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Description of document: Audits of Tribal Courts under contract to the Bureau of Indian Affairs (BIA), 2006-2010

Requested date: December 2012

Released date: January 2013

Posted date: 25-February-2013

Source of document: FOIA Coordinator
Bureau of Indian Affairs
Office of Trust Services
1849 C Street NW, Mail Stop 4620-MIB
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TRIBAL & CFR COURTS REVIEWS PROJECT

PRE-CLOSEOUT STATUS REPORT

October 19, 2006

Elbridge Coochise, Chief Justice retired
Philip D. Lujan, Judge
Charles D. Robertson, Jr., Esquire

COOCHISE CONSULTING, LLC
Elbridge Coochise, President
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Myrna R. Rivera, Court Reporter

Court Reviews Project STATUS REPORT October 19, 2006

In October 2005, the Tribal Court Review Project was funded by the DOI/BIA. The Project is intended to provide information to the BIA, OMB and other Federal entities that will inform them on the status of Tribal Courts, and whether Tribal Courts are being adequately funded.

The Project provided for a Court Review of 25 Tribal and CFR Courts, divided roughly into two Courts per BIA Region. For the past 11 months, the Tribal Court Review Team has been criss-crossing Indian Country visiting Tribal Courts. We are pleased to Report that the Reviews visits are complete and the final few Review Reports, two or three, are being finished. We imagine this is the most comprehensive information compilation effort ever undertaken, and completed, regarding Tribal Courts.

This Status Report is for a meeting with Federal Officials to be held on this date. Below, we briefly indicate and make comments on the various components of or issue areas effecting Tribal Courts. (This is not a final Report. A more comprehensive Report will be forthcoming in the future.)

1. **The Tribe.** Tribes are struggling to keep pace with the demands on contemporary Tribal governments. Most of this is from external sources such as artificial jurisdictional limitations imposed by Federal court decisions and Congressional legislation, not membership unrest. As a result, Tribal Courts operate relatively autonomously within the Tribal Governmental structure.
2. **Court Budget.** Most Courts are under-funded. Many are under-funded at a critical level. Court budgets vary widely. Tribes place a priority on the Court and fund their Courts often at the expense of necessary Tribal Programs.
3. **Federal Funds.** Due to the severe under-funding of Courts, Federal Funds are all used properly in support of the Court. Most Courts exclusively use Federal Funds to pay for Court staff. The Federal Funds are inadequate to fund most Court staff needs.

4. **Court Staff Salaries.** Salaries are low for Court staff. Salaries almost never rise to the level of local city-county Court staff. A significant portion of Court staff are being paid below the poverty level.
5. **Contracts for Judicial Services.** Judges, while making more than anyone else in the Court system, are still underpaid. Approximately 50% of Judges are contracted and less than full-time. Tribes in outlying areas have difficulty finding law-trained Judges to hire. Many Tribes contract with local, non-Indian Attorneys for Judicial services. Law-trained Tribal members often work for even lower pay to be at home.
6. **Courthouse.** Most Tribes have an inadequate Courthouse. Waiting areas are small, even if they do exist, causing security problems. Privacy is a problem for juvenile matters. A small number of Tribes are building Courthouses with Tribal funds (those few with available resources.)
7. **Courthouse Security.** Few Courts have adequate security systems. Electronic security for the Courthouse is rare. Many Tribes cannot afford part or full time Bailiffs. Law Enforcement often serves as Bailiff.
8. **Caseload.** Caseload numbers are high and growing for all Tribes.
9. **Status of a Tribal Constitution.** Most Tribes have a Constitution. Those without (usually Traditional governments) want a Constitution. Many Tribal Constitutions do not specifically authorize creation of a Court.
10. **Location of the Court within the Structure of the Tribe.** Most Courts are created by the Tribal Governing Body. Many are created by statute, which means changes to the Court can be made by a majority vote of the Governing Body. Governing bodies do not use this authority unreasonably.
11. **Tribal Economic Development.** A very small number of Tribes have viable economic development funds. Most Tribal economic development funds provide jobs and pay for a modest amount of other governmental services. Successful economic development, whether it be oil, gas, gaming, etc., has a direct positive effect on the Court.
12. **Independence of the Court.** There is no comprehensive problem with Judicial Independence in Indian Country. Tribal Governing Bodies are aware of the need for the Court to be independent, and strongly support this independence. There are many Tribes with statutory Independence provisions. There are few Tribes with separation of powers statutes. Governing Bodies rarely reserve any Judicial oversight or authority when creating Tribal Court systems. In the few instances when governing bodies infringed in the court, it is over-dramatized, quickly spread to other tribal court practitioners, and exploited by the media.

13. **Authority of the Governing Body over the Court.** Most Tribes place Court administrative activities (finance, hiring, personnel policies, etc.) with the Administration. Tribes do not have a clear idea of the proper relationship between the Governing Body and the Court. As a result, they bend too far in the other direction and tend to leave the Court alone entirely, even when they have a reasonable basis for contact with the Court (for example, setting the salary structure.)
14. **CFR Courts.** All Tribes using CFR Courts would prefer to contract those Courts. The poorest Courts in Indian Country are CFR Courts. The poorest Tribes tend to have CFR Courts. There are very real concerns about whether CFR Courts provide adequate service to the Tribe. Due to low funding, Tribes cannot afford to contract these Courts.
15. **P.L. 280 Courts.** States do not adequately provide law enforcement or Court services to Tribes when the State has criminal jurisdiction. Nor do non-Indian Courts render adequate justice in other areas of the law they enforce. Tribes enforce a level of concurrent jurisdiction in P.L. 280 jurisdictions
16. **Court Staff: Judges.** Most Court Judges are very experienced; many Courts have Judges with 10-30 years experience. The Court benefits from having at least one law-trained Judge on staff. The Court benefits from having at least one Judge with traditional/cultural or knowledge of the Tribal common law.
17. **Court Staff: Clerks.** Clerks tend to be very experienced and dedicated. Clerks tend to be from the Tribe.
18. **Court Staff: Other.** Court Administrator, Probation Officer, Process Server, Bailiff, specialized Clerk services, usually Court funded positions, are accomplished through other means when funding is insufficient. Most Courts are missing one or more of these positions.
19. **Court Operational Policies.** Most Courts do not have written Court or Financial policies and procedures.
20. **Court Staff Training.** There appears to be sufficient opportunity for Court staff to be adequately trained. There are not sufficient Court resources to receive training by outside entities.
21. **Tribal Code.** Most Tribes have adequate Tribal Codes, only missing pieces of laws. Most Tribal Codes are maintained in large three ring binders. A growing number of Courts maintain their Codes digitally, where they can be made available by CD-ROM or on a web-site and downloaded.
22. **Oliphant.** This is bad law, resulting a class of criminal activity which goes unpunished because no one has jurisdiction to Prosecute. This problem is increasing; particularly in the areas of drug selling and domestic violence.

23. **Traffic Code.** A growing number of Tribes are decriminalizing traffic offenses as a means to use civil fines to enforce traffic laws and maintain safety on the Reservation.
24. **Courthouse Technology.** Most Tribes are Courts of Record. Few Tribes have digital recording systems. Many Tribes use old cassette recording systems. Most Tribes do not have adequate phone systems, with voice mail and messaging, meaning there must always be staff assigned to answer the phone.
25. **Case Management Software (CMS).** About 50% of Courts have CMS. CMS is substantially purchased by Grants. CMS tends to be prohibitively expensive for most Tribes. Functioning CMS can save as many as 20 hours per week of a Clerks time. The availability of CMS Training following conclusion of the initial purchase is poor and the costs tend to be prohibitive. Some staff still tend to resist computerization.
26. **Relationship with the Governing Body.** This relationship is usually good. Many Governing Bodies do not understand the proper relationship with the Court and err on the side of non-interference. The Governing Body usually hires the Judges.
27. **Appellate Court.** All Tribes have some sort of Appellate system. Local systems with three Judge Panels, using any other Trial level Judges, are most common. Some jurisdictions use Regional Appellate systems. Regional Appellate systems tend to have problems with timely response. Often, they also have problems with the quality of decision. A small number of Tribes use the Governing body for the Appellate Court; these tend to be poorer Tribes with few Appeals.
28. **Jury Trials.** All Tribes offer Jury Trials. Some Tribes have Jury Trials as much as once a week, some tend to not have any at all. Most scheduled Jury Trials, particularly criminal; tend to be settled before the Trial begins. Jury Trials are expensive for Tribes. A small number of Tribes use non-Indians from local voting lists as Jury members. (This works well.)
29. **Relationship with the Administration.** Most Tribes use the Administration for the Court budgetary process and Court staff hiring. Most Tribes use the Chief Judge/Court Administrator in the hiring process.
30. **Public Defender.** Most Tribes follow Indian Civil Rights Act for defense services. Some Tribes, while codifying ICRA, still provide no cost or low cost Public Defender services.

In conclusion, we leave you with the following observations. It is clear that Tribes value and want to be proud of their Court systems. Tribal Courts are often funded at the expense of other areas. A few Tribal Courts are achieving a level of experience and sophistication approaching, and in some cases surpassing, local non-Indian Courts. There

are problem areas with individual Courts. These can usually be remedied. However, adequate funding is the largest problem, and the only common problem.

It is the strong recommendation of the Tribal Court Review Examiners that the Tribal Courts budget be substantially increased to at least \$50 million.

SCOPE OF WORK

The contractor in conjunction with BIA, tribal governments and tribal court personnel will develop the scope-of-work and conduct an initial review of tribal courts.

Areas to be reviewed in the Two/Three -Day on-site Tribal Court Review by the Review Team.

1. Determine the place of the Court within the Tribal structure. Organizational structure of the Court. Determine the level of judicial independence.
2. Review the Court personnel, including experience, qualifications and training.
3. Determine the Court case-load and the ability of the Court to adequately deal with the case-load. Appellate court caseload.
4. Review the Court's administrative function (management). Review the Court's operations internal policies and procedures (Manual). Review the Court's internal financial policies and procedures (Financial Management Manual).
5. Review the Court's working relationship with other entities: Prosecutor, Law Enforcement, Public Defender, and ICWA.
6. Review the Court Budget. Is there adequate funding for positions, salary levels, and funding for Court activities such as jury trials, appeals. The percentage of total funds that are federal funds.
7. Financial accountability in the use of Federal funds. How are the funds being used?

"Conducting Tribal Court Reviews:

Conduct reviews of Tribal court systems including [CFR Courts] as negotiated with the Tribal government, Tribal court and local BIA representatives will be conducted in accordance with the negotiated scope-of-work, and will identify strengths and weaknesses relative to functions for which Federal funds are allocated. Recommendations will be made to correct deficiencies and a corrective action plan will be developed designed to correct deficiencies. Accurate data will be collected for GPRA/PART.

The reviewer will indicate whether or not there is:

- An acceptable rating associated with the use of Federal funds allocated for the Tribal court, and provide any documentation supporting this conclusion;
- An unacceptable rating associated with the use of Federal funds for the Tribal court and indicate the reason for the determination;
- No determination is made relative to a rating and provide the reason for this conclusion.”

This provision is required by the Bureau of Indian Affairs from the DC Offices.

TASKS/DELIVERABLES

PHASE 1: Contractor shall develop a project plan for court reviews. The project plan will include a start date, list of reviewers, each reviewer's responsibility in the review, completion date, exit dates (debriefing of court manager(s), Tribal government and Bureau personnel). A final report will be developed and delivered to the Office of Tribal Services (OTS) which will contain a court improvement plan (CIP), that will identify codes to be developed if necessary, personnel to be trained, trainers, tribal government personnel orientation time and location and all logistics required for the performance of the work. A line item cost takeoff to implement the court improvement plan will also be developed.

PERIOD OF PERFORMANCE

Completion of this effort will be no later than Notice to Proceed (September 2, 2005) + 360 calendar days, September 30, 2006.

Timelines:

Notice to Proceed (NTP) = 0

NTP + (approx) 10 days: Initial Consultation Meeting in Washington, DC

PHASE 1 completed = NTP + 360 calendar days.

KEY PERSONNEL DEDICATED TO PROJECT (as submitted and approved)

REVIEW TEAM

Elbridge Coochise, Chief Justice retired, Coochise Consulting, LLC (main contractor)

Charles D. Robertson, Jr., Esquire, Robertson Consulting

Philip D. Lujan, Judge

Myrna R. Rivera, Court Reporter

Biography: The Honorable Elbridge Coochise

Elbridge Coochise is an enrolled member (4/4) of the Hopi Tribe in Arizona. Chief Justice Coochise retired 7/14/97 has been on the bench for 29 years. Semi-retired and owner & operator of Coochise Consulting, LLC, which provides services to tribes and tribal organizations; including lobbying, training, pro-tem judge, judicial services, administrative services and court evaluations.

In Senior-Judge status; he sits on the Sac & Fox Tribe of the Mississippi in Iowa Tribal Court, the Cabazon Court of Appeals, and the Intertribal Court of California. Served on the San Carlos Tribal Court as a special judge, helped start up and sat the Mohegan Tribal Court 2000-2005. Prior to retirement he served as the Chief Justice of the Northwest Regional Tribal Supreme Court 1988 - 1997, served as the Administrator/Chief Judge of the Northwest Intertribal Court System (NICS)(a circuit court system) in western Washington State 1981 - 1997. He was Associate Judge in the Hopi Tribal Court 1976 - 1981.

He served four terms as President of the National American Indian Court Judges Association 1988 -1996. He served three terms as President of the Northwest Tribal Court Judges Association 1988 - 1994. He serves on the Board of Directors of the National Indian Justice Center (NIJC), Santa Rosa, CA; on the Board of Directors of the Native American Rights Fund (NARF), Boulder, CO; on the Board of Directors of the National American Indian Court Judges Association (NAICJA); on the Board of Directors of the Tribal Economic and Social Solutions Agency and a member of the Advisory Board to the National Tribal Judicial Center in the National Judicial College, Reno, NV. He is an alumnus and joined the faculty of the National Judicial College, Reno, NV in 1993. He was Chairman of the Tribal Governance Committee of the Affiliated Tribes of Northwest Indians, 1987 - 1997 (a regional tribal governments' organization).

A recognized leader in his field, Justice Coochise received the Who's Who Worldwide Award for Leadership and Achievement in his Profession for 1992-1993, received the Who's Who Global Business Leader award for 1993-1994, and in November 1994 he received the Who's Who among Outstanding Americans award. He served as a member of the National Indian Policy Center's task force on Law & Administration of Justice. He currently is a member of the BIA/Tribal Budget Advisory Committee's Judicial Subgroup. He has had the honor of serving on several national committees and panels, has taught for various tribes on American Indian issues in the U.S. and Canada. He was the key proponent in the passage of the Indian Tribal Justice Act, PL 103-176 passed on December 3, 1993.

Biography: Charles D. Robertson, Jr.

Charles (Chuck) Durrell Robertson, Jr. is an enrolled member of the Cheyenne River Sioux Tribe. Chuck was born in Eagle Butte, South Dakota on the Cheyenne River Sioux Reservation, the son of two Indian teachers. In his formative years, Chuck lived in a number of places before graduating from high school in Scottsdale, Arizona. Chuck began his undergraduate work at Arizona State University and completed it in 1983 at the University of Minnesota. Chuck completed his *Juris Doctorate* in 1988 at Georgetown University Law Center in Washington D.C.

In his professional life, Chuck has worked in several areas of Indian affairs; including education, law enforcement, Tribal Courts, health care, gaming, and legislative/legal. Chuck has worked for a number of different jurisdictions, including city, state, Federal, national and Tribal. In varying capacities, Chuck has worked for the United States Senate, for (former) U.S. Senator Paul Wellstone, U.S. House of Representatives, National Congress of American Indians, Native American Rights Fund, and the National Indian Gaming Association.

Chuck was most recently the Executive Director of the National American Indian Court Judges Association. Chuck's strongest skills are in the areas of legislative/legal analysis and professional writing of all sorts. Chuck has drafted original testimony for Congress and the Administration more than 50 times and is responsible for numerous pieces of Federal legislative language. Chuck, under his own name or ghost-written, has been published in several newspapers and periodicals. Chuck is proud to consider himself a strong advocate for Indian Nations and Indian people. Chuck is currently working as a Consultant to Indian Nations and Adjunct Faculty (in the areas of Indian Studies, American Government and English) at Oglala Lakota College in Rapid City SD.

Biography: The Honorable Philip Lujan

Philip D. Lujan is a member of the Kiowa Tribe of Oklahoma and Taos Pueblo. He grew up in the Rainy Mountain community of Kiowa County in Oklahoma. He is a graduate of Washburn University and the University of New Mexico, School of Law. He has worked exclusively with tribal governments and courts for over thirty years.

Legal Experience

- 1974 – 1977 Staff Attorney, UNM's American Indian Law Center.

Tribal Court Experience: 1978 – Present

- Chief District Judge for: Potawatomi Nation (15 Yrs); Kaw Nation (2 Yrs); Iowa Nation (10 yrs).

- Formerly Chief District Judge for Cheyenne and Arapaho Tribes (6 Yrs);
- Formerly Chief District Judge for: Kickapoo Tribe (4 Yrs); Sac & Fox of Oklahoma (18 yrs.).
- Federal Magistrate for Courts of Indian Offences for: Anadarko Area serving the Kiowa, Commanche, Apache, Fort Sill Apache, Wichita, and Affiliated Tribes, Caddo, and Delaware Tribes (20 Yrs);
- Seminole Agency (5 Yrs). Formerly the Chickasaw Agency CFR Court for (4 Yrs).
- Prosecutor: 1978 – 1983 Anadarko Agency CFR Court.

Academic Experience:

Judge Lujan retired as a Professor Emeritus after twenty-five years of teaching at the University of Oklahoma. He was an Associate Professor in the Department of Communication. He taught various courses including Intercultural communication and the First Amendment. He has worked as a consultant and made numerous presentations in Native American communication. He was the Director of Native American Studies for twelve years and wrote the successful proposal to the Board of Regents which established a Native American Studies Major in the Arts and Sciences College.

Biography: Myrna Rae Rivera

Myrna R. Rivera is an enrolled member of the Washoe Tribe of Nevada and California. She graduated from Sherman Indian High School in Riverside, California. She was elected to Carson Colony Community Council (1981 - 1985) and served as secretary/treasurer. She represented her community on the Washoe Tribal Council for a one 4-year term. In addition, she served on the Board of Directors of the Inter-Tribal Council of Nevada.

Ms. Rivera attended Sierra Valley College in Fresno, CA with a concentration in the area of court reporting. Following college, she worked as the Clerk of Court and the Court Administrator for the Washoe Tribal Court of Nevada and California. In this position she was responsible for working with various jurisdictions; including Tribal, state, Federal, and appellate court systems. She has also served as a case manager for the TANF for the Washoe Tribal TANF Program, 2003 - 2004.

Ms. Rivera is currently employed with the Inter-Tribal Council of CA, a consortium that provides health, education, childcare, victim services to 50 tribal communities in California. In this capacity, she is program manager for the Tribal Law Enforcement Training Program and Rural Domestic Violence Program. She is a victim's advocate and obtained her certificate in Victims Services from California State University Fresno. In addition, she serves as an Advisory Board Member for the Women of Color Network representing the Western Region for

the development of leadership skills within the domestic violence programs for women of color.

Ms. Rivera has created and developed a culturally relevant training presentation called the CRADLEBOARD Way. The goal and effect of the presentation is to provide culture based abuse prevention training to tribal communities, organizations, individuals. The CRADLEBOARD Way is also used to present cultural sensitivity and collaboration training to non-Indian communities and agencies. The CRADLEBOARD Way has been presented to tribal communities; residential treatment facilities; Head Start training conferences; California Indian Education Conferences; Tribal TANF Programs of Torres Martinez, Washoe, CTPP, to law enforcement agencies at both tribal and non-Indian departments; throughout California; tribal clinics; Elder Centers; domestic violence conferences; and most recently for the University of Oklahoma Men's and Women's Wellness Conference.

As the Court Reporter for the Tribal Courts Review Project, Ms. Rivera documents the interviews and creates meeting summaries for the Review Team's Reports.

Year Two:

PHASE 2: CONTRACTOR SHALL DEVELOP A COURT IMPROVEMENT PLAN. Contract of \$300,000 for year 2 ending 9/30/07, of which \$156,000 are in the contract and the additional \$144,000 needs to be added.

DOI/BIA TRIBAL COURT REVIEWS PROJECT							
25 COURTS					10/14/2006		
November 2005 thru September 2006					\$450,000		
<u>NO.</u>	<u>COURT</u>	<u>Days</u>	<u>DATES</u>	<u>TRAVEL DATES</u>	<u>ACTION</u>	<u>AIRPORT</u>	
1	Red Lake CFR	3	11/21-23/05	11/20 - 24/05	Completed	Bemidji	
2	Lac Du Flambeau	2	11/30-12/1/05	11/29 - 12/2/05	Completed	Rhineland	
3	Anadarko CFR	3	12/14-16/05	12/13 - 17/05	Completed	Ok. City	
4	Kickapoo CFR	2	12/20-21/05	12/19 - 22/05	Completed	Ok. City	
5	Chickasaw CFR	3	1/11-13/06	01/10 - 14/06	Completed	Ok. City	
6	Osage CFR	2	1/16-17/06	01/15 - 18/06	Completed	Ok. City	
7	Eastern Cherokee	3	1/25-27/06	01/24 - 28/06	Completed	Asheville	
8	Salt River Pima-M	3	2/8-10/06	02/7 - 11/06	Denied	Phoenix	
9	White Mtn. Apache	3	2/13-15/06	02/12 - 16/06	Completed	Phoenix	
10	Santa Ana	2	3/16-17/06	03/15 - 18/06	Completed	Albuquerque	
11	Mescalero	3	3/20-22/06	03/19 - 23/06	Completed	Albuquerque	
12	Crow Creek	2	3/27-28/06	03/26 - 29/06	Completed	Pierre	
13	Lower Brule	2	3/30-31/06	03/29 - 04/1/06	Completed	Pierre	
14	Te-Moak CFR	2	4/13-14/06	04/12 - 15/06	Completed	Elko	
15	Pyramid Lake	2	4/27-28/06	4/26 - 30/06	Completed	Reno	
16	Southern Ute	3	5/8-10/06	5/7 - 11/06	Completed	Durango	
17	Picuris	2	5/22-23/06	5/21 - 25/06	Completed	Albuquerque	
18	Wind River	3	6/6-8/06	6/5 - 9/06	Completed	Riverton	
19	Blackfeet	3	6/12,14-15/06	6/11 - 17/06	Completed	Great Falls	
20	Warm Springs	3	7/19-21/06	7/18 - 22/06	Completed	Portland	
21	Spokane	3	7/24-26/06	7/23 - 27/06	Completed	Spokane	
22	Ute	3	8/14-16/06	8/13 - 17/06	Completed	Salt Lake	
23	St. Regis Mohawk	2	8/28-29/06	8/27 - 30/06	Completed	Syracuse	
24	Spirit Lake	2	9/13-14/06	9/12 - 15/06	Completed	Grand Forks	
25	White Earth	2	9/25-26/06	9/24 - 27/06	Completed	Fargo	
\$300,000 - 10/14/06		PHASE II CORRECTIVE IMPLEMENTATION PLAN				\$156,000	
Phase II Planning Mtg.		10/10-13/06		10/9-14/06		Albuquerque	
1	Red Lake	5	11/27-30/06	11/26-12/1/06		Bemidji	
2	Lower Brule	5	12/11-15/06	12/10 - 16/06		Rapid City	
3	Mescalero	5	January			Albuquerque	
4	Te-Moak	5	January			Elko	
5	Blackfeet	5	February			Great Falls	
6	Pyramid Lake	5	February			Reno	
7	Picuris	5	March			Albuquerque	
8	Spokane	5				Spokane	
9	Ute	5				Salt Lake City	
10	St. Regis	5				Syracuse	
11	Warm Springs	5				Portland	
12	Kickapoo	5				Oklahoma City	
13	Spirit Lake	5				Grand Forks	
14	White Earth	5				Fargo	

DOI/BIA TRIBAL COURT REVIEWS PROJECT						
25 COURTS FY-2006						
October 2005 thru September 2006						
						\$450,000
NO.	COURT	Days	DATES	TRAVEL DATES	COSTS	AIRPORT
	Initial Mtg. w/BIA	2	10/14-15/06	10/13 - 16/06	\$8,148.99	Albuquerque
1	Red Lake CFR	3	11/21-23/05	11/20 - 24/05	\$18,158.48	Bemidji
2	Lac Du Flambeau	2	11/30-12/1/05	11/29 - 12/2/05	\$14,728.29	Rhineland
3	Anadarko CFR	3	12/14-16/05	12/13 - 17/05	\$18,680.12	Ok.City
4	Kickapoo CFR	2	12/20-21/05	12/19 - 22/05	\$13,776.26	Ok.City
5	Chickasaw CFR	3	1/11-13/06	01/10 - 14/06	\$17,511.07	Ok.City
6	Osage CFR	2	1/16-17/06	01/15 - 18/06	\$15,219.76	Ok.City
7	Eastern Cherokee	3	1/25-27/06	01/24 - 28/06	\$18,269.78	Asheville
8	Salt River Pima-M	3	2/8-10/06	02/7 - 11/06	\$20,235.67	Phoenix
9	White Mtn.Apache	3	2/13-15/06	02/12 - 16/06	\$21,649.05	Phoenix
10	Santa Ana	2	3/16-17/06	03/15 - 18/06	\$14,218.40	Albuquerque
11	Mescalero	3	3/20-22/06	03/19 - 23/06	\$18,044.55	Albuquerque
12	Crow Creek	2	3/27-28/06	03/26 - 29/06	\$9,659.44	Pierre
13	Lower Brule	2	3/30-31/06	03/29 - 04/1/06	\$11,574.64	Pierre
	Project Mtg.w/BIA	1	4/8/2006	4/7 - 9/06	\$7,935.85	Albuquerque
14	Te-Moak CFR	2	4/13-14/06	04/12 - 15/06	\$15,940.55	Elko
	OMB/BIA Mtg.	1	4/21/2006	4/20 - 21/06	\$5,881.43	DC
15	Pyramid Lake	3	4/27-29/06	4/26 - 30/06	\$20,849.27	Reno
16	Southern Ute	3	5/8-10/06	5/7 - 11/06	\$19,593.46	Durango
17	Picuris	3	5/22-24/06	5/21 - 25/06	\$19,307.08	Albuquerque
18	Wind River	3	6/6-8/06	06/5 - 9/05	\$17,417.29	Riverton
19	Blackfeet	3	6/12, 14-16/06	6/11 - 17/06	\$28,374.57	Great Falls
20	Warm Springs	3	7/19-21/06	7/18 - 22/06	\$19,334.25	Portland
21	Spokane	3	7/24-26/06	7/23 - 27/06	\$19,200.65	Spokane
22	Ute	3	8/14-16/06	8/13 - 17/06	\$15,520.47	Salt Lake
23	St. Regis Mohawk	2	8/28-29/06	8/27 - 30/06	\$14,808.34	Syracuse
24	Spirit Lake	2	9/13-14/06	9/12 - 15/06	\$15,795.39	Grand Forks
25	White Earth	2	9/25-26/06	9/24 - 27/06		Fargo
TOTAL:					\$439,833.10	
			Contract	\$450,000.00		Average
			current	(\$439,833.10)		\$18,326.38
			Balance	\$10,166.90		
As of September 15, 2006						





TRIBAL COURT REVIEWS

Project Under

DOI/BIA CONTRACT

STATUS REPORT

January 31, 2006

BY

Elbridge Coochise, Chief Justice retired

Charles D. Robertson, Jr., Esquire

Philip Lujan, Magistrate

Ray Perales, Consultant

Myrna Rivera, Court Reporter

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TRIBAL/CFR COURT REVIEWS

Funding is through the Bureau of Indian Affairs, Department of the Interior, Washington, DC to conduct the Tribal Court Reviews of both Tribal Courts and CFR Courts in Fiscal Year 2006, beginning October 2005 through September 2006.

Twenty-five (25) courts will be assessed during the contract period. The courts are chosen by the Bureau of Indian Affairs, DC. The courts selected for review are those who receive some federal funds from the Department of the Interior, through the Bureau of Indian Affairs.

The project is operated under a commercial contract with the Department of the Interior.

The Review Team: Elbridge Coochise, Chief Justice retired; Charles Robertson, Jr., Esquire; Philip Lujan, Magistrate; alternate – Ray Perales, Consultant; and Myrna Rivera, court reporter.

THE TRIBAL/CFR COURTS REVIEWED TO DATE ARE:

Red Lake Chippewa Tribal Court	November 21 – 23, 2005
Lac Du Flambeau Tribal Court	November 30 – December 1, 2005
Anadarko CFR Court	December 14 – 16, 2005
Kickapoo Tribal Court	December 20 – 21, 2005
Chickasaw Tribal Court	January 11 – 13, 2006
Osage Tribal Court	January 16 – 17, 2006
Eastern Cherokee Tribal Court	January 25 – 27, 2006

DOI/BIA TRIBAL COURT REVIEWS PROJECT

25 COURTS

November 2005 thru October 2006

<u>NO.</u>	<u>COURT</u>	<u>Days</u>	<u>DATES</u>	<u>TRAVEL DATES</u>	<u>COSTS</u>	<u>AIRPORT</u>
1	Red Lake CFR	3	11/21-23/05	11/20 - 24/05	Completed	Bemidji
2	Lac Du Flambeau	2	11/30-12/1/05	11/29 - 12/2/05	Completed	Rhineland
3	Anadarko CFR	3	12/14-16/05	12/13 - 17/05	Completed	Ok. City
4	Kickapoo CFR	2	12/20-21/05	12/19 - 22/05	Completed	Ok. City
5	Chickasaw CFR	3	1/11-13/06	01/10 - 14/06	Completed	Ok. City
6	Osage CFR	2	1/16-17/06	01/15 - 18/06	Completed	Ok. City
7	Eastern Cherokee	3	1/25-27/06	01/24 - 28/06	Completed	Asheville
8	Salt River Pima-M	3	2/8-10/06	02/7 - 11/06		Phoenix
9	White Mtn. Apache	3	2/13-15/06	02/12 - 16/06		Phoenix
10	Santa Ana	2	3/16-17/06	03/15 - 18/06		Albuquerque
11	Mescalero	3	3/20-22/06	03/19 - 23/06		Albuquerque
12	Lower Brule	2	3/27-28/06	03/26 - 29/06		Pierre
13	Crow Creek	2	3/30-31/06	03/29 - 04/1/06		Pierre
14	Te-Moak CFR	2	4/13-14/06	04/12 - 15/06		Elko
15	Pyramid Lake	2	4/27-28/06	04/26 - 29/06		Reno
16	Southern Ute	3	May	05/1 - 5/06		Durango
17	Picuris	2	May	05/8 - 11/06		Albuquerque
18	Wind River	3	June	06/5 - 9/05		Riverton
19	Blackfeet	2	June	06/21 - 24/06		Great Falls
20	Warm Springs	3	July	07/10 - 14/06		Portland
21	Spokane	3	July	07/17 - 21/06		Spokane
22	Ute	3	August	08/1 - 5/06		Salt Lake
23	St. Regis Mohawk	2	August	08/9 - 12/06		Montreal
24	PINE RIDGE		September	09/4 - 8/06		
25			September	09/11 - 15/06		
TOTALS:						



TRIBAL & CFR COURT REVIEWS PROJECT FY-2008

FINAL REPORT

September 30, 2008

**Elbridge Coochise, Chief Justice Retired
Charles D. Robertson, Jr., Esquire
Philip D. Lujan, Judge
Ralph E. Gonzales, Esquire**

©

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Myrna R. Rivera, Court Reporter

TABLE OF CONTENTS

EXECUTIVE SUMMARY	3
I. INTRODUCTION.....	5
II. METHODOLOGY.....	6
III. SCOPE-OF-WORK.....	7
IV. TRIBAL COURT NEEDS ASSESSMENT PROCEDURE.....	9
V. THE REVIEW TEAM’S COMPOSITE FINDINGS.....	10
VI. FEDERAL MEASUREMENT – USE OF FEDERAL FUNDS.....	15
VII. CONCLUSION:.....	16
Right to a Speedy Trial	18
APPENDIX A – BIOGRAPHIES	20

EXECUTIVE SUMMARY:

The Native American Indian Judiciary is comprised of small to medium Courts dealing with 500 to 3,000 cases per year. (Source: Report by the Judicial Subgroup for the Tribal/BIA Advisory Council, October 2004) Because of the Indian Civil Rights Act of 1968, as amended, (25 U.S.C. §§ 1301-1303) they are considered “misdemeanor” Courts, which limit “any penalty or punishment greater than imprisonment for a term of one year and a fine of \$5,000, or both.” (25 USC § 1302 (7)) But Tribal Court jurisdiction in civil cases may run the gamut, depending on the extent of personal and subject matter jurisdiction.

The Review Team observed, while on site at various Reservations, an increase in lawlessness and gang activity. Tribal Courts must be given more extensive sentencing authority to adequately address criminal activity on Indian reservations. The Independent Review Team recommends that the Indian Civil Rights Act be amended to allow Tribal Courts “to impose a penalty or punishment not greater than imprisonment for a term of three years and a fine of \$15,000, or both.” This sentencing increase is proposed in the 110 Congress 2D Session as S. 3320, the “Tribal Law and Order Act of 2008.”

The Independent Review Team supports the provisions of S. 3320 (110 Congress 2D Session,) in particular the provision that mandates U.S. Attorneys to timely notify appropriate Tribal officials of decisions to decline prosecution, and provides for upgrading detention facilities. Although not a part of the Scope-of-Work, the Review Team observed that on many occasions prisoners had to be transported many miles for incarceration. Most often juvenile offenders had to be transported because of the extreme shortage of adequate housing facilities for them. In some cases transportation took three hours one way, causing an additional strain on an already meager law enforcement staff.

Domestic violence and child abuse, on Indian reservations, is reaching a chronic stage and many non-Indian perpetrators escape judicial sanctions for their crimes and many Indian women and children live in fear or under threat of continued violence. The Independent Review Team recommends that the Indian Civil Rights Act be amended, to expand Tribal Court jurisdiction over non-Indians, in recognition of inherent Tribal sovereignty.

Attention was focused on the intra-relationship between the Tribal government and the Tribal Court vis-à-vis the freedom of interference from Tribal Officials. The Review Team concludes that Tribal Courts predominately operate independent of undue influence from Tribal Officials.

Midway through the Fiscal Year the Review Team was informed that there was a perception that Tribal governments may be violating individuals’ “Right to a Speedy Trial” (Indian Civil Rights Act (25 USC 1302 (6))). Focus was placed on reviewing dates of charges, arraignments, and trials. The Review Team concludes from this assessment, that Tribal Courts are acutely aware of defendants’ rights and found no flagrant violations. Fifteen courts were specifically reviewed to determine compliance, and fourteen were determined to be in compliance which their Speedy Trial Requirement which results in a 93% compliance rate.

Prepared by the Independent Court Review Team: Coochise Consulting, LLC

Tribal Courts are operating as efficiently as expected given the circumstances under which they exist, and are providing their respective Indian communities with adequate justice. However, the quality of justice on Indian reservations could be improved if adequate operational funds were provided. The Review Team recommends that funding for Tribal Courts be substantially increased and at a minimum the appropriations under the Indian Tribal Justice Act, as amended (25 USC 3601 et seq.) be allocated.

I. INTRODUCTION:

The Bureau of Indian Affairs, (BIA) Division of Tribal Justice Support is engaged in a robust initiative to independently review American Indian Tribal Courts that receive Federal funds from the BIA, to support budgetary increase requests, assess operational needs and provide assistance to address weaknesses cited as a result of the Court reviews. These reviews are considered proprietary to the Tribe, Court and BIA. The Review Team provides copies of reports directly to the Tribe, Court and BIA and will not release information regarding these reports under any circumstance to others. Requests for information must be directed to the respective Tribal government or the BIA.¹

The Independent Tribal Court Review Team has more than 85 cumulative years experience dealing with Indian Tribal Court matters. The Review Team's base cadre is Honorable Chief Justice Elbridge Coochise, Ret., Honorable Philip Lujan, Charles D. Robertson, Jr. Esq., Ralph E Gonzales, Esq., and Myrna Rae Rivera, Court Reporter. Biographies are attached as Appendix A. Review Team members (all enrolled Native American Indians) were specifically selected based upon substantive, hands-on experience with Tribal Courts and are currently or have been jurist or officers of the Court. Alternate team members are available to augment this base cadre to ensure that a minimum of four team members are available to conduct each Court review.

In FY 08, the Division of Tribal Justice Support scheduled 18 Tribal Courts for review. The Tribal Court Independent Review Team reviewed 14 of the 18 Tribal Courts. Four Tribal governments canceled their reviews. By and large, Court reviews were scheduled for five days, but in certain circumstances Tribal desires required an adjustment to this schedule.

Courts Scheduled for Review in FY 08

Tribal Name	Review Date	Fiscal Year	Cancellation By Tribe
Rosebud Sioux Tribal Court	09-21-2007	FY07	
Oglala Sioux	10-12-2007	FY08	
Crow Nation Tribal Court	10-26-2007	FY08	
Walker River Paiute	11-06-2007	FY08	
Havasupai	11-21-2007	FY08	
San Carlos	12-10-2007	FY08	

¹ Joseph Little, Associate Director for Tribal Courts, Bureau of Indian Affairs, Division of Tribal Justice Support, Albuquerque, New Mexico, Phone 505-563-3833,

Ft. McDowell	01-14-2008	FY08	Canceled
Gila River	02-15-2008	FY08	
Washoe	02-27-2008	FY08	Canceled
Tohono O'dham	03-10-2008	FY08	Canceled
Hualapai	03-28-2008	FY08	
Turtle Mountain	04-13-2008	FY08	
Sisseton Wahpeton	04-22-2008	FY08	
Standing Rock	05-09-2008	FY08	
Quinault	06-09-2008	FY08	Canceled
Ft. Belknap	06-20-2008	FY08	
Ohkay Owingeh	08-01-2008	FY08	

II. METHODOLOGY:

To effectively determine the operational strengths and weaknesses of a Court system, a methodical review of its management policies and practices must be accomplished. It is necessary to review not only written policies and procedures, but also to interview staff to determine “unwritten” policies and procedures. Recommendations are provided to correct any identified shortfalls.

To provide this assessment, the following must be accomplished:

- A review of the Constitution, Bylaws, Tribal Code and other governing documents.
- A review of the Court operational policies and procedures.
- A management evaluation of the Courts existing practices and procedures.
- An evaluation of the Court’s budget and financial situation.

Notification Letters are sent to the Tribe approximately two weeks prior to arrival. The Notification Letters contain the proposed Scope-of-Work and a Tribal Court Review Preparation Guide. The week before arrival, contact with the Court is made by telephone and logistics are collected. It is not the intention to surprise the Tribe or Tribal Court and arrive for a review without advance notice.

The evaluation includes an initial meeting with the Tribal governing body and/or the Chairman/Governor. The evaluation also includes a closure meeting, with the Governing body, Chairman/Governor, and Court staff.

The Assessment includes interviews with the Court staff and those involved in Court activities, including, but not limited to:

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Chief Judge	Process Server
Associate Judge	Bailiff
Appellate Judge	Chief of Police
Court Administrator	Tribal Attorney
Chief Clerk	Prosecutor
Civil Court Clerk	Public Defender
Criminal Court Clerk	Detention Officer
Juvenile Court Clerk	Social Service Programs
Appellate Clerk	Tribal Court Oversight
Receptionist Clerk	Committee/Body
Probation Officer	

No names of individuals are included in this Assessment. The issues and concerns are the focus of the Assessment. Individuals, however, will be identified by references to their position if the information or activity is particular to that position.

Each person interviewed will be asked to describe and answer questions in relation to their function and duties with the Court system, to offer comments concerning potential problem areas affecting Court operations, and to give suggestions concerning how the Court could be improved.

The assessment also includes reviews and evaluations of Court operations and procedures; records management systems; financial management, including resources and budget; Court equipment and the Court facilities. Court files may also be reviewed, generally or specifically, to determine adherence to law or policy.

III. SCOPE-OF-WORK:

A. Introduction:

In order to accomplish the primary purposes (defined in the Introduction) of conducting Tribal Court reviews the Independent Review Team focuses on the following two fundamental aspects of a Tribal Court operation:

1. This initiative was partly devised to gather data (evidence) for the BIA to support the accomplishment of efficiency measurers developed in conjunction with the Federal Office of Management and Budget (OMB) for the Program Assessment Rating Tool (PART) that ultimately supports requests for budgetary increases.
2. Secondly, an independent review of a Tribal Court produces an objective assessment regarding its systemic operation. The Independent Review Team develops a set of findings that highlights a Court's strengths and weaknesses. Recommendations are developed to address weaknesses. These weaknesses are categorized into corrective actions that may be completed in the short term, such as minor revisions to the Tribal

code and those that will take longer to accomplish, such as building a new courthouse.

B. Model Scope-of-Work:

A model scope-of-work was developed, but the Review Team meets with the Tribal government, Court, BIA Agency and Regional Officials at each location to negotiate a specific scope for the review. Fundamentally, the Review Team evaluated the following aspects of a Tribal Court operation at all Courts reviewed during this Fiscal Year:

1. Determine the place of the Court within the Tribal structure, and organizational structure of the Court within the Tribe. Determine the level of judicial independence. Review the availability of the codes and maintenance of said codes. Determine the status of the Appellate Court within the Tribe.
2. Review the Court's internal administrative function (management), and organizational structure of the Court. Review the Court's internal policies and procedures manuals. For example review the Court's internal Financial Policies and Procedures Financial Management Manual.
3. Review the Court personnel, including experience, qualifications and training.
4. Review the Court's working relationship with other entities: Prosecutor, Law Enforcement, Public Defender, Detention, and ICWA.
5. Determine the Court caseload and the ability of the Court to adequately deal with the caseload. Determine the Appellate Court caseload.
6. Review the Court Budget. Is there adequate funding for positions, salary levels, and funding for Court activities such as jury trials, appeals, outside counsel. Percentage of Federal funds in the total Court budget.
7. Examine financial accountability in the use of Federal funds. How are funds being used?

In order to quantify the review of these operational aspects of a Court a "Tribal Court Needs Assessment Procedure (© 2008 Coochise, Lujan, Robertson)" was developed by the Independent Review Team for rating purposes. This rating instrument produces a score against which a standard can be applied and Courts can be ranked. The total possible score a Court can get is 200, the Review Team determined that a raw score of 120 would be the cut-off point to receive a "satisfactory" rating and a Court receiving a score less than 120 would be rated "unsatisfactory." Courts receiving an unsatisfactory rating would be placed on a priority list for technical assistance for the implementation of their corrective action plan. The following Needs Assessment Worksheet demonstrates this review procedure.

IV. TRIBAL COURT NEEDS ASSESSMENT PROCEDURE:

A. Introduction:

A Tribal Court Needs Assessment Worksheet was developed in response to preferences expressed by OMB to establish a numerical assessment to gauge the efficiency measurements of Tribal Courts, that could be use as a comparison for all reviews, and that would be able to be replicated by other court reviews. The Independent Tribal Court Review Team acknowledges the difficulty of applying a numerical assessment to a subjective category. However, the Review Team developed a worksheet that assessed the following functional elements of a tribal court operation:

1. Resources/Budget,
2. Workload,
3. Functionality within the Tribal Government Structure:
4. Staffing,
5. Statutory Structure (Codes),
6. Functionality outside the Tribal Government Structure, and
7. Policy (Financial/Operational)

These elements were rated on a numerical scale from 1 through 10.

In order to ensure consistency in scoring, standard definitions were developed. When the worksheet protocol was complete, members of the Review Team were able to individually and independently replicate the final worksheet score with less than 3% variability.

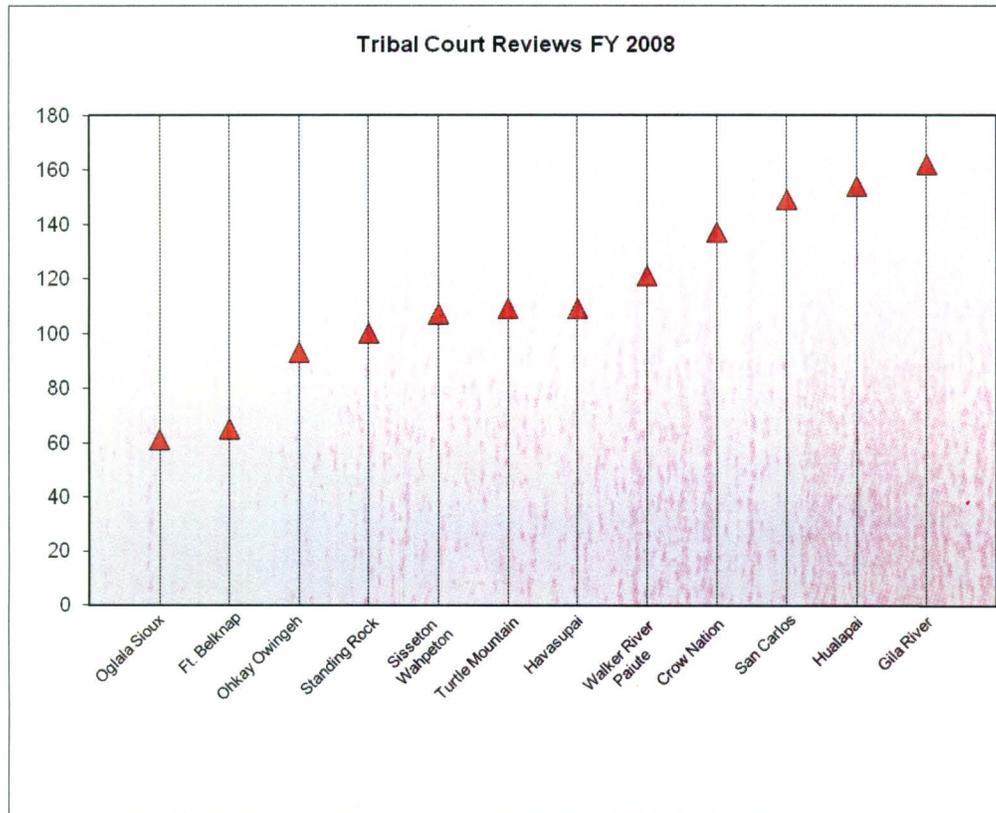
B. Review Results:

Based on the application of this process the chart entitled “Tribal Court Reviews FY 2008” (below) expresses the Tribal Court scores for FY 08. It was determined by the Independent Review Team that a score below 120 (which is the standard deviation for a “D” rating”) warranted a revisit for the implementation of corrective actions to assist in the improvement of a Court’s operation. Of the number of Courts reviewed 8 received scores below 120 and were listed as needing assistance for improvement. The data show that the mean score for Fiscal Year is 114. The result of this analysis produces a measurable level of need which is used to determine, if the funding and Court resources available to the Court are satisfactory. A satisfactory level would be funding and Court resources scoring 60% or better (or a raw score of 120 or better) on the Need Assessment Worksheet. A scoring level below this translates into a Tribal Court having a greater, or lesser level of need depending on their placement on the rating scale. This Measurement was not intended and should not be used for purposes of determining annual Court funding, but as a way to identify for the Federal Government, those Tribes having the highest level of need.

Corrective action, technical assistance was completed at three of the Tribal Courts on the priority list: the Rosebud Sioux Tribal Court, Oglala Sioux Tribal Court, and Sisseton-

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Wahpeton Tribal Courts. The Havasupai Tribal Court was added because of a complete turnover of critical Court personnel. Technical assistance was also provided for the Blackfeet Tribal Court, which was reviewed in the preceding Fiscal Year. Therefore, a total of five Tribal Courts were provided technical assistance during this Fiscal Year.

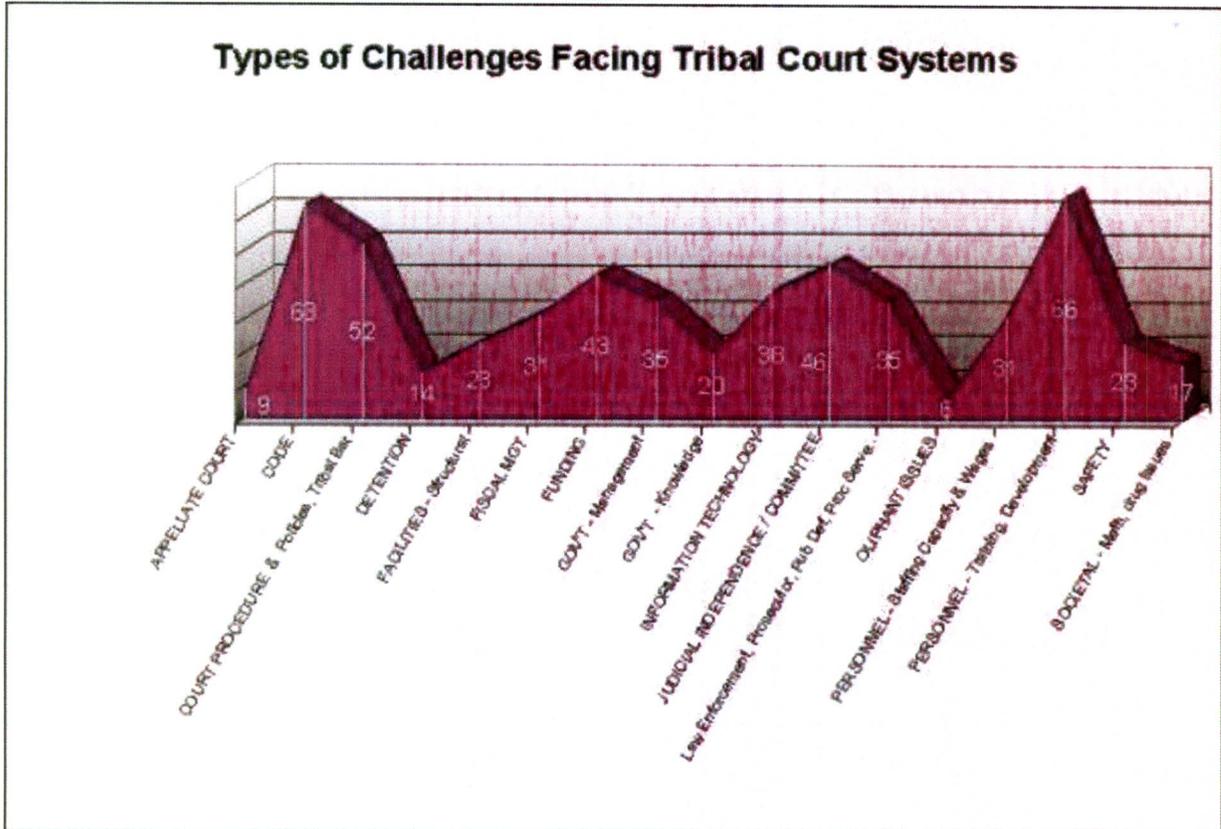


V. THE REVIEW TEAM'S COMPOSITE FINDINGS:

The total final scores for the 14 Tribal Courts are illustrated in the chart (Section IV, above) entitled "Court Reviews – FY 2008." However, as described in Section III above, the Independent Review Team established a score of 120 as the dividing point between Courts that would be placed on the priority list for corrective action. These reviews generated from between 23 to 27 findings at each Court. The findings were placed in a matrix to determine commonality. Based upon the foregoing the findings resulted in a listing of seventeen major areas (see chart that follows) in which Tribal Courts need improvement.

A frequency was developed based upon the data, the number of times the Independent Review Team cited a particular finding within each category. The resulting chart (below) depicts the type of challenges facing Tribal Court systems based on this data manipulation.

TRIBAL COURT CHALLENGES



A. SUPPORTING DATA:

TABLE EXPRESSING DATA INTERPRETING THE CHART ABOVE

Challenges/Consolidated Findings	Frequency
1. Personnel – Training (Development)	66
2. Codes (in need of update)	63
3. Court Procedures & Policies, (Tribal Bar) - (in need of update)	52
4. Judicial Independence / Committee	46
5. Information Technology	38
6. Government Management	35
7. Funding	43
8. Law Enforcement – Prosecutor, Defender, Process Server	35
9. Fiscal Management	31
10. Personnel – Staffing & Wages	31
11. Facilities – Structure	23
12. Safety	23
13. Government Knowledge	20
14. Social – Meth., Drug Facilities	17

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15. Detention	14
16. Appellate Court	9
17. Oliphant Issues	6

This table lists the findings into common categories and based upon the data produce a frequency in which a particular finding was reported. From this matrix that data then support conclusions such as the proposition that primarily, Tribal Courts lack training of its personnel, followed by the need for Tribal code update, or amendment, and so on.

B. EXPLANATIONS OF CHALLENGE CATAGORIES:

Each Challenge addresses a specific category of need resulting from the Tribal Court reviews (Reference the Table above).

1. Personnel: Indicated a need for training and the development of job skills for, Court Clerks, Judges and Bailiffs.
2. Codes: Indicates a need to update and codify tribal codes. However, currently all the tribes are working with codes.
3. Court Procedures and Policies: Indicates a need to create, update and put Court Procedures and Policies in written form.
4. (a) Judicial independence: Indicates any influence on the part of the tribal government with regard to judicial decisions. Generally, Tribal governments do not influence judicial decisions, but many tribal governments lack documents that support the independence of the tribal court.

(b) Judicial Committees: Indicates a need for defined roles of committees who are engaged in influencing decisions.
5. Information Technology: Indicates Tribal Courts lack of current software, networking capabilities, and/or updated computers. This also includes a lack of current communication systems.
6. Government Management: Indicates a lack of formal procedures for Code revision and distribution to affected governmental entities and the public.
7. Funding: Indicates that Tribal Courts are typically under funded under their P.L. 93-638 funding source and receive an inadequate amount from Tribal funds.
8. Law Enforcement: Indicates a lack of Prosecutor, Defenders, and Process Servers.
9. Fiscal Management: Indicates a tribal court's lack of internal written financial policies.

10. Personnel: Indicates a lack of adequate court personnel and salaries for staffing such as Court Clerks, Judges, and Bailiffs.
11. Facilities: Indicates a lack of adequate physical structures, a need for modern facilities, and in some cases a need to address unsafe structure conditions.
12. Safety: Indicates a lack of access to current safety procedures and security to protect court personnel.
13. Government Knowledge: Indicates an individual leader's lack of training in basic governmental concepts such as "separation of powers," and the unique role of the Courts within the government structure.
14. Social: Indicates a lack of adequate facilities that are available for substance abuse treatment. Includes all major substance abuse matters affecting adults and minors such as abuse of Meth. alcohol and inhalants.
15. Detention: Lack of access to standard detention facility.
16. Appellate Court: Having a full complement of appellate justices who make timely and unbiased decisions.
17. Oliphant Issues: Indicates that there is the lack of jurisdiction over non-Indians who commit crimes within Indian lands, and the high number of declinations for prosecution by the U. S. Attorney.

Even though funding for Tribal Court operations is listed as number seven in the delineation of challenges above, data from other sources support a conclusion that funding remains a critical need. The Judicial Subgroup conducted the last survey, in 2004, for the BIA/Tribal Budget Advisory Council in preparation for the FY 2007 BIA Budget. The Assistant Secretary for the Department of the Interior – Indian Affairs, organized the Judicial Subgroup to provide data and substantive information about Tribal Courts to this Budget Advisory Council. The Subgroup's report concluded that \$126 million is needed as a total funding requirement for Tribal Court operations, and \$172 million is needed to upgrade facilities.

Overall Comparison of Results

Survey Date ¹	2001	2003	2004
Response Rate ²	176	171	158
Total Population Count ³	4 million	10 million	4 million
Number of Tribes with a Population Count of <=5000 ⁴	76	74	67
Average Number of Tribal Court Personnel ⁴	11	7	10
Caseload ⁴	187,032	241,158	258,420
Type of Case Most Often Cited ⁴	Criminal	Criminal	Criminal
Percent of Tribes with a Cost Per Case <=\$1000 ⁴	67%	70%	84%
Percent of Tribes with Funding Requirement of <\$250,000 ⁴	57%	64%	58%
Total Funding Requirement ⁴	\$80 million	\$100 million	\$126 million
Total Cost to Upgrade Facilities ⁵			\$172 million
Total Cost to Establish Judicial System ⁵			\$6 million

¹ A survey was not conducted during 2002. ² During 2004, 129 of the 158 that responded reported that they had an established judicial system. ³ During 2003, four tribes listed their population at 1 million plus. These four accounted for variance of 6 million from 2003 to 2004. See the Population Variances slide for more details. ⁴ The calculation for 2004 is based on a response rate of 129. ⁵ The question on facilities and establishing a judicial system were added to the survey in 2004.



Source: Report by the Judicial Subgroup for the Tribal/BIA Advisory Council, October 2004.

There is no indication that this funding requirement has diminished over the past four years. The 2003 OMB's PART assessment states that the total funding for Tribal Courts is \$26 million, consisting of direct funds from the BIA (\$11 M) with the remainder from Tribal TPA funds. This funding level equals only 21% of the total Tribal Court operational need. There has been no appreciable funding increase for Tribal Courts since this assessment. The lack of adequate funding resources directly impacts the quality of justice provided on Indian reservations. In recent years "unfunded" mandates, such as the COPs program, has produced an additional workload on Tribal Court systems. Tribal Courts must absorb increased workload requirements without additional operating funds. The worst-case scenario, observed by the Review Team, was a Tribal Court operating on a \$10,000 budget. Most of the work performed by Court personnel was done on a volunteer basis. The 2004 data collection survey also shows that the BIA provides only approximately 23% to 25% of the 21% of the total funds for Tribal Court operations. The "Indian Tribal Justice Act" appropriated \$56 million for Tribal Courts, but the Department of the Interior as never drawn on this appropriation.

C. THE MEAN SCORE:

The mean is 33; therefore it appears that challenges/findings with a frequency greater than this number are the most critical weaknesses affecting Tribal Court operations in Fiscal Year 2008. The following two tables separates the challenges/findings into two parts and

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prioritizes them by frequency so that a determination can be made relative to which weaknesses are most critical and should be addressed in Corrective Action Plans.

Challenges/Consolidated Findings Table 1	Frequency above the Mean = 33
1. Personnel – Training (Development)	66
2. Codes	63
3. Court Procedures & Policies, (Tribal Bar)	52
4. Judicial Independence / Committee	46
5. Information Technology	38
6. Government Management	35
7. Funding	43
8. Law Enforcement – Prosecutor, Defender, Process Server	35

Challenges/Consolidated Findings Table 2	Frequency below the Mean = 33
1a. Fiscal Management	31
1b. Personnel – Staffing (?) & Wages	31
2a. Facilities – Structure	23
2b. Safety	23
3. Government Knowledge	20
4. Social – Meth, Drug Facilities	17
5. Detention	14
6. Appellate Court	9
7. Oliphant Issues	6

VI. FEDERAL MEASUREMENT – USE OF FEDERAL FUNDS:

The BIA requested that the Independent Review Team specifically review the use of Federal funds that were allocated for Tribal Courts and determine whether or not Federal funds are being spent for Court activities. A Satisfactory rating is 100% use of Federal Funding for Tribal Court operations. (This includes all Self-Governance Tribes.) A Questionable rating means 90% or better use of Federal funding for Tribal Court operations. (This category is intended to inform Tribes that, through oversight, the Tribe misdirected a small portion of Federal funds for non-Court activities.) An Unsatisfactory rating is intended to identify Tribes that incorrectly use Federal Court Funds for non-Court activities.

Use of Federal Funds - Rating

Satisfactory _____

Questionable _____

Unsatisfactory _____

Use of Federal Funds - Review Results:

Thirteen of the fourteen Tribal Courts reviewed in FY 08 received a “Satisfactory” rating relative to the use of Federal funds. The Rosebud Sioux Tribe received an “Unsatisfactory” rating.

VII. CONCLUSION:

The Native American Indian Judiciary is comprised of small to medium Courts dealing with 500 to 3,000 cases per year. (Source: Report by the Judicial Subgroup for the Tribal/BIA Advisory Council, October 2004) Because of the Indian Civil Rights Act of 1968, as amended, (25 U.S.C. §§ 1301-03) they are considered “misdemeanor” Courts, which limit “any penalty or punishment greater than imprisonment for a term of one year and a fine of \$5,000, or both.” (25 USC § 1302 (7)) But Tribal Court jurisdiction in civil cases may run the gamut, depending on the extent of personal and subjective matter jurisdiction.

The Review Team observed, while on site at various Reservations, an increase in lawlessness and gang activity. Tribal Courts must be given more extensive sentencing authority to adequately address criminal activity on Indian reservations. The Independent Review Team recommends that the Indian Civil Rights Act be amended to allow Tribal Courts “to impose a penalty or punishment not greater than imprisonment for a term of three years and a fine of \$15,000, or both.” This sentencing increase is proposed in the 110 Congress 2D Session as S.3320, the “Tribal Law and Order Act of 2008.”

The Denver Post reported in a November 14, 2008, article entitled “Expose on the Journal: Broken Justice” [<http://www.pbs.org/movers/journal/11142008/watch2.html>] that:

- 65% of the complaints that are filed [with the U.S. Attorneys Office] are just rejected out of hand by federal prosecutors. That's an astounding number. What would we do if the district attorney for Denver, if we learned that he was declining 65% of cases? Well, it would be an outrage; it would be enough to send the citizenry into the streets.
- After a six-month investigation examining dozens of cases from more than 20 reservations, Michael Riley published a four-part series called "Lawless Lands." It would reveal that a shocking number of crimes simply go unpunished in Indian country.

- In a recent three-year period, U.S. attorneys declined to prosecute half of the serious assault cases brought before them, almost half the murder and manslaughter cases, and over 70 percent of child sexual abuse cases
- The most recently available FBI arrest numbers are just as staggering. In fiscal 2006, on reservations where the federal government handles felony prosecution, 658 rapes were reported, only 7% led to arrest. For aggravated assault, the figure drops to less than 4%.

The Independent Review Team supports the provisions of S. 3320 (110 Congress 2D Session,) in particular the provision that mandates U.S. Attorneys to timely notify appropriate Tribal officials of decisions to decline prosecution, and provides for upgrading detention facilities. Although not a part of the Scope-of-Work, the Review Team observed that on many occasions, prisoners had to be transported many miles for incarceration. Most often juvenile offenders had to be transported because of the extreme shortage of adequate housing facilities for them. In some cases transportation took three hours one way, causing an additional strain on an already meager law enforcement staff.

Domestic violence and child abuse, on Indian reservations, is reaching a chronic stage and many non-Indian perpetrators escape judicial sanctions for their crimes and many Indian women and children live in fear or under threat of continued violence. The Independent Review Team recommends that the Indian Civil Rights Act be amended, to expand Tribal Court jurisdiction over non-Indians, in recognition of inherent Tribal sovereignty.

Attention was focused on the intra-relationship between the Tribal government and the Tribal Court vis-à-vis the freedom of interference from Tribal Officials. The Review Team concludes that Tribal Courts predominately operate independently of undue influence from Tribal Officials, except for one Tribe.

Midway through the Fiscal Year the Review Team was informed that there was a perception that Tribal governments may be violating individuals' "Right to a Speedy Trial" (Indian Civil Rights Act (25 USC 1302 (6))). Focus was placed on reviewing dates of charges, arraignments, and trials. The Review Team concludes from this assessment, that Tribal Courts are acutely aware of defendants' rights and found no flagrant violations. Fifteen courts were specifically reviewed to determine compliance, and fourteen were determined to be in compliance which their Speedy Trial Requirement which results in a 93% compliance rate.

Right to a Speedy Trial
INDEPENDENT TRIBAL COURTS REVIEW TEAM
Speedy Trial Data: 15 Reviews from 2007-2008

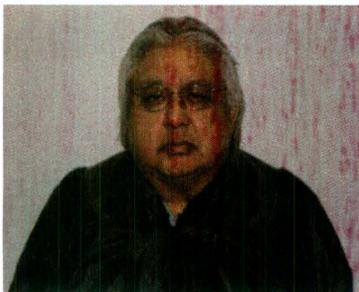
Court	Speedy Trial Or Similar Provision In Place?	Prosecuting Criminal Cases In a timely manner?
Sisseton-Wahpeton Oyate Tribe April 25, 2008	Law & Order Code re: Arrestment	Yes
Crow "Apsa ' Alooke" Tribe Oct. 26, 2007	Report is Silent	Yes
Havasupai Indian Tribe Nov. 21, 2007	Report is Silent	Yes
Gila River Community Feb. 15, 2008	Report is Silent	Yes
Ft. Belknap Indian Community June 20, 2008	Report is Silent	Yes
San Carlos Apache Tribe Dec. 14, 2007	"Speedy Trial" Provision	Yes
Turtle Mountain Chippewa Tribe April 11, 2008	"Pre-Trial Hearing" Code Provision	Yes
Ohkay Owingeh Pueblo Aug. 1, 2008	Report is Silent	Yes
Cheyenne River Sioux Tribe Sept. 21, 2007	Report is Silent	Yes
Rosebud Sioux Tribe Sept. 27, 2007	Report is Silent	Yes
Oglala Sioux Tribe Oct. 12, 2007	Report is Silent	Yes
Walker River Paiute Tribe of Nevada Nov. 9, 2007	Tribal Code provision is applied: "Time Limit for Commencing Criminal Prosecution." Not Adequate	No
Crow Nation Tribal Court Oct. 26, 2007	Report is Silent	Yes
Standing Rock Sioux Tribe	Report is Silent	Yes

May 5 – 9,2008		
Hualapai Mar -28-2008	Report is Silent	Yes

Tribal Courts are operating as efficiently as expected given the circumstances under which they exist, and are providing their respective Indian communities with adequate justice. However, the quality of justice on Indian reservations could be improved if adequate operational funds were provided. The Review Team recommends that funding for Tribal Courts be substantially increased and at a minimum the appropriations under the Indian Tribal Justice Act as amended (23 USC 3601 et seq.) be allocated.

APPENDIX A – BIOGRAPHIES

Biography: The Honorable Elbridge Coochise



Elbridge Coochise is an enrolled member (4/4) of the Hopi Tribe in Arizona. Chief Justice Coochise retired 7/14/97 has been on the bench for 29 years. Semi-retired and owner & operator of Coochise Consulting, LLC, which provides services to tribes and tribal organizations; including lobbying, training, pro-tem judge, judicial services, administrative services and court evaluations.

In Senior-Judge status; he sits on the Sac & Fox Tribe of the Mississippi in Iowa Tribal Court, the Cabazon Court of Appeals, and The Intertribal Court of California. Served on the San Carlos Tribal Court as a special judge, helped start up and sat on the Mohegan Tribal Court 2000-2005. Prior to retirement he served as the Chief Justice of the Northwest Regional Tribal Supreme Court 1988 - 1997, served as the Administrator/Chief Judge of the Northwest Intertribal Court System (NICS)(a circuit court system) in western Washington State 1981 - 1997. He was Associate Judge in the Hopi Tribal Court 1976 - 1981.

He served four terms as President of the National American Indian Court Judges Association 1988 -1996. He served three terms as President of the Northwest Tribal Court Judges Association 1988 - 1994. He serves on the Board of Directors of the National Indian Justice Center (NIJC), Santa Rosa, CA; on the Board of Directors of the Native American Rights Fund (NARF), Boulder, CO; on the Board of Directors of the National American Indian Court Judges Association (NAICJA); and a member of the Advisory Board to the National Tribal Judicial Center in the National Judicial College, Reno, NV. He is an alumnus and joined the faculty of the National Judicial College, Reno, NV in 1993. He was Chairman of the Tribal Governance Committee of the Affiliated Tribes of Northwest Indians, 1987 - 1997 (a regional tribal governments' organization).

A recognized leader in his field, Justice Coochise received the Who's Who Worldwide Award for Leadership and Achievement in his Profession for 1992-1993, received the Who's Who Global Business Leader award for 1993-1994, and in November 1994 he received the Who's Who among Outstanding Americans award. He served as a member of the National Indian Policy Center's task force on Law & Administration of Justice. He currently is a member of the BIA/Tribal Budget Advisory Committee's Judicial Subgroup. He has had the honor of serving on several national committees and panels, has taught for various tribes on American Indian issues in the U.S. and Canada. He was the key proponent in the passage of the Indian Tribal Justice Act, PL 103-176 passed on December 3, 1993.

Biography: The Honorable Philip Lujan



Philip D. Lujan is a member of the Kiowa Tribe of Oklahoma and Taos Pueblo. He grew up in the Rainy Mountain community of Kiowa County in Oklahoma. He is a graduate of Washburn University and the University of New Mexico, School of Law. He has worked exclusively with tribal governments and courts for over thirty years.

Legal Experience

- 1974 – 1977 Staff Attorney, UNM’s American Indian Law Center.

Tribal Court Experience: 1978 – Present

- Chief District Judge for: Potawatomi Nation (15 Yrs); Kaw Nation (2 Yrs); