

**Panel 4: Components of the Juvenile Justice System
Impacting American Indian Youth – 02/11/14**

Joanne Shenandoah: I wanted to mention co-chairing this afternoon in place of Senator Dorgan is our very-esteemed Dr. Eddie Brown, and he will take on the next panel. He's an American Indian Policy Institute Professor of American Indian Studies in the School of Social Work at Arizona State University. I'd like to introduce you to Dr. Brown. And thank you so much for standing in for Senator.

Eddie Brown: Thank you. Good afternoon. As we prepare for the next panel, I think we can truly say that we have been blessed by the thoughts and the wisdom shared with us this morning and this afternoon by the presenters and the panel. And we will now move to the fourth panel which will be addressing the topics related to the Components of the Juvenile Justice System Impacting American Indian Youth. The panel will examine the components of the juvenile justice systems that impact American Indian youth. They will describe the systems' impact on trauma-affected youth and review investigation, prosecution, criminal defense, and probation in rural and urban settings, and identify issues and recommend changes that support youth involved in the juvenile justice system.

Each of the panelists have 10 minutes, that will be followed by 20 minutes of questioning by the advisory committee. Now, the witnesses on the panel are Sheri Freemont, Director of the Salt River Child Advocacy Center. Could you just raise your hand so we could—thank you. Nadia Seeratan, Senior Staff Attorney and Policy Advocate for the National Juvenile Defender Center. Ethleen Iron Cloud-Two Dogs, Technical Assistant Specialist, Tribal Defending Childhood Initiative, Education Development Center, Inc. Lea Geurts, Court Administrator, Probation Officer (Former), and Pyramid Lake Paiute Tribal Court and Instructor at the Fox Valley Technical College. Now, welcome panelists, and we look forward to hearing your testimony. Miss Freemont, you may begin.

Sheri Freemont: Thank you. Again, I'm Sheri Freemont, currently the Director of the Family Advocacy Center here in Salt River, Turtle Mountain Chippewa in Omaha. I've been serving this tribe

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for almost nine years. I was previously the chief prosecutor here for several years. Before that I was a stateside prosecutor in the county doing family violence and crimes against children. So I'm a transplant to Arizona because I came to Arizona to study Indian Law. I'm pleased to be a member of this panel today to talk to you about my experience in Indian Country justice issues for children. I'm also a mother and a daughter and a granddaughter and a sister and an auntie. And as Chief Justice Yazzie said, and many of us have said, I really am here because I really do worry about the future for our children on our communities. I really do feel as if we're at a breaking point. I might be a little bit Chicken Little about that. I do still have hope. I'm not completely pessimistic. But I fear that it is time to take some strong action.

I did submit my written testimony and, for the purposes of my presentation today, I kind of wanted to talk about this fictional character I created. For those of you who don't work in the justice areas for children or in the dependency areas for children, some of these facts may seem shocking. But for those of us who do, these are not shocking or fantastic. This is a very real possibly for a real child and his life story. And my fictional child, his name is Drew. When he was seven years old, he lived with his mom, his dad, some uncles, and a grandfather, and his younger siblings. His little brother was four and his sister was just a baby. He had been witness to one of his uncles kind of having a psychotic episode under the influence of drugs and his uncle had held a knife to some of his family members and they had been barricaded into the house. He says he didn't see anything, however, we heard on the 911 in my scenario that he was crying in the background. He was interviewed and in his interview he talks about how his family members are gang members, they drink a lot, they sometimes smoke G. He knows where it is. He's not supposed to touch it or be in the room when they smoke it. He knows where the pipes are. He's seven years old, but Drew knows how to make gang signs.

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He's met a police officer who's been nice to him at his school, but he's also noticed that he's supposed to generally hide from police. And he's seen the police officers use the Tasers on his dad and he feels as if he's seen police hurt his dad. He knows his dad has been shot by a gun before, but he did not die. And he knows that his dad can shoot people if they try to hurt them. Mom and dad fight a lot. Dad makes her cry. No one ever hits anyone, but sometimes dad holds mom down. Sometimes mom goes to grandma's house with just the baby, but Drew and his little brothers always stay at home. When this happened, this was stateside. Uncle was prosecuted. Stateside CPS responded. First time they've heard of this family. Mom reports that she was going to move back to the reservation and live with her mother and her children and the father was not coming. Dad was going to get substance abuse counseling. Nobody checked with the schools, nobody else was consulted, case closed.

When Drew was nine years old and he was living on the reservation, a search warrant is served at his home. His parents are both present and they are held on the ground by the police officers with guns. Drew was allowed to leave his house with his grandpa. Weapons are seized, methamphetamine pipes are sized. This year we know that Drew was excessively truant. He was suspended for bringing a knife to school. And he's also bullying other children. He's attending a state school off the reservation. This is when he's nine. Dad was arrested and sentenced for this offense of guns and methamphetamine. He's out of the picture for 19 months. Mom faced no charges. CPS was notified.

This is the first time tribal CPS has been involved and they did not know about the prior incident. No truancy referral was made, no services. Nobody knows about the bullying behaviors. Tribal CPS determined that since mother was a victim and father is out of the pictures, no services are necessary. When dad is released about 18 months later, Drew calls 911 when his parents are fighting. He tells dispatch that dad is kicking mom. Mom has blood on her face. Him and his siblings are hiding in the garage. Father

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is arrested. Mom refuses to cooperate, doesn't appear for trial. Father stays in custody until the day of trial three months after. Police report does not mention that the children were hiding or called police. Only mentions that they were not harmed.

