

**Panel 1: Overview of American Indian Youth in Tribal, State,
and Federal Juvenile Justice Systems – 02/11/14**

Addie Rolnick:

Thank you, Senator Dorgan, and members of the task force, for inviting me here today. I want to thank the Salt River Community and President Enos for hosting, the Tribal Law and Policy Institute for putting together the logistics, and to thank Assistant Secretary Washburn, the tribal leaders here, and all of the normal people who showed up to talk and to listen about this issue.

My job is to kind of sketch the map of what we're talking about when we say, "the juvenile justice system's response." That's pretty complicated, actually. Some of—so I have this policy brief that I wrote several years ago. And, sadly, there hasn't been a lot of updates in statistics since then. So I'm not going to spend a lot of time on numbers. What I know is in here. There are extra copies if anybody wants them, but I know the task force has them.

When we talk about the juvenile justice system's response, we want to figure out what we mean by "the system." So for most youth, when we're talking about the juvenile justice system, we mean the state system in whatever state they live in. For Native youth, depending on where they live and what they do to get involved in the system, they may come in contact with a tribally-run system, a state-run system—and, of course, there are many different state- and tribally-run systems—or the federal system or multiple systems at once.

Which makes the task of figuring out what's happening to them and what should happen to them much more complicated. So I'm going to tell you—instead of talking about numbers, I want to tell you what I know about the strategy for building effective juvenile justice systems. And then I want to tell you a little bit about what is actually happening in terms of Native youth, which doesn't go along with the strategy for building effective systems.

And some of this is drawn from academic research I've done, but I have also spent years working with tribes, both lobbying Congress agencies, and then at the tribal court level, building tribal institutions and then trying to get resources to assist in those. Focusing mainly on building

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effective juvenile systems.

So what should happen? The strategy for building an effective juvenile justice system goes something like this: You assess the needs of the community. So, you look at the youth. You look at the types of offenses they're committing. You look at the risk factors. You look at the things that lead them into delinquency. And you look in particular at the unique issues faced by a particular community.

So for many youth, we know—for basically all youth—we know that things like childhood victimization of any kind can lead them into delinquency. For Native youth, we know some more particular statistics about the incidents of childhood victimization and also about historical trauma that I'll talk about in a minute. So you look at the unique needs.

Then you look at other things that might inform the needs. So you look at jurisdictional limitations. You look at particular resources that do or do not exist in the community. You look for structural gaps. You look for what you can use. So you look at the community and you look at what's there.

My favorite example of this is still I worked with a community up on the North Slope of Alaska. And one of the things that we did when building a juvenile system there was to use the whaling captains as sort of a mentoring program. So the community had whaling crews. And the whaling captains were highly respected. So we didn't need to import another structure when trying to come up with a diversion program.

And then you design a system to meet those needs. So it should include—when I say a "system," it should include all aspects of a system. So not just a jail. Not just a court. Early intervention. Community alternatives. Prevention. Treatment. Alternatives to incarceration. A whole range of mental health and substance abuse treatment. And then if necessary, varying levels of secure facilities. But only at the end. And then, of course, courts.

And there's broad agreement among many people in the

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juvenile justice community outside of Indian Country that incarceration should be the last option and it should be used sparingly for all youth.

Then you seek funding and you seek partnerships to try to fill in the needed infrastructure. This is anything from staffing to buildings to actual programs. And here one of the things that I've seen is often what you have here is tribal—someone on a tribal council, they get together and they're trying to build an effective juvenile system. To expect members of a tribal council to be experts in juvenile justice policy doesn't make a whole lot of sense.

I think I've encountered one person who happened to be a chair and a juvenile justice expert in my work. And so it's important that the partnerships are out there that the council members can seek when they're trying to build a system according to their needs that will support what it is that they want.

Then you borrow best practices from other tribes and from non-tribal communities. And then when you do a good job, you share them. So that's what it should look like. Now, all local systems will be different. But when looking at national patterns regarding Native youth, we can identify a few of these factors in more detail.

So we know that Native youth have very high rates of violent victimization and exposure to violence. We know that they have high rates of suicide and other mental health issues. We know that they have rates of alcohol and drug abuse. We know that they're overrepresented in arrests for alcohol and drug offenses and low-level offenses like running away.

We know that they've suffered from historical trauma. And I mean two things here. I mean sort of generalized historical trauma. These are communities that have suffered removal, targeted killing, wars, disease, rapid loss of culture, and loss of language. But also more specific to youth, the historic trauma that comes from boarding schools and the foster care policies that led up to the Indian Child Welfare Act.

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This is a story of education being explicitly linked to assimilation. A story of forced change and rehabilitation being accomplished through violence. And a story of facilities modeled after military camps. And a story of disruption of family and cultural transmission.

We also know that Native youth are overrepresented in the most restrictive placements and the most restrictive interventions. And finally we know that many tribes lack a full range of community-based options. So, having mental health professionals available to use in a system can be difficult.

So, looking at these needs overall, what kind of a system might they suggest? Well, a system that has trauma screening and mental health care. A system that places drug and alcohol treatment at the center. A system that responds to the historical circumstances of Native youth in the following ways: Repairs families. Restores culture. Avoids military-style discipline. Avoids violence to every extent possible. Avoids removal from the home to every extent possible. Responds to the trend of over-incarceration by taking care—extra care—to avoid reliance on any kind of detention or incarceration unless it's absolutely necessary.

