is certainly good, then you do  
7 have to enhance those tribal programs to work with these  
8 juveniles. Even when it comes to adults the Native women  
9 incarcerated at Coffee Creek the vast majority of them are in  
10 there because of drugs, offenses related to drugs and alcohol,  
11 whether it's assault, they drove the get-away car, you know,  
12 they're going down for their man, seriously. And so because of  
13 Measure 11 a lot of them have incredibly long prison terms when  
14 what they really need it drug and alcohol programs. That's the  
15 same for youth.

16 If you take a look at -- I'm sorry, I don't have it with  
17 me. I had a great printout for the state of Montana where I'm  
18 from and represent of Native youth what they were in for. The  
19 bumping of those youth shouldn't be incarcerated.

20 COMMISSIONER EID: Ms. Folkman.

21 MS. FOLKMAN: Children should not be in an adult  
22 system and an adult system which is not prepared to work with  
23 youth. There needs to be some sort of alternative that the  
24 youth still need to be able to -- there still needs to be a  
25 justice system accountable but through a rehabilitative system.

1 So that's my impression on it.

2 COMMISSIONER EID: Thank you, guests. Other  
3 questions? Greatly appreciate your time. Thank you so much.  
4 Thank you for all your good work. As to future field hearings,  
5 we will be circulating a list of those and we will be starting  
6 with a session in Portland in conjunction with NCAI, so we will  
7 be looking forward to circulating some dates internally for  
8 different places, then coming out with a list on our website  
9 which is in the process and so some of you will be invited  
10 back, I'm sure. We're going to take a break until 1 o'clock  
11 and then we will reconvene here. Thank you, everyone.

12 (LUNCH RECESS TAKEN AT 12:00 P.M.)

13 (RECONVENED FROM LUNCH RECESS AT 1:10 P.M.)

14 COMMISSIONER EID: Mayor Botelho, appreciate very much  
15 you being here. We're excited to come to Alaska and we will be  
16 doing that under your gracious invitation. There's some  
17 internal negotiations as to weather conditions and timing, but  
18 I'm sure that all of that will work itself out in time. Mayor  
19 Botelho, is the commissioner for the Alaska Rural Justice and  
20 Law Enforcement Commission and I'll let him explain what that  
21 is. But needless to say, out of the 565 recognized tribes most  
22 of them are in Alaska, but some of us have never been there and  
23 we pontificate perhaps about it, but in my own case do not --

24 we are grateful to you coming here and sharing some of your  
25 wisdom on these issues and also keeping us focused on the  
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1 Alaska Native community and the mission we have and what  
2 Congress wanted us to do.

3 MR. BOTELHO: Thank you, Mr. Chairman. I truly  
4 appreciate the opportunity to address you on behalf of the  
5 Alaska Rural Justice and Law Enforcement Commission. I also,  
6 again, want to extend my personal thanks to the Tulalip Tribe  
7 for their gracious hosting of me and reception here. Like  
8 communities around the country the residents of what we call  
9 Bush Alaska grappling with family violence, alcohol addiction,  
10 but what perhaps distinguishes most communities around the  
11 nation is that in most of these communities there is absolutely  
12 no law enforcement.

13 Highest rates of family violence, the highest rates of  
14 suicide and the highest rates of alcohol abuse anywhere in the  
15 nation and unfortunately at the top of the list in Indian  
16 country in the United States. And those challenges I think are  
17 exacerbated in part because of the enormous geographical size  
18 of Alaska, the remoteness of these communities, the  
19 skyrocketing costs of transportation, the lack of any economic  
20 opportunity and the enormous gaps in the delivery of any form

21 of government service particularly from the state of Alaska.

22 That leads me to the formation of the Commission which,  
23 needless to say, the Rural Justice and Law Enforcement  
24 Commission in 2004 as a result of a number of state-wide forums  
25 and discussions and in response to a request by the Alaska

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1 Federation of Natives, Congress created this nine member  
2 commission with a charge to review federal, state, local and  
3 tribal jurisdiction over civil and criminal matters in Alaska,  
4 to provide specific recommendations to Congress and the Alaska  
5 state legislature on topics relating to law enforcement,  
6 judicial services, the importation and introduction of alcohol  
7 to rural Alaska and domestic violence and child abuse, themes  
8 many of which I heard of course in the presentations this  
9 morning as well.

10 Our commission is co-chaired by the state attorney general  
11 and the U.S. attorney for the district of Alaska. We wear them  
12 out fairly quickly because we've gone through six attorney  
13 generals since 2005 and four U.S. attorneys are acting as  
14 attorneys. And I don't blame at all the Commission, but I'm  
15 sure there's some statement to be made there.

16 With the appointment of the Commission in 2005 we held  
17 hearings around the state and subsequently formed four work



18 groups made up of individuals in the professions in tribal and  
19 primarily state government as well as just rural residents to  
20 focus on four areas that we were asked to give special  
21 attention to. And those work groups meeting over the following  
22 year and a half came up with more than a hundred options, we  
23 call them recommendations, but options for the Commission  
24 itself to consider. That lead us to sift through and identify  
25 those that we would give priority to.

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1 Each of you should have at your desk right now a little  
2 thumb drive which is the 135 page report and I'm sure you'll  
3 all go home and read it tonight. But I think it will give you  
4 a sense of both our process most importantly, recommendations  
5 that while directed specifically at Alaska I think may have  
6 some pointage as you look at the nationwide issues as well  
7 dealing with domestic violence and child abuse, looking at  
8 juvenile justice which was a particular concern in virtually  
9 all the testimony we received around the state.

10 After we issued our report we spent a fair amount of time,  
11 actually, in at least two sessions of the legislature  
12 encouraging the adoption of various recommendations and some of  
13 them have actually been incorporated into state law and been  
14 funding to existing programs which I think bolstered some of

15 the recommendations. And I think most encouragingly our state  
16 court system which is the unified court system has undertaken I  
17 think some very positive steps in developing good relations  
18 between tribal courts and our state trial courts particularly  
19 looking at cross training and giving opportunities for  
20 interaction between tribal court judges and state court judges.  
21 Largely I think it's inspired by our awareness of Minnesota's  
22 efforts pioneering that activity.

23 We then went on to form four smaller work groups to follow  
24 up on those recommendations and also to track progress, but I  
25 have to say that for the most part because of two things,

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1 funding limitations and fundamental uncertainties about the  
2 life of our commission, those efforts were largely curtailed.  
3 One, we've made I think substantial progress on and we're  
4 hoping to bring it to a successful conclusion in the next  
5 couple months, that's been a proposed template, for cross  
6 jurisdictional state, tribal -- not HIPAA but like that, again,  
7 a topic raised in our last panel.

8 One of I think the concluding observations I would make is  
9 that as a result of our activities within the state we become  
10 painfully aware that there was a tendency to be a wide gap  
11 between state governments and tribal governments with regard to

12 the roles in rural Alaska. This owes a great deal to our  
13 unique recent state history which I would probably begin by  
14 focusing on the legislative act in 1971 which has had an  
15 enormous positive impact on the state which I think initially  
16 generated a lot of hostility within the white community who  
17 didn't understand the nature of the claims, mostly ignore the  
18 frustration of the Native community because it was a settlement  
19 only in name. But it was imposed by Congress not a result of  
20 negotiation but was a precursor condition preceded for the  
21 construction of the Transatlantic Alaska Pipeline. That is the  
22 reason it moved as quickly as it did.

23 But it also left unresolved other ongoing tension in  
24 Alaska which had to do with the subsistence on fishing rights  
25 which were to be addressed but then postponed and became part

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1 of Article 8, the Alaska National Public Interest Land  
2 legislation in 1980. The state had proposed to provide a  
3 Native preference and subsistence on hunting and fishing.  
4 Congress adopted to defer to its state position and, therefore,  
5 created a rural practice on public lands in Alaska. But that  
6 has created an ongoing battle between state law and federal  
7 law. In federal lands we have the rural preference. On all  
8 other lands in the state and waters it is Alaska preference

9 which has created urban, rural divide but also a Native,  
10 non-Native divide which underlays a lot of the politics of the  
11 state with two sessions recognized all federal purposes until  
12 1993 with the (inaudible) list federally recognized tribes and  
13 follow up the Tribe List Act of 1994 which also meant that the  
14 state has now 15 years, a relatively short period of time, to  
15 adjust the reality of tribes and has not done particularly a  
16 good job, frankly, in that regard.

17 And the only overlay in all of this has been the U.S.  
18 Supreme Court's decision Venatide (phonetic) which determined  
19 that Indian country at least with regard to the Claims  
20 Settlement Act does not exist in Alaska. And so you have  
21 tribes in the state which clearly exercise certain inherent  
22 sovereignty but not with land. What I've outlined here at some  
23 length is what led the Commission to decide that it needed to  
24 undertake a broader effort in trying to reconcile tribes in the  
25 state and that is two years ago to do a retreat with

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1 legislators to look at Indian law.

2 Commissioner Gede was one of our resource panelists in  
3 that effort and just two months ago we continued that process  
4 convening a group of Alaska Native leaders, legislators and  
5 members of the governor's cabinet to encourage a resumption of

6 a tribal state dialogue that really has language that was in  
7 agreement which was reached ten years ago. We thought at the  
8 time it was sufficient -- on the part of the state to move  
9 forward and in the last several years it has been the fact that  
10 we've just been in a series of ongoing litigation over tribal  
11 powers.

12 And in March of this year the Alaska Supreme Courts in  
13 State versus Native Village of Tanana again concluded that the  
14 inherent sovereign jurisdiction of Alaska Native tribes,  
15 actually, did extend to initiation of trials in child custody  
16 cases and their judgements were entitled to full faith and  
17 credit. As I mentioned, we expect to cease operations at the  
18 end of this year and so we're not going to be in a position to  
19 collectively pursue some of these next steps that we think are  
20 necessary to improve the state of state tribal relations in  
21 Alaska, but we're hoping there will be others that will pick up  
22 that kind of -- not just the state tribal relationship, but the  
23 desirability to strengthen those relationships.

24 That led to the directive from my commission to urge you  
25 to hold a field hearing in Alaska. I'm so pleased that you're

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1 prepared to do so. I think it's important, first, for the  
2 Native community in particular to share with you their

3 experience about the challenges that are in Indian country.  
4 It's important for the non-Native community to hear that  
5 message as well, and I think that your presence will do a great  
6 deal to spur those of goodwill in leadership in Alaska to  
7 undertake further action. Thank you, Mr. Chairman, for this  
8 opportunity.

9 COMMISSIONER EID: Thank you, Mayor. Questions from  
10 the Commission? Mr. Gede, no questions?

11 COMMISSIONER GEDE: No questions but certainly a very  
12 warm thank you for coming and speaking to us and extending  
13 that invitation. We really look forward to coming up.

14 MR. BOTELHO: I look forward to you coming any time  
15 you can make it. I understand, as I mentioned to you, there is  
16 many advantageous times within the state, but I also understand  
17 there are considerations of weather, for example, and that may  
18 create in favor of a somewhat later date. I look forward to  
19 being able to a tour when you come.

20 COMMISSIONER EID: It's been the hottest summer and in  
21 terms of what that does to the human body.

22 MR. BOTELHO: There are certain times of the year it's  
23 probably the coldest experiences you've ever experienced in  
24 your life. I'm sure there's a happy medium. Thank you.

25 COMMISSIONER EID: Thank you so much. We actually

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1 have two of those packages coming and this will be the first  
2 and this has to do with Indian children and I'm hopeful that we  
3 can start with Judge Thorne. We have the world's worst  
4 eyesight in any part of the world that ever recorded as not  
5 exactly clean and fresh. So we all better get used to this.  
6 We have Judge Thorne and we have former justice Bobbe Bridge.  
7 So welcome. Thank you so much for being here. I'd like to  
8 take you in the order in which you're listed on the agenda  
9 which would be Judge Thorne, Judge Montoya and Judge Bridge, if  
10 that's all right. Judge Thorne, Your Honor, may it please the  
11 court.

12 MR. THORNE: Thank you. I appreciate the chance to  
13 talk with you this afternoon. Just by way of introductions so  
14 you understand that my perspective is a little bit different in  
15 that I've been a tribal judge and a state judge. I've learned  
16 how to be a judge in a tribal court setting. When I teach new  
17 judges in our state system I teach them some of what I learned  
18 from the tribal judges who taught me. So it's a different  
19 approach than a lot of my colleagues have, but I've been a  
20 judge now -- I handled my first case involving a termination of  
21 a child 32 years ago. So I've been at this for a little while.

22 I've served on a number of national commissions, won a

23 national CASA award from tribal (inaudible) North American  
24 Council, American Rights Funds, ABA, children needs committee  
25 and a commission of children in foster care and I continue to

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1 serve on a number of other boards.

2 What I would like to do, though, is talk with you about  
3 ten recommendations or options, as the gentleman before said,  
4 that I hope you'll consider. The first one is tribal access to  
5 CIP, court improvement projects. The CIP funds are a  
6 relatively small amount of money, but they really are the  
7 driving mechanism for states to innovate in child welfare  
8 practice. It's designed to bring agencies and the judges  
9 together, the administrators, the lawyers to say how are we  
10 doing and what can we do better. Each state is entitled to a  
11 grant and the grants are made directly to the state supreme  
12 court. They involve a pot of money for training, one for  
13 collaboration and one for actually data, processing  
14 information, data.

15 Right now tribes don't have access to that money, so the  
16 very mechanism that drives improvement and innovation in state  
17 courts dealing with children is not available to tribes. There  
18 are some states that take the initiative to invite tribes into  
19 their CIP process. And a couple of years ago the Children's



20 Bureau required states to collaborate with tribes in that  
21 process, but a case review of the CIP process shows that only  
22 17 even mentioned tribes in their CIP plans despite the fact  
23 that it is a requirement. Fewer than ten actually talk about  
24 doing anything. So I would hope that you would consider  
25 recommending the tribes have access to its relatively small pot  
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1 of money whose purpose is to innovate and improve in child  
2 welfare practice.