CPS received this police report four weeks later. Mom tells CPS that she was done with this father and he's moved out and not coming back. CPS was not aware the father was in jail. They thought he had really left the scene. They offered numbers for crisis and a domestic violence counselor. They don't use them. She was not advised of CPS concerns. When Drew is 12, his father is murdered in his home when nobody else was home. No arrest was ever made, but the family believes he was killed by a person dad owed money to. Drew and his brother are the first people to find the body. An investigation was conducted, but no leads. CPS was notified and children referred to behavioral health services. CPS was not notified for suspicions of the murder. They did not view this as a possible preventable action on the parents' behalf.

When Drew is 15 years old, he is now a documented gang member. He's arrested for tagging a wall. He doesn't go to school anymore. He's had two prior arrests for alcohol and one for assault. He has a girlfriend. His girlfriend's mom doesn't allow him to come to the home because she believes that they are sexually active. Drew tells his probation officer mom drinks a lot. Drew's younger brother reports to probation that Drew yells at mom a lot and calls her names. Drew has a large tattoo across his forearm stating his father's name and his own gang name on his other arm. Probation is not told about dad's death or its circumstances.

This is not an uncommon situation in the fact that the commu—the agencies are not aware of the full history. When I was a prosecutor in my first position, we never knew the history of a juvenile offender in our position. If we ever did, it came from defense counsel and maybe in mitigation. This is—we've heard many times that the delinquency justice system is not usually appropriate to help these

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children. What we do know is when they turn 18 they'll hit our adult system. Because at 18—so at 17 years old, 364 days, they're a child—but at 18 they're an adult and now they're going to face the criminal justice system as adults. Our method in the community here has to be to reverse this pattern.

What we do is called—we operate a multidisciplinary team co-located out of the Family Advocacy Center. Our child crimes detectives are CPS workers and our prosecutors are housed there—well, at least one prosecutor. We investigate every case through a multidisciplinary process. One of the things that we do is we don't wait until we have a dead child. We don't wait until we have children facing the most serious offenses. We try to use the multidisciplinary process when we get lower-level referrals. Why is a seven year old missing 80 days of school? What's going on? Why are these children not getting any appropriate services? Why are they—what if they might have special needs or medical needs? Why are they not making it to their doctors' appointments? What is going on in a home in which the home is filthy and unlivable? What's going on, substance abuse, et cetera?

We run a background situation on our family from a CPS and a police investigation side using our other partners in education, behavioral health, and whoever may be involved in the family, to understand the entire picture. Yes, we do have juveniles who commit very serious offenses that do probably need to go to the federal system. We have had some of our juveniles commit homicides. But what's really sad to me to see is someone who was like Drew turn 18 and do one of those terrible offenses, model what his father taught him—and maybe his grandfather, too. Nobody knew how to make him feel safe. And so when he's 18 and he commits one of these offenses, he's shipped off. He doesn't exist anymore in this community. He's in prison. It is not uncommon. We have to stop before we get to that point. We have to use early intervention and we have to train police officers, teachers, everybody involved, that it's early intervention that can really save these kids.

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I am proud to say that, in this community, our elected officials don't just talk the talk. They actually put those words into action and back up the programs to support these children and these families. The administration here in the community, in addition to counsel, encourages and mandates that the departments work together and share critical information on behalf of these children—not necessarily exclusively in the community. Our kids go to school outside, we need to know that. It doesn't help any of us to focus on incident-based practices. We must look at it holistically on behalf of children. I say—I hear about resiliency. I hear about removals. And I just have to say that having seen dead children because they were not protected by the people who were put on this planet to keep them safe and make them feel loved and teach them and nurture them, it changes you and it keeps you focused on the ultimate mission.

I don't that unequipped parents are bad people. I don't think there needs to be a reason why they are the way they are. All's I need to know is what are we going to do about it? It doesn't matter as to why they aren't being effective parents yet. What are we going to do about it? And I do think about safety first and well-being as critical. Because if we just remove a child, I also know what will happen. If we age kids out of the system, I'll tell you what's going to happen. They're going to be suicidal, homicidal, in jail, young parents, unequipped parents, substance abuse addict, and victimized. That's their result. That is their result. Our written testimony supports the idea of collaboration in a multidisciplinary team. Best practices are well established as to how to achieve that. So I hope that this taskforce will seriously consider making recommendations to fully support collaboration and communication with culturally-competent departments and agencies and people that are willing to do that hard work. Thank you so much for your time and for your commitment to these issues.

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Eddie Brown: Thank you, Miss Freemont. Miss Seeratan, we will hear from you next.

Nadia Seeratan: Thank you. Thank you for inviting the National Juvenile Defender Center to share our perspective on the role of the juvenile defender and the importance of juvenile defense for American Indian and Alaska Native youth in the juvenile justice system. Today I will share with you recommendations with a specific focus on the essential role a juvenile defender plays in protecting youth in juvenile courts. NJDC provides national leadership training, technical assistance and support to defenders to ensure quality representation of youth in urban, suburban, rural, and tribal areas. NJDC has seen firsthand the positive outcomes that result from effective legal representation for juveniles. We've also seen the lasting adverse effects that follow when children charged with crimes are provided with inadequate or no representation. We strongly believe that all youth, including American Indian and Alaska Native youth, involved in the juvenile justice system should have ready and timely access to capable, well-trained legal counsel with individualized representation that is developmentally appropriate, free from bias, and strength based. We also recognize the unique challenges American Indian and Alaska Native youth face when they come into contact with the juvenile justice system. Where, unlike the majority of youth who enter courts in the rest of the United States, Native youth may be prosecuted in three distinct juvenile justice systems: federal, state—

Eddie Brown: Excuse me, could you hold that mic—

Nadia Seeratan: It's too low?