Prioritizing intervention and treatment services. And building facilities that are needed for that, instead of building jails. So, building runaway shelters. Building mental health treatment facilities. And then investing in community options outside of detention and outside of even treatment facilities.

And then the final piece is actually I think a little bit harder to think about in this context. It's easy to talk about not criminalizing youth. But I think it's also important that these systems resist the temptation to over-criminalize even the adults who victimize the kids. So we know a lot about how intergenerational trauma has caused the problem that we're here to talk about today. We have to seek solutions that don't overuse prosecution, jail, and disruption of families in order to address it.

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So, if that's what should happen, what has actually occurred? Here are just a few examples. So we know nationally that Native kids receive too little and too much. There's a lack of protection. And then when anyone is paying attention to what's going on with Native youth, they receive the harshest sanctions, disproportionately. And when I say the harshest sanctions I mean removal from the home, secure detention, and transfer into the adult system.

This is especially alarming in light of the particular historical and current circumstances of Native youth. A couple of examples—and this happens at the state level, the federal level, and the tribal level. So in South Dakota there was a facility—more than a decade ago now, I think—with a large Native population, but it was a state-run facility. And they were actually placed under a consent decree after a court got involved, for how brutal their practices were.

And even after they had a camera installed because of the consent decree, they were able to make a whole movie of these detention facility personnel putting on riot gear, throwing the kids down spread-eagle, chaining them to the beds. This is after the cameras were installed. And this is a facility that is largely made up of Native youth.

So knowing what's happened in terms of the boarding schools in Native youth's history, why would they be in a facility like that?

In Wisconsin I worked with a tribe where their kids were coming into the state system, and the tribe would opt—would recommend that they go to some sort of community-based option. Some sort of probation. And invariably the state would override whatever the tribe was saying and send the tribe to the—the kid to the secure detention whenever possible.

We've seen BIA facilities where there's no guarantee of placement close to the youth's home. We see the use of regional facilities. Arizona and Colorado is the closest you can get for most tribes where I live in Nevada. So that's very

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far. We see mental health and substance abuse treatment handled through a separate agency with a different priority system. So you can't really build a juvenile system and a mental health system at the same time. You have to go on the IHS list and the BIA list.

We see educational services in BIA facilities lacking or subpar. We've seen facilities that are left to rot because tribes wanted to build treatment-based facilities, and the bureau refused to run a facility unless it was upgraded to the highest detention level. So we've seen empty juvenile facilities because the tribe and the bureau can't agree. And here the tribes want treatment. The bureau is pushing for something harsher.

I saw a tribe constructing a secure facility in Alaska. And when I talked to the youth and said, "What's happened to you when you've gotten in trouble and what has worked?" they talked about a place called Raven's Way in southern Alaska that is sort of an Outward Bound model. And it's focused on substance abuse.

So all of the kids in this community had experienced that and thought it was a really good model. And the tribe was building a secure detention facility instead.

In the federal system, there's no designated juvenile facilities. Kids are placed instead in contract facilities, usually state- or locally-run. I don't think that they're usually tribally-run. There's no way to track the programming or the services they receive. And because there really is no federal juvenile system, there's no emphasis on the kind of care that juveniles need.

We've also seen double prosecution. So it doesn't violate double jeopardy for two sovereigns to prosecute, but there is no need, when there's such a lack of law enforcement and prosecution on reservations, for someone to prosecute a low-level crime twice. Especially where the tribe seeks rehabilitation and then the federal prosecutors come in and sentence them to secure detention.

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We've seen the use of military-style, sometimes run by private companies. And we've seen schools run like prisons. So in 2003 there is a story—I don't know if any of you remember it—of a girl who died at the Chemawa Boarding School. And she died because she **was** drunk, and they put her in their jail as a detox. And the BIA was faulted for her death. They were faulted because they knew, the investigation found, that there were poor detention conditions.

But the fundamental issue here is, why does the school have a detention center? Other kids are sent to boarding schools. They don't have jails in them. So there's a real problem with the way the whole system is being run and the focus on jails.

The reasons why this has happened, I think the main issue is a lack of policy and oversight, which is why I'm glad this hearing is happening. This is complicated by the role of three different jurisdictions. For each jurisdiction there are additional factors that lead to the lack of policy. In the federal system, again, there is no juvenile system. It is basically a patchwork system where the policies that do exist have been driven by an imagined predatory interstate drug offender, and not by the needs of Native youth.

For example, there's a lower age of transfer into the adult system that was driven by this sort of fear of predatory juvenile criminals. And it's actually Native kids that are mostly in the federal system.

In the state system you have multiple jurisdictions. There's no requirements that states involve or even talk to tribes in their jurisdictions. And no requirement that they make any plans with Native youth in mind. And on the tribal level, the policy is set sort of piecemeal at the agency level. It's informed by law enforcement and prosecution, but not by any of the other sides.

There's very few links to juvenile policy organizations focused on non-detention alternatives. I have had several

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community-based and nonprofit organizations that work outside of Indian Country come to me and say, "We're trying to do something to get kids out of jails. We can't find tribes to work with. We're trying to increase educational opportunity in detention facilities. We'd like to find some tribes to help for free."

So the fact that there's no link between these organizations that actually want to support what tribes are doing and what tribes are seeking is a real problem.