3 Second, and this was a question that was asked to David  
4 Simmons on an earlier panel, how do we get NICWA compliance.  
5 It's my experience that the single thing over -- for some years  
6 I did the law in Utah. The single thing that drives change in  
7 that system are the CFSR reviews, child and family service  
8 reviews. I've participated in the state PIP plans, first round  
9 every state fluctuated. Every state has a PIP program  
10 improvement plan to try to remedy those on a state plan on a  
11 number of issues. The states are extremely concerned with  
12 complying with the timelines and the requirements in the child  
13 and family service reviews but NICWA is not part of those  
14 reviews.

15 The simple addition of NICWA compliance to the CFSR  
16 reviews would orders of magnitude improve state compliance with

17 NICWA without adding any teeth to the law at all, just simply  
18 knowing that somebody is going to come in and audit the files,  
19 did you ask the question is the child a family member, did you  
20 look for placement with a family, did you notify the tribes.  
21 Just that by itself would vastly improve compliance. Every  
22 state is -- paranoid might be too strong a word but extremely  
23 concerned with CFSR reviews.

24 Third, I hope you would recommend clarification of  
25 jurisdiction for tribal courts to issue a vow of Violence

0108

1 Against Women Act protective orders but also enforce those  
2 orders. I think it's almost beyond dispute that there are  
3 still some people who are clear on that that tribal courts can  
4 issue protective orders. The enforcement part is the problem.  
5 The DOJ study on violence in Indian country make it clear that  
6 Indian women are subjected to violence at a huge number of  
7 times more often, and a vast majority of the violence  
8 perpetrator in Indian country is by non-Indians for whom tribal  
9 courts have no jurisdiction.

10 The remedy obviously is to get the tribes court  
11 jurisdiction for that, but if not, at least recommend that a  
12 mechanism be set up so that tribal orders are enforced because  
13 right now, quite frankly, a lot of the sheriff's offices, other

14 jurisdictions decide. It's not worth the risk to them to worry  
15 about enforcing those orders.

16 Fourth, I would hope that you would consider recommending  
17 that 4E waivers be instituted for tribes. Ideally I would like  
18 to see beyond waivers and eliminate the requirements. 4E is a  
19 five to six billion dollar pot of money that is tied to removal  
20 of children. It allows states to seek reimbursement from the  
21 federal government for about 60 percent of the cost roughly  
22 services children in foster care and after they've been  
23 removed. There have been some states and local jurisdictions  
24 that have gotten waivers for 4E and they've had a dramatic  
25 reduction of the number of children in foster care. Chicago  
0109

1 went from about forty-seven thousand children in foster care  
2 and about two and a half years later to about seventeen  
3 thousand. LA went from about fifty thousand to roughly twenty  
4 thousand in two to three years by allowing that money to be  
5 used up front for services to help families that are in fact  
6 not requiring the removal of children before you help them.

7 If tribes were allowed to use that kind of 4E money to  
8 support the innovative things that are happening in tribal  
9 courts to help preserve families to, A, helping tribal children  
10 but, B, also serves as a model. We don't need foster care as

11 the intervention of choice when children are abused. We've got  
12 to make sure they're safe, but we ought to look primarily to  
13 making sure they're safe at home before we move to strangers,  
14 if that's necessary.

15 Fifth, cost of programs, court appointed special  
16 advocates. I would hope that you would recommend an increase  
17 of funds to national CASA to create and state and sustain  
18 tribal CASA programs. These are volunteers who advocate on  
19 behalf of children who have been abused or neglected. Again,  
20 the research is pretty clear that children who have a CASA get  
21 better services, more timely services, they spend less in care.  
22 There are tribal CASA programs, but they're continually facing  
23 a sustainability problem. And the difficulty is that state  
24 CASA programs have economic engine in the community that helps  
25 those. Most tribal communities, quite frankly, are so poor

0110

1 that they don't have an independent source of economy that can  
2 support a volunteer program, and so we need to be able to fund  
3 that in some other way. The flip side of that is CASA needs to  
4 be trained about cross cultural evaluations. Again, the  
5 research is clear that about 98 percent of CASA recommendations  
6 are ordered by the judges. If you have people who come in and  
7 make evaluations of families and don't understand tribal

8 communities, tribal families, the recommendations are not  
9 nearly as good and as helpful to somebody who understands  
10 those. For a relatively small pot of money we could begin the  
11 process of change.

12 Sixty thousand CASA volunteers in the country about tribal  
13 life, tribal family, tribal communities and a relatively short  
14 training period, certify them as at least having beginning  
15 knowledge that's necessary to ask the right questions when they  
16 advocate on behalf of tribal child in a state court proceeding.

17 Number six, I would so much like for you to support the  
18 idea of training for tribal judges. When I started as a tribal  
19 judge 30 years ago Bureau of Indian Affairs had money and  
20 offered training. The vast majority of judges were non-lawyers  
21 so we did training like evidence in three days, we did civil  
22 procedure in three days. That's a great start. But for the  
23 last 15 years there have been almost no training dollars for  
24 those tribal judges yet we're asking them to do everything a  
25 state court judge does, do it with less resources and we're not

0111

1 giving them the knowledge that they need to do it. Tribal  
2 judges, advocates and social workers all need some training.

3 I hate to bad mouth people, but there are workers who work  
4 in tribal communities whose last up-to-date knowledge of child

5 welfare was 20 years ago. Our children deserve at least the  
6 opportunity to benefit from what we know about what works for  
7 children. We don't have all the answers, but what we do know  
8 doesn't get transferred into tribal communities very well or  
9 very often.

10 Seven, I hope you would support the idea of cross training  
11 for a state tribal judges with NICWA with child development,  
12 violence and other things so at least we have people talking in  
13 the same language. Virtually every state has state training  
14 institute for judges, new judges as well as continuing  
15 education. It's only a small handful of judges that make that  
16 training available to the tribal judges. There's just no  
17 excuse for that in my mind. The conferences are going on  
18 anyway. All we're really talking about is funding a chair in  
19 the room and a bed overnight to get those judges trained.  
20 We're not talking about developing new things. We're just  
21 talking about sharing resources that are already there.

22 Eight, I hope you would support beginning efforts to  
23 eliminate some of the ambiguities in NICWA and foster tribal  
24 state connections. We have the Foster Connections Act, but the  
25 Act doesn't do very much in terms of fostering state tribal

0112

1 ambiguities like what does it take to be an expert witness.

2 How do we use those experts. The transfer standards of state  
3 judges are supposed to use good cause when they decide whether  
4 or not to transfer a case to tribal court. There's no  
5 definition of good cause anywhere. Nobody trains on that.  
6 What we're really doing is asking state judges to use their  
7 best guess without any real knowledge of tribal communities  
8 unless the state takes the initiative to ask for that training  
9 to be completed.

10 Active efforts should be used for placement efforts and  
11 decisions not just on removal, decisions clear and convincing  
12 beyond a reasonable doubt. There is conflicting state case law  
13 out there about what the standard is for different parts of  
14 NICWA according to different states and different state supreme  
15 courts. We're talking about a federal law here. There really  
16 ought to be one definition that we ought to be able to say to  
17 the state supreme courts, the state tribal courts and the bar,  
18 here's what the standard is, here's how the measure whether or  
19 not to move this child and where to move that child.

20 We ought to be encouraging information. By information I  
21 mean computer and records access and resource sharing among the  
22 states with the tribes and we ought to consider clarifying that  
23 NICWA really is talking about long-term best interests of the  
24 children. We're not looking at just what's in the best

25 interest this week but long-term over their developmental

0113

1 years, over their teen years, over the life of the case, over  
2 their life after the case is over. How can we position them to  
3 give them the best shot of the future.

4 Number nine, encouragement of tribal court access and  
5 collaboration state education systems, fostering connection and  
6 the recommendation of that dealt a lot with state access to  
7 education, information and sharing, but there's been very  
8 little effort at getting state school districts, Office of  
9 Education to share information with the tribal counterparts to  
10 make sure those children get the best educational services.

11 Then lastly, I would encourage you to recommend the use of  
12 technology to create and enhance and preserve relationships  
13 with children. There are some things, for example, Skype.  
14 It's a free Internet computer service that would allow a child  
15 to talk to their grandmother in South Dakota everyday at no  
16 cost, to talk to their siblings, to talk to their cousins,  
17 aunts and uncles, relationships that are so important in Indian  
18 communities. There are ways that we can use technology. We  
19 don't have to say if you're not around the corner you don't get  
20 to visit, have contact with all of those people. And I'm out  
21 of time and that's not usual for me to stop on my own. Thank



22 you.

23 COMMISSIONER EID: Thank you so much, Judge Thorne,  
24 and thank you for that outline. I'm hoping that your remarks  
25 are going to be part of the record, I know they're written out,  
0114

1 but we want to capture them because they're all --

2 MR. THORNE: I'll certainly send them to you.

3 Although, there may be more than ten by the time we get to  
4 them.

5 COMMISSIONER EID: No questions at this point. Judge  
6 Montoya-Lewis.

7 MS. MONTROYA-LEWIS: Thank you for the opportunity to  
8 address the Commission today. I do have some written comments  
9 and I'll try to go through those without spilling over my time  
10 as well. One of the things that I think is difficult when we  
11 have a short period of time is to try to condense the issues.  
12 And so as I was thinking about that I wanted to really bring to  
13 your attention the complexity of cases that we see in tribal  
14 courts and the overlap and complexity that we see with that  
15 with cases where we see defendants in tribal courts and the  
16 same families in state courts.

17 As a judge I've presided over criminal and civil calendars  
18 drug courts, family treatment courts, re-entry courts. I've

19 been a part of creating resolution dispute, resolution models  
20 and in every case that I've seen in some way children are  
21 impacted. So if I'm presiding over a criminal calendar and  
22 working with a defendant that defendant, him or herself, may  
23 not have children, but they have a niece or a nephew for whom  
24 they're responsible.

25 So that's the case where I think the importance of focusing

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1 on how what we do in courts affects children is something that  
2 none of us should be exempt from. So I think the fact that  
3 that's a case in tribal communities is no different than state  
4 courts, but it's certainly something that in my experience in  
5 tribal courts we are constantly taxed with remembering that  
6 what we're doing affects all the children in the community. So  
7 I think it's no surprise to say that Indian child welfare of  
8 all tribes and certainly all the tribes that I've worked with.

9 And I want you to remember that in every family that I've  
10 worked with over the ten years that I've been a judge I have  
11 never found a family that wasn't in some way impacted by  
12 institutional or foster care. And in many case of the cases  
13 where I have current dependency cases I can go back three or  
14 four generations before I can find a child who grew up with his  
15 or her parents as the primary. That's not necessary

16 grandparents who stepped in. In my view where I was raised  
17 that's essentially the same way as being raised by your  
18 parents.

19 But what I'm talking about is a family is touched in some  
20 way by having children removed from their care and put into an  
21 institutional setting. So when we talk about a child welfare  
22 cases in tribal court trying to reunify the family, which is  
23 the role in every tribal court case, in my experience we have  
24 to remember that we're not really just looking at one  
25 generation where this particular child has been removed from

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1 his or her parents' care because the parent has a drug  
2 addiction. We're talking about multiple generations where this  
3 is a pattern and it's in fact almost expected. It's comes as a  
4 surprise to people when I said, you know, this is not -- this  
5 doesn't have to be the way it is, there could be a different  
6 path here because they didn't grow up with their parents and  
7 their parents didn't grow up with their parents and no  
8 parenting skills.

9 So that gives I think something of what Judge Thorne was  
10 talking about was for good defense attorneys that everyone be  
11 aware that we're talking about inner generational trauma. That  
12 not only makes the cases more complicated but requires

13 significantly more resources. If you're going to really  
14 address those issues you have to do it with money and I hate to  
15 always bring these comments back to that issue but, as you all  
16 know, tribal courts are not a stable source of income.

17 If you happen to be in a community where the tribal court  
18 has economic development from whatever source, if you're lucky  
19 enough that they value the tribal courts and they put money  
20 towards them then you have some resources. But if you're in a  
21 tribe that doesn't have those resources or they don't put the  
22 resources for the court you can add them. And I've worked in  
23 both environments and what makes me sad about that is there are  
24 children in Tribe A who have access to those resources and  
25 their families have access to resources. They may or may not

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1 access them. But Tribe B where the kids have nothing and I  
2 have nothing to offer them. And I think that disparity is a  
3 real issue that I hope that you'll begin to address and  
4 consider. I think it's unrealistic to expect that among all  
5 the 527 tribes that we would have equal access advocating for  
6 that, but I am advocating that we begin to look at how we  
7 create some stability in the court systems in terms of funding  
8 so that there is at least a basic level of expectations  
9 available for children and their families.

10       The other thing I would like you to consider, and I think  
11       Judge Thorne touched on this a little bit, is the importance of  
12       developing tribal and state court judges. Again, I don't think  
13       that comes as a surprise to anyone, but even in a state -- I've  
14       worked in both Washington and in New Mexico as a tribal court  
15       judge. Both of those states have relatively good relationships  
16       between tribal and state judges. We certainly aren't  
17       forgotten.

18       However, the issues in terms of recognizing particularly  
19       state court counterparts, the validity of the tribal courts  
20       decision continues to be an upward battle. I'll give you a  
21       couple of examples. I presided over a civil case that went to  
22       a bench trial involving a non-Indian land owner who owned land  
23       on reservation. She was sued in tribal court basically for  
24       adverse possession by a tribal member who also owned land on  
25       the reservation. That case went to a trial in front of me. I

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1       issued a decision for her and it was very lengthy findings of  
2       facts and conclusions of law that were very lengthy. She sued  
3       him in state court so we had essentially the same case going on  
4       in court. Both state and tribal had jurisdiction in that  
5       situation. However, my case went to trial first. I issued  
6       decision, the state court judge who was about 20 minutes away

7 from and me and actually knew me refused to recognize my orders  
8 and took the case to a full bench trial again and came to the  
9 exact result, but everybody spent money, time on attorneys and  
10 for effectively the same result. And I struggled to understand  
11 the reason behind that.

