

Joanne Shenandoah: Followed by 30 minutes of questioning by the advisory committee. Panelists for our third panel, Juvenile Court Justice Judges Panel, include the following: I'd like to welcome William Thorne Jr., Appellate Court Judge, Utah Court of Appeals, (Retired). Also would like to welcome Abby Abinanti, Chief Judge, Yurok Tribal Court. Also would like to welcome Herb Yazzie, Chief Justice, Navajo Nation Supreme Court. So in that order, we'd like to take your testimony. We will look forward to hearing it. And, of course, we will respond once you all have completed your testimony. So please welcome William Thorne Jr.

William Thorne Jr.: I was just teasing my colleagues it's been a long time since I was the junior lawyer at a table. I appreciate the chance to be here with you this afternoon and I've submitted written testimony. And I hate it when people read things to me, so I'm not going to read it to you. What I hope to do is talk to you a little bit about the fact that I think we need to change directions on how we help the victims, the children who are exposed to violence.

For several decades now, we've talked in terms of federal legislation that talks about safety being the paramount value, safety being the utmost value. I think that's wrong. Safety is necessary, but safety is a subset of well-being. If we truly believe that safety was the paramount value, we would put our kids in plastic bubbles. No one would touch them. No one would communicate with them. No one would harm them. But that can't be what we do. Instead, I would propose that well-being is the paramount value. And safety is a subset of that. Safety is a part of that. Safety's necessary, but it's not sufficient. It's not enough by itself.

Our goal should—instead of just simply suppressing conduct, should be to heal the victims. I mean, in my 34 years as a judge I've seen second, third, fourth generation kids coming out of foster care. And they're coming out of foster because we didn't do a good job of healing them. We took them away from their families. We removed them from the harms that they were exposed to. But we didn't heal them. It's very much like saying, "Just in case." Well, when you check into a hospital, you don't expect them to amputate

your leg just in case. When you have an eye infection, you don't expect them to take the eye just in case. When we take children from their families and we take children away from their communities just in case, what we've really done is set up the next generation of children to come through the system.

I think what we have is a direct result of a hundred years of the boarding-school philosophy, then translated into removal philosophy, and then the predominant notion in this country of removing children as a way of intervening and solving problems when the family has problems. We take them away, but we don't heal them. So that when they become parents themselves, they are not equipped. For good reason most of us parent the way we were parented, including the fact that some things happened to us that we swore would never, ever happen to our own kids. But I still hear my father's voice come out of my mouth sometimes. And that's scary. We parent as we were parented. Well, when we put kids in boarding schools, where do they learn to parent? When we put kids in foster care, where do they learn to parent? How do they learn to cope with the struggles when they've never seen an adult struggle with problems and overcome them? I mean, the hallmark of a good employee is you don't bring your personal problems to work. So the kids who have been removed, they never see an adult struggle with a problem and overcome it. They see that when an adult has a problem, they disappear.

It shouldn't surprise anybody that, in our communities, we have problems with substance abuse. We have problems with people disappearing into a bottle, or literally disappearing, when we don't have a chance to heal the kids who come from troubled homes. And please understand this is not to say I would willingly expose kids to violence. That's not what I'm saying. But it's like exposing kids to smallpox; you would never do that willingly. But if they're exposed to smallpox, thank God there's an inoculation. Well, there is an inoculation for these children and that's resilience. Study after study have shown that kids who seem to survive the very worst physical abuse and sexual abuse, some of those

kids come out whole at the back end. And what those kids have in common is resilience, the ability to be whole.

Well, we know now what creates resilience. Resilience are connections with family, with community. It's not just one strand. It's a network of people that that child can then surrender that hypervigilance we heard about this morning. They can surrender and let somebody else care for them as they are children and they can heal. And they can see what it's like to have somebody care for them—not because they're being paid to care for them like a foster parent, but because they're connected to that child. Permanence is not a judge's signature on a dotted line at the end of a court hearing. Permanence is in the eyes of that child who knows, when they're in need, they can expect that these people will respond to them. It's the child's perception of that permanence, that's what creates resilience. If we can build out that resilience in our communities, when they are exposed to violence, they were surrounded by a network of people who care.