So the overall story I've seen—and I don't usually like to say tribes are doing wonderful things and everyone else is hurting them. I think that's an oversimplification. But here it's almost true. So, the needs that I have seen tribes express have much in common with the best practices in juvenile justice. Non-detention, treatment, community-based options.

But tribes over and over again are thwarted by federal policy or lack of federal policy and by interference by federal and state official. So federal-level recommendations need to support the innovations tribes are doing. They need to build bridges with organizations that can help that. And they need to make states listen. So if you take one thing from here about a recommendation, that's what I would say.

I know we're going to hear a lot of recommendations from the task force about strengthening tribal systems. So I'll let them talk about that. And I look forward to hearing more from the audience and the other people who will testify about best practices that are out there now. Thank you.

Byron Dorgan: Professor Rolnick, thank you very, very much. [APPLAUSE] And thanks for all of the work that you have done. Professor Goldberg?

Carole Goldberg: Actually, I'm going to defer to my colleague, Judge Pouley.

Byron Dorgan: Judge Pouley, you may proceed. And I failed to mention that there is someone down in this corner that's going to hold up "15 minute" signs when your 15 minutes is expired. So just

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thank you, Professor Rolnick. You were right on time. Thank you very much.

Theresa M. Pouley:

I want to thank the task force for allowing me to be here. There is nothing more important to me than talking about Indian children. As a member of the Indian Law and Order Commission, it was my passion, and it is my passion across the board.

So when I speak to you today I speak to you from many places. So I'm going to talk about the recommendations about the Indian Law and Order Commission. But I also am the chief judge of the Tulatip Tribes. And I see these kids in my court every day. I'm the mother of four beautiful children. And I have a four-month-old grandson. So I am an Indian person in the 21st century. So I speak to you about these things from many places.

I testified in 2008 in front of the Senate Committee on Indian Affairs in front of Senator Dorgan. And I said one in three Indian women will be raped in their lifetime. And as I look in the eyes of my daughter, I don't want her to ever ask the question, will she be the one or the three?

As I look at the report today I can say the exact same thing about my grandson. I never want to ask whether my grandson, as I look into his eyes, is going to be one of the statistics that is mirrored in the report. The circumstances are absolutely dire for Indian children. I heard the statistics being mentioned in the opening remarks by Associate Attorney General Tony West. And all of us know the truth of the matter.

Indian children are not well. That's the conversation we need to have. What are the wellness indicators for Indian children? The report opens with truly dire circumstances for Indian children. They are off the chart for every wellness indicator. One-quarter of Indian children live in poverty, versus 15—13% in the United States.

They graduated high school at a rate 17% lower, on a

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national average, than any other race. But I'll tell you in communities like Tulalip, 50% of Indian children do not graduate from high school. They live 2.4 years less than any other person in the United States. Their substance abuse rates are higher. They're twice as likely as any other race to die before the age of 24.

What a huge loss to all of America and to our tribes and communities. They have 2.3 higher rate of exposure to trauma. They have two times the rate of abuse and neglect. They are longer in the child welfare system. They are longer in the foster care system. They are least likely to be placed in their homes. They are 2.3 times more likely to commit suicide than children of any other race.

Their experience with PTSD, as we've already heard from the Associate Attorney General West, rivals the rates of returning veterans from Afghanistan. If those are the wellness indicators for Indian Country, all of us need to take notice and change the way that we operate with regard to Indian children.

So what are the recommendations of the report? We have a variety of recommendations that are listed for fundamental changes in the juvenile justice system. But I think of my daughter and I think of my grandson. And I think of just saying one simple phrase to them always, which is sort of a touch phrase in my family: I love you to the moon.

We need to figure out how to love all Indian children and put them in an environment that is free from violence and also encourages positive reinforcements for education and a variety of things that are important to their communities. Tribes should absolutely, as our first recommendation from the commission, be allowed to opt out of federal or state juvenile jurisdiction. The Indian Child Welfare Act has taught a valuable lesson: Bringing children home makes a difference. That's where their families are. So tribes should absolutely be able to be opt out of the federal and state juvenile delinquency system.

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Current state and federal funds should flow to the tribes who take over that juvenile jurisdiction. So if that money is going to the state, to be able to deal with Native children who are delinquent, it should simply revert to the tribes. The same thing's true with regard to the federal government. If the federal government doesn't deal with those children, that money should simply revert to the tribes.

Funds for detentions should be used for all kinds of alternative services. I think Professor **Rolnick** gave some great ideas of how we can target better uses of funds than for incarceration. Tribes absolutely, positively, across the board must be given notice any time an Indian child is placed outside of their home. And that includes detention.

The Indian Child Welfare Act left this huge gap for tribes and children. It's part of the reason that statistics are so difficult to identify for Indian children. Because they're in the state system, but they're not required to give notice to the tribe. They're in the federal system, but they're not required to give notice to the tribe. And they're in the tribal system, and nobody collects the data for all three of those groups.

It simply is true: These statistics are dire, but we only have a third of the picture. So commissioning a task force to be able to make a concerted effort at finding all of our Indian children is absolutely critical.

One federal agency—is one of our recommendations—should be responsible to study and collect data on all Native children. All kids in the juvenile justice system, also as Professor **Rolnick** said, should absolutely positively be given trauma-informed screening. We need to start the moment they walk in the door.

So whether it's in the dependency system or the delinquency system, we need to have appropriate screening tools to be able to screen for trauma. I heard Associate Attorney General West say that 60% of kids in the United States are actually exposed to violence. I'm here to tell you that it's probably a hundred percent in most tribal communities.

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If you ask any tribal leader or if you ask me, a hundred percent of our kids in tribal communities are exposed to violence. And we need to learn how to do that better. We need to learn how to manage that better with trauma-informed services.

Kids should be close to home when they are placed in facilities. So they should be close to their reservation if they're under state or federal jurisdiction, as opposed to being farmed out to who knows where. The federal system should be entirely changed. Currently, Native kids commit crimes on Indian reservations may go to federal prison. As a commissioner on the Indian Law and Order Commission, I asked for the better part of two years, "Where are our children?"

So if we have a hundred Indian children in the federal prison system, you would be surprised to know we don't know where they are. The federal system is specifically ill-equipped to be able to deal with juvenile delinquents, because they don't have a juvenile delinquency court. Judges aren't trained in the modern methods of dealing with juvenile delinquents, because the percentage on their calendar is so low.

The federal system has to be entirely changed. And no Indian youth, without the permission of their tribe, should ever be in federal penitentiary. And no person should ever have to ask, "Where are those children?" That's just not an acceptable answer to any of those questions.

There are amendments and recommendations to the Federal Delinquency Act that are contained in the Indian Law and Order Commission report. Those recommendations give specific changes. And some of them are actually very easy changes to the Federal Delinquency Act. So if the tribes don't opt out, at the very least tribes should be allowed to intervene in federal proceedings. Tribes should have the option of moving those cases to tribal court, instead of federal court.

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I can't imagine a scarier place for an Indian child than to be in federal court. And when you remember the trauma that they came from, know they're in federal court, and now are going to federal prison, just imagine that space. One of the most compelling places that we went on our travels as part of the commission was actually to a juvenile detention facility.

And it was actually very well-run and beautiful facility. But I remember walking into the intake and thinking, "Oh, my gosh. How scary would that be if I was 10?" We simply have to change the way that we do business with regard to children.

We also recommend that the Indian Child Welfare Act should be amended and it should provide for notice, intervention, an opportunity for a hearing, and maybe even a transfer of that case to tribal court for all Indian children. I don't think Indian children should generally be section into either delinquent or dependent children. I think there has to be a recognition that all of our children have been abused or neglected at some point in their history and that we need to be able to have notice of where they are, wherever they reside.

I'm not going to look in my grandson's eyes and ask the question, "Where are you?" And I won't do that for all of the grandmothers in Indian Country. We shouldn't have to ask the question, "Where are our children?"

So thank you very much for allowing me the opportunity to testify today. And I hope that you take the recommendations from the Law and Order Commission to heart. Because the future of all of our children is on the line. Thank you.

[APPLAUSE]

Byron Dorgan:

Thank you very, very much for the presentation. And next we're here from Carole—Vice Chancellor Carole Goldberg.

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Carole Goldberg:

Well, thank you very much. And I, too, want to thank the advisory committee, Co-Chairs Senator Dorgan and Shenandoah, and all the members. And, of course, the Salt River Pima-Maricopa people for inviting us here today.

I, too, like Judge Pouley, am a member of the Indian Law and Order Commission. And I'm pleased to say that there is a fortunate overlap in the Indian Law and Order Commission and this advisory committee, in the form of Lieutenant Governor Jefferson Keel. And we are accustomed to being on your side of the questioning, rather than on the witness side. But it's a pleasure to be in any capacity here today.

I just want to comment a bit on the fortunate overlap in timing of the Indian Law and Order Commission's work and the work of your advisory committee. As you may know, one of the recommendations of the Indian Law and Order Commission was that the implementation take place within the Justice Department, that this advisory committee be created. And we are very happy that that has taken place.

The Indian Law and Order Commission, as you all may be aware, was created by the Tribal Law and Order Act of 2010 and charged with making recommendations for the improvement of safety and justice in Indian Country. Our report was issued in November of 2013. We have nine members. Perhaps I should speak in the past tense, because our last day of formal existence was the end of January of this year.

But three members appointed by President Obama—Judge Pouley and I being among those—three appointed by the Senate—Jefferson Keel being one of those—and three appointed by the House. There were appointees from both the majority and minority side in both Houses of the Congress, which means this is both a combined legislative and executive branch commission and a bipartisan commission.

I'm also pleased to say that the recommendations of the Indian Law and Order Commission were and are unanimous.

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There are no dissenting opinions. We came to these recommendations from a variety of ideological starting points. But we arrived at the same conclusions because we all shared concerns about safety and justice in Indian Country.

And some of our recommendations are for legislative action, as you might expect from a bi-branch commission. Some of them are to be implemented by the executive branch, if they are accepted. And I'd like to spend a little bit of time dissecting those as they relate to juvenile justice.

But first I want to explain something about the order of the topics in our commission report. If you've seen the report—and I think it may be bigger than was expected when this commission was created. It's over 300 pages, including appendices. This was an all-volunteer commission. And we had a limited staffing and other capabilities. But we were committed to holding hearings, as you are. And we valued that very much.