12 Similarly, I had a case again in the last year that went  
13 to a jury trial, civil injury trial oddly enough involving a  
14 member of the property in question and that case was litigated  
15 in front of a jury. The plaintiff was awarded damages and  
16 then attorneys fees were sought. I granted the request for  
17 attorneys fees, wrote, again, written orders, decision on that.  
18 The Court of Appeals then heard that case. So it went to  
19 tribal court of appeals affirming my decision and now the  
20 attorneys are attempting to enforce that judgement in state  
21 court because most of the property is off the reservation, and  
22 the state court is refusing to recognize anything that occurred  
23 in the tribal court. So effectively there's no ability to  
24 enforce the judgement even though this was discussed with the  
25 tribal judges and the state court judges and we've been unable

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1 to move forward.

2 So there's this jurisdictional gap. And even if they're  
3 not jurisdictional gaps, miscommunication, suspicion that goes

4 both ways and that can really negatively affect children. In a  
5 state like Washington where we have cases involving children  
6 who are tribal children in state court and tribal court you can  
7 see vastly different results in cases that actually are very  
8 similar, and as a result of that sometimes I continue to see  
9 what I would call forum shopping where file this case in state  
10 court because I don't like what that judge is going to do.

11 As I was trained as a social worker before I became an  
12 attorney. I know what good casework looks like. I expect to  
13 find that. There were certain caseworkers who went to great  
14 lengths to avoid me as a result of that because I had high  
15 expectations, and if I saw that the caseworker's training was  
16 20 years old I had something to say about that.

17 So I gradually began to see cases that might have been in  
18 court to be filed in state court because they could avoid that  
19 in that scenario and the tribe would sometimes choose to remove  
20 the case and bring it into tribal court leaving that caseworker  
21 behind, but it's a terrible precedent to set, and it's terrible  
22 for the child who gets torn between foster families, torn  
23 between systems, torn between services. So that's something  
24 that I would really like to address in some form and to talk  
25 about being bold, frank and honest about what those

1 misunderstandings mean in terms of our children because, you  
2 know, it's not about me and my ego and whether or not my  
3 decision and order is recognized. It's about the impact that  
4 that has on that family. I'm not particularly interested in  
5 whether or not the judge likes the order. I'm interested in  
6 whether or not they think that -- whether or not they  
7 understand that they're having an impact on these children and  
8 that they've considered that and that they consider that what  
9 the tribal court is doing is reasonable thing. I think that  
10 goes back to education. It goes back to training. I think it  
11 goes back to state understanding that tribal courts are  
12 different but that doesn't mean that they're inefficient or  
13 ineffective.

14 I'd also just like to underscore the access to PIP funds  
15 which is something that is I think critically important. As I  
16 said, tribal courts have no access to any state funding so any  
17 kind of funding would be helpful, but if we have to support  
18 court improvement project monies to work with our state  
19 counterparts along with those plans I think that would go a  
20 long way to begin to address some of the issues that I see.

21 I think the other thing with respect to talking about 4E  
22 money, which is another place that I want to focus your  
23 attention on, is a good thing for tribes to be able to access



24 that money. And I'm certainly not here to say anything  
25 negative about that, but the permanent timelines that come

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1 along with that 4E funding do create significant issues for the  
2 tribal courts. I've been a part of the tribe that's been  
3 attempting to access that money and I've sort of been sounding  
4 the alarm about the permanency guidelines and clash with what  
5 the tribal code requires.

6 And I've raised a lot of questions about how are we  
7 supposed to manage those things. There's not a lot of clear  
8 answers to that and I think that's something that needs to be  
9 addressed, that there is either a waiver process that's a  
10 reasonable process or there's something in 4E amendment that  
11 recognizes that tribal courts function differently and that  
12 their tribal values have validity, and that if the funds are  
13 going to follow the child that the funding also follow the  
14 culture of that child.

15 I also just as a last wanted to continue to encourage the  
16 growth of what I would call therapeutic courts, drug courts,  
17 treatment court and re-entry courts. This kind of complicates  
18 the issues that I talked about in terms of funding because  
19 those kinds of courts are very expensive. They require a  
20 significant amount of time for everybody on the team,

21 significant amount of time for the judge. On a normal calendar  
22 in court I can go through 75 cases in three hours. If I'm  
23 doing treatment court it's going to take me an hour per family.  
24 That's very different in terms of money and in terms of time,  
25 but I would also tell you it makes a huge difference if I can

0122

1 develop a relationship with somebody who's in front of me and  
2 we can work together and have the same goals and we have an  
3 understanding of about what those same goals are. But again,  
4 those things take time to plan, they take time to evaluate and  
5 they take time to -- but I would like you to consider that and  
6 support those things.

7 I think tribal courts have been at the forefront of  
8 developing those kinds of therapy to courts, and I think we  
9 have a lot of teach other in terms of that. I am very grateful  
10 to be a part of this conversation and I look forward to  
11 continuing the conversation.

12 COMMISSIONER EID: Thank you so much, Judge. We  
13 appreciate your comments.

14 COMMISSIONER ELLIS: I have a question. Your Honor,  
15 you mentioned that, you know, some of the state courts, state  
16 court counterparts aren't willing to recognize your orders. I  
17 guess I'm curious to know maybe what you think maybe their

18 reason is the perception about your court directly or tribal  
19 courts in general, and just want to get your thoughts about how  
20 you think on a more local level than a national level we can  
21 address that problem of communicating better with state courts?

22 MS. MONTROYA-LEWIS: I think it's a combination of sort  
23 of general concerns and maybe more specific to particular  
24 courts. The comment that I got directly from the judge with  
25 respect to the more recent case where he's not giving full

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1 credit to my order was, well, I don't think you give full faith  
2 and credit to my orders which is completely wrong. We have  
3 forms that anyone who has a state court judgement can file with  
4 the court for full faith and credit and pretty much being  
5 formally granted in my court. They're uniformly granted in  
6 other courts. So I do think there is work to be done in both  
7 sides.

8 In the particular instances I've given you, you know,  
9 there's just simply obstinance, quite honestly, that I have  
10 jurisdiction, too, and I'm not going to concede to you, to the  
11 council and the state court. And I do appreciate that. I love  
12 my jurisdiction, too, but it creates these sort of ridiculous  
13 situations. I had a similar situation with a tribal court in  
14 Hana where I had a child custody case and had granted, issued

15 written custody orders. Mother was a member of a different  
16 tribe, took the children and tribal court judge wasn't willing  
17 to grant custody back and forth with that person. Several  
18 years ago in my court, a different judge apparently did not  
19 give full faith and credit comment to an order that came from  
20 that court. So I didn't figure out -- we tried to sort out  
21 what case that was. We weren't able to do it. So I do think  
22 that, you know, don't want to single out state court judges.  
23 It's just where it comes up mostly. Thank you.

24 COMMISSIONER EID: Other questions? Judge, thank you  
25 so much for your testimony. I hope that you'll also submit to

0124

1 the record in addition to the transcript your remarks. Thank  
2 you. So Justice Bridge. And one of the things for all of us  
3 to remember is that ones a justice always a justice. We Bobbee  
4 Bridge. I notice that really honorable just kind of slips  
5 aside. I really appreciate you being here. Thank you so much  
6 for taking the time.

7 MS. BRIDGE: Thank you. And it is my pleasure having  
8 to be asked to be a part of this panel and very important  
9 discussion today. So Chair and members of the Commission, I  
10 really want to applaud you for developing and devoting this  
11 amount of attention to juvenile justice and child welfare. All

12 too often when law and order commissions or justice commissions  
13 in general are talking we don't talk about kids or the dumb  
14 people. In fact, back where we come from and the most  
15 opportunity, as Judge Montoya-Lewis was saying, we have  
16 intergenerational kids before they become parents, et cetera.  
17 So thank you very much for doing that. I too look forward to  
18 working with you all as we move forward with some of these  
19 excellent recommendations that I've heard already.

20 I guess the first thing I ought to say is what they said  
21 and Judge Thorne in particular who was very precise and  
22 concise. In my brief time, however, I want to change the focus  
23 maybe just a wee bit. A little bit about my background. I was  
24 a judge for nearly 30 years, almost half and half the time in  
25 trial court and then on the Washington State Supreme Court. In

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1 both of those capacities I worked a lot on issues relating to  
2 kids in foster care, juvenile system kids that we are obligated  
3 as communities to take care of and as courts have special  
4 relationships for their well being. Previous to that I was 14  
5 years as a lawyer where I represented in part tribal  
6 governments and individuals, so I have the soul for the  
7 practice of law in Indian country and hope to see it respected  
8 and improved and taken advantage of not only best practices

9 (inaudible) practices but also that we state side begin to look  
10 more at prompting, not only prompting but proven practices that  
11 have been developed in tribal communities. I'll get back to  
12 that in just a moment.

13 What I am doing now is acting as the family president and  
14 CEO for an organization called the Center for Children and  
15 Juvenile Justice. I've left some annual reports, propaganda  
16 you can look at at your leisure. But our sole function is  
17 system change for system kids and that is to improve their  
18 outcomes, to ensure that not only each of the systems that  
19 impact kids who are involved in child welfare, foster care and  
20 juvenile justice system get the promise that we give to them.  
21 Removing them from the home, promise them that we're going to  
22 keep them safe and look out for their well being and permanent  
23 reunification or adoption or some other kinship care kind of  
24 permanent relationship. And the kids that we bring into the  
25 juvenile justice system, rehabilitate them again, have them

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1 meet their promise. So not only do we work on ensuring that  
2 that's what the systems are doing, but that they work better  
3 together. 30 years or so that I've been involved in this.

4 So in particular I want to describe a five year initiative  
5 in the state of Washington for juvenile justice reform and

6 investment non-profit foundation called "Models for Change."  
7 Washington State was selected as one of only four states in the  
8 union to be engaged in this initiative over a five year period  
9 beginning in 2007, and over ten million dollars will ultimately  
10 be invested in the state of Washington looking towards various  
11 areas of reform.

12 I am pleased to say that the Center for Juvenile Justice  
13 was named as the lead entity for that initiative and that means  
14 basically that we have, first of all, helped to develop the  
15 work plan and then now we act as the manager and the  
16 facilitator and the implementer, if you will, for this work. I  
17 want to share with you the key principles of this initiative  
18 because it seems to me that these principles while they are  
19 research based and value centered they should resonate in  
20 Indian country. And why I think this initiative and while only  
21 a part of it and more recently has become engaged in activities  
22 in Indian country. While we can use what is happening in the  
23 lessons that we are learning through all of the activities in  
24 models for change to bring about positive system change in  
25 Indian country for the better outcome of Indian children.

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1 So here are the values. Fundamental fairness, all system  
2 participants including youthful offenders, victims and families

3 deserve (inaudible) recognition of juvenile adult difference,  
4 that juveniles are fundamentally and developmentally different  
5 than adults. We can't just say they did the crime they're  
6 going to do the time and they're going to be treated as adults.  
7 It does not match the signs, it does not match the intuition  
8 and it certainly doesn't match our experience.

9 The recognition is different that a juvenile justice  
10 decision maker has the knowledge to respond to individual  
11 differences in terms of a person's development, culture,  
12 gender, needs, and strengths. Now, that doesn't mean that we  
13 don't have guidelines, that doesn't mean that our discretion  
14 isn't structured to avoid prejudice and other kinds of bias  
15 which have no place in the Indian justice system, but that does  
16 not mean that we can not recognize individuals kids and what  
17 their needs may be as well as what their strengths from their  
18 families and their culture. Recognition that all kids have  
19 potential. No matter how obnoxious they may be they all have  
20 strengths and are capable of positive growth. That, after all,  
21 is what we are obligated as adults and members of the community  
22 to provide. Safety of course. Communities and individuals  
23 need the right to feel safe.

24 And then personal community and system responsibility are  
25 the last three of these values. And it isn't just about the



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1 kids, isn't just about the community and certainly isn't just  
2 about those of us who work. It's about all of us sharing  
3 responsibility for better outcomes and responsibility for these  
4 youth.

5 So in the State of Washington how those values translated.  
6 One of the things that was recognized and I think is so  
7 important about this initiative is unlike many others we were  
8 not provided with a formula. We were provided with a set of  
9 values that we respected, that we agree with and we live, but  
10 beyond that what are the differences in your communities, what  
11 are the differences in your state that we should emphasize when  
12 you're looking at reform. I should mention that the other  
13 states are Pennsylvania, Illinois and Louisiana and finally  
14 Washington. We were named in that chronological order.

15 So our target areas for improvement as (inaudible) were  
16 disproportionate mental health and what is the most watched  
17 and alternative to formal prosecuting. What that meant was  
18 keeping kids out of court all together if we could with  
19 diversion and what that has looked like on the ground in the  
20 activities that have been going forward in this state is  
21 truancy. We know that truancy when they disengage in school is  
22 when they most often are getting into trouble, but it's also

23 tends to be a sign that there are troubles going on already in  
24 that child's life whether it be in a family situation or in the  
25 individual child situation. So for all those reasons truancy

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1 is something where we really want to focus our attention and I  
2 would hope that you would as well. We are working in sites in  
3 Spokane, Ben Franklin, Clark and King Counties and for a period  
4 of time in Pierce. We've also had some grant work going on  
5 from the Juvenile Rehabilitation Administration at the state  
6 level, DMC and re-entry. At the administrative office of  
7 (inaudible) which has provided us with not only development and  
8 assessment tools that can be used, but also data, how to  
9 collect it, how to analyze and how to share it.

10 King County Prosecuting Attorney's Office which is  
11 modeling a tiered system of truancy that I hope I will have an  
12 opportunity to explain briefly teach out that helps kids with  
13 civil legal needs who are also involved in the juvenile justice  
14 system and they're particularly working on improving the  
15 quality of legal representation for kids in the juvenile system  
16 through the state and it's based out of the University of  
17 Washington and working on making evidence based practices  
18 culturally competent, but making sure that we do take advantage  
19 of the natural community strengths that are available and while

20 keeping fidelity to the model of these practices and these  
21 treatment interventions that are called evidence based  
22 practices, making sure that we do work with kids.

