

ARIZONA STATE, TRIBAL & FEDERAL COURT FORUM
State Courts Building, Room 119
1501 West Washington
Phoenix, Arizona 85007

Minutes of the
February 1, 2008 Meeting

Court Forum Members Present:

Hon. Victor Antone
Gila River Community Court

Hon. William Canby, Jr.
U.S. Court of Appeals, Ninth Circuit

Hon. Victor J. Clyde
Chinle Justice Court

Hon. Earl Carroll
U. S. District Court

Hon. Jesse Filkins
Yavapai-Apache Tribal Court

Sue Hall
Clerk of Superior Court, Apache County

Pat Henson
Public Member

Hon. Patrick Irvine
Arizona Court of Appeals, Division One

Hon. Delfred Leslie
Hopi Tribe

Mary O'Grady
Arizona Office of the Attorney General

Hon. Delbert Ray
Salt River Pima-Maricopa Indian Community Ct.

Kathleen Rosier
Public Member

Hon. Allen Sloan
Window Rock

Vincent Kirby
Tribal Liaison

Administrative Office of the Courts (AOC) Staff Present:

Rose Hughes-McPeck
David Withey

Participants/Visitors Present:

Charlene Greer, Esq.,
Alieda Montiel
Robert Roll
Margaret Vick, Esq.
Edd Welsh
Debra Brockway
Celia Rumann
Rania Khoury

Mona Polacca
Richard Herrera
Albert Long
Dana (Law Clerk to Judge Irvine)
Helen Burtis
Jamie Heller
Stan O'Dell

II. Call to Order

Judge Irvine called the meeting to order at 10:20a.m. and welcomed the attendees. Hon. Ted Armbruster, Fountain Hills Municipal Court Judge and Karen Vampotic, Assistant Attorney General, Child Protective Services Section from Tucson, acknowledged their presence telephonically. Mary O’Grady, Arizona Solicitor General advised that she shared the agenda with the Indian Law Working Group of the Attorney General’s Office. David Withey related that Judge O’Neil and Judge Grimsley called to indicate their regrets that they could not due to conflicting obligations.

III. Approval of Minutes

Judge Irvine called for the approval of minutes from the last meeting Judge Canby, so moved. Mary O Grady, seconded. There was no opposition, and the Minutes were approved.

IV. Ongoing Matters

A. Tribal Court Involuntary Commitment Process

Intertribal Council of Arizona response
Clerks of Superior Court response.

David Withey explained the plan is to receive information from the Clerk, and also from the Intertribal Council. We are now working on the Protocol that is designed to increase the efficiency of the process for having a tribal court involuntary commitment order enforced by the state superior court. Comments regarding this protocol were requested from the superior court clerks and from the Intertribal Council of Arizona which was instrumental in securing adoption of the authorizing statute and rules.

Sue Hall explained that she had forwarded the Protocol to the clerks and had received a couple of e-mails back indicating there was a not a lot of “heartburn” over the Protocol. The clerk that had the greatest concern is the Maricopa County clerk where they are large enough that the Clerk’s Office does not really take an active role in the acceptance of these types of Orders. Instead the orders go to Court Administration which provides them directly to the judges. So the Clerks Office really didn’t actually walk the documents to the Judge that was assigned as the protocol provides. They were concerned about changing their process for these mental health orders. Sue suggested that the protocol is there to help establish a guideline, and that each court can modify it as appropriate for their court. She believes the Superior Court in Maricopa County would not have to drastically change their process. David suggested that there may be a difference, in general, between how large courts and smaller courts handle these cases. David noted that Pima County may have similar issues, and we should hear from Pima County. He suggested that he, and Sue, follow up on this issue and report back at the next meeting as to whether we need to make some changes in the Protocol. Sue believes that some of the other counties have few commitment orders. David is suggested that this needs to be brought back to the next meeting with any changes that we think are needed.