But we came up with six chapters' worth of recommendations. And if you look through the table of contents you'll see that juvenile justice is actually the final—sixth—chapter. That was a subject of some debate within the commission. At various points in time, we were convinced that juvenile justice actually ought to be at the very early part of the commission report, in chapter two, after our initial chapter detailing overall recommendations regarding jurisdiction.

Ultimately, juvenile justice wound up as the last chapter, because what we saw was that juvenile justice was a more specific form of all of the recommendations we had made in this report. That is, there are implications for juvenile justice of our jurisdiction recommendations. There are implications for juvenile justice of our recommendations on strengthening tribal justice systems, on intergovernmental cooperation, and on detentions and alternatives.

They all had implications for juvenile justice. And we wanted

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to show how juvenile justice could reflect and further extend those recommendations. And that's why it's the last chapter. Not because we thought it was of lesser importance. By no means. With Judge Pouley on the commission, there is no way we could have viewed it in that way.

Also before separating out some of these legislative and executive branch recommendations, I want to stress something that is evident from the structure of this chapter on juvenile justice. And it's something that Professor Rolnick mentioned at another recent panel we were on. And that is that the chapter begins with a representation of all the challenges and hardships that Native youth experience.

Because we wanted to make it clear that when we're talking about juveniles in the justice system, we are talking about an interrelated set of systems of dependency and juvenile justice. That is, the children who are finding themselves in the juvenile justice system are very often the same children who are in the same dependency system. The children who are experiencing difficulties in life not of their own making.

And we wanted to stress that, because juvenile justice is often viewed in other systems in more punitive terms. And that's not the way we saw it. So as the commission was doing its work, one of the things that I always like to point out was that there were two types of recommendations we were making.

One set involved fundamental reform or re-envisioning of the justice system. And another set of recommendations involved what I like to call workarounds. That is, how could we within the current system or framework of jurisdiction try to improve the way the system worked?

So in the juvenile justice section, we actually have both kinds of recommendations. Both for fundamental reform and for the so-called workarounds. As Judge Pouley has indicated, our recommendations for jurisdiction for the adult system we believe apply equally—in fact, even more strongly—to the juvenile justice system. That is that tribes should be able to

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opt out of federal or state jurisdiction. Partially or fully. And either forever or, if they change their view about it, to be able to restore it as they see fit.

We think it's a stronger case for juvenile justice because the federal system that they would be opting out of is a system, as you've heard, that is not designed for or suited for juvenile matters. And in the state system, we already have, for dependency matters, a provision in the Indian Child Welfare Act that allows tribes in Public Law 280 and other state jurisdiction systems to request from the federal government the re-assumption of exclusive jurisdiction.

So if that already exists in PL 280 and similar jurisdictions for dependency, all we're doing is recommending that that same capacity for tribes be extended to juvenile justice or delinquency proceedings. Right now those are excluded from the Indian Child Welfare Act provisions. But we think they should be included.

Now that's going to require legislation. We don't doubt that. We are also, as Judge Pouley indicated, recommending that the Federal Juvenile Justice Act be amended so that tribes are included with states in the provisions that preclude federal juvenile justice jurisdiction under specific conditions.

So the example we give in the report is that if there were a juvenile in the city of Los Angeles who was charged with a federal handgun crime, the federal prosecutor, before being able to take jurisdiction—this is a crime of general federal jurisdiction; it's not an Indian Country specific crime. But before the federal prosecutor could take jurisdiction, the federal prosecutor would have to demonstrate with specific evidence that either the state lacked jurisdiction, that the state lacked the resources to manage that type of case, or that the federal interest in that prosecution was unusually strong.

And if the federal prosecutor could not demonstrate those things, then the federal government would not have jurisdiction. That provision does not apply currently to tribes.

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That is, if you have a federal Indian Country juvenile prosecution, the tribe cannot say, "Well, we have jurisdiction, therefore the federal government should not be able to prosecute."

And we are suggesting and recommending in this report—again, this is legislative change that would have to occur—that the word "tribe" be included. Right now federal territories are included. Tribes are not included. They should have the same capacity as states to say, "If we have jurisdiction, then the federal government should not."

What are the things the executive branch could do? There are plenty. Among the recommendations we make is that there be better tracking of Native juveniles who are in the federal justice system. This is something that the executive branch could be doing right now. Judge Pouley should not have to continue asking, "Where are our children?"

There are also diversion programs that can be established that we recommend, from the federal system to tribal systems, that would return youth to tribal justice systems, where their situations could be managed in concert with dependency processes and in concert with tribal programs such as those you've heard from Alaska Native villages or elsewhere that will be more culturally suited to helping heal tribal youth.

So there are a variety of these recommendations that could be implemented at the executive branch level, through the attorney general.

Another one that I will mention that I think is very important and bears on tribal youth and state systems—I come from the state of California, a Public Law 280 state. So I'm very sensitive to this. I've done a lot of my own research work, studying the issues and problems associated with state jurisdiction in Indian Country. And one of the most troubling problems we have is just keeping track. We don't have federal requirements that when county justice systems arrest Native youth who are living in Indian Country, that that is

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noted on the FBI crime reports.

So that we do not have adequate data from state justice systems to know where the youth are. Again, that question that Judge Pouley has asked. "Where are our children?" We could benefit from FBI sieges, specifying in their requests from county and state justice systems to designate whether the offense occurred in Indian Country.

So while there are numerous recommendations in this report that do require legislative action, there are many that could be implemented at the executive branch. And, of course, I believe your advisory committee is in a position to likewise recommend and support legislative proposals. And we would certainly encourage you to support those made by the Indian Law and Order Commission.

But also to bring to bear your deep connection to the Department of Justice, in supporting executive branch actions that could benefit Native youth. Thank you very much.

[APPLAUSE]

Byron Dorgan:

Well, thank you very much. I have, over the years, sat in front of a lot of panels. And this—the depth of knowledge and commitment and passion on these issues with this panel is just extraordinary. We really appreciate the academic background and the research background and the knowledge that you have.

I was struck by—in the roadmap, as I was looking through it—the work that was done as a predecessor to this, a Northern Arapaho youth said before he was 17 he was a pallbearer at 15 funerals. That tells you an awful lot about why we're doing this. And the admonition about children who have been exposed to violence and get in some difficult, the suggestion that adults stop asking, "What's wrong with you?" and start asking, "What happened to you?" Very important work that you all have done, and I appreciate it.

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Now what I'd like to do is open this up for the task force to begin asking questions. We have until 10:30, so we have about 20, 25 minutes. And why don't we just do this informally? If you just raise your hand and then ask a question of the panel. Are there advisory or task force members that wish to inquire of the panel? Yes, sir.

Male AC member:

This is for anyone who'd like to venture a comment. One of the things that we've heard a number of times is a reluctance of victims to come forward in the community, because of—whether it be a federal state or tribal jurisdictional matter—is a fear of lack of confidentiality in the system and reprisal from whoever. Have you seen communities where that has sort of been addressed effectively and victims feel that they can be protected in the community, as opposed to sort of re-victimized that sort of stuff?

Theresa M. Pouley:

I've worked at a couple of different tribes in the northwest, so I have a couple of things to say about sort of closed communities, like a tribal community, where they're very close. I think everybody here who has any tribal affiliation will say, "Well, as soon as I got to the clinic, everybody knows." It's not a breach of confidentiality, however. So just by the very fact that you're there.

So re-education—sort of the community on, "No, your—things that are confidential remain confidential." And then building that trust.

With regard to victims coming forward as a general proposition, I have to say this: It's absolutely critical that you be able to provide full-scale justice services, where offenders are held accountable. It is that accountability for offenders that sends the message to the victims that it's safe to come forward.

It's not a coincidence, for example, for sexual assault in two of the jurisdictions for which I've been a judge, that when I originally got there, there were virtually zero sexual assault cases. Because there was no one to answer to and no trust in the system. Now in both of those jurisdictions, after

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successful prosecutions and appropriate punishment or, in many cases, appropriate treatment for protection of community and the family, those persons are coming forward.

So the number of sexual abuse crimes in those two jurisdictions has actually increased. I'm very fortunate—and thank you very much to the Department of Justice and to Tony West in particular—get to be one of the pilot sites for exercising extended domestic violence jurisdiction. So we were just selected last week.

And for domestic violence, it's exactly the same. Until the victims recognize that you can come forward, your issues will be heard, and the problems will be addressed, they won't have confidence in the system. But once you do do that, they absolutely come forward. You absolutely can protect them and at the same time educate them and then start asking questions about their family.

Domestic violence is one of those things where it has that sort of crossover. There's great research out there that says that domestic violence, for example, in dependency cases, where kids were abused and neglected, is the number one reason that return to their parents is going to be sabotaged. So you need to identify it. You need to provide services for it. You need to hold offenders accountable.

And when you do, those other feelings about "I can't come forward" or "I'm scared to come forward," they go away.

Carole Goldberg:

I'd be happy to add another perspective on that, which is about the question of legitimacy and trust in federal and state systems. I mentioned earlier that our commission reached unanimous recommendations, coming from many different starting points. Some supported tribal control because they believed in local control generally, and tribal control was an important instance of that.

Others started from a point of strong belief in the importance of tribal sovereignty. There were also research findings that

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supported the idea that willingness to report crime and testify about crime depends upon the perceived legitimacy and trust in the system.

And when you have federal or state systems attempting to deal with violence issues in Indian Country, and the very presence of those systems is something that tribes never consented to—if you think about Public Law 280, you think about the imposition of federal criminal justice in Indian Country, if you think about the long distances that are associated with the location of federal criminal justice courts and other institutions, the lack of culture appropriateness of the federal state systems—you can see that problems of legitimacy and trust are powerfully manifest in those systems.

And so the problems of reporting and testifying are very strong there. And I wanted to have that as a complement to what Judge Pouley was saying about ways of enhancing trust in tribal systems.

Addie Rolnick:

And I'll just add a couple more points. So, you asked about this concern about the willingness of victims to come forward and the possibility, it sounds like, that there either wouldn't be confidentiality or wouldn't be repercussions that were appropriate. And in a way I think that's the wrong question to ask, for two reasons.

So first of all, there is an issue with—and this is apropos in light of the Woody Allen stuff that's been in the paper—but when men abuse children and women, very often they don't lose community stature or leadership positions. This is not a tribal issue. It happens in tribes, but it happens everywhere. That has to change, and I'm not sure that the task force can do anything to change it.

You can have a very good system, a very confidential system, and a very accountable system. But if people who are abusers remain in power and remain with high stature in the community, that sends—the kind of message that sends to a person who has to see their abuser in charge and

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respected every day is really difficult to imagine.

But the second piece of it is about the solution. So, you know, when you talk about confidentiality and repercussions, I'm thinking it's because we need people to come forward to prosecute. But in the juvenile system what we're talking about is the juvenile justice system's response to kids who have been victimized is about healing the kids. And you don't need to prosecute to heal kids. You need them to be able to get services.

So why not build a system that assumes—based on what we've heard, it wouldn't be out of—it would make some sense—that assumes that every kid has been victimized? And that gives them services without them—so you don't have to, as a kid, disclose that you've been abused or name your abuser, in order to get the right service. You just get them.

And then if in the therapy that you get as part of the system you disclose it in that context, and if a prosecution happens, fine. But the fundamental goal of the juvenile system is to heal the kids. And I don't think that you need a system that allows you to name abusers to do that, necessarily.

Jefferson Keel:

I have a question. And Addie, in your remarks you spoke about the—you know, talk about over-criminalization. And one of the things that you had mentioned, too, was the integration of services. Right now they're patchwork and piecemeal. And we don't have, really, treatment services available for our children. Our youth that are incarcerated or they find themselves in a court. So you mention trauma screening and doing those in your initial intake. And I know that Judge that Carole and I, when we did visit these detention centers, it is frightening for a child to be placed even in that situation.

But how would you—and if you would, talk about the integration of provider services, whether it be the BIA, the IHS, the DOJ, all of those federal agencies that have—they have funds that are designed or different, I guess,

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procedures. But very seldom do those resources reach down all the way down to where they're supposed to be, where they're intended to be utilized by those victims.

And then how would you talk about integration of the family into the treatment? You know, we're not talking about treating just the child or the victim here. In fact, as you've said, the child is the victim in this case. It becomes one. So can you talk about that when we talk about the patchwork and the piecemeal operations?

Addie Rolnick:

Yeah. So this is a really hard question, I think, and I don't know that I have a good answer. There are promising programs—and they're sort of all over the place; they're in Indian Country and outside of Indian Country—that do things like provide treatment and involve families. They're sort of family-centered counseling-type models.

They're just models that sort of begin from, "What do we best to heal this kid?" And they're out there. I hesitate to tell you specific programs, because the hardest part about this is doing the research to find out which programs are working and then keeping up on that research. I'm not sure that anyone's really done that, and I haven't been able to sort of get the resources to go out and study the programs.

But I know they're there. And I know there is some information outside of Indian Country about types of models that work.

The hard question is how to coordinate all of the services that need to be together at the tribal level. And this is where there's this particular hurdle of different agencies having different jurisdiction. I can say that I think, to the extent that the federal agencies are involved in setting priorities or providing funding, there should be one agency that sort of decides what is going to be funded and fully provides funding for that.

So I think some things have changed in the five or so years since I've been working in D.C. But construction funding

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came from Department of Justice. Operations funding came from the Bureau of Indian Affairs. Decisions about what kinds of facilities would be operated came from the Bureau of Indian Affairs. And all mental health treatment, substance abuse—everything that you might think of as related to mental health—came from IHS.

And all those agencies have—the BIA and DOJ were coordinating a little bit on, you know, choosing the facilities. But IHS has a whole different list. If you want a hospital, you go to IHS and you get on their 20-, 30-, 40-year waiting list for a hospital. They're not related at all. So I'm not sure that I have the perfect solution for how to revision the agencies. I know that the task force—the commission—has recommended centering it in DOJ, I think.

And I don't know if mental health recommendations were part of that. But mental health and treatment and family-centered counseling are such a big part of what needs to happen in juvenile justice. And to sort of lop off a huge piece of it and say, "That's in Health and Human Services, and you can do it, but you have to do it separately," makes no sense.

And I don't know if the answer is to dismantle the IHS. You know, that's a harder question. And maybe you all have thought about that.

Carole Goldberg:

I'm pretty sure that there's nothing in the commission report that recommends dismantling the IHS, but [LAUGHS] it's an intriguing thought. No, we have a number of recommendations, as you know, Lieutenant Governor Keel, about support for tribal justice systems. We have recommendations that talk about shifting from individual, targeted, grant-based funding that tribes chase in different ways in different years. And trying to consolidate it all into some more reliable base funding.

We talk about establishing levels of parity with non-tribal systems that are getting funds from the federal government. We talk about the importance of having a consolidated funding source. And that's another important part of our

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recommendations. We want the funds to follow the jurisdiction. So that as tribes take over more and more functions, that the funding that was previously going to federal and state systems would be directed to the tribes.

And we believe that it is probably going to be more cost-effective for those funds to go to the tribes. We also talk about the fact that there could be set-aside provisions in funding streams that currently go to state justice systems, in order to ensure that tribes get an appropriate share. We talk about ensuring that Public Law 280 and non-Public Law 280 tribes are all taken into consideration. And those that are under settlement acts and other forms of state jurisdiction taken into consideration when this funding is provided.

So we appreciate that there needs to be a very fundamental rethinking of the way funds are going. We have taken account of the fact that funding increases are controversial in the current Congressional environment. But we also think that the way funds are being directed now is not necessarily cost-effective and that with a rethinking of funding, as well as some reexamination of the levels of funding, that much better service could be provided to Native youth.

Ron Whitener:

Just one quick question. In the description of what would be an optimal juvenile justice system, one thing I didn't hear was the issue of right to counsel for the children. You know, Native are really the only group in this country, when they're being prosecuted by a tribe, that doesn't have the right to someone to represent their stated interest. What's the panel's thoughts on that?