Eddie Brown: —just a little closer?

Nadia Seeratan: Sorry—where unlike the majority of youth in the United States, they may be prosecuted in three distinct justice system—federal, state, or tribal courts—and subject to transfer into the adult criminal justice system. We're particularly cognizant that the constitutional rights and due

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process protections that are afforded to indigent defendants in the United States do not apply to American Indian and Alaska Native youth in tribal courts. We understand that under well-settled principles of tribal sovereignty, tribal governments—and by extension, tribal courts—are not bound by Fifth Amendment due process guarantees nor the Sixth Amendment right to counsel. We believe, however, that juvenile defenders play a vital role in ensuring that all youth who enter the juvenile justice system—especially those who've been exposed to violence and may benefit from trauma-informed services—are treated fairly and protected from further harm within the system or abuses of power by judges, prosecutors, probation officers, detention staff, and other system players. Moreover, given the gross overrepresentation of American Indian and Alaskan Native youth in justice systems, given secure confinement that they disproportionately face, we believe it's critical that culturally-competent, well-trained defense counsel be afforded to these youth to challenge these disturbing inequities.

The juvenile defender is a unique role in that they are the only person in the justice system whose role it is to express the expressed interest of the child. By representing the expressed interest of a child, the defense attorney becomes the child's voice in a proceeding that is overwhelmingly confusing and frightening for young people. Although decisions of the United Supreme—State Supreme Court that afford a constitutional right to counsel for youth are not binding on tribal nations. And JDC believes these decisions, which recognize developmental science and brain science research, brings important information to bear and should provide persuasive and compelling arguments for the need for legal representation for all juveniles including American Indian and Alaska Native youth in tribal courts. So I'll start with Galt, the United States Supreme Court Case 47 years ago that provided juveniles with the right to counsel. In Galt, the court found that the child requires the guiding hand of counsel at every step in the proceedings, because the juvenile needs the assistance of counsel to cope with problems of law, to make skilled inquiry into facts and to insist upon the regularity of proceedings. The court

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recognized the unique and critical role of the defender, stating the probation officer cannot act as counsel for the child, his role is an arresting officer and witnessing as the child, nor can the judge represent the child.

Coming to more recent cases in the justice system, the Supreme Court has actually recognized the adolescent development and brain science research that has come to bear, and they have adopted that, and so I bring this to the committee's attention because these cases, although not binding on tribal courts, provide compelling information about the adolescent brain and the reasons that children are fundamentally different and categorically less deserving of the harshest punishments. *Roper v. Simmons*, *Gramm v. Florida*, *Miller v. Alabama* and *JDB v. North Carolina* have all touched on the science that is becoming overwhelmingly adopted to find that juveniles are different than adults in categorically different ways. In particular, the courts have found that juveniles have a lack of maturity, underdeveloped sense of responsibility, which engenders recklessness, impulsivity, heedless risk taking. Second, juveniles are more susceptible to negative environmental influences and pressures, including from their families and peers, and in part because minors have limited control over their own environment and lack the ability to extricate themselves from horrific crime producing settings. And third, juveniles are more likely to change in development, a child's character is not well formed as an adult.

In reaching these conclusions, the Supreme Court has relied upon the body of scientific research, confirming the distinct emotional, physiological, neurological attributes of youth. These developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds. Bearing this in mind, it's very critical the courts look to the role of the defender in ensuring that these youth are protected because the consequences of justice involvement are far reaching. Without defense counsel to argue on their behalf, juveniles face an increased risk of punishment, which may not be proportionate to the offense. This risk of disproportionate punishment is particularly high

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for American Indian and Alaska native youth, who often receive little to no court interventions or are disproportionately severe sanctions, such as secure confinement and transfer to adult systems.

Even in courts that truly believe in a rehabilitative process for youth, many well intentioned stakeholders can put the perceived need of getting a youth services, or having the youth participate in restorative justice programs over fundamental fairness for the accused youth. This can be true whether in tribal or state courts. While many children exposed to violence and living with trauma will benefit from services, the juveniles justice system does not need to be the doorway to service provision, and this is a point that I really want to put forth loudly. If a youth can be safely diverted from court systems, services should be provided for in the community. We do not need children coming into the justice system for minor offense to provide them services, which is often a risk that comes into play. True diversion does not require the filing of a petition in juvenile court, true diversion requires working with the youth in the community and providing services beyond that, because the consequences of a juvenile adjudication, even if just to provide services, are very harsh and long lasting, that may have a larger impact over all.

When a juvenile cannot be diverted from the system, defense counsel is essential to ensure alternatives to detention. Detention should only be a last resort for youth that poses a safety risk or who cannot receive effective treatment in the community. Similarly, those youth who are placed into programs or facilities that are poorly matched to their interest, are set up to fail, and likely to penetrate further into the system. Youth who are unnecessarily incarcerated experience negative peer influences, interference with critical stages of adolescent development, and an inability to engage in the very kinds of activities and relationships needed to build success in the community.

This underscores the importance of providing all children with juvenile defense counsel who must, at a minimum, be

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knowledgeable about lesson culpability of adolescence and be prepared to present mitigated evidence in support of this. Defense counsel who is prepared to provide a vigorous and aggressive defense to propose placement, services or interventions plays essential role in minimizing the harmful consequences that result from juvenile justice system involvement and delinquency adjudications.

Defense counsel is also critical post-adjudication, where a youth has been committed or is under the continued jurisdiction of the court. For American Indian and Alaska native youth who are incarcerated at disproportionate rates, their treatment within the system is more likely to be subject to harsh treatment and bias within commitment facilities. Having defense counsel who can respond to issues or complaints regarding the safety of the youth, conditions of confinement and help the client prepare for successful reentry can be invaluable.

We heard earlier from a youth who talked about coming back into the system after placement in detention and wishing she was back in detention. That's atrocious, it should never be a system where the youth feel so failed after serving time that they are unable to access and return to the community successfully, but we know that this clearly a problem, not just for American Indian and Alaska youth, but doubly so for them because of the exposure to trauma and violence that they've had.

Defense counsel, in particular, plays a crucial role in ensuring that youth understand the process that they are subject to and feel fairly represented. Youth are likely to view proceedings that adhere to due process requirements as fair and research suggests that even if the outcome is negative, those who believe they were treated fairly are more likely to obey the law and comply with requirements that are put upon them.

Adolescent decision making can be an interesting factor for youth, particularly where, although they have the right to counsel, we see in state and federal courts, for Native youth

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and non-Native youth, many youth waive their right to counsel. This is often due to different pressures that are put upon them and a lack of understanding about the importance of counsel and what the benefits can be. There are many reasons that youth may waive counsel, however it's very important that counsel be provided and youth receive meaningful consultation about the right to counsel because of the long term impact that system involvement can play. This is the case in either court, state systems, federal systems or tribal systems. Without representation, youth have to navigate this process alone, they face the higher likelihood of detention and incarceration and serious consequences, they are separated from their communities and it does interfere with their ability to become productive members of society.

I want to just quickly wrap up by talking about what needs to be done and one of the suggestions that we have, clearly, is that all youth, regardless of which system they are in, need to have a right to counsel, not a due process right to counsel, but a right to counsel based on the science that shows children benefit from representation and it leads to better successful outcomes for them.

I've provided my full written testimony to the committee, which talks about the National Juvenile Defense standards that NJDC has developed, which is a guide for lawyers to provide for the level of defense that lawyers should provide. I've also talked about training that is required to ensure that when lawyers are working with children, that they are providing culturally competent services for those clients, working with the community and ensuring that the needs of American Indian and Alaska Native youth are appropriately considered.

So I thank the committee for their time, and I just want to echo that guaranteeing legal representation will safeguard the needs and interests of youth who have been exposed to violence and ensure that they are not further traumatized through the system. Thank you.

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[APPLAUSE]

Eddie Brown:

Thank you, Ms. Seeratan. We will now hear from Ms. Iron Cloud-Two Dogs. Please hold that microphone close so that we can all hear every word.

Ethleen Iron Cloud-Two Dogs

[NATIVE LANGUAGE @ 9:35 to 9:39 – 0211D] My relatives, I greet you all with a handshake, I'm [NATIVE LANGUAGE] Takes the Robe Woman, I'm Ethleen Iron Cloud-Two Dogs, I'm from the Oglala Lakota people and I also have Crow ancestry. I'd first of all like to acknowledge the ancestral spirits and guardians of this beautiful land, I'm truly honored to be a guest here and to be a guest of the Advisory Committee. I'm the daughter of the late IstoWanjila (One Arm) and PehinSapa Win (Black Hair Woman). I'm from the Knife Chief, Bad Wound and Locke Tiospaye (extended family) and it's my responsibility to tell you where I come from. I reside in Porcupine, South Dakota, on the Pine Ridge Indian Reservation. I'm a technical assistant specialist with Native Streams Institute, as well as the Tribal Youth Training and Technical Assistance Center. I provide technical assistance to the Rosebud Sioux Tribe, Defending Childhood Initiative Project, they are one of two tribes funded under the Defending Childhood Initiative, the other is the Rocky Boy Chippewa Cree Tribe.

I would just like to echo Judge Abby's sentiment about need based funding. If there is such a horrendous situation with our children, that our children are suffering out there in Indian Country, why don't we have a Defending Childhood Initiative Project for every tribe? I don't understand that.

So I would just like to say I also speak from my experience as an education specialist with the Bureau of Indian Education, I provided technical assistance to juvenile detention centers across the country. I was also charged with checking on children and students who were placed by the educational placement program within the schools and what I found was that our children, our youth, that are in

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these centers, that are in tribal juvenile detention centers, are basically out of sight and out of mind.

There's a word in our language, Lakota language, and the word is *tehila*. When you *tehila* somebody, you cherish them, and the plural of that is *tewicahilapi*. I would really like to propose that we quit using the terminology that gives our children a very negative identity and use the strength based terminology. If we had a *tewicahilapi*, informed circle of care for our children, it would look much different. A cherished, we cherish them circle of care, we would identify them according to their strengths, their skills.

What we have found, what I have found is that in the tribal juvenile detention centers, the American Indian girls are at great risk for not receiving the needed services for what they come in with. A lot of them come in with prior suicide attempts and this is from talking from tribal juvenile detention administrators and tribal juvenile correctional officers, as well as getting feedback from the girls themselves. They need education, I've come across girls who haven't been in school for over a year, they're 16-17 years old and the last grade they completed was 8th grade and that is really—to me it's a crime, that these girls, and also the boys, are going through what they're going through without intervention from us, the community.

We really need a transformation of the system. The juvenile detention centers should be a place where healing can begin. They should be able to have the youth screening for suicidality, for their strengths, for their skills. For trauma, what have they been through; for education, for health.

Training for juvenile detention center staff is very critical, too, as far as revising and transforming the current model. I think the place where they get the training, which is in Artesia, I believe, New Mexico. Has anybody looked at that model, what kind of training are our tribal correctional officers, tribal juvenile correctional officers are getting, and how are they applying that?

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So I would just like to say that, in summary, we need a comprehensive, coordinated, collaborative and most importantly, culturally appropriate circle of care for American Indian girls and boys in juvenile detention centers. We need need-based funding for juvenile detention centers and I would just like to say that, on behalf of all American Indian girls currently in detention, my hope and prayer is that we can make a better path for them. Pilamaya, thank you.

[APPLAUSE]

Eddie Brown:

Thank you, Miss Iron Cloud-Two Dogs, for those thoughts, as well as recommendations. Before we move to our concluding panelist, I want to recognize that throughout the day we've had a number of tribal leaders visit the hearing and I want to recognize the Honorable Terry Rambler, Chairman of the San Carlos Apache Nation for his presence here today. If, at any time, there are other leaders that have not been recognized, if you would just please notify staff, so that we could recognize your attendance here, as well.

Our concluding panelist will be Mrs. Geurts.

Lea Geurts:

Thank you, good afternoon. On behalf of the Pyramid Lake Paiute Tribe and myself, I want to thank you for the opportunity to be here today, it is both my pleasure and honor to be able to speak to you today about children exposed to violence and tribal juvenile probation.

I, too, would like to start off by giving a scenario that is all too common and familiar to those of us that work in the field and work and encounter troubled or delinquent youth. Johnny is a 14-year-old young man that has been adjudicated as a delinquent offender for an assault and minor in possession of alcohol that took place at a community event and was believed to be gang related. Johnny was referred to tribal probation on a suspended sentence in hopes of providing some interventions and resources for Johnny, as this is his first time before the juvenile justice system. During the case planning process, and some investigation, the probation officer was able to develop a timeline of different instances

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throughout Johnny's life where he has had contact with different agencies.

At age four, social services was contacted because Johnny was found by a neighbor wandering the street, asking neighbors for food. Johnny appeared to be unbathed and in soiled clothing. Johnny was returned to his mother and some monetary assistance was provided to the family for food. At age eight, Johnny was referred to the principal's office for pushing other kids off toys during recess and fighting. Johnny was given lunchtime detention. At age ten, Johnny is referred again to the principal's office for cursing at his teacher and refusing to engage in classroom activities. A conference meeting was set up with Johnny's mother, who did not show up and Johnny was sent back to class. At age 11, Johnny was found by law enforcement to be with some other boys that were spray painting a local water tower. Johnny was driven home by the officer, the officer attempted to make contact with Johnny's mother, but was told that his mother was at work. The mother's boyfriend was home, but seemed uninterested in what Johnny was up to and showed little concern that Johnny had been brought home by law enforcement. At age 12, Johnny is found to be skipping class and hiding in the school bathrooms, Johnny is referred to the school resource officer, who instructs Johnny he can't hide out in the bathrooms and he needs to go to class.

One month prior to summer break, Johnny stops going to school all together. The following school year, Johnny is placed in a special class for students that have been deemed disruptive. Johnny is truant off and on and has lost any academic aspirations, but manages to stay under the radar and is promoted to high school.

Johnny continues to have issues, both with attendance and academics. Up until this year, Johnny was known to be more of a loner and not have a lot of friends, however a school teacher reported seeing Johnny being picked up from school during lunch break by kids she knows that have been expelled from school for fighting. The following weekend,

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Johnny was taken into custody for the assault and minor in possession that places him under probation supervision.

It is fair to say that Johnny, at minimum, has a history of some behavioral problems, however, when we pull the curtains back and take a deeper look into Johnny's life, we see a completely different picture. We don't see the unruly child that's disruptive in class, fights with other kids, disrespects others, and has no regard for the law. We see a victim, we see a child that's been exposed to violence, we see a child who is in a car and watched his father rob a convenience store cashier at gunpoint and because of that be sentenced to prison. We see a child whose mother has a drug addiction and struggles to provide the basic needs for her child, such as food and a safe home. We see a child who watches his mother get beat by her boyfriends and then beats him for his mere existence. We see a child who turns to extended family for solace, only to be sexually assaulted by an older cousin. We see a child that is teased and made fun of because he is different than the other students in school. Lastly, we see a child that watches a gang initiation and rather than being scared and wanting to take retreat to his home for safety, he wants desperately to belong.

More often than not, Johnny is who is referred to juvenile probation and probation is tasked with trying to overcome all of the years of exposure to violence, learns survival and the anger and distrust that has been embedded and reinforced over the years in Johnny's life.

In trying to address the needs of our juvenile clientele, tribal probation officers face many hurdles. If I were to make a list of the top three issues that tribal probation faces, adequate funding is always on the top of that list. Everyone has that challenge, when it comes to securing resources for our youth, however for the purposes of this discussion and the identification and recommendations, I believe it's important to keep the mindset of doing more with less and focusing on how we can enhance or modify resource availability with minimal monetary impact to our already struggling tribal justice systems.

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One major hurdle that I believe tribal probation officers face is standardized protocols for information sharing, assessment and referral. As we've seen with Johnny throughout his 14 years, there are multiple contacts and missed opportunities for family interventions to take place. So often a minor is placed under probation, wants to do well, responds favorably to the structure and is making progress in the different types of programming that the minor has been referred to. However, the minor continues to be exposed to the same environment that assisted him in the development of his current behaviors and at times this becomes apparent in an attitude displayed by oftentimes his parents, that either see probation as a right of passage—I was there, it's the same thing, the same road that I walked down—or for an array of different reasons, may take on the attitude well, now he's yours, you fix him. This attitude becomes difficult to combat.