Alida Montiel, a Member of the Yaqui Tribe, spoke on behalf of the Intertribal Council of Arizona. She noted that Margaret Vick has provided legal assistance to the Intertribal Council on this issue for about ten years. She is explained that the processing isn't always efficient, and that there are still mentally ill individuals who languish in tribal jails. There are still problems with some of the Tribal Behavioral Health Services, working with their Tribal Court, and even processing over in Superior Court in an expeditious manner. Alida suggested there should be more opportunities and resources in the future for training as needed. Though involuntary commitment does not happen very often, when it does the individuals are in need of immediate treatment. She sees a need for training on the levels of Tribal Behavioral Health Services, the Case Managers, the TRBAs, the RBAs, and the Tribal Courts.

Margaret Vick reported that she has been providing legal assistance to the Intertribal Council on health issues for close to twenty years. Margaret explained that the Protocol was developed to address problems experienced on the Navajo Nation through a series of meetings with court personnel in Coconino County, and Tribal Personnel. She emphasized that the superior court clerk, the superior court judge and administrator, the Tribal Court staff, and the mental health staff all sit down for an hour in one room, talked through the process, and agreed this is how we are going to do it. Everyone gets to know each other, and then the process can proceed more efficiently. There is a need to be sure that any differences between the protocols and the Supreme Court approved rules are acceptable and that the due process rights for the patient are respected. The patient and the patient advocates need to know that the Attorney General will reply in 24 hours as opposed to five days.

It is Margaret's understanding that in April this topic will again be on the Forum agenda. Since the rules were established the State has amended the Mental Health Treatment Code, to mandate local treatment. However, there is no residential treatment available on reservations; or within the Indian Health Service System. So there is still the issue of people who live on reservations not able to access local treatment that meets the requirements of state law. So a tribal court order that orders placement at the State Hospital cannot be followed until mandatory local treatment has been provided. This problem is being considered by the Arizona Attorney General's Office and ITCA. The mandatory local treatment provision, 36-541 states, "That this section shall not apply if the Court finds" listed circumstances...Or when there's no local Mental Health Treatment Agency readily available to take them."

David Withey noted the statute that authorizes recognition of tribal court involuntary treatment orders providing commitment to the state hospital may supersede the mandatory local treatment requirement with respect to tribal court commitment, though this requirement was adopted in the intervening period. David believes that there may be a couple of ways to approach this issue; one is in terms of the statute itself saying that if there is no local treatment available, it is not required. Also there is the statute that specifically authorizes the recognition of the tribal court order committing an individual to the state hospital through the process that is provided in the Rules with no mention of local treatment. Alida Montiel advised that Catherine Plum with the Attorney General's Office will be attending the April meeting to discuss the local treatment issue, Mary O'Grady mentioned Bob Source as an additional contact who recently moved from the Attorney General's Office to the Department of Health Services. Alida Montiel expressed appreciation that the Tribal Court Forum is working on this issue.

Hon. Irvine remembered this issue existing back in 1982 when he was working for the Gila River Tribe. He believes the great difficulty of it is that there are so many different people who are involved in the issue with different concerns depending whether it is a large County or a small County and every Tribal Government has its own issues. But it sounds like this process is getting all of the input from all of the right participants. He asked if any one can think of any one else who may have a role to play to please bring them in, because it would be the most effective if everyone has input. I do appreciate and thank everyone's involvement in this, it sounds like it is on the right track.

Mary O'Grady brought up a question regarding the federal role and the problem of the Indian Health Services not having resources. Since the State does not have a lot of resources either, what is available at the federal level in terms of residential treatment? It was noted that there is a facility on the Sioux Reservation in North Dakota but no Arizona facility. Judge Irvine agreed that in dealing with the Court's role and the treatment issue, the resource issues are significant too. Hon. Irvine reiterated that this will be on the Agenda for the next meeting, and that Catherine Plum with the Attorney General's Office who has a lot of experience and works on a daily basis with these issues will be attending in April.

B. Revocation of State Probation of Reservation Resident

David Withey explained work is pending by the ASU Sandra Day O'Connor College of Law, legal programs, students, and staff who have volunteered to help us with compiling information about extradition procedures. These procedures may be needed if someone residing on the reservation of a tribe who is on State Probation commits a violation that requires revocation proceedings in state court. The violation might be commission of a new crime, either on or off of the reservation. What is the procedure then for the State authorities to take that person into custody? This is the reason we are looking at extradition.

Charlene Greer explained that extradition at Salt River is pretty traditional: Executive to Executive. Requests for extradition are signed by the Arizona Governor's Office and sent to the tribal President. The President determines whether or not the person should be extradited. Then the subject of the extradition has an opportunity in Court to say they are not the person sought, or they will not be treated fairly in the state court, or they can file a Writ of Habeas Corpus in our Court arguing they are being held improperly. Charlene states that since she has worked with Salt River, she does not know how many extraditions have been requested, but knows of none that have been denied. There is a practical reason. Considering the person's rap sheet typically shows commission of a lot of crimes on the Reservation, if the State wants to take this person and incarcerate them the tribe is very happy to cooperate. Judge Irvine asked if there was a written policy or an ordinance or a statute. Charlene Greer states that there is an Ordinance.

Judge Canby asked whether it is clear that the probation department would go to the tribe rather than just pick up the probationer on the reservation. He suggested that this could be very disruptive unless a cooperative regime is worked out, assuming that that is the way the State authorities want to or do operate. David Withey responded that this is a matter that is sometimes worked out between the local state and tribal authorities either expressly or implicitly. Where the tribe has expressly disapproved the probation officers do not go on the reservation. One tribe permits the probation officers from one county to go on the reservation but has told the

department in another county not to send its officers on the same reservation, due to some bad history. It was clarified that the formal extradition process is used only for felony offenders.

Jesse Filkins noted that there is a tension between Law enforcement and the Courts concerning extradition. Since historically extraditions are granted the police tend to conclude why go through all this, with all these hearings if you are just going to ship 'em out anyway. It easier for the Police to deal between themselves, particularly when the tribal officers are state certified. They have a working relationship with the Sheriff's department and all of those folks all of the time and their position is let's get it done. Charlene Greer replied that extradition procedures are needed to maintain sovereignty, but she agrees it is a problem for law enforcement officers.

Kathlene Rosier Director of Indian Legal Programs at ASU, provided information about the efforts of her program to maintain up to date lists of tribal judges, tribal court attorney admission requirements, and location of current tribal codes, court rules, appellate court information, and availability of court opinions. These lists are updated every semester, every year. Extradition procedures and service of process requirements are included in new additions to the chart currently being compiled by a work group. The student working on extradition has about eight to ten rules for different courts, which is farther than we have been in a while. Kate offered to share the information through e-mail. The list will also be made available on the Court Forum web site. Kate asked members who see anything on the list about their tribal court that has changed, or that they would like to have added, to provide her with that information. Pat Henson asked Kathleen Rosier for the address on the web site that she previously cited. Kathlene Rosier responded that it is www.law.asu.edu/ilp. The tribal court and laws information is under community services on the web site. It also provides contact information for the tribal law office and legal services. Hon. Irvine stated that the Indian Law Program has been a great resource for him.

C. Indian Law on Bar Exam

David Withey referred to a draft rule petition provided to members on this subject prepared by a committee of the Indian Law Section of the State Bar. The new rule language proposed is simply to add to Rule 35(b) the words, "and jurisdiction, (including Arizona federal and tribal) and tribal government immunity." The purpose, as explained in the petition, is to focus on these particular areas because these seem to be the areas where there is the most danger for the client(s) and attorneys who are ignorant of Indian law. The notion is that jurisdiction is so fundamental, whether it is Federal, State or Tribal, it is a subject that invariably needs to be attended to by lawyers and so it is appropriate to hold people accountable for on the Bar Exam. David reminded the members that the Forum voted at its last meeting to support the Indian Law Section proceeding with a rule petition such as this, though no specific language was endorsed. Judge Carroll asked David Withey whether there has been any consideration of admitting a person to practice in tribal court who took and passed the Indian law course? David Withey replied that he did not know of any consideration of that kind of approach to the issue. That is something to note and pass along. Hon. Irvine stated whether to approve this petition will be up to the Supreme Court in their rule making process.