I mean, even Attorney General Holder's taskforce on violence in their 2012 report noted the positive benefits on children exposed to violence. And there they were really talking about inner-city, hardcore violence; the positive effect of being surrounded by family and community who care. Removing them is not the answer. Removing exacerbates the problem. We know from brain research that when cortisol, that hormone that floods your body when you're under stress, the brain literally will not grow. So when we take children out of a violent situation which is bad and we put them with strangers in foster care, we've just exacerbated the time period that they're exposed to cortisol. We've exposed longer to the fact that their brains will not have what it needs to grow. So if we can build that resilience in before they're exposed to violence, when we strengthen the communities and strengthen the families and the children know they have a network of people they can call on, then we have inoculated them.

But for some children they won't have that inoculation, so we ought to be focusing after the fact on connecting them to

family and kin and communities where they know they have some adult who cares about them, who's willing to speak up for them, is willing to protect them. Because we've seen the result of what happens when we remove kids from bad situations and put them in foster homes. I mean, the statistics are just awful. Much less if they happen to grow up in foster care and never have a chance to go back to family. Sixty percent of those kids are homeless, in jail, or dead within two years. That's not a good outcome for those kids. We need instead to be going back to the values and the traditions of our communities where relatives were/are responsible for each other, where neighbors were responsible. Where it wasn't that if I knew somebody was being hurt, I would necessarily want them to be in jail. But I want somebody to intervene. I want somebody to stop the hurt. I want somebody to heal. And the perpetrators often have their own stories.

And I have to echo what President King said before, no child's a throwaway. Nobody in our community should be considered a throwaway. One of the things I learned early on as a judge is sometimes people literally have to hit bottom before they can start to climb out. We should never give up on somebody. We can still intervene. We can still make sure the violence doesn't continue. But we don't and should never throw away kids. We need to restore those connections that were broken up by the boarding schools, the policies that followed that. Western science supports traditional tribal notions. I mean, it's amazing that the brain research has now come around where they recognize that the best factor for bringing the cortisol level down are connections with caring adults. It's the tribal traditional values of being connected. Western science has finally gotten to the point where they recognize tribal traditions have value and we need to be implementing those things. Our current situation, I believe after 34 years on the bench, is a result of those broken connections. So, thank you.

Joanne Shenandoah:

Thank you very much, Judge Thorne. Your words are wonderful and very clear that you care very much about our children. Thank you for your testimony. And now we'd like to hear from Judge Abinanti.

Abby Abinanti:

Good afternoon. My name is Abby. And at home, as I said in my written testimony or just about anywhere, people now call me Judge Abby. I'm back on the bench part time in San Francisco and the rest of the time I'm at home as the Chief Judge. This morning when I said my morning prayers, I was saying, gosh, I wish I wasn't so old and cranky, but I am. I didn't want to be cranky today, but I am. [CHUCKLES] So what I have to say is somewhat influenced by that.

I wanted it to be different by this time. We've all known each other, the three of us up here, for a very long time. And we all recognize we're almost done. And we've tried really hard for a really long time. And we haven't, in many ways—these guys, they've done a lot. And we wanted to do so much more, you know. And I look around and I say, okay, what's the difference, you know, what could we have done or what should we have done? And how come in this country, how did we—we, in our own country—become so invisible? What happened? You know, how are the cries of our children not heard; our women, our men, our boys? I don't understand. I really don't. I've lost my ability to understand that.

I thought—you know, at home when I'm a judge, what I tell all the people that work for me—and even the ones who have been trained in the colleges and like I have—you know, what's important is to remember the values of our people, remember the values of our villages and, from those values, develop practices for these days. That is way different than following all the rules that I see in all the government programs and in CTAS and trying to compete for money. You know, and I'm here at this conference or at this hearing and I'm writing back to my program administrator who is thankfully smarter, younger, and not cranky. And we're sitting there trying to get our grants ready and knowing, you know, if we win then 500 other people—555 other people lose, you know, in other tribes. And that's not right. I mean, I know it's not right and I don't know how to stop it.