23 Washington State University on research and evaluation in  
24 a variety of areas, social and health services before we've  
25 established a special assistant to the secretary for juvenile  
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1 justice particularly involved in community engagement in a  
2 community level on a variety of issues but most importantly on  
3 truancy and the Native Law Center at the University of  
4 Washington. And we heard Professor Ron Whitener reference to  
5 at the second or two and half year point of our initiative is  
6 when we began to engage in activities mostly because we wanted  
7 to know what we were doing before we brought on that  
8 complexity.

9 So what have we learned. Basic learning which tie the  
10 recommendations for you cross prevalence and you heard a lot  
11 about child welfare and domestic violence. Those issues are  
12 cross prevalent and engage in every kid, virtually every kid  
13 who comes in the juvenile justice system. In other words, we  
14 can't occupy them anymore. Even if we're focused on juvenile  
15 justice we have to know that the idea behind the juvenile  
16 justice system is a failed child welfare, a failed intervention

17 to keep kids out of child welfare. Where the child is living,  
18 what the child understands and what is going to be meaningful  
19 for the child or the youth.

20 Integrated systems, I mentioned that at the beginning.  
21 When systems work together it makes so much difference. When  
22 the court in a juvenile justice proceeding can invite education  
23 system to come to the table, when the child welfare worker  
24 who's been responsible for this case doesn't just say we're not  
25 going to have anything to do with this kid anymore but instead

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1 we'll offer foster placement or setting or look for, continue  
2 to look for appropriate kinship placement, et cetera even where  
3 the child -- so much better for outcomes review.

4 Community involvement is critical for all those things and  
5 the voice of youth which the older I get the stronger I believe  
6 it is and wiser that I believe it is. I don't know what other  
7 setting we would not ask the consumers of our setting how  
8 they're doing than we do in the justice system. These are our  
9 consumers. So the idea of having kids at the table expressing  
10 their needs has really come first to child welfare, but we're  
11 now getting required to to pay attention from who may have only  
12 had the experience at the juvenile justice system come and  
13 talk. Data collection is critical. It's very critical for us

14 not only to challenge the status quo and what we think of as  
15 the -- (inaudible) or intuition which may or may not be right  
16 but also embarking on these particular issues to ensure quality  
17 and to make sure that what we had hoped was going to be the  
18 outcome in fact are those more positive outcomes.

19 Then lastly, so these holistic practices and approaches,  
20 ability to remember is based on prior practices which they are  
21 showing remarkable success. I think I've been given -- all  
22 right. So what I'm going to say is in specific I engage --  
23 explaining exactly what some of these programs in Franklin  
24 County and King County, across the state both in points that  
25 truancy, mental health and the like.

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1 The last thing I want to talk about is moving models for  
2 change to Indian country which is an innovation in the state of  
3 Washington that is the only one of the four states that is  
4 contributing to this. This has been very exciting work  
5 bringing me back into Indian country in a way that I haven't  
6 really been at since my Native garnish -- law firm in Seattle  
7 -- so anybody out there thinks that they're not very good, I'm  
8 sorry, but that was the best I could do in 1977. And this is  
9 really, really exciting work because the principles, the values  
10 and the proposed solutions, the lessons learned that for models

11 for change in the state are really what tribal communities  
12 have been all about.

13 I believe that you heard from Ron Whitener this morning  
14 about some of the activities and gathering and developing of  
15 the model codes and some other projects around the state that  
16 will be and are now a part of the work of models for change in  
17 Indian country. And what is also one of the most exciting  
18 things to happen will be the development of the hope state  
19 tribal court partnerships of youth who are in state side  
20 schools and are truant, but they can be permitted to engage in  
21 practices for -- that tribes can provide resources for them.

22 Last but not least CCYJ is also interested in making this  
23 work in Indian country and I am proud to announce that on the  
24 15th day of the month that Raquel Montoya-Lewis will join CCYJ  
25 as a consultant first and then hopefully a project director to

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1 work on juvenile justice and child welfare in Indian country,  
2 joint jurisdiction courts, cross training and all of the  
3 sharing of practices that we wanted for all of our kids. Thank  
4 you again so much. There's a lot more to be done and I hope  
5 that we can really challenge ourselves to be the most  
6 innovative. Thanks.

7 COMMISSIONER EID: Thank you, Justice Bridge, greatly

8 appreciate the remarks. We appreciate it very much. Are there  
9 questions for the panel from the Commissioners? No questions  
10 at all. You know, I think that's actually a testament to how  
11 thorough and organized your presentations were. I want to  
12 thank you and commend you for pointing us in the right  
13 direction. It may well be that we have other questions as we  
14 go and we will have our website posted. We're going to be up  
15 in Portland in October, November for the national (inaudible)  
16 we'll be having a field hearing in conjunction with that and it  
17 may well be that we have opportunities to get together.

18 We really appreciate your taking the time to help us and,  
19 you know, look forward to this process to be able to contact  
20 you and otherwise interact with you as far as suggestions as to  
21 what we should do. It's good to have a friend almost from  
22 Colorado. Judge Thorne, I'm curious why -- Justice Lee, went  
23 to his investiture ceremony last fall. I can't get over the  
24 fact that he's now on the court of Utah.

25 Chief judge is no longer a federal chief judge famously

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1 sat in a trial that I did when I made an argument about  
2 preserving, you know, the role of the appellants is walk on the  
3 battle field and shoot the wounded. I've never for the record  
4 appellant judges -- being married to a state supreme court

5 justice myself, but we really appreciate the fact that you're  
6 here and look forward to working with you. We're to take a  
7 five minute break, not a 15 minute break and jump back into the  
8 work.

9 (BRIEF RECESS TAKEN)

10 (COMMISSIONERS EID, ELLIS & KEEL NOT PRESENT FOR TESTIMONY)

11 MS. OWENS: I worked for a couple years for the  
12 Northwest Tribal Justice Association as we had Violence Against  
13 Womans Rights and we did national training for tribal court  
14 judges. Listening to the previous presentation I have to say  
15 brought back a flood of memories. I've been on the supreme  
16 court for 11 years now and I've been out of the tribal court  
17 business as well as the state trial court business, but it  
18 brought back what's the old saying, the more things change the  
19 more they are the same. And I would like to touch just on a  
20 few of those.

21 I think one of the most important things that we can do  
22 for our justices in Indian country otherwise training for the  
23 judges and that training has to be constant and ongoing. I  
24 know our state has a fall conference that we've had every year  
25 for 53 years. I know that because I've been the chair of that

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1 conference for the last seven or eight years. For at least the



2 last 20 years we have invited tribal court judges and have  
3 funded guest spots for them to attend and we have a member of  
4 the tribal court judge who also serves as a tribal court clerk  
5 on our planning committee. And we have NICWA programs and all  
6 sorts of things depending on what our theme is for the year and  
7 we will be having that next month.

8 However, due to the budget problems that we've had in  
9 state we've had to cut that back and we are not having an  
10 annual fall conference that we've had for the last 53 years.  
11 We are having to cut back to every other year. So we have not  
12 had one since 2009 and this will be our first one since then,  
13 and I really hate to see that because this is a conference that  
14 gives all the judges and appellant courts, supreme court,  
15 district court, superior court and tribal court judges that  
16 choose to attend gather in one place where much learning can  
17 take place outside a formal classroom. So I would like to see  
18 that.

19 We also, unfortunately, I was in session with my court  
20 this morning and the administrative we were dealing with budget  
21 matters we had to cut a supplemental request CASA volunteers  
22 which I heard mentioned from one of the earlier speakers. The  
23 CASA program people is a volunteer program for children. It's  
24 volunteers, but of course like anything else it does take money

25 and training and support for the volunteers who give so freely

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1 of their time and we all -- I don't think in on my court was  
2 happy about taking that vote and not asking for that money. We  
3 could have asked I suppose, but it was pretty clear that we  
4 wouldn't be getting that kind of program because it wasn't a  
5 court program.

6 Full faith and credit. Again, from my experience and my  
7 point of view that has been a good practice or it has been  
8 observed. I think one of the better things this is sort of  
9 co-exist with the training tribal court judges and the state  
10 court judges need to know one another, need to communicate with  
11 one another. I was one at a training and one of the tribal  
12 court judges said she had a jurisdictional conflict it occurred  
13 to her the (inaudible) came on state court judge. They were  
14 able to iron out the issues quite well and develop a friendship  
15 and professional working relationship that we think about doing  
16 like picking up the phone and calling. So with that I think  
17 I'll reserve my time for questions.

18 COMMISSIONER POULEY: Describe a little bit about the  
19 issues in that.

20 MS. OWENS: Since I've been on the court I'm the only  
21 person that served as a tribal court judge that served on the

22 Washington State Supreme Court and although we have another  
23 members who have a great deal of litigation experience in  
24 federal courts working for the attorney general's office. Also  
25 on the court I used to say I worked in the trenches and we  
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1 worked in the big leagues. But we've have had several issues,  
2 at least one important tribal issue a year. I could have  
3 brought all those cases and I just neglected to because my  
4 invitation came a little late in terms of the specifics.

5 We just had a decision at the Washington Supreme Court  
6 called State versus Erickson and it involved a prosecution for  
7 drunk driving of a non-Native defendant who was on the  
8 reservation driving erratically and then literally crossed half  
9 of the lane and stopped at a store that was not on the  
10 reservation, was stopped by tribal police who detained that  
11 individual for the county officers to come.

12 Washington Supreme Court heard argument on this case three  
13 times. Our first decision was a 930 decision which we  
14 basically ruled that the tribal court officer had authority to  
15 make the stop and also statutory authority. On a motion for  
16 reconsideration, I don't understand quite why the state  
17 conceded, that the court did not have statutory authority. So  
18 we did not hear the case again, but we re-caucused the case and

19 issued a second opinion saying that the tribal officer had  
20 authority to continue fresh pursuit of a motorist on the  
21 reservation and, again, we granted reconsideration a third time  
22 because of arguments by both parties. I'm not sure why the  
23 state joined that in making those concessions, but that they  
24 did not have fresh pursuit authority based on state statute  
25 that did name tribal officers specifically and then we did hear

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1 argument a second time and that 930 decision became history.  
2 It was withdrawn and I adhered to our original decision that  
3 the tribal officers did have authority to make the stop. That  
4 was a 54 decision. I suspect we'll get a reconsideration  
5 decision again, but I also don't expect that to change, but I  
6 think it points out some of the jurisdictional gaps.

7 I did work for a tribe who did have cross deputization of  
8 officers and worked there in 1999 and 2001 and the sheriff of  
9 that county revoked that cross deputization for what I  
10 determined was no apparent reason. I wasn't really involved in  
11 the dispute or the negotiations, although the chief of police  
12 there did me the courtesy and I was interested in it. I knew I  
13 was leaving at that point, but I read a lot of the  
14 correspondence between the chief of police and the sheriff and  
15 the general liability, although the police department, tribal

16 police had offered to post an indemnity bond of two million to  
17 five million dollars. Let's talk about it, but even that offer  
18 wasn't actually discussed.

19 It worked very well, cross deputization of the officers.  
20 The reservation was near the town, only three or four miles  
21 out. It was -- there are always resources with law  
22 enforcements and they work very well together and it was really  
23 a shame to see something that had worked for years successfully  
24 be withdrawn for no good reason. I guess the politics involved  
25 in everything. But I'd like to encourage more in terms of law

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1 enforcement as well as judges, more cross training, more  
2 interaction so we don't have those issues.

3 Again, as you see from the history I brought, all three of  
4 our opinions, two of which have been withdrawn and my dissent,  
5 my brilliant dissent. For the commission members it is a  
6 difficult area of law. You know, Indian law is very hard.  
7 That's one of the reasons I really enjoyed practicing in a  
8 rural community. It really kept me up on some very cutting  
9 edge issues, but it's not easy and we struggle with it and as  
10 long at the last word is in the United States Supreme Court and  
11 can (inaudible) we're going to have to work cooperatively to  
12 have the peace and security that our communities deserve and

13 all communities in all cultures want. Thank you for having me.

14 It really has brought back a flood of memories most often good.

15 COMMISSIONER POULEY: Thank you, Judge Owens. Judge  
16 Pouley.

17 JUDGE POULEY: Thank you. I want to thank the  
18 Commission for taking on the important task that you have and  
19 bringing your meetings to Indian country to do that work. I  
20 think it's very important and very much appreciated and I'm  
21 honored to speak before you. I am currently the chief judge  
22 and court administrator for the Swinomish Tribal Court.

23 Swinomish Tribe is about 40 miles north of here. It  
24 encompasses 75 hundred acres and we are a population of around  
25 four thousand seven hundred total people, about eight hundred

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1 tribal members, about a thousand Natives total living on the  
2 reservation. We have many thousands of annual visitors to the  
3 reservation for recreation, to conduct business with the tribe  
4 and to visit our casino. I'm also the judge for the  
5 Sauk-Suiattle Tribe which is near Darrington, again, just a few  
6 miles north of here, much smaller geography, much smaller  
7 population. I'm also a member of the board of directors for  
8 the National American -- Native American -- National American  
9 Native Court Judges Association. Get the name right.

10       When I am asked about my court and the work that I do one  
11 of the first things I do to describe the court is to describe  
12 what we're not. We're not a branch of the Skagit County  
13 District Court or Skagit County Superior Court. The point of  
14 being a tribal court is that we are unique to the tribe. We're  
15 developed by the laws of the tribe, the culture of the tribe,  
16 the knowledge of the tribe. I'd like to emphasize that we need  
17 to keep that in mind as we are developing future solutions.  
18 What I mean by that is that tribal justice systems are the  
19 systems that are best suited to deal with on reservation tribal  
20 and on reservation social issues related to tribal. The tribal  
21 systems are developed with the culture, the knowledge and the  
22 values of the tribal community in which they're situated.

23       I think it's no coincidence that tribes with very strong,  
24 viable justice systems such as the Tulalip Tribe have seen  
25 success in bringing down the crime rates, have seen the success

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1 in bringing down the rates of violent crimes and the incidents  
2 of domestic violence and use and abuse of drugs and alcohol. I  
3 don't think it's just a coincidence. I think it's because they  
4 have strongly developed tribal justice systems based upon the  
5 culture and the values of the community that they work in. And  
6 I think that tribes should not have to rely upon the federal

7 government or the state government or law enforcement agencies  
8 or other outside agencies to police and create tribal justice  
9 systems.