D. DV Orders Processing Into ACJIS and NCIC

Explanation of Arizona courts process

David Withey introduced Robert Roll to explain how the State Court processes domestic violence orders into the state and national criminal history databases. Tribal judges have expressed interest in exploring how this might be done more effectively for tribal court orders. Information about the approach of the state courts may help with understanding and addressing the complications of this process. Robert is the manager of the Arizona judicial department data warehouse, the Court Protective Order Repository (CPOR) and the Law Enforcement Protective Order Repository (LPOR).

The databases involved in processing protective orders are illustrated in a handout entitled Protection Order Life Cycle Information Flow, Arizona Courts Process Flow, Supreme Court, State of Arizona. This handout outlines the different steps that a protective order can go through. Processing an order through these databases allows immediate access by dispatchers and even an officer in a car equipped with the latest telecommunication technology. An order can be distributed nationwide through the NCIC database. A drawback is that the data quality requirements of the NCIC are very high to prevent misidentification, such as the defendant's date of birth, which is not always available. Courts in four Arizona counties, Coconino, La Paz, Cochise, and Gila, have set up transfer of the electronic data for each order from their case management systems through the statewide databases into a database that is accessible to law enforcement officers.

Robert stated that he discussed with David Withey what path a tribal court protective order takes in order to get into state and national databases, if they do get there. David Withey inquired as to how the tribal courts handle these orders? Jesse Filkins indicated the orders go from his court through the Camp Verde Marshall's Office for registration. He believes that this is what he does at Yavapai/Apache and Camp Verde. Robert Roll asked if the orders go through the Sheriff's Office, and then to the Federal Level, and if it does go that level, is there a bridge that can be brought back to the local level to the state repositories? That is a question for the future and more discovery down the road. Judge Irvine asked Judge Filkins if the Marshall sends the orders to the state system? Judge Filkins stated that he believes that is the purpose.

David Withey stated that presumably the Marshall enters the orders into NCIC, but would run into the same lack of information problems as the state courts have encountered. David stated that the problem was so significant that they created the separate state databases because they just were not getting the orders entered into the NCIC as needed. Because of information gaps, ie: if you did not know the color of the person's eyes or birthday, the order could not be entered into the system. Complete information is required for identification purposes when dealing with criminal arrests to make sure you have the right person. Jesse Filkins said that he receives Newsletters regarding federal communications, state criminal communications; looks at them, but does not always go through all of the steps. He stated he has been given some very good information and will make a better effort of making sure his orders get into the systems before he complains that the State is not enforcing tribal orders. Edd Welsh asked Robert where he can get more information. Robert Roll offered to provide David Withey more materials and David offered to put them on the Court Forum web site.

Jesse Filkins asked whether the enforcement problem the protective order databases were designed to address was that the person protected did not have the protective order to provide to the law enforcement officer. Robert responded that even if the officer has the order, officers are required to verify the authenticity of the order due to the ease with which an order can be falsified using today's technology. If the protected person does not have a hard copy of the protective order, the officer usually will query the national database, NCIC. In either case, if the order did not have the all of the necessary data it will not be verifiable on the NCIC. Then the officer will have call Dispatch for help determining which court issued the order, which law enforcement agency holds the protective order records for that court and whether a valid order is in effect, a very lengthy process compared to a hit on the database. David Withey questioned, even if the protected person has a valid copy of the order, how does the officer determine that it has been served? Robert responded that an NCIC hit verifies service as well as the validity of the order. Similarly, Dispatch can verify service by contacting the holder of record. An unserved order can be served on the spot if the defendant is present. Robert clarified that an order is in effect and enforceable only after is has been served on the defendant.

Robert advised that foreign orders of protection, orders form other states and from tribes may be directly filed with a limited or general jurisdiction court. The Court would create a new case number for that court, but referenced by the name and number of the court of origin. However, the Arizona court would not serve the order, just record it so the court can verify, "Yes, we have this on file, they can reference it if need be."