You know, I want it to be different. I want there to be less—you know, you have to qualify and to qualify you have to

have TA and then after you get the TA, then you have to have a strategic plan. You know, for the first six months I heard stakeholders, I thought it was the same thing as the kids talking about the vampire stuff, you know. And it's just like I'm always trying to catch up. And now we're always trying to catch up. And we are different and we could do it different. And I think having sat as a state court judge as long as I have and now being asked back to my home court—which is in San Francisco—because it's gotten slightly behind, I see it doesn't even work for them. You know, it doesn't. It really doesn't. And if you would just do—well, now that Bill called him President King, I'll have to call him President King, too—but what Tracy said was true, just give us the money and get out of our way. You know, I don't know how to say it. I'd like to say it in a nicer way, but I don't have much left in me to do that. You know, it is a different way. We have a different way of doing it.

All the rules and all the time—every time, like NCIC, every system that you have, it's always, oh, we forgot to put in the tribes. Oh, we forgot to put in the tribes. I mean, how can you be that forgetful, you know, and still walk around without slamming into walls? I don't know, but you manage. You know, and it doesn't seem right to me. I want to tell one story and it's about the differences. They said—they came into my office, somebody said—Lena, a grandmother, and she said, you know, they put out a warrant for her granddaughter. And I said, “Well, how old is your granddaughter?”—because everybody knows this gets to me. And she said, “Well, she's 11.” I said, “Well, how long has she been missing?” And she said, “A week.” I said, “Well, they can't find an 11 year old in a week, for crying out loud?” I said, “Well, wait till after work. I'll come and get you and her auntie and I'll take one of our probation officers,” because it was up in the town. I said, “I can't believe I can't find one little, scrawny Indian kid in a week.”

So we went up there and it took us a couple hours, but we found her. And I got out of the car and I yelled at her. And she started to run and then her grandmother got out of the car and yelled her name and the kid stopped. And I said, “You were right to stop.” And then I knew, too, you know,

that our way is better. Our way can work. I said, “Your grandma called you and you did the right thing. Now go get in the car and we have to face this. I’m going take you to probation and then you’re going to get locked up and then we’ll come and take you home after a while.” You know, and that is different and you don’t see the state court judges running around doing that, but that was—she—you know, Lena came to me. I’ve known Lena all my life. And the kid’s now living with her grandmother. Then I went out and looked for her daughter the next night, you know, who was stoned someplace and I talked to her. And, you know, the thing is to go back over and over and over.

And what I tell our case managers and people in the field is that, you know, it’s a lot harder to be a drunk in the gutter than it is to go over and give somebody a hand. You know, they didn’t plan it to be this way. They never meant for their life to go this way. And it’s hard to be a drunk and to die like that and to be in there. And if they want to try again on a day, then the least we can do is help them try. You know, and I don’t care what the rules say. I don’t really care. I care if I get caught at it, you know, because I don’t want to lose funding. But I do want us to not lose our hearts in what we’re supposed to do.

You know, in the written stuff I wrote a lot of things about, okay, here’s the recommendations and here’s what you need to do and there’s all that stuff. But the truth of the matter is, if you have the will and the will to get the money and channel it there and quit making it, you know, all the competitive grant stuff—you know, I don’t know where that came from. It’s a horrible process. You know, to me, it’s all needs based. I don’t go to my nieces and nephews and only give to the ones that are strong enough to beat the others. I mean, I don’t know who behaves like that. I really don’t. You know, if there’s a need then you share equally what you have. You don’t just act like that. And it’s the whole process and how it’s been set up, to me, doesn’t seem right. You know, and we’ve gotten into it and we do it because we don’t have any other choices, but it doesn’t make it right.

And I guess if anything could come out of this, the government, you know, it's talking about violence and it's easy to look at somebody and say, okay, this was a violent thing, you know, if somebody got hit or somebody got run over or, you know—I've seen a lot of horrible things and people act in horrible ways. But the funny thing is, in all of this, I've only seen maybe one or two really truly evil people. And I've seen a lot of people in my life. I've seen people do really horrible things, but I haven't seen a lot of evil people. You know, and so that can be stopped. And it needs to be stopped and we need to have some way of going, okay, here's the need. Here is a way for us to try to work with trauma in a community. And each community has a right to be trauma-free. Each community has a right to have all of those issues addressed, you know, not mine over Bill's, over—nor the Chief Justice's committee. It's not like that. It wasn't supposed to be like that ever. You know, and that's what it's come to.

So I would think that if the government could stop creating the violence or the—it's like creating a situation or an environment where violence is okay, you know, and where it's encouraged. And you create this set of rules that allows it. Because all the studies—and I mean I read the studies, too, and the only thing I was ever really good at in school was reading. I can't do math, I can't do languages, I can't do science, but I can read like whatever. You know, so I read everything. And I understand that a big cause of this problems in our community, a lot of it comes from poverty and lack of opportunity. And as long as that's there, then these other symptoms are going to pop up. And that's what this violence is, it's a symptom. You know, I know my people. I know the River. I know what we're taught. I know what we believe. I know who we are. And this is not who we are. You know, it is who we have, in part, become.

But if we can get that out of us, the things that poverty brought, we can return the values that sustained us for hundreds of years. There's no reason not to. You know, we've only been doing this part for a relatively little time. And it can fade from the memory of the people if we have the will and if others who have the ability give us the will to

get back in control of our situations, you know, and not to always be running around trying to beg for money. You know, I don't like it. I've never liked it. And I don't really have the manners for it, as Bill has told me over and over. [CHUCKLES] I'm working on my manners, though, you'd be happy to know. [CHUCKLES] He said—actually he said last night, he said, “I did written testimony, too, and mine's much nicer than yours.” And I said, [LAUGHS] “Well, what else is new, Bill?” So with that, I'll close. And thank you for listening.

Joanne Shenandoah: Thank you very much, Judge Abby.

[APPLAUSE]

Joanne Shenandoah: Thank you for your voice. And the message of return to values is a very important one, one that we have been hearing a lot about. And we are taking that to heart. So thank you for your dedication and your service. Next we'd like to hear from Chief Justice Yazzie from the Navajo Nation Supreme Court.

Herb Yazzie: Thank you. Yá'át'ééh. I'm not sure whether you can hear me with—I'm hearing echoes over here. Anyway, Yá'át'ééh. My name is Herb Yazzie. I speak to you today from experience, over 30 years of being a lawyer practicing in Navajo Nation Court, other tribal courts, state courts, and federal courts. Thirty years' experience of dealing with problems arising within families. And I come to you hoping that you will hear us. This table has close to a century of experience. And you will notice there's a common theme. In lay terms, we encourage active, aggressive practices of breaking the cycle. I personally come to you with a sense of dread because we come through our experience to recognize we are at a critical stage. All Indian Nations are at a critical stage because the young people that we talk about, will they be—in five years' time, ten years' time, twenty years' time—be speaking our language, know the value system of our nation? Will they have that compassion, that love for their relatives? That's why we're here.

Now, I'm a Navajo, Diné. In our language, the full name for a Diné is Nohookáá Diyin Dine'é. It's an acknowledgement of our relationship to the Holy People. We are here today talking about our young people, sacred people. And the sacredness is not acknowledged, not recognized by the American legal system. It simply isn't. That's why we say that the ancient laws, the ancient principles, the ancient practices, have to be acknowledged by the governments. And I talk not only of the federal government, the state governments, but our own Indian Nations. They have to acknowledge that.

Now, I come to you with this hope that you will openly acknowledge in your work that there are ancient principles, ancient laws. Throughout the day I've heard about the federal government's view, the federal government's hope. And I hear phrases that is disturbing in that, for example, that we have to come up with educational programs for kids in jail. That we have to find out data, we have to search for data, where are our kids? Well, it shouldn't really be about that. It should really be about how do we break the cycle? Not only the cycle in individual families, but the cycle that all governments seem to be engaged in. And when we say let's find educational programs for kids in jail, I read it as an acceptance that kids can be put in jail, should be put in jail. And through my experience, you will never break the cycle if you do that.

My hope—I have hope because someone said earlier today, they see how this current administration under President Obama seemed to be thinking outside the box, searching for alternatives. I would be blunt in saying that the American criminal justice system is inappropriate to be applied to young people. The flip side of that statement is that all governments, all the governments we're talking about, should change their laws and their habits. You do not apply criminal concepts to young kids. You build this cycle, you perpetuate something that does not work. So I encourage you to seek ways to break the application of criminal law concepts to young people.

Now, these young people—I've been around long enough and I've talked to different Indian Nations enough to note that I can summarize this feeling by a statement from the co-chair this morning that when you come seeking to help your young kids, you lay your weapons down. You don't approach it in a punitive manner. That's the American system. And we all have personal and tribal horror stories that we can share with one another. But those of us at the table who practice law for this many years, who've seen the impact of applying punitive criminal measures to the behavior of youth, how pathetic that is. We've seen that. And I guess when you come to our age, there's this frustration that sets in and we have to speak rather bluntly. We have an opportunity here to truly help. Instead of sending out requests for proposals as to how to lessen the impact of a kid being in jail, how to educate the family, we should be prioritizing all that money for how the ancient laws and the ancient principles can be taught by the nation itself. We cannot, for the sake of our kids, our nation, continue to perpetuate a failed system.

Now, the historical trauma that we have mentioned throughout the day, yes, it is there at a tribal level, at an individual level. But let's not kid ourselves, that's not a matter of the past. It's happening today. And it will continue to go on unless we put a stop to it. We got to break the cycle. We talk about finding our kids. Well, from my perspective, the governments—all three levels—are still stealing our kids. They're stealing our kids. How do we get them back? We want them back. They are, in our ancient principles, not disposable. That's how we have to—we think you should approach this concern that you express. Now, decriminalizing or not applying criminal concepts, punitive concepts in which detention comes with it has to be forth—for—it has to be at the forefront.

Now, these ancient laws, these ancient principles that I mention, the acknowledgement of them, we hold those laws dear to our hearts because we know they work. And we make a judgment call that the criminal justice system doesn't work. And if we have a common—all these governments, they have a common goal, an orderly society. We can agree

on that, that there should be an orderly society. It's how do we do it? How do we reach it now that there's been so much abuse of our kids? Like my colleagues here say, you have to treat it. You don't treat the concerns and the issues of family by locking people away. And so let's put our weapons down and let us practice what these ancient laws say to us. Thank you.

Joanne Shenandoah: Thank you very much. I'd like to thank you all for your words, very well said.

[APPLAUSE]

Joanne Shenandoah: And we are listening and we are taking this to a debrief meeting tomorrow the entire day. I'd like to say, just at this juncture, I would like to invite the panel—or not the panelists, but I'd like to invite the advisory committee for questions, but I want to answer that just briefly because we have such an amazing taskforce. People from almost all walks of life, but who really care, who are extremely dedicated. Now, I am 200 years away now, seven generations from Chief Shenandoah. The land that I live on is where he died at the age of 110. And he began what they call the Oneida Academy to help our youth become educated, but it turned into Hamilton College today. And I have to say this is very amazing because, of the violence that we've experienced in our life, this place where I lived used to be called Head on a Pole during the Revolutionary War. So this is only 200 years ago. We have a lot of healing to do and we are making great progress. And I am so grateful for all of your testimonies. I want to give you another hand. It was so beautiful. Really, thank you. If you will join me.

[APPLAUSE]

Joanne Shenandoah: We appreciate your dedication. And I would like to open it up now to the advisory committee to please ask questions.

Female 1: This question is for Judge Yazzie. Could you give an example of how you would apply the ancient law in a situation with a youth on your reservation?

Herb Yazzie: Here I'm going to speak from experience from interacting with many Indian Nations, many elders from different nations. And I would summarize all of that by the way I see it best described, ancient principles. These are sacred human beings entrusted to us temporarily while they are on Earth. Therefore, treat them as sacred beings. That's an ancient principle that I think is applicable to all Indian Nations.

Joanne Shenandoah: Are there other questions from the advisory?

Abby Abinanti: I just wanted to add onto what Judge Yazzie said, too. As an example, when—like if I have a young person in my court, I will sit down with them and ask them to bring family with them. And we look at the police report and we analyze it. And I talk to the youth and the family and I ask them what went wrong on that day or how I could help and what other kinds of help they would need. You know, I'm not really particularly interested in settling the crime or whatever the crime was, if they shoplifted or if they vandalized—I mean, we have a situation now where a bunch of kids vandalized a house—and what we'll do is we'll sit everybody down and try to figure out how come this happened that way and how are we going to fix this and how are we going to make this right? You know, that's what we do and it isn't—I don't ever ask them, "Are you guilty or are you innocent?" I say, "Do you want to talk this out? Do you want to make this right?" And probably 95% of the people—youth and adults who are given that choice—say, "I'd just as soon talk it out and try to make it right." We have very few trials. It's just about how do you make this right? How do you make this right?

William Thorne Jr.: I'd like to add reverse example. In state court, I have seen children terminated from their parents because their mother was a victim of domestic violence and the children watched. And so the children were taken from both parents, from the mom because she couldn't protect the children from seeing what happened. That's how perverse our system has become. So instead of connecting the children at least with the nonviolent member of the family, preserving that, building that, they're terminated and put with strangers. That's absolutely backwards.

Joanne Shenandoah: Thank you. We have approximately another few minutes here if—I think, Dee, you had a question?

Dolores Subia Bigfoot: Yes, I sort of have a statement question and I'm not for sure how to formulate it. So—and this is for Judge Yazzie, but anyone can respond—so as we think about the sacred trust of children and we think about that they are sacred, the—I can't imagine a federal court using those words in some kind of decree that might be written. But I think when we consider—when we talk about being culturally based or culturally competent or having cultural integrity, then the understanding of sacredness becomes much more to our hearts and that—I think many of us here would agree that that resonates with us much more so than a parent-child attachment. And so how is it that we would be able to bring these holy words so that we could really not only have the, you know, understanding and the values of those ancient practices and those ancient ways, but so that the true spirit of that. And I think that, you know, one of the things that is really challenging is to bring in the spirit and the sacredness of those relationships. So any guidance in that way would be helpful.

Herb Yazzie: To hopefully explain what we're saying, there's a—we use the word "justice" a lot, the English word "justice." And I would venture to say all of us have a different sense of what justice is; every one of us. To try to generalize from the Native perspective what justice is, it is to restore that young man, that young lady, back to the sacred path that they should be following. It's always restoration to the family, to the community, to the Indian Nation. That always has to be. Now, all of the concepts under American criminal justice is diametrically opposed to that. I know I'm overgeneralizing, but it's to punish—not only when it would come to kids, it's really to punish them over matters they had no control over. They have this history. They got to live in this environment. How much control do you think they have over that? They don't. So you're punishing them for being in the wrong place at the wrong time. That's how I would put it.

[APPLAUSE]

Abby Abinanti:

I just wanted to add, what we would do as a term of practice and what I tell our staff to do is I know best practices. I've read best practices. You know what it is to be an aunt. You know what it is to be an uncle. Go out and do that and I'll cover the best practice, you know, part of it. Because that is what I need from you and that is what they need from you. Now, you know, these people have come up with all these rules and, you know, we've got some smart people back in the office and will cover, but just go do that. Go and get it done. And that—I think that's how we change the practice and what I would say from the bench. I'd say just go do that or if it's—we're very gender based and we're dance people—and I'll say—you know, in the summer I'll go, "Go to men's camp this week and then come back and we'll talk," you know, "And bring somebody from there with you. And if it's resolved, if the men—if you men resolve it, then I'm fine with it." You know, so you have to know what you're doing, but it's really everybody that is there, for the most part, does know what it is to be an aunt or an uncle. And I was saying to somebody, you know, earlier, it's just like when I had trouble with my daughter and she was—had pushed me to the edge, I just threw her in the car and took her home and dumped her off at her uncle's before I strangled her. You know, and then that was—he talked to her and then that was it. You know, and that's what works. That's the practice, you know. I wasn't really going to strangle her.

William Thorne Jr.:

When I talk to people about the approach they should be using, I use something similar except I call it the grandson test. If my grandson were involved in the system, no would not be an option. Failure would not be an excuse to stop. There is no stopping. There is no failure. Again, like President King was talking about, children don't fail. We may fail to give them what they need, but that fault is because we're coming up with the wrong solution, not because they're incapable of being helped. If I'm going to demand the best from my grandson, how could I sleep at night if I'm willing to accept less for your granddaughter or your son? If the system ought to be judged by my grandson, I ought to demand that for everybody's grandchildren when they end up in the system.

Joanne Shenandoah: Thank you so much for those words, all of you. I think we have time for just one more question. I think Lieutenant Governor Keel had a question? He's good? You pass? Anybody else for one more question? With that, we'd like to thank you for your testimony. It's been very well accepted, I can tell, from our committee here. And Godspeed, may Creator continue to bless you in your work. [NATIVE LANGUAGE @ 1:12:01 – 0211C].

[END PANEL 3]