Additionally, there may be other agencies having contact with the family and the probation officer is not notified. For example, law enforcement receives a phone call for a domestic violence dispute, the perpetrator may be arrested, on-site medical care provided for the victim, but the minor and the exposure to the violence, may not always be addressed. The same issue can come up when a probation officer is out in the field conducting home visits, and sees not necessarily what would fall under something that would have to mandated reporting on, but is aware of potential violence in that home that that juvenile in that home may be experiencing.

My recommendation would be the development of a tool that we can implement tribal-wide throughout our departments to help recognize these youth who are being exposed to that violence. Identify the exposure, identify how the information is reported, who the information is reported to and ways that we can assist in early detection to this exposure and increase the opportunity for intervention and will, too, assist the probation officer in making the best assessment for the

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well being and future case planning for the minor under their supervision.

The last issue I would like to discuss and make recommendations on is a limited access and restrictions to BIA funding. A perfect example to address this issue would be to refer back to Johnny. If after assessments it's determined that Johnny is in need of a multifaceted residential behavior program, there's not one accessible through IHS. The next step would be for the probation officer to secure Medicaid on the minor through the state and then follow the long process to get approval for Johnny to be placed in the needed program. This, more times than not, is a placement that results in the minor being sent out of state.

After the minor goes out of state, does well in his program, the transitional team and after care team get together and determine if it's going to be appropriate to transition Johnny home, to have a step down process, let's reintroduce him into the community. However, when we look for those resources to be able to move Johnny from his inpatient facility back closer home to the tribe, that's not available either. As a probation officer, when I contact our corrections department, I'm told that I can put Johnny back in detention and then transition him home from there. That minimizes all of the progress that Johnny's made. So again, the probation officer, we have to look to securing a state resource, a state foster care placement to assist in transitioning Johnny back home, which again, takes him outside of the community, it puts burdens on transporting him back and because of some of these issues, a lot of times we have youth that have responded favorably to the treatment and to the behavior modification programs, but they end up being dumped back in that same environment that we took them from and we're not able to adequately monitor that.

These hurdles are great and I hope that these are small things that we can do with what we have right now, that would make a huge difference in the impact on this juvenile's life. In closing, I would like to thank you once again for your time, I hope that this insight assists in the development of

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programming that is both practical and accessible in the field. I think that we've heard these stories and Johnny is not the uncommon, Johnny is those stories that I take home with me at night, that you feel helpless when you think about the outcomes or when you see that minor who's now an adult and you think there was hope for him. So I keep hope because it keeps faith and it's what keeps us going, but we have to implement changes, even if they're small. Thank you.

[APPLAUSE]

Eddie Brown:

Thank you, Mrs. Geurts. I also want to thank the panel members for the case examples that you've presented and your specific recommendations that you presented, as well. I want to turn the time now over to committee members for questions. Yes, please.

Ron Whitener:

I have a question, I think for Ms. Freemont. What's your experience been, in terms of accessing information from schools that aren't tribal schools? I see that in the work that I've done, keeping track of how children are doing in school is one of the first indications of trouble that you can intervene on, but in a lot of the experiences that I've had, accessing that information from the state schools can be almost impossible, even if the child is a resident of the reservation and a member of the tribe. What's your experience with that?

Sheri Freemont:

Here in Salt River, as you can see, we're close to outlying areas, so a lot of our community members here attend schools in Mesa, a few in Scottsdale but we also operate our own schools. We have good relationships, I think there are some formal agreements about how we will handle truancy referrals, etcetera. We like to handle any child that's domiciled in the community, that is truant, say, outside, is handled through our courts here. We also, I'm not entirely sure how it's funded, but I do believe we have designated social worker counselors that are tribally employed but stationed outside to service our community member children

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that are out there. So they're some of the critical members of our MDT's.

As housing is always a shortage, some of our families, especially the ones that may be in need, tend to be mobile, so they'll move to, say, an outside city and back and back and back, but the constant may often be that educational component, so we've built relationships, we've taught them that they can trust us and we can trust them, we'll play by their rules, as long as they service the children in their best interests. We want to make sure we're being legal and ethical, so we understand what are our boundaries for HIPAA, what are our boundaries for mandatory reporting and also sometimes you can simply get consent from the families to let us talk about your kid in an open setting and see what we can do and put together a program.

So we try to be creative as possible, you always want the stateside systems to meet their burden, too, but sometimes we just lift it up a little bit by reaching our own hands in there and doing that on behalf of our kids. Education is a place to have eyes and ears on children every day. Does that answer your question?

Ron Whitener:

Has that been the other tribes' experience, in terms of having a good relationship with the local schools that are run by the states?

Lee Geurts:

We have a fairly good working relationship, I think a lot of times when the schools are concerned, they're looking for a resource and so they'll reach out to the tribe. I think really where some of the hurdles that we face is those kids that fall through the cracks. So we have a junior/senior high school on the tribe, so sometimes we have all of these players that are wanting to assist minors and to share information, but again sometimes the parents or guardians can be very resistant to that and so sometimes it's the communication, I think, that takes place between the tribe and the state, so a parent might get upset that maybe a referral was made at our local school, withdraw the student and then six months later somebody realizes that hey, we never got a request for transcripts from any other school. Come to find out Johnny

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hasn't been in school for six months. Those are some of the information sharing components that I think we face.