10 I think to try to make those outside systems better is a  
11 little bit like trying to make a hammer a better screwdriver.  
12 No matter how hard you work and how successful you are you  
13 still end up with the wrong tool, and I think that's the case  
14 here. If you let me push the metaphor just one more step and  
15 that is that there are times that we need the hammer, but most  
16 of the time what we need are good screwdrivers in the hands of  
17 the people using them and I think that's tribal courts. The  
18 goal should not be to create more branch courts for the county  
19 or the state.

20 The goal should be to allow local justice systems to work.  
21 It's very unique nature tied to the character of the community  
22 in which they're located, avoid trying to create a one size  
23 fits all solution whether that is adopting policies that force  
24 tribes to be more like a state court or whether it is to say  
25 this is what a good tribal court looks like, enforce all tribes

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1 to be that tribal court. I think that loses sight of what  
2 makes tribal courts successful and what makes tribal courts  
3 successful is allowing them to develop justice that fits their



4 community. So I think it's very important that whatever  
5 standards are developed or recommended we can't lose sight of  
6 what actually makes tribal court, tribal justice systems  
7 successful.

8 I think one of the other things that bothers me as a  
9 tribal court judge is when I read cases or I read opinions or I  
10 read scholarly work that talks about this issue and talks about  
11 tribal justice systems, and it's really clear to me that the  
12 statements being made are people that are uninformed about how  
13 tribal justice systems work. And, frankly, I think much of  
14 what is written is based upon a racial bias, and I think that  
15 we have to be careful about letting that kind of thing carry  
16 over into preventing us from doing good work.

17 I think it's also clear that the court decision that we  
18 have crazy quilt of law and rules regarding the nature of  
19 tribes and tribal justice and jurisdiction and authority. What  
20 Justice Owens didn't tell you about the Washington State case  
21 is that the justice that wrote the majority opinion, last  
22 week's case, wrote the dissent opinion in number two and she  
23 acknowledged that, in her words she acknowledged that the  
24 result was ludicrous, but that's how she felt she was forced to  
25 decide the law. I'm not judging the law or the argument.

1 Justice Owens knows the case better. But for a judge to come  
2 out and say I think the law forces me to make a ludicrous  
3 result tells me that the law is messed up and I think that we  
4 have to acknowledge that.

5 But I think one thing that's clear about the law is that  
6 tribes do not have authority to regulate or enforce their laws  
7 within their own territory equally among all people that are  
8 within the territory. And I think we should look at this from  
9 the perspective of the tribe. And I'll use the Swinomish Tribe  
10 as an example. The city of La Conner is across the channel  
11 from the reservation of the tribe. The city of La Conner is a  
12 small community that relies upon tourist's money and tourists  
13 come in and bring money for the economy to thrive. If a person  
14 from Canada, which is a short distance from La Conner, a person  
15 from Canada or a person from Oregon comes in to visit La  
16 Conner, there's no question that they are subject to the rules  
17 of the city of La Conner, that they are subject to the laws of  
18 the state of Washington and can be prosecuted in Skagit County  
19 Superior court for breaking those laws and violating those  
20 rules. There's no question. Nobody questions that or thinks  
21 that there's anything wrong with that.

22 The Oregon and Canadian citizens don't vote for the mayor  
23 of the city of La Conner, they don't have any say in the state

24 representatives, they don't vote for the government, but they  
25 are subject to the rules and the law. Across the channel we  
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1 have visitors coming to the reservation to partake in the  
2 casino business or use the natural resources or the beautiful  
3 area or they even live there or marry tribal members, but they  
4 are not equally subject to the rules and laws and regulations  
5 the way a Native is.

6 And if you look at it from the perspective of the tribe or  
7 even the tribal court or the tribal police it doesn't make any  
8 sense why that should be the case, but that's where the law has  
9 put us. It doesn't make any kind of sense and I don't agree  
10 with this, I don't agree with what the law has put us and I  
11 think that as legal scholars we can have a debate about why we  
12 are where we are and as legal scholars we can read the opinions  
13 of the courts and we can have a lively debate about why the  
14 court is right and why the court is wrong. And I think that we  
15 should continue to have those debates, but I think at some  
16 point we have to understand the reality of the situation. And  
17 the reality of the situation is that the supreme court is not  
18 going to be changing over night, that this history of laws are  
19 already there and I think what we have to have is an overriding  
20 congressional and legislative solution to the problem.

21       The solution that I see us having is very broad. Number  
22       one is that I think what we have to have is what everybody  
23       referred to as the Oliphants fix. I think the suggestions  
24       regarding the Domestic Violence Act and some of these  
25       incremental steps are good steps, but I think ultimately we

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1       have to go to a point where we completely have an Oliphant fix  
2       so that we have jurisdiction over all people that come within  
3       the territory of the reservation, think that everybody is  
4       treated equally, everybody is treated equally under the law of  
5       the tribe.

6       Secondly, I think that you have to realistically create  
7       process guidelines, that those guidelines must respect the  
8       character and nature of the tribal courts and tribal justice  
9       system. That goes back to my original thought and that is we  
10       have to be careful not to prescribe rules and regulations that  
11       will limit tribes and tribal justice systems in their ability  
12       to meet the unique character of their tribe. We must be  
13       encouraging, not discouraging creative and unique development.  
14       I think a more controversial proposal, but one that I think has  
15       to probably at least be considered and debated is granting  
16       limited, possibly discretionary appeal and review authority in  
17       federal courts. And I think that if we have some set standards

18 about what is appealable and how a case is going to get to the  
19 federal court for appeal then you're going to have a good  
20 system.

21 Tribes will see that as being a threat to their  
22 sovereignty, but I think that it's unrealistic to believe that  
23 that's not already occurring. What occurs now is you do have  
24 federal review, but it is unpredictable, it happens randomly  
25 and it's not respectful of tribal court systems. I think that

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1 what you have is an unpredictable random and disruptive result  
2 of review as opposed to passing a law that says this is what  
3 can be reviewed, this is how it can be reviewed, this is how  
4 it's going to get to federal court. I think if you had a  
5 predictable system of review versus an unpredictable system of  
6 review it actually respects the decision and respects the  
7 sovereignty of the courts.

8 The other thing that I think has to change is the funding  
9 system. I'm not talking about necessarily about more funding,  
10 but how funding occurs. I think that we have to move towards  
11 federal direct funding of tribal justice systems. The majority  
12 of federal funds that are available come through competitive  
13 grant structures and that grant structure is a broken system.  
14 The grant structure rewards grant writing skills. Not all

15 people have the ability to write grants and that is a real  
16 shame. It also creates competition between the tribes and I  
17 don't think tribes should have to be competing for funds to  
18 fund basic services. That's what we're really talking about  
19 here is a fundamental basic service that is tribal justice and  
20 it shouldn't be funded on a competitive basis. All tribes  
21 should have equal access to that money.

22 The other problem with the grant system is that it favors  
23 program creation. In other words, all the grants that come out  
24 say what program are you going to have, is the flavor of the  
25 month or flavor of the year type program or if you have a

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1 really bad meth problem and meth is a popular grant issue then  
2 you're eligible to get money. If you just want to (inaudible)  
3 to do an honorary system that -- I think that's wrong. It also  
4 creates a temporary system. If I have a grant for one year or  
5 three years or whatever and I want to hire somebody, well, I  
6 have money to pay for them for the one year or the three years  
7 of the program, but then I have to turn around and find  
8 additional funds or maybe get another grant to try to fund that  
9 and that really impedes program development.

10 The other problem most of these grants do not allow for  
11 construction. You can have, for instance, a Decap (phonetic),

12 tribal court enhancement grant and you can buy all the fancy  
13 computers and equipment that you want, spend hundreds of  
14 thousands of dollars for the equipment, but if you're in a  
15 double-wide trailer that's leaking water that's going to ruin  
16 that equipment you can't build a building to put it in. Even  
17 more ludicrous.

18 The Swinomish Tribe was awarded with the funds that came  
19 out for the economic improvement. There was a lot of money  
20 given to tribes. We were awarded the stimulus package. Thank  
21 you. I lost the word. We were awarded a grant to build a  
22 domestic violence shelter, but we couldn't actually build. And  
23 it's more complicated than that. But with the help of a lot of  
24 different departments within our tribe we were able to meet the  
25 requirement, but you can't have new construction. That didn't

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1 make any sense.

2 I think that we have models out there. If you look at the  
3 child support program, for instance, where tribes can get  
4 direct funding to run a child support program, the federal  
5 government has set standards on how you have that program and  
6 set standards on the type of program, how many attorneys you  
7 can have and so forth, if you look at that as a model or you  
8 look at the model of self-governance funds going to tribes and

9 allowing tribes to develop their own programs and then you see  
10 a model for how you can have direct funding for tribal justice  
11 systems. I think the key is -- and finally, the last point and  
12 then I'll need to stop is to do opt-in systems giving the  
13 tribes the ability to do this to do the good work that they do  
14 and get out quick.

15 MS. ABINANTI: My name is Abby Abinanti and I'm the  
16 chief judge for the Yurok Tribe. I like everything you said  
17 about the federal review part because I'm taking all that and  
18 incorporating that. We'll talk about that later. I agree with  
19 the debate. I would sort of like to break the problem out into  
20 two components and the way I think about it is how I try to  
21 manage their system and how I try to create my system, and  
22 those really are the two ways that in my mind I think about  
23 this whole problem. And managing their system is really trying  
24 to figure out how to get them to understand, meaning the  
25 federal government who sets up most of the money, most of the

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1 laws, everything else, how to make them see that their 33 rules  
2 of how you opt-in to Title 4E when you don't apply it to a  
3 state aggravates a state but cripples a tribe. It is almost  
4 impossible whether you agree with Title 40 or not.

5 When you present these gifts to the tribe they have to be



6 presented in a fashion that you can accept them, that you can  
7 then maybe change them to fit your needs. For instance, if you  
8 would allow the Title 4E to create foster care situations where  
9 grandmothers could be providing foster care for their  
10 grandchildren who are having children so that they can then  
11 teach them how to parent that would be a really good thing.  
12 They don't allow that in Title 4E. But for us culturally we  
13 could get a lot of mileage out of that, passing out of that  
14 because a lot of grandchildren were or could be raised and the  
15 great-grandchildren are being raised in that but there's no  
16 money and that happens time after time after time. That is  
17 meant to be an example of what's going on.

18 Another example that is particularly aggravating to me is  
19 when you create in child (inaudible) and the main party in my  
20 mind in that situation is the child and is the only one that  
21 does not have a lawyer most of the time. What kind of gift  
22 have you really given. All you've done is wear people down and  
23 make people feel really bad and there is no way to articulate  
24 what your position is.

25 In a state like California, which is where I'm from, you

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1 have massive relocation and you have people from all over the  
2 country plus all of us that live there, you have all of these

3 people in court and very few lawyers representing the tribe.  
4 So is that act really seeing its potential. I don't think it  
5 really is. When you're going to give out gifts like that make  
6 them mean something or don't bother. I mean, it really becomes  
7 more of a headache than anything else.

8 And the other thing that I really want to tie on to is the  
9 creation of our own systems. Time and time again we talk about  
10 -- to me the perfect example is, well, if you want to be a  
11 judge or if you want to -- you can't be bias, you can't know  
12 the people, that shows a conflict of interest. Okay. That is  
13 a concept, okay. Concepts aren't real. Trees are real.  
14 Concepts are made up, okay. You need to understand that my  
15 concept, my people's concept is they came from villages and the  
16 only people who could participate in decision making about a  
17 particular family had to know that family otherwise you had no  
18 standing. Now, is that right or wrong. It's not right or  
19 wrong. It's a concept. Again, not a tree. It's how we did  
20 things. It worked for several thousands of years and, frankly,  
21 we had a better track record in the state. So I'm saying if  
22 you want to compare systems we were doing okay, you know.

23 And I think that kind of building a system and creating a  
24 place where we can teach people how to do that because now what  
25 we're teaching (inaudible) all of us that are lawyers went to

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1 law school. There's only one way to think you do something and  
2 that's it, period, that's it. And the tribes really that is  
3 not how they did things and to try to get us back and them  
4 together is not an easy process. And I agree we need training,  
5 but we also need training that is particular to how do you  
6 create a system out of a culture when there's been a gap. What  
7 we've had here simply is a gap. It isn't that they're gone or  
8 lost or dead or went to Mars. It's a gap. You know, whenever  
9 you have a gap you have to figure out how to then close the  
10 gap.

11 But people have to pay attention to it to make it work.  
12 That isn't happening. You don't make it work by doing this,  
13 that or whatever. I too agree that we need to cooperate more  
14 with the state judges and try to work things out. I'm a very  
15 big fan and I know how much money it takes to be in a court and  
16 how to operate them, but if you want to change the system  
17 you're looking at kids and you're going, okay, what do we do  
18 for these kids when they're here in the system. It's sort of  
19 like asking what do you do if someone wants to jump off the top  
20 floor of a building. Well, obviously your options are somewhat  
21 limited at that point. When you have the most option is before  
22 they climb up the stairs or get shoved.

23        So to me what you want to look at is creating in the tribes  
24        a strong volunteering collaborative court system up that will  
25        keep them on top of that roof from being shoved or jump.

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1        There's two different problems here. You know, and I think we  
2        have wellness court, in our wellness court I would first say I  
3        see this guy drunk, go talk to them. I don't care. Well, you  
4        know, but that's my nephew. If you walk by your nephew you'll  
5        walk by mine so go out there and engage. Don't throw people  
6        out of wellness court who get drunk. You bother them and  
7        bother them until they try it again. Who wants to be  
8        constantly bothered, who wants to sit out there if you're going  
9        to be bothered constantly. That has a certain way of fixing  
10        itself.