Pat Henson again asked whether there is involvement in the Coconino County project with tribal law enforcement since that county has a substantial in tribal area. Robert responded that he is working only with the state courts, so tribal orders are not involved. That would be the next process to consider - - to ask how we can get the tribal protective orders into the databases accessed by law enforcement officers.

Pat inquired about service of protective orders. Robert explained that the process server who serves the order returns a certificate of service to the court. The Court then enters the service date into the court's computer and that information is automatically forwarded on to NCIC and to the Repository.

Pat questioned whether an officer who responds to a domestic violence or a domestic dispute call must go back to his office to verify an order leaving the victim alone. Robert indicated that instead he may go back to his car, and use a laptop or his radio right then and there on site.

Judge Irvine thanked Robert for the information.

VI. New Matters

B. Exercise of Criminal Jurisdiction in and around Indian country

Role of US Attorney

Role of Federal Public Defender

Judge Irvine introduced the topic and the representatives from the U.S. Attorney's Office and the Federal Public Defender's Office. Vincent Kirby from the U S Attorney's Office began with an explanation of his office's role in handling cases relating to crimes on Arizona reservations. Mr. Kirby has been with the U S Attorney's Office since 1991, and since 1993 has prosecuted violent crimes on Indian Reservations, primarily the White Mountain Apache Indian Reservation and a number of cases from the Navajo Nation. The U S Attorney's Office prosecutes felonies. The tribes do not have felony level jurisdiction, but may exercise concurrent jurisdiction. For example, an assault may be treated both tribally as a misdemeanor and also by the federal authorities as a felony. The issue of double jeopardy does not generally apply, if a tribal prosecutor in a Tribal Court convicted an individual of a misdemeanor or assault, that does not prevent us from coming in and prosecuting that for a felony level assault. The Courts have always viewed that as a process of a separate sovereign; therefore there are no double jeopardy issues there.

The primary source of jurisdiction is in Title 18, U.S.C. § 1153, which is also referred to as the Major Crimes Act; which lists the crimes that are in the United States Code that the U.S. Attorney can prosecute in Indian Country. Generally, all felonies involving an Indian victim, an Indian suspect and occurring in Indian Country can only go through the federal system. The U.S. Attorney's office also has jurisdiction when a Non-Indian is a perpetrator involving an Indian victim. The states have the primary jurisdiction over Non-Indian on Non-Indian crimes, although in some cases the U.S. Attorney's Office will take a look at those cases well. Types of cases prosecuted include assaults, sexual assaults, sexual crimes involving minors, kidnapping cases, murder cases, and vehicular manslaughter. Once the U.S.A. determines that a felony crime has been committed, a federal investigation may commence immediately to avoid loss of evidence due to delay. Working with the FBI or BIA the U.S.A. has made great strides toward getting involved with a case right from the beginning. The U.S.A. must determine if a case needs to go federally and also to decide if the case needs to move quickly, with an immediate arrest.

Federal jurisdiction applies to some other listed crimes in Indian country under "nationwide Applicability" The Courts have allowed federal prosecution of additional crimes of this type such as, drug offenses, conspiracy, car jacking, firearms, child pornography that apply regardless of where the crimes occur. A drug offense is a federal crime no matter where it occurs, similar to child pornography.

A conviction in tribal court is not necessarily admissible in Federal Court. It is difficult to explain to victims and their families that the fact of the conviction; statements they make, suspects they identify, their pleas of guilty generally are not admissible in Federal Court. Instead the federal prosecution generally requires a separate investigation and evidence. The Courts have also determined that unless counsel was present on behalf of an Indian defendant during the course of criminal proceedings, a conviction based upon that proceeding does not count as a prior conviction to enhance the sentence in a subsequent case.

Mr. Kirby noted that his office gets a lot of questions regarding the handling of juvenile offenders. The Federal Juvenile Delinquency Act for the most part requires that juvenile proceedings remain confidential so very little can be reveal about a pending prosecution. Under

federal law a juvenile charged with even the most serious crime is not automatically transferred or treated in adult court. Instead, a must file a motion with the federal district judge to seek a transfer to adult status. The judge has seven factors such as social background and prior treatment alternatives that must be considered before making the transfer. There are things of that nature that the Court has to consider before that happens. Of course, if the Judge decides that the juvenile can be transferred to adult status then he is indicted, and then what was a secret proceeding becomes a public proceeding.