Eddie Brown:

Dr. Bigfoot.

Dolores Subia Bigfoot:

Thank you. I just want to acknowledge my sister Ethleen and all of the work, and also to ask you, can you give us an update of the Defending Childhood Initiative that *Rocky Boy* and Rosebud Tribes have been involved in and what the status of that, is that a fair question?

Ethleen Iron Cloud-

Two Dogs:

I'll answer to the best of my ability. Rosebud Sioux Tribe has a Defending Childhood Initiative project that is in its third year and they may be going into a no cost extension year. What they're really focusing on right now is sustainability, is how can their collaborative partners share the responsibility of responding to children exposed to violence in the community through system infrastructure changes, revisions and development. They're also really focusing on cultural appropriateness of services, so whenever a child has experienced trauma, they put into place Lakota cultural interventions that would be applied as soon as the trauma occurs and extending that to family members, also.

They're also putting children exposed to violence on the community agenda, they have numerous communities that have officers and that have officers that are elected and they have a community chairperson's association that they can put into place standing agenda items. So Rosebud Sioux *Tribe* is proposing to them that they put on the agenda every month what is the status of children exposed to violence, do we have any children exposed to violence in the community, what are we doing about it, are we reducing it?

So they're looking at a broad type of sustainability. I can speak less to Rocky Boy Chippewa Cree, my relative and colleague, Terry Yellow Hammer is the technical assistance specialist for Rocky Boy Chippewa Cree and they are doing similar activities and programs in their community to reduce children exposed to violence rate. Thank you.

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Dolores Subia Bigfoot: And just as a note to us, I think we probably need to learn from them, since they have been implementing some of this for a couple of years, so thank you very much, appreciate it.

Joanne Shenandoah: I'd like to add on to Dee and your question, because we've been hearing from prior testimony Chief Justice Yazzie, about ancient values and this is very wonderful to hear, and I think across the board, across the nation, we're going to be wanting to hear more about programs that work. Just visiting the Salt River Child Advocacy Center yesterday was very important because I believe you're making some great inroads, Sheri. I'm just wondering, have you engaged the elders in any way, to become part of the program to help troubled youth, to be there for them? Just curious, because in the Iroquois way, we always consider our elders as the one that have the knowledge. Just wondered if any of you have considered engaging the elders, bringing them to advocacy centers or things like that, is there anything in place along that line?

Sheri Freemont: Yes, first off, primarily through the senior services program, but not just, we also have a cultural resources department, which we can also use, and then of course many of the tribal leaders or cultural leaders, we can use too. We try to support elders or seniors who are caring for their family members, so we have some programs that support them. We try and make sure the information is available, and sometimes there's been sort of forums hosted, to engage with the seniors, tribal council will have seniors only meetings or forums to kind of get their feel or their say on how should we address this or what is the impact.

But on a micro level, every once in awhile, not as often as some people might think, but every once in awhile there's a purely cultural issue that will take place in a case, maybe in the way discipline is employed or the way whether or not something is or not abuse. We had a particular incidence that had to do with whether or not a child's hair should be cut and as is true for many of our tribal communities, not everybody who serves on our team is native, or especially not from this community, and many of our tribal communities have different perspectives. So we gathered a varied group of community elders, seniors, and asked them what's the

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cultural value of hair and discipline and what does it mean? We got different opinions and it's interesting.

So we take the opportunity that when something unique like that happens, we try to say how can we train our team to be culturally competent in this area? So we don't have a one size fits all, we say this is a cultural issue, let's hear some voices, they're not swearing their testimony out, they're just saying that I, as an individual, this is what I have, and we try to add little exposures, understanding that every individual's different, every community's different. So that's the best way that we use them.

As you know, we have different religions, we have two tribes here, two different histories, different cultures, so it's sometimes difficult to say, especially in a community such as this, what is the cultural value and what has it always been. It's sometimes not as clear of an answer as some of the other communities. So we try to survey and get as best information when we can.

Eddie Brown: Any other response from the panelists on that question? Okay, please.

Matthew Fletcher: Thanks, I have a question for Ms. Seeratan, maybe it's not a question but just a statement. But I'm personally in complete agreement with the idea that juveniles should have, native kids should have attorneys at all stages, but we also heard some testimony earlier today from a worker at Hopi, who reminded us that it's difficult to get professionals in rural areas. I used to serve as an appellate judge for the Turtle Mountain Band of Chippewa Indians, which is located in northern North Dakota, and I don't know if this is true, but somebody told me there was only one licensed attorney within 75 miles of the reservation. He was the one that told me that.

I actually have a student that I'm supervising a paper for at Michigan State Law School right now, who's thinking of ideas about how to get law grads out to the rural areas, including Indian Country, and I wondered if you had any ideas or consideration of that

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Nadia Seeratan:

Absolutely, this is actually an issue that NJDC has been looking at and is working with OJJDP to develop some recommendations regarding rural and tribal youth. We recognize the difficulties oftentimes when it's four hours or six hours to the largest or the nearest city, and ideas like you suggested with law grads and looking at how to develop maybe fellowships where there are incentives to students that are coming out of school, whether it's for a year or for two years, to try and be placed into a tribal community or a more rural community, to provide those services and to spend time between law school and those early years when we have young attorneys with them, to make sure that they are trained in what is needed and what is necessary for representation of native youth and for youth in communities where it may seem that there are not sufficient services and thinking about creative ways to develop them.