11        It's a different philosophy. There has to be room for  
12        that philosophy if we're going to try to move forward together.  
13        What's interesting to me watching the systems develop and move  
14        along and try is that as we see the collaborative courts people  
15        are going, oh, these really work, this really works. Well,  
16        yeah, it did work, it really worked for us and I would like to  
17        see more of it done there and I would like to see those kinds  
18        of justice programs.

19        I really agree with the thinking about the competitive

20 funding and the grant writing and all that, but the first year  
21 I wrote grants and I didn't get any. I don't play well with  
22 others, and I know that so I thought, okay, this was not fun.  
23 So then I look up the requirements, I look up all the criticism  
24 and I look if you can write a logic model. So I opened up the  
25 logic model and I went, shoot me, this is never going to

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1 happen. So I went out and I hired somebody who worked for our  
2 court system. You know, that way I got over on everybody else.  
3 That's not right. I mean, I knew that, you know, what I did.  
4 That's not the way to set up a justice system.

5 You know, that's not the way that institution in any  
6 community should have to try to survive and then you go, okay,  
7 what trick am I going to do next to get the next two or three  
8 years because my problem is not going to be solved in two or  
9 three years. That is not a way to run this kind of  
10 institution. It's not like they -- they have to be  
11 institutionalized if you want them to work. If you don't then  
12 they're not going to work and that's kind of where we're at.

13 And we need to build our institution and we need to build  
14 our infrastructure and the tribes -- state for us to try to get  
15 the money to law enforcement is really, really hard. We need  
16 to have that assistance, we need to have that help.

17 But what I really want people to concentrate on is two  
18 sets of problems here. How do we work with what's out there  
19 and where people already are and how from getting into that  
20 mess because the woman, I don't see her now, of course I don't  
21 have my glasses, on who had 16 brothers who all ended up in the  
22 system, that is stoppable, it is stoppable, but you have to --  
23 you can't just sit there and go I hope, I hope. And it has to  
24 be a plan and it can be done, but it has to be done using a  
25 collaborative model using volunteers.

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1 What I teach our people in our courts to do is culture  
2 model which is you have the same responsibility you have as a  
3 an aunt or an uncle and you know what those are, go out and do  
4 it. And it wasn't like we didn't have consequences in our  
5 community. It isn't like we didn't have the meanest  
6 grandmothers alive in our communities. Nobody really pushed  
7 them around unless they wanted a good whacking. So you know,  
8 it's not like we don't know how to do it.

9 So I think if you can concentrate on those things and then  
10 create a model that's what our court looks like you have your  
11 role as an aunt and uncle, you know what that looks likes, go  
12 after it and do it. You know, that's what I want to see. So  
13 that's the kind of thing I want for us to create. I don't want

14 us to look like state courts. If they worked maybe I wouldn't  
15 mind but they're not. Thank you.

16 COMMISSIONER POULEY: Thank you, Judge. Last but  
17 certainly not least Judge Johnson.

18 MR. JOHNSON: I told Abby I would be last. I want to  
19 say a few tribal words and then I'll explain why I'm here and  
20 some recommendations that I have. Wu kusa hun uma ieu wanickel  
21 weas hsa ya ya kash kash kit kit waas waas (phonetic). We meet  
22 again. And in our country when you first met somebody that's  
23 what you would say to them because you want to make sure you  
24 were a friendly relationship there, that you weren't going to  
25 get, what did you call it, smacked, hit.

0155

1 COMMISSIONER POULEY: Whacked.

2 MR. JOHNSON: Whacked. And the other part I said was  
3 my name is gray coyote and I'm a tribal judge and I have been  
4 for about 30 years and I did it before licensed attorneys  
5 wanted to be there except me. We didn't have licensed  
6 attorneys. They didn't want to be around. There wasn't money  
7 there, there wasn't clients that were going to pay them to be  
8 in our court. We had plenty of tribal people hunting and  
9 fishing, Indian child welfare and we had all those things, but  
10 that's how long I've been a judge.

11 I would like to say I was six foot four, black hair when I  
12 started. Now look at me. But that is kind of what happened.  
13 I wasn't six foot four. I did have a lot of hair. I'm a  
14 licensed member of the Oregon State Bar, received a juris  
15 doctor from University of Oregon. When I moved back to my  
16 reservation after moving around and being in different jobs  
17 they had to get my mind right again. People would say you're a  
18 city boy, you can't hunt, can't fish, you don't know how to  
19 fight anymore, something like that. That is my brother, by the  
20 way. So you have to get your mind right, you have to start  
21 thinking like a human being again, not like a lawyer, although  
22 I've done that for quite a long time.

23 When I first moved back I went into politics. I was very  
24 stupid. I became chairman of our tribe, chairman of our board  
25 of trustees which was our governing. I was also chairman of

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1 general counsel at the same time. So I took guff from  
2 everybody including my mother. I teach classes for the  
3 National Indian Justice Center, president of the National  
4 Indian Justice Center. I don't think people like to admit that  
5 but I do. I protem court for other tribal courts either  
6 appellant or trial and I protem for the city of Pendleton which  
7 is a town right off the reservation.



8 I want to say this. When I first started as a judge we  
9 didn't have Oliphant. So we did not Indian defendants in  
10 criminal cases. We did a lot of that -- we amended our  
11 constitution that said we could do non-Indians. We didn't care  
12 so we did and we had a lot of cases come through there and we  
13 adjudicated them. No one was complaining. Matter of fact,  
14 when Oliphant was actually stuck up our nose we finally said,  
15 okay, we'll receive one of these cases and refer them to the  
16 state and the people didn't want to leave, the non-Indians. We  
17 live here, we want to stay in this court. So that's kind of  
18 something that I thought was interesting.

19 Lewis and Clark first discovered us. I want to say in the  
20 core of discovery from Thomas Jefferson we were here and we had  
21 organized a society on oral laws, oral traditions and customs.  
22 That's our culture. We had that 2000 BC, before Columbus, or  
23 before that core of discovery. So we had all that then. And  
24 Abby was talking about we had things that were working. We  
25 didn't have a crime rate that I know of. I don't think we knew

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1 what defined domestic violence was except my mother knew it  
2 because she invoked it on me. We didn't have crime, we didn't  
3 have taxes, a lot of different things that now we take for  
4 granted. So I'll just say we were here, we had our own laws.

5 And I want to say this. We are still here and our culture is  
6 still here and our language is still here and our people,  
7 citizens want to do it themselves.

8 When I first started as judge I remember a lot of my  
9 elders saying to me reason we want to get rid of that stupid  
10 law is we want to, we want to govern ourselves. We aren't  
11 saying anybody is worse than us or what have you. We know what  
12 we want and we want enforcement, the safety we want, the health  
13 and the welfare that we want. So what I remember my elders  
14 telling me and I kept saying is we want to do it ourselves. We  
15 don't want anybody else doing it.

16 So we retrocede. And by the way, we did that with  
17 collaboration of county, state, federal officials, county DA,  
18 county sheriff, people that supported us in that effort. And  
19 before we got the retrocession what we discovered was we  
20 weren't getting the service we should have been getting. I  
21 know it happens in California and I think it happens in other  
22 maybe parts of Oregon as well as Washington possibly because of  
23 racism which there still is, whatever, but it's still exists.

24 So one of the recommendations I have is, and I hope you  
25 consider it, I think I've heard it already, is repeal Public

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1 Law 280. It's a stupid policy termination area and one that

2 needs to end. I don't know why we keep doing it. We  
3 retroceded it from our jurisdiction, Umatilla reservation, and  
4 we did that back in the early 1980's is that the non-Indian  
5 population that lives on our -- supported the criminal  
6 jurisdiction but not the civil jurisdiction of retrocession for  
7 the Umatilla tribes. That was because they thought we were  
8 going to use our eminent domain powers, which we don't, and  
9 exclude them from the reservation or take their land and kick  
10 them off. We would have done it way before now, boys. So that  
11 was one of repeal that should be considered. I'm not joking  
12 about that. Revoke, overturn, do something about all of them.

13 We do non-Indian defendants and civil cases, not criminal  
14 cases. We still do that. We also have surprisingly  
15 non-Indians on our jury that some don't agree with that, but  
16 they live in our community and so we use that. So I think  
17 those are important things to consider. Besides that, there  
18 are funding issues that I think should be considered that would  
19 expand jurisdiction would be a better idea than this Law and  
20 Order Act criteria (inaudible) we've been doing that and some  
21 of them are even Indian. I think if we want to do it I think  
22 we should do it, period.

23 And I guess I'm going to argue with the judge down the way  
24 here, not Abby, and I'm going to say if you want to have our

25 court decisions incurred by some other appellant system, not

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1 tribal, then I want to hear theirs and I want to see their  
2 tribal courts come to our appellant courts and maybe we can  
3 overturn some of these things that are coming through the state  
4 that shouldn't be going out as decisions that may be absurd.  
5 Maybe we need to send that back to the state or back to the  
6 feds. I'm playing with you there, but I'll say that's the same  
7 rational going reverse and that's the way I see it so I'll  
8 argue with you.

9 JUDGE POULEY: That's all right.

10 MR. JOHNSON: The other thing I think is very  
11 important and I don't think you should be forced to do anything  
12 as a tribe or a state or whoever, but I think additional form  
13 of justice, culture common law. It happens everywhere, not  
14 just in Washington and Oregon and California, but I know Pueblo  
15 country that they don't have anything that resembles to me  
16 modern state court or even modern tribal court forums and I  
17 think they ought to be allowed to do that. They are allowed to  
18 do it. Leave them alone. If they don't want to be messed with  
19 don't mess with them. The minute we start saying Pueblo  
20 people they're going to start suing their judges and council  
21 people or whoever or governors I guess they call them.

22        So I see that and I say leave people to decide how they  
23        want to live themselves. There were some minor -- to tribes  
24        shouldn't have to go through the state so we have to dance to  
25        someone else's tune. We should also have I guess I call it a  
0160

1        juvenile crime program assessment. There's something like that  
2        in the OJDP, this is my juvenile words, but I know always want  
3        to assess every kid good or bad on our reservation and behaving  
4        in school, see how they're responding to different things and  
5        see how they respond to any problems that they have, not just  
6        when they're trying to commit suicide or trying to commit a  
7        crime or stealing a car. She wants to deal with them when  
8        they're good kids.

9        Indians being the way we are, that's me, we don't want to  
10        tell anybody our business. So I don't want to fill out any  
11        surveys. I also think that there should be honor for  
12        subpoenas, tribal court subpoenas or state court or whatever,  
13        subpoenas issued to help I guess Indians or federal employees  
14        or tribal employees. I'm not just saying federal but that  
15        those subpoenas, I get to be exempt because I'm going to go to  
16        my boss and cry about it because some of these cases that we  
17        have sex offenders the medical people are the ones that can  
18        explain it to us. If I just got to say, yeah, it looks good to

19 me that's not good. I think I said honor those subpoenas. I  
20 think that's it. That's all. Thank you.

21 COMMISSIONER POULEY: Thank you. I want to thank all  
22 of the panelists. So Justice Owens, Judge Pouley, Judge  
23 Abinanti, Judge Johnson. I can't tell you, first of all, how  
24 great it is to have this panel of judges up here, but second of  
25 all, how grateful I am that I could just pick up the phone and  
0161

1 call all of you or e-mail you on pretty short notice and get  
2 you to come and testify in front of the Commission. But we  
3 really do want to hear a tribal voice. I've spoken that  
4 message often and remind us of the things that we need to hear  
5 when we make recommendations. But just a heartfelt and  
6 personal thank you to each and every one of you. Tom, I don't  
7 know if you wanted to add anything?

8 COMMISSIONER GEDE: Just a very warm thank you for  
9 coming and I hope that you don't mind if we tap your brains and  
10 your hearts on the issues that you've already talked about as  
11 we develop questions that will inevitably develop over the next  
12 year as we hold hearings. This is our first one so we are  
13 thinking it's going to develop, I'm sure, as we move forth in  
14 the principles and points that you've made. So thank you  
15 again.

16 MS. ABINANTI: Great endurance.

17 COMMISSIONER POULEY: Thank you very much. I have a  
18 spot in the agenda logistically move things around a little  
19 bit, so we're going to take a ten minute break and then I have  
20 a list of people who are going to testify. Representative John  
21 McCoy is going to testify first. I have Ron Tso, the chief a  
22 Lummi Nation. Matt Haney is the Colville Police chief who is  
23 here to testify. Lowell Halverson and is it Patrece Kent. So  
24 we'll take testimony in order about ten minutes from now. So  
25 thank all of you for your patience and we'll reconvene as we

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1 move things around a little bit.

2 (BRIEF RECESS TAKEN)

3 COMMISSIONER POULEY: Step up to the microphone.

4 MR. MCCOY: Good afternoon. I'm state representative  
5 John McCoy, 38th legislative district which is all over Tulalip  
6 reservation, 50 percent Marysville and 99 percent of Everett.  
7 Until a year ago I was the economic development guy for the  
8 Tulalip tribes. I retired and so I'm just doing state  
9 legislative work now.

10 But with the subject at hand, for the last 16, 17 years I  
11 worked with Michael Taylor, the lead attorney for Tulalip, in  
12 building the law enforcement court system and the family

13 services and all that to where it is today. It took a lot of  
14 time, took a lot of planning, naturally a lot of money, but I  
15 think we're well on the road to successful programs. I'm  
16 especially proud of the court system. We've attracted some  
17 very good people to work within that system but, you know,  
18 nothing is ever finished. It's growing. It needs to grow. So  
19 the group of folks there now have taken them a long way, but in  
20 a few years they all want to move on so we need to move other  
21 people in and bring in some younger blood, if you will, but you  
22 know, that's all part of progress.

23 I've been here all day and I pretty much agreed with  
24 everybody except for one item, and there is no way in the world  
25 we are going to get a constitution amendment. That is a bit of

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1 a reach. That takes 38 states. Tribes are only really  
2 representing 26, so we're 12 short to begin with and there's  
3 some states that know they ain't going to sign on for that.  
4 But we need to continue. Education is going to be an extremely  
5 important part. One of the things around the country that I  
6 like is the Oklahoma Supreme Court in it's either last weekend  
7 in May or the first weekend in June they have sovereignty  
8 weekend. I'd like to see that happen here in Washington State,  
9 not at the same time, but you know, a month or two in front or



10 behind. I'd prefer behind because if it was in front of then  
11 I'd be in session. So that tribal court system folks and the  
12 state folks can network and work together in helping to resolve  
13 some of these common issues.