Judge Irvine asked Vincent Kirby how many cases arise in a given year, just estimates. Mr. Kirby made the "The Indian Country Report" available to those present. This report shows the number of and type of cases prosecuted by reservation. Judge Carroll encouraged everyone to look at the Indian Country Report. Looking at the statistics for all of the tribes, and the tribal membership numbers, it appears there is some difference between prosecution rates for various tribes. The Navajo Nation is reported as having 141 cases - - while the Tohono O'Odham is a 23,000 member tribe, and there are 202 prosecutions which are almost double the Navajo Nation that has 275,000 people. And the White Mountain Apache numbers have the same kind of problem. Judge Carroll found these statistics very interesting to compare the tribe's population and the number of prosecutions for that reservation

Vincent Kirby responded that 81 of the Tohono O'Odham cases involve controlled substances, far and away more than any other Reservation. Law enforcement made a concerted effort to try to deal with the drug problem on that reservation. The Navajo Nation cases are primarily assaults and murders. Some of the numbers reflect initiatives to combat Meth problems on some reservations and some tribes have dealt with it more aggressively than others. Mr. Kirby noted that the size of the Navajo Nation makes this difficult.

Mr. Kirby described the handling of a typical case based on his experience prosecuting cases on the reservation of the White Mountain Apache Tribe. A case usually begins with dispatch of a tribal police officer on a call. The agreement between the U.S. and tribal authorities and joint training has provided that the tribal officer will assess the crime to determine whether it appears to be a matter that calls for federal prosecution. If so and especially if the call involves a stabbing victim or someone who was seriously injured being transported, dispatch calls the on-duty FBI agent, or depending on the reservation, a Bureau of Indian Affairs officer. The agent or officer responds to the scene, makes his assessment, starts the interview process, goes to the hospital, talks to the doctors and, faxes to the assigned U.S. attorney an incident opening, a one page summary regarding the case, which is often followed by a phone call within a couple of days describing the evidence, the facts of the case, and the additional investigation needed. This gives the assigned U.S. attorney a pretty good sense of whether the case was going to merit federal prosecution, or whether the federal authorities should complete their investigation and turn what they had over to the tribal prosecutor. The final determination is based upon the complete report. Sometimes the Assistant U.S. Attorney will need to personally interview a witness or a victim to get a better sense of the situation. Once the necessary information is obtained a determination is made whether to seek an arrest warrant based on a complaint or go to the Grand Jury seeking an indictment.

Mr. Kirby explained that tribal prosecutions typically proceed before federal prosecutions because the tribe can move faster due, in part to the distances involved. It takes a few weeks or months, depending on the case, for federal agents to complete their reports. In many cases, on the reservation of the White Mountain Apache Tribe, the tribal prosecutor prosecuted a lot of cases. Some tribes such as the Navajo Nation prosecute few cases because the jail space is so limited.

Charlene Greer raised the problem of the cases over which the U.S. Attorney has exclusive jurisdiction, but does not take - the Non-Indian versus Indian misdemeanors. She noted these cases are a huge problem on her reservation. Mr. Kirby indicated the U.S. Attorney is attempting to address this problem by appointing tribal prosecutors who qualify as special assistant U.S. attorneys which allows them to appear in federal court to prosecute those matters. Unfortunately, this approach has had limited success due to lack of qualifications and turnover. A renewed effort will be made to resurrect this means of filling the jurisdictional void. Many of the non-Indian offenses against Indians involve domestic violence. Unfortunately, by the time the case gets to of Court, parties have reconciled, or the victim is uncooperative.

Judge Canby described the idea of tribal courts using creative and civil remedies to handle domestic violence by a Non-Indian. One tribal judge at a workshop related that Non-Indians cited into tribal court usually just show up since it's a long way to state court and it probably means more time in jail. The non-Indian misdemeanor jurisdiction problem is a very severe one, since the U.S. Attorney is not staffed to handle these case considering the major crimes in Indian Country that are more pressing. Some of the tribes are trying to figure out a system of civil penalties under which they might be able to exercise jurisdiction over non-Indians.

Judge Clyde pointed out that the jurisdiction diagram in the materials does not have the Non-Indian versus the Non-Indian crime in Indian Country.

Judge Irvine asked Assistant Federal Public Defender Celia Roman to talk about what her office does on Indian reservations. Ms. Roman noted there are areas of disagreement with the U.S. Attorney Office about the nature of jurisdiction in Indian Country. For the most part the Chart that was laid out by the U S Attorney's Office is pretty accurate but there is disagreement primarily as to how cases of nationwide applicability apply in Indian country. Although the circuit courts have uniformly upheld jurisdiction, it has not yet been resolved by the Supreme Court. A significant portion of the work of the Federal Public Defender, at least in the Phoenix Office arises in Indian Country. Defense counsel's role in the justice system is to protect clients' rights and to insure that the government does not overstep its authority. Sometimes that interest aligns with tribal authority, sometimes that interest aligns with the sovereign interests of tribal communities, and sometimes it is at odds with those interests.

Ms. Roman explained that while tribal convictions don't count as criminal history for the purpose of calculating sentences under the guidelines, the court is pretty free to consider someone's tribal criminal history in determining the appropriate penalty. An increasing frustration is the lack of real intervention by tribes get people meaningful help when the underlying problem is addiction. There are a lot of tribal programs, but there are few or no inpatient drug and alcohol treatment programs available on reservations. People are going

through the tribal justice system and getting tribal convictions until they do something really bad. The federal government may step in with perhaps, some meaningful intervention while treatment at the tribal level might have stemmed the problem.

Juvenile defenders see juvenile offenders who have a history that is clearly indicative of someone heading into an addiction problem whether it is alcohol or more recently, Methamphetamine. If they do not get intervention early enough they are going to end up in the federal system, and possibly be transferred to adult status. And when a juvenile is transferred to adult status the juvenile is facing a felony conviction, loss of all of the privileges that go along with that, and the sentences that are applied in federal court. These sentences are getting longer, including mandatory minimums, for example, recently Congress enacted in the Adam Walsh Act, a thirty year mandatory minimum for sexual abuse of a minor under the age of twelve and a ten year mandatory minimum for assault of a juvenile. The Courts won't have the discretion at that point to sentence in a way that they might think is appropriate.

Ms. Roman explained the tribal courts impact federal public defenders and their clients though they are only appointed in the event of federal prosecution, the tribal process may well have already occurred, and there is no right to appointment of counsel for someone who is charged with a tribal offense. Sentences by tribal court for misdemeanor convictions are increasingly multiple years long based on consecutive misdemeanor sentencing. And so people are facing significant amounts of time in Tribal Court without a lawyer to assist them in the process. Federal defenders need to know who to call to get the client's tribal court criminal history and the record from the proceedings in tribal court. Some times a record is not available. There is a need to know who to contact in each tribal court.

Lunch

VI. New Matters

A. Tribal Sex Offender Registration Requirements

Registration of state probationers

David Withey referred to the ordinance from the Tohono O' Odham Legislative Council concerning Sex Offender Registration in the handouts. The issue is how this registration ordinance applies to state probationers who travel through the reservation on state and federal highways, such as the freeways in Phoenix and in Tucson. Sex offender registration of state probationers with one tribe has been an ongoing cooperative effort in Pima County by having the tribal officer register probationers at the Pima County Probation Department. An issue arose when a defense attorney questioned, "Why does my client need to register when he is just traveling through on the freeway to go to work?" So that is the issue that is presented, and I thought maybe we could just be able to get some information about what other tribes are doing and what your policies are again is the idea of this. David asked whether there are other sex offenders registration ordinances like this, and if so, how are they applied, what is the practical effect, what do the different tribes do to enforce the registration, and what is the preference in terms of who registers.

Charlene Greer stated that Salt River adopted a sex offender registration ordinance a number of years ago. One of the police officers tracks it and does all the work. However, when the federal law was passed requiring tribes to opt out of the federal scheme for tribes, Salt River decided to do that. So the tribe is looking at our ordinance and will conform it to what's required by federal law. The list is only available within the community and on paper rather than the web; and is available to appropriate entities like schools. Judge Ray noted that Salt River finally has a tribal resolution to participate in the registration of sex offenders but have limited resources needed to make it work.

David Withey asked whether sex offenders traveling through the reservation community are required to register. Charlene responded that the offender had to be in the community a certain length of time or live there before registration is required. But an offender convicted in the tribal you have to register right away. Charlene stated registration is the way to keep the people safe, but also has constitutional implications.

Sue Hall asked whether the issue was travel on the Interstate to go to employment within the tribal jurisdiction. Rania Khoury responded that it is just driving through to go to a place of work off the reservation. David Withey explained that there is no doubt about the requirement that probationers who went to work on a Reservation register with the tribe.

David Withey noted that there is a federal law called, "SORNA," Sex Offender Registration and Notification Act that has a lot of the requirements. Charlene Greer explained that tribes are in a National Sex Offender Registration Program from which a tribe may opt out in order to have its own Program. Tribes that have their own program must still meet certain requirements. Vincent Kirby advised that an Assistant U S Attorney, Diane Greer focuses on issues regarding SORNA. SORNA requires that a sex offender register and keep his or her registration current in each jurisdiction in which the sex offender resides, is an employee or is a student. The question is whether a tribe can extend registration to traveling too. Mr. Kirby offered to get an answer. He explained that it may be argued that it may be an impermissible interference with state or interstate travel. Mr. Kirby added that there is a 10 percent loss of funding for federal grantees that don't comply with SORNA, but compliance may be cost prohibitive. An offender who fails to register and keep registering every 90 days if a Tier 3 offender, could face up to ten years in federal prison. The Marshall's are developing a program, talking to DPS regarding entry of the registrations into the computer, and how the compliance is going to be monitored.

It is up to each probationer to determine whether they are required by the ordinance or by law to register, rather than the probation department. But officers do need to alert the probationers they supervise that they are supposed to obey all laws. So probationers need to determine, and to some degree officers need to help them determine what the law is.

Judge Irvine explained the Forum is going to break and divide up and work on the Service of Process Rule and the Recognition of Tribal Judgments. But before we do that does anyone else have anything else that they want to bring up, sort of a call to the Membership and the Public? Pat?

Pat Henson stated that so much of what was discussed today are services, and services require funding. She wondered if it would be an appropriate thing for this Forum to consider looking into funding alternatives such as seeking grant money from whoever has grant money to provide services. She suggested the tribes might want to join in on a joint basis, or an individual basis. We could at least provide information as to where this money might be found.

Judge Irvine stated that he is not sure the Forum has ever done anything like receiving a grant. AOC on behalf of the state, the different counties and the different tribal organizations have pursued grants where necessary. He questioned whether the Forum is a legal entity in terms of seeking funding. If anybody wants to raise any possibilities, the Forum could share this input and try to make sure everybody is aware of them.

Judge Irvine asked if there are any other thoughts, anything that anyone would like to put on the agenda for the next meeting, or issues you want to raise. We can do it now, or do it anytime.

Kathleen Rosier provided information about the ASU College of Law Tribal Court Trial Skills Training in March.

Judge Irvine asked about the next meeting. David Withey responded that we don't have a location as yet and asked if any tribal court would like to host the meeting somewhere more or less in the center of the state. Judge Irvine stated that if we don't have a tribal court hosting next time, we can certainly meet at the state courts building. He asked that we establish the meeting dates for next fiscal year as well. We will plan on the next meeting to be held on Friday, April 25th, and we will send out a confirmation of that.

VII. Adjournment

Judge Irvine adjourned the Main Meeting at 1:55 p.m. Those participating in Sub-Committees divided into two groups.