Along those lines, one of the things that I just wanted to add in is the important role that defenders can play, whether or not they, themselves, are Native or they are from another community. An important part of defense for any youth is looking at their cultural environment, where they are from and working in building relationships with the community. So although a defender may not themselves be Native, they should be exploring all options within the community, as I believe Sheri mentioned in her comments, that oftentimes the person who gave her information on social history of youth was the defender, that they often didn't know anything about the background, and that is an important place that the defender can play a role in really talking with that youth, understanding where they come from, and working with the youth and their community to build resources, to find opportunities.

So it is employing creative strategies, whether it's through having young law grads or providing incentives to other attorneys from other regions for more experienced attorneys to come in and act as a tribal defender in a place. So it may be about employing creative strategies, whether for experienced lawyers or for newer lawyers, but we can start to fill those gaps and it's important to fill those gaps. I think

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that having a good cordial relationship with the communities will help to develop that and grow that need.

Sheri Freemont:

If I can also, Professor, I think loan forgiveness would be a good incentive. I know that in Arizona prosecutors, if you've served enough years as a stateside prosecutor, there's loan forgiveness programs, so I would love to see—well, first of all I'd love to see more Native practitioners, period, but I'd love to see more of us serve in our domestic capacities for tribal communities. It's easy for me to say because I work right here, and live a few miles away, that's easy for me to say, but I think loan forgiveness and intensive training programs, if there were more than just one on every other cycle year, tribal prosecutors training, if there was an actual fellowship program that taught how to effectively do a tribal prosecution or tribal defense. I've never seen a tribal defense program, they probably exist but I only hear about the prosecution ones. But I think if we could develop a loan forgiveness program, maybe a grant potential, and one of my recommendations, too, was in the grant sometimes the salaries are capped and I mean to be fair, if you want to get a an experienced, competent attorney to serve in these areas and you're asking them to live probably away from their families, if they have one, you have to compensate that so that they'll do it for those years. That...money talks is probably...you know?

Carole Justice:

Just one comment, what about a telelaw type of program, telelaw, like telehealth?

Nadia Seeratan:

Let me just comment on that, as well, and Committee Member Whitener and I have talked about this a great deal and the University of Washington Native American Law Center has made efforts to use a remote representation type project to provide representation for youth. There are a lot of issues with that and there are benefits to that, and one of the ways that the Native American Law Center in Washington has worked to that is to provide technical assistance to people who would work with the youth or represent the youth, whether that was a lay advocate or not.

Not having face to face contact with your client can interject an aspect of inability for the client to form a good

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relationship, a confidential relationship, a feeling of an advocate that's on their side, and so it is difficult without in-person representation, to actually ensure that you have an advocate that is a part of the system. When you have a law trained prosecutor and a law trained judge, but a defender who is not actually in the courtroom, there are a lot of things that could be missed. That's not to say, and I'm sure Committee Member Whitener can expand on it, but that's not to say that there aren't opportunities for remote access and remote communication with clients, and I think that that's important when a defender can't necessarily be there every day or be in person for all of their interviews. But in person defense is very important for youth who, as we all now, often does not feel empowered in these systems and it helps to build a sense of empowerment for them.

Ron Whitener:

So since that was the project that I did, I can talk about it a little bit. We did find that we tried to provide legal services to a remote reservation in Washington State where there was no attorneys for juveniles and what we found was that we weren't able to build the rapport and the trust between our clients using video conferencing. It worked a little bit, in some ways, but it had serious problems. We also had a companion program, though, that provided technical assistance to a lay advocate in a system that, again, very remote in Washington State, similar to *Hopi*, there was no housing for anyone, except for the people that lived on the reservations, so they weren't able to recruit anyone to come in and act as the attorney, so just community members acted as lay advocates.

What we did find very successful was providing child advocacy training, providing case consultation with them, having law students from Seattle doing research and giving it to the lay advocate, so that they could go in with a footing that they felt comfortable advocating. They felt that they saw significant increases in their capacity.

I think for a lot of our tribes, it's going to be difficult to get graduates of law schools who have passed the BAR, to those areas and they're still going to rely on lay advocates, but I do believe, with support, lay advocates can be as effective and sometimes more effective because of their

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knowledge of the community, than a young graduate of a law school who's going out. So I think there's a whole variety of things that we could support and provide funding for that would use all of those methods to increase the services for our juveniles.

Lea Geurts:

Just to add to that again, I think lay advocates play a vital role in our system as well, just because if we're coming in on a quasi-criminal offense, our intent is not necessarily adjudication at the end of the day, our intent is to get the minor the resources that they're in need of to get them in a better place. And lay advocates, a lot of times, are community members and people who are out there and they have the eyes and ears that can bring the values of the community to the court. The week before last, I had an opportunity to talk with Christine Fulsome Smith, who is head of the National Judicial College in Reno, Nevada, and we had that exact conversation. So one of the ideas that we had discussed was putting together modulars, education modulars, that can be free to lay tribal advocates, that they can log on online, go through the course curriculum and then at the end take examinations that they can then provide to the court that they're practicing in. So we start standardizing some of the practices and the understanding of the law for some of those lay advocates that are vital to our juvenile system.

Eddie Brown:

Thank you. This concludes the panel presentation for this portion, we want to thank the panelists for your efforts. It's obvious to now the hard work that you put in and the commitment that you have in this important effort, so thank you very much for your time.

[APPLAUSE]

Eddie Brown:

I want to remind the audience that at five o'clock we will have an open mic for those that would like to share their thoughts and recommendations and so forth, that would be at five o'clock, concluding the last panel. So right now we'd like to take a break for 15 minutes and if you can reconvene here at four o'clock. Thank you.

[END PANEL 4]