14 I find it ironic that we talked about getting full faith  
15 and credit for tribal courts. Quite honestly, what the state  
16 supreme court did in the last couple weeks on that lemon case,  
17 I don't know if I give them full faith and credit, you know,  
18 keep going back and re-addressing the same thing over and over,  
19 coming to different conclusions every time they do it. So that  
20 was pretty poor. You know, that is gonna set up a problem.

21 And the reason that I got the tribal law enforcement bill  
22 passed through the state of Washington was hoping that we could  
23 eliminate that, but unfortunately we have some sheriff's that  
24 generally it's more about turf. There's a few of them that  
25 have some diversity issues, but it's more about turf. And I

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1 found it quite amusing that down there towards the end when the  
2 sheriffs finally realized they had the votes to get that bill  
3 passed then they were willing to negotiate, but up to that time  
4 they didn't want to negotiate. And the positions that they  
5 were taking I started calling them the sheriffs of Nottingham  
6 because it was really funny watching how they were positioning

7 themselves and everything else. But again, like I said, that  
8 was more about turf because the United States Constitution says  
9 the county sheriff is the top cop. They get to say what  
10 happens. So they have a problem with a sovereign nation, you  
11 know, having their own. They really have a problem with that.

12 But I put in the legislation that if the tribe really  
13 wants proper cross deputization all they have to do is initiate  
14 it and that starts the clock and the county has one year to  
15 negotiate with the tribe. At the end of that one year then  
16 they go to binding arbitration, otherwise that local sheriff  
17 will just keep dragging it on and on and on and there has to be  
18 an end to this. But because of some of the political issues  
19 and those sheriffs that have diversity issues it's not moving  
20 as fast, but it is moving here in Snohomish County. You know,  
21 I negotiated with the county sheriff, King County prosecutor  
22 for three years, came to a document that we agreed on and then  
23 the sheriff wouldn't sign it. So that's what really angered me  
24 and why did the tribal law enforcement. We can't have that.  
25 You can't work that hard and then all of a sudden nothing.

0165

1 So my overall philosophy what are we going to do. We need  
2 to amend a federal action and state action. We all know that  
3 feds move pretty slow. The state is slower. The tribes are a

4 little faster. But we need to do more work on the state level  
5 and that as more and more states do action in Indian country  
6 then that will, you know, just cascade along.

7 One of the other things that I am, I'm chair of the Native  
8 American state legislators. So we are networking, we are  
9 exchanging information, helping each other get various bills  
10 passed. And like everything else, you know, not all states are  
11 on the same page, not all tribes are on the same page. So  
12 there's a lot of give and take there. So that's what we need  
13 to do. We need to chip away at the federal level and we need  
14 to chip away at the state level in order to accomplish  
15 everything. That's what I have.

16 COMMISSIONER POULEY: Do you mind, Representative  
17 McCoy, you just talked about retrocession in the House. Can  
18 you tell me just a little bit about that?

19 MR. MCCOY: I could. Last session I introduced a  
20 piece of legislature for retrocession and, you know, it was for  
21 all 29 tribes, you know, simplified the process a little bit  
22 in that the tribes would take a resolution to the governor, the  
23 governor went, okay, yeah, I can live with this and then  
24 gradually proceed to the federal government and then annex  
25 between the tribe and the federal government on what that tribe

1 would get to do or not do. So I'm working with Professor  
2 Anderson and Doug Nash, Mike Taylor and a couple of others.  
3 And right now what we're doing, we're doing work sessions, so  
4 we're educating everybody so we get everybody on the same page  
5 and so when I redo the bill or drop the new bill, then I think  
6 I'll have some reasonable belief I will have success, but we'll  
7 see what happens.

8 COMMISSIONER POULEY: Thank you. Thank you for  
9 testifying. I don't know if there's any other recommendations,  
10 but you do know where to find me.

11 MR. MCCOY: Yes, I do.

12 COMMISSIONER POULEY: So any information you can  
13 provide me personally as well as the Commission generally we're  
14 really going to want to watch and see how that retrocession  
15 bill sorts of applies to the state legislation. So thank for  
16 you hanging around today and thank you for your testimony.  
17 Ron Tso is the chief of police from the Lummi Nation.

18 MR. PATERNOSTER: I think he's still preparing his  
19 testimony.

20 COMMISSIONER POULEY: Very well. Thank you. Do we  
21 have Matt Haney?

22 MR. HANEY: Thank you for this opportunity. I  
23 appreciate it. My name is Matt Haney and I'm the police chief

24 for Colville. We're a little reservation located in the north  
25 central part of the state. I was being facetious about a

0167

1 little. It's 1.4 million acres. So we're one of the largest  
2 reservations and we serve about 12 thousand tribal and  
3 non-tribal people within the reservation boundaries.

4 The reason I had requested the opportunity to give  
5 testimony today is about a decision that's already been  
6 discussed at great length here. The Supreme Court decision to  
7 eliminate tribal police's ability to follow a non-tribal member  
8 off of the reservation boundaries really creates an increase  
9 and hazard for anyone living on the reservation whether they're  
10 tribal members or non-tribal members. What this in essence  
11 says that if a non-tribal member is being stopped or someone's  
12 trying to stop them, one of my tribal officers, their best bet  
13 is to run for the reservation boundary. If they make it  
14 they're home free. So this is actually an incentive for  
15 increased reckless driving and increased number of pursuits  
16 which are really scary and dangerous for everybody.

17 I've been a police officer now for 32 years. It's hard to  
18 believe it's been that long. I spent the first 29 years in  
19 regular cities and counties in both Alaska and Washington  
20 State. I had the opportunity to serve three tribal communities

21 as well as Native Alaskan communities in Alaska and I've seen  
22 it from all different angles from working for the King County  
23 Sheriff's Office, one of the largest agencies, to police  
24 departments of only four. These kind of decisions are morally  
25 damaging for tribal police because there is a racial bias, and

0168

1 this isn't a secret, which are basically telling tribal police  
2 officers that you're not quite as good as your fellow officers  
3 working right beside you. And that's not only unfair, but it's  
4 also dangerous. It gives my officers less incentive to go out  
5 there and chase down drunk drivers, chase down anyone that's  
6 breaking the law and creating a safety hazard.

7 The second piece that hasn't been discussed here yet today  
8 that really affects my department and all of our departments,  
9 tribal police departments in the state is that the judge  
10 writing the decision said the cure is just to have cross  
11 deputization. Well, most of my officers are cross deputized.  
12 I have two very cooperative sheriffs both Okanagan County and  
13 give us deputization as long as the officers are certified  
14 within the state of Washington.

15 So the process is once my officer attends the police  
16 academy in New Mexico he has his federal commission, comes up  
17 here and he's supposed to attend the driving range which the

18 State of Washington controls. They changed the format a little  
19 over a year ago and now it's become increasingly difficult for  
20 any tribal police officers to pass this course. So like two of  
21 my officers have failed twice, and as long as they are not  
22 passing this course administrated by the state they can't be  
23 cross deputized. And this gives, you know, all of us tribal  
24 police chiefs -- this gives the state in essence more power and  
25 I don't think the state needs any more power.

0169

1 As others have said, tribes have the ability the knowledge  
2 and skills to police themselves. We don't need the state  
3 telling us how to do it. Thank you.

4 COMMISSIONER POULEY: Thank you. Lowell Halverson.  
5 How good to see you. Come on up.

6 MR. HALVERSON: My name is Lowell Halverson. I'm vice  
7 president of the executive council for Kluti-kaah Tribe up in  
8 Alaska and I'm a recent political (inaudible) in the tribal  
9 endeavors because of some things that I saw that were  
10 difficulty in our proceedings up north. I live nearby here and  
11 that's why I'm here now. I'm not as prepared as I would like  
12 to be because I got the call late last night and I put the  
13 documents that I could find together this afternoon, and I'm  
14 afraid that what I'm going to give you is information and

15 questions and anecdotal evidence of what I knew as a  
16 profession.

17 I've been with the tribe for more than three decades and  
18 my father before me very active in our general -- once a year  
19 and most of the time. I've been very interested in comments  
20 made by Representative McCoy and by Your Honors in part because  
21 they are some of the speakers that we've ever called. You are  
22 inspirations of the first order to us and have been very  
23 helpful to us in so many ways.

24 That said, the anecdotal evidence I would like to present  
25 is in the form of questions from interviews conducted today.

0170

1 If this sounds harsh, it's not intended to. Don't kill the  
2 messenger. This is Ed Thomas. I have it in writing. He was  
3 responding to me because of his frustration and you can be  
4 assured that most of the time he's a very statesman like  
5 person, but like many of us up north we're very frustrated by  
6 the kind of what I will hesitantly call the institutional  
7 racism in the state of Alaska. I'm prepared to defend that in  
8 one way or another.

9 But meanwhile, what he asked here is questions were he's  
10 concerned that this Commission should be focusing on getting  
11 this law implemented instead of running around listening to



12 testimony. He would have put that more artfully if he was  
13 here. That was helpful in getting the law passed. Now that it  
14 is passed implementation plan is critical especially with so  
15 much discussion and pressure on funding, but if there are going  
16 to be hearings of this nature, this nature being here, why are  
17 230 Alaska tribes left out of the loop. Are there any Alaska  
18 tribes here?

19 COMMISSIONER POULEY: No, but we'll be going to visit  
20 Alaska, so Alaska is getting our undivided attention.

21 MR. HALVERSON: I welcome you and hope that you catch  
22 lots of fish.

23 COMMISSIONER GEDE: In January?

24 COMMISSIONER POULEY: In January there is ice fishing.

25 MR. HALVERSON: Bring your own drill. So basically PL

0171

1 280 language of the law applies to Alaska or not. Will there  
2 be funding for tribal courts. And I don't expect answers from  
3 any of the commission people that are here, although answers  
4 would be very helpful. Long pause, silence, okay.

5 My own comments. Also, I did talk to a tribal attorney  
6 whose name I will not disclose and this person also says the  
7 same thing. I'm curious if the reference to Indian country and  
8 the amendment will have a negative effect on Alaska tribes

9 since the benefit it receives states except for a few  
10 exceptions. There is no Indian country in Alaska. That means  
11 that there's about 80 thousand people up there that are  
12 basically ghost of which 27 thousand are members of the tribe  
13 that I'm a member of which about 12 thousand of those actually  
14 live in the state of Alaska and are having very, very great  
15 difficulties dealing with so many issues that can be almost  
16 insurmountable.

17 I can speak as a person who sat at the negotiating table  
18 with the Alaska attorney general's representative for over two  
19 years, monthly meetings and so on just discussing simple little  
20 issues such as whether and how and if they will acknowledge a  
21 court order issued from our tribal courts. Yes, we do have  
22 courts up there that are statutory courts, administrative type  
23 hearings, but they don't have a lot of jurisdiction outside  
24 their immediate area and we are still litigation and we're  
25 probably going to be in litigation for some time with the state

0172

1 of Alaska over issues of jurisdiction which we believe could be  
2 cured by Congress in the snap of an eye. I say could be  
3 because I came back from a Washington DC junket during the  
4 state hearings doing the same thing which was to testify to the  
5 Office of Child Support as to how are we doing on child

6 support. I tried to explain to her that we don't have a real  
7 court in the sense that the people who are the other sovereigns  
8 in Indian country will not accept anything except the most  
9 modest of jurisdictional rights for the tribes.

10 Many of you have probably been to Alaska. It's 40 percent  
11 metropolitan mostly living in Anchorage and a lot of Natives  
12 live in Anchorage without the Anchorage social scale, and the  
13 rest of them live in rural communities and a lot of those rural  
14 communities are small except the elders in that community, too.  
15 And that means there's no access to justice in a conventional  
16 sense and there are no rights to speak of. When you talk about  
17 domestic violence and how we can cure it that's kind of  
18 private, sort of way up there. The worst kind of domestic  
19 violence to come -- my father once told me when somebody  
20 offends the offense is against the entire village. We take the  
21 person for a walk on the ice. That's primitive. That is not  
22 exactly due process and probably is unacceptable by the Justice  
23 Department, but it is a way of life that happens because it is  
24 the only life up there.

25 Alaska tribes have lots of history managing themselves.

0173

1 They have all the traditions, they have all the legal rights of  
2 being Native but none of that is recognized by the Alaska

3 government. And unfortunately, the state of Alaska has a  
4 co-partner in these proceedings, the federales. At least  
5 that's my opinion, and I'm not saying that is the opinion of  
6 the central council or executive council. I'm speaking out of  
7 place on my thinking here.

8 We get jurisdiction and we get our food from basically the  
9 same place. The state says we can go on federal land, but they  
10 have basically appropriated but not for sure and they are the  
11 ones that can tell us how many fish we can take. They're  
12 fighting us with whether they get to even have commercial  
13 hunters kill otters and ship their pellets to China for the  
14 benefit of people who don't have (inaudible). As for them  
15 being processed in China and brought back here in little pieces  
16 of fur pellets for around four hundred dollars, we have a quota  
17 set for us by the federal government of nine hundred otter we  
18 can kill and use for fur and other things. But there are 27  
19 thousand otters. It's killing the fish.

20 So those kinds of dilemmas come up every day. I have to  
21 say, subsistence committee meetings find a place -- actual  
22 users by order of the government, federal government, but when  
23 it comes to other issues like tribal forestry resources the BIA  
24 is going to say you can't do this, you can't do that, but if  
25 you do do it you're going to be arrested by a state of Alaska

0174

1 police officer. So my personal issue is one that actually goes  
2 back to the 1960's when there were many of us who rode on a  
3 field bus or two, down south who may have sat in with the  
4 Indian tribes that were convening at the eastlake BIA office,  
5 and we closed that BIA office for three days and three nights  
6 and the people have taken to the streets and done  
7 demonstrations. And that's my position personally, is the only  
8 way we're going to get this solution, Indian discrimination, is  
9 by going and doing peaceful, non-violent vigils and tell them  
10 what is morally wrong, not merely what is in the congressional  
11 act as to Alaska.

12 MS. SWANNACK: I apologize. It's time.

13 COMMISSIONER POULEY: Thank you very much. Chief Tso  
14 or Patrece Kent.

15 MS. KENT: Good afternoon. My name is Patrece Kent.  
16 I was born on the Yakima reservation. I'm an attorney  
17 practicing on the Yakima reservation. I'm admitted to the  
18 Yakima court, Yakima eastern western district of Washington,  
19 9th Circuit federal task court and also the state of  
20 Washington. My primary client is an Indian business owned  
21 business practicing traditional business practices and trained  
22 twelve step treaty 1955 and U.S. I apologize. I was not aware

23 of this meeting until yesterday and so my remarks might be a  
24 little unprepared for that. I do apologize. I very much  
25 appreciate the opportunity to be here today.

0175

1 I think it's important not only for my client, but for the  
2 Yakima Nation who it is my understanding -- I do not speak for  
3 the Yakima Nation. I am very pleased to hear that you are  
4 charged with simplifying jurisdiction Indian country. I'm  
5 certainly everybody will be thrilled if that were to happen.  
6 My personal experience by growing up on the Yakima reservation  
7 and more recently representing a Yakima owned business is that  
8 simplification of jurisdiction in Indian country,  
9 unfortunately, (inaudible) other than any jurisdictional  
10 activities of the Indian nations.

11 In February of 2011 my client before he was my client  
12 experienced what was supposed to be a soft entry execution of a  
13 federal warrant. Federal agents from at least four agencies,  
14 task force officers who are originally from three different  
15 states as well as local law enforcement officials who were  
16 attached to that task force entered at 6:00 a.m. in February,  
17 knocked on the door, provided no advanced notification to the  
18 Yakima Nation. In fact, turned away Yakima Nation officers and  
19 Yakima Nation elected officials.

20       There is a rumor that one of three federal enforcement  
21 agents in charge said I'm with the, fill in the blank, agency  
22 and I have jurisdiction to go anywhere I want to in this  
23 country. In fact, 51 has specific language requiring advanced  
24 notification consultation for non-Indians who are not employees  
25 of the bureau, independent agent to come on to the Yakima  
0176

1 reservation. The execution of the search warrant occurred on  
2 trust property, Indian owned business practicing legally. The  
3 basis of the search warrant was to investigate alleged  
4 violation of state tax laws, not in Washington state but in  
5 other states entirely.

6       My very, very deep concern is that this Commission in  
7 discussing what simplification or stream lining of jurisdiction  
8 in Indian country look like. Please, please take seriously --  
9 I know you are all devoted to Indian country. Please take  
10 seriously the need to recognize the various entities, to  
11 recognize cooperation and consultation, to recognize that not  
12 all Indian country is alike. It doesn't do much to simplify,  
13 and I understand that is your charge. But simplification can  
14 not mean elimination and destruction of the sovereign  
15 governments and the traditional uses and land and practices of  
16 the people.

17 I would also strongly encourage the Commission to provide  
18 advice that not only is Indian country judiciary and law  
19 enforcement in need of resources and so too will by tribal  
20 brothers and sisters of the bureau, of the newly designed  
21 Bureau for Tribal, oh my gosh, Tribal Justice. I do know that  
22 in both the Yakima Nation and my clients attempts to discuss  
23 openly and freely with the Department of Justice and the Office  
24 of Tribal Justice and within that area there are a number of  
25 issues that in part because there is ongoing litigation but

0177

1 separate and apart from that there needs to be an actual  
2 meaningful opportunity to communicate, to educate. Not only to  
3 education tribal law enforcement but to form and educate not  
4 only the federal, as I said, but also the state. Thank you.  
5 That's all the remarks I have.

6 COMMISSIONER POULEY: Thank you. Last but not least I  
7 have Chief Tso.

8 MS. SWANNACK: I don't see him here yet.

9 COMMISSIONER POULEY: I saw him here just briefly. I  
10 just met him for the very first time. For those hard core  
11 public hearing observers that remain to the bitter, bitter end  
12 thank you, thank you, thank you so much. I'm pretty excited  
13 that we have completed our very first public hearing of the



14 Commission. This is the very first one. It's our commission  
15 as an independent commission to hear everybody, to give  
16 recommendations for change.

17 So for all of you that came to listen to the testimony,  
18 provide the testimony such a heartfelt thanks. But you're  
19 going to get about 12 more opportunities because I think we're  
20 going to try to get 12 locations in 12 days. It's our  
21 commission mission time 12 months, not 12 days. Oh, goodness.  
22 So we'll be around so look for us if you wanted to provide  
23 testimony or additional testimony or written testimony please  
24 feel free. We'll have a website up soon so feel free to  
25 provide information on an ongoing basis. And Chief Tso is last  
0178

1 but not least. So do you want to come up and say a few words.

2 MR. TSO: Good afternoon, everybody. Hy'She slam.  
3 Thank you for letting me speak here today. On behalf of the  
4 Lummi Nation welcome all who are guests here and those that are  
5 visiting our great land that is out here today to enjoy the  
6 trees and the water and what the people are about. That's  
7 fishing. So we're able to relish of some our traditional  
8 values and ceremony that encompasses it.

9 My name is Ron Tso from the Lummi Nation and I'm here to  
10 give the talking points regarding Lummi Nation's consideration

11 for the Tribal Law & Order Act of 2010. To begin with, Lummi  
12 Nation appreciates the opportunity to present our concerns  
13 about the Tribal Law & Order Act and its implementation.

14 My name is Ron Tso. I'm the chief of police for the Lummi  
15 Nation. Lummi Nation is located on a 25 hundred acre  
16 reservation featuring 12 miles of coastline which is also the  
17 international border of the United States of America. We have  
18 a population of nearly seven thousand individuals who live on  
19 the reservation. The overwhelming majority are members of the  
20 Lummi Nation.

21 Our location on the water and along Interstate Highway 5 is  
22 attractive to international smugglers who use our people as  
23 mules for marijuana and pharmaceuticals from Canada. Our  
24 people are also used as street dealers and next tier suppliers  
25 for Mexican drug cartels for cocaine, crack, heroin and meth

0179

1 from Mexico.

2 At Lummi we know that incarceration makes better criminals,  
3 not healthier people. We do recognize that sometimes there is  
4 no alternative to incarceration to protect vulnerable members  
5 of our community. However, incarceration is rarely the best  
6 method to help anyone and especially our tribal people to  
7 function in a healthy manner in our communities when they are

8 released. We have learned the hard way that for successful  
9 re-entry into our communities that our people need a  
10 comprehensive continuum of care that includes addiction  
11 treatment, job-related education and training, housing and  
12 employment supported by traditional ceremony, language and  
13 spirituality. While we need to support the re-entry of the  
14 physical person, there is a need to support the re-entry of  
15 their spirit as well.

16 If our members need to be incarcerated we need them to be  
17 in tribally designed and operated facilities that can begin  
18 treatment education, work training and cultural teachings  
19 before they are allowed to return to freedom. We need the  
20 financial support and flexibility to help ourselves. Providing  
21 for only 50 grants for 550 tribes is not enough. At Lummi and  
22 throughout Indian country we need to recover and restore tribal  
23 strength. This is our tribal community. The best way for our  
24 tribal families to achieve wellness is to use our traditional  
25 disciplines and spiritual practices in conjunction with the

0180

1 non-Indian mental health best practices to heal ourselves and  
2 our people.

3 We need to restore resources to the reservation to  
4 facilitate this process. The resources that remain are not

5 sufficient to support the restoration process. We look to the  
6 federal government to facilitate the restoration process with  
7 the same vigor that was used to facilitate the destruction of  
8 our way of life, which is also facilitated.

9 Now, I have a few comments about the Act itself. Using  
10 law enforcement problems to increase federal government control  
11 of Indian country. Section 245 amends another law and Section  
12 203, assistant probation officers, provides enhancement for the  
13 federal probation system, not the tribal probation system.

14 This is another example of using legislation directed and a  
15 problem that has widespread support and then actively taking  
16 care of your own problems. This legislation is an example of  
17 the bait switch approach to consumers which has been widely  
18 criticized and discarded by most private companies.

19 Addressing the needs of Indian country law enforcement does  
20 not mandate the expansion of the federal government's role in  
21 the provision of law enforcement services on the reservation.

22 This Act repeatedly avoids direct enhancement of the tribal  
23 programs, services, functions and activities but has not missed  
24 an opportunity to enhance the authorities and resources  
25 available to federal government law enforcement.

0181

1 Insertion of the U.S. Constitution. The Act enhanced many

2 of the authorities of tribal government but also places them  
3 under the U.S. Constitution in a way that has never been done  
4 before. Using the standards of the protections required under  
5 the U.S. Constitution is not a neutral statement and sets a  
6 standard that is foreign to many tribal communities, only  
7 experienced through television or movies.

8 This provision will quiet the fears of some and accentuate  
9 the fears of others. The problem is that those whose fears  
10 will be increased will be those tribal members who are  
11 unfamiliar with any system other than ones based on accessible  
12 tribal traditional values. Clearly, the comfort of others  
13 distant from the reservation was considered paramount over the  
14 concerns of those who will actually be impacted.

15 Concurrent jurisdiction of a set of crimes on the  
16 reservation with federal government could have been easily  
17 corrected by simply substituting tribal for U.S. constitutions  
18 which has been reviewed and approved by highly knowledgeable  
19 and uniquely qualified individuals. All reservation residents  
20 now live under the jurisdiction of these constitutions and  
21 should remain under their own laws.

22 Tribal Justice Commission. The Commission ensures tribal  
23 input by requiring that a tribal advisory committee is created  
24 composed of two tribal representatives from each region of the

25 Bureau of Indian Affairs. The nine commission members are

0182

1 appointed for the life of the commission and they are appointed  
2 through circuitous recommendations and consultations routes  
3 described in the legislation. This is the standards of -- this  
4 is the stance, well-established process for tribal  
5 consultations on its head. Consultation is usually done with  
6 the membership of the tribal advisory committee alone.

7 Assistance provided to border tribes. Since 2001 and the  
8 development of Homeland Security Department tribes have sought  
9 to define a role within the national security structure  
10 consistent with their vulnerability. The Act includes funding  
11 for the Blackfeet Nation of Montana to support the costs of  
12 investigation and control of illegal narcotics traffic. The  
13 Blackfeet Nation is not the only tribe whose reservation abuts  
14 the Canadian border. Part D, Blackfeet Nation of Montana for  
15 the investigation and control of illegal narcotic traffic on  
16 the Blackfeet Indian reservation along the border with Canada.

17 Those tribes whose border coincides with the international  
18 border of the United States, both land and water boundaries,  
19 and have identified their added costs and responsibilities in  
20 the age of terror, international terrorism and community  
21 terrorism. The Department must take this authority and expand

22 it through the development of regulations that provide funding  
23 to all tribes who have similar enforcement situations.

24 Tribal juvenile detention facilities. Part three,  
25 development of plan. Throughout the Act there are many federal  
0183

1 plans done in consultation with tribal leaders and  
2 organizations but ultimately plans produced by entities of the  
3 federal government. The development of a plan describing these  
4 programs, services, functions and activities is a good thing  
5 for tribes if and only if tribal plans are developed and  
6 included in the final submission.

7 Mechanism for transfer of funds. Grant mechanisms are  
8 repeatedly specified in the Act rather than remaining silent on  
9 the transfer mechanism or specifying the transfers of funds  
10 based on the annually services plan as authorized under Title 4  
11 and Title 5 of PL93-638 as amended. Identification of grant  
12 mechanism shows that the real goal is to enhance our federal  
13 government grant administrators and others who are not elected  
14 in a system that is managed by our elected official for the  
15 benefit of their constituencies. The insertion of a layer of  
16 bureaucracy will reduce the funding that is available to tribal  
17 government without one compensating service or function.

18 The costs of preparing grant applications and negotiation

19 of grant agreements is not covered by grant funds and becomes a  
20 tribal government cost. The grant mechanism enhances the  
21 operation of the federal agency in change of making the grant  
22 awards, not the grantee. The grant making unit is the unit of  
23 the federal government, while the grantee are not. This unit  
24 of government has automatic increases in operational costs  
25 while grant funds remain fixed as appropriated level become

0184

1 less and less as a bureaucracy created to manage the grants  
2 awards consistently award themselves a greater and greater  
3 amount of grant funds.

4 Funding through the Bureau of Indian Affairs branch of law  
5 enforcement. The Act does not provide an effective operational  
6 and developmental connection between the DOJ and DOI funded  
7 portions of the tribal law enforcement systems programs. The  
8 operational and development funding for tribal law enforcement  
9 systems are included in the DOI, not the DOJ budget. The 2012  
10 budget includes an increase of two million dollars to account  
11 for the additional authorizations and responsibilities of the  
12 tribe under this new Act. Questions.

13 COMMISSIONER POULEY: Thank you, Chief. Now that is  
14 our last witness for the day. I just wanted to thank everybody  
15 for coming. Like I said, we'll be on the website with a



16 schedule of events, B12, BIA regions to hit in about 12 months.  
17 So thank you very much for coming today. And as the Honorable  
18 Judge Pouley would say at Tulalip Tribal Court, we're  
19 adjourned.

20 (ADJOURNED AT 4:14 P.M.)

21  
22  
23  
24  
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0185

1 C E R T I F I C A T E

2

3 STATE OF WASHINGTON )  
4 ) ss.  
5 COUNTY OF SNOHOMISH )

6

7 I, CASEY D. JOHNSON, Notary Public in and for the State of  
Washington, residing at Bothell in said County and State do hereby:

8

9 That the foregoing is a full, true and correct transcript of  
the hearing taken in the above-entitled cause;

10 IN WITNESS THEREOF, I have hereunto set my hand and affixed  
my official seal this 20th day of September, 2011.

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Casey D. Johnson

CCR #2381

24

Notary Public in and for

the State of Washington,

25

residing at Bothell.