Carole Goldberg:

The recommendations of the Indian Law and Order Commission include a fundamental jurisdictional recommendation that has to do with tribes opting out of state and federal justice systems. And a concomitant of that opting-out would be the provision of individual rights, including the right to counsel. That's a recommendation that applies to the juvenile justice chapter as well as to the general jurisdiction chapter.

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Members of the Indian Law and Order Commission have met with the Legal Services Foundation board, to take account of the fact that the Tribal Law and Order Act does have a provision that would, for the first time, enable the Legal Services Corporation lawyers to provide criminal defense services in tribal court. There isn't a funding stream that goes along with it.

And I know the Legal Services Corporation lawyers who serve Indian Country have a mixed view about whether they are the appropriate sources for criminal defense services, because they represent tribes and they may be perceived as being conflicted in some circumstances. I have a personal view that the Legal Services Corporation's lawyers that have been working in Indian Country have a very strong connection already with tribal communities and a better understanding of Indian Country justice issues generally.

So that if there's some way to address these conflict issues, it would be an appropriate thing to fund them, among other sources, to provide criminal defense services. But I think the view of the commission is that providing more rights to individuals is a good thing. At the same time, we're mindful of the fact that establishing very highly adversarial justice systems for adults and juveniles alike can be in contradiction to some of the justice ways of tribal communities.

And our view has been that the way to address that is through the provision of defense counsel, who can work with their tribal clients to determine whether they want to waive rights and opt into alternative systems, such as wellness courts or peacemaking systems or any other kind of alternative system that is not a highly adversarial one.

But it will be very important that in the process of making those choices, that they are adequately represented.

Theresa M. Pouley:

Is it all right if I respond to that? So, a couple of things. First of all, there's a variety of tribes that actually already do provide public defense services to the more traditional delinquent children. But I would sort of propose this as a

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general proposition. So at Tulalip we don't have a delinquency code and we don't do delinquency cases. So we don't approach those in any way.

What I do have is dependent children who are in trouble. And they're in trouble in a whole bunch of jurisdictions. So they may be violating the laws of Tulalip, but they may also be violating state law. Hopefully they're not violating federal law. Haven't seen one yet. But what we do is appoint civil legal aid attorneys as guardian ad litem to those children, who can be effective advocates for them across systems.

For example, in fighting a state truancy petition. Or in defending against a state proceeding, to be the liaison. But also to sort of demand that appropriate services for those abused and neglected children be provided by the state. So there's really two things. There is a dependency and a delinquency system. Honestly, I think all children are youth in need of care. And sort of approach it that way.

Byron Dorgan:

We've reached the end of time for this panel, but there's one additional question. Let's proceed with that, and then we will end the panel. Thank you very much.

Valerie Davidson:

So I think there are other models in other kinds of programs in Indian Country that have served tribal communities really well. I know that for Alaska tribes, self-governance in healthcare has really made an incredible difference in our service delivery. And one of the things that it allows is—in fact, it encourages—program redesign so that we can make the programs match and tailor to the needs of what our particular community are.

And I've wondered if you've given much thought to the opportunities for self-governance. I mean, true self-governance in justice programs. And I guess we also notice in Indian Country there is this sort of perverse proclivity—especially in Public Law 280 states—that have a real knack for, in a competitive grant environment, using our horrible statistics in our communities to be able to pursue grants for states to provide services on behalf of our tribal members.

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And so I was wondering if you'd given any thought. I didn't see a recommendation in the Indian Law and Order Commission on specifically self-governance. But there were a lot of hints pointing to self-governance. So can you give us your thoughts on the—I won't be unbiased—incredible opportunities for self-governance for justice programs?

Theresa M. Pouley:

I think the general recommendations on tribal justice systems and detention and detention alternatives really do address that funding stream towards tribes, which is a more self-governance model. That tribes should just be given the money to be able to do what is appropriate for their community at sort of base-level funding. And in doing that really represent true self-governance. So to the extent that our recommendations talk about that funding, I think they do address it.

Carole Goldberg:

And just to say we have a whole chapter addressing Alaska, as I'm sure you're aware.

Valerie Davidson:

Yeah. It was fabulous.

Byron Dorgan:

We're going to take a break in a moment. I'm going to ask a question without an answer, and we'll just let it hang for a bit. And the question is this: I have been, Judge Pouley, to your reservation a number of times. I've toured your children's program in years past. Very strong program. Your tribe has a very strong business plan. Has a very advantageous location to Highway 5, or Interstate 5.

And so your tribe is seen by me as more affluent, with more opportunities, than some other tribes that do not have those opportunities. So the question is—and I'll just allow this to hang there—what is the correlation with respect to economic misery and children exposed to violence? And would you see substantially less of it in a Tulalip tribe, as opposed to a tribal judge in some other tribe where there are far fewer advantages? There's not a major casino near a population center that produces a stream of income that's very advantageous.

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So what is that correlation? The correlation between economic misery and children exposed to violence. Let's let that hang out there for a while. And I assume we'll have people address that today. Because I think that's also a very important issue. We will take a 15-minute break and begin promptly in 15 minutes. Thank you very much. Thanks to the panel. What an excellent panel.

[APPLAUSE]

[END PANEL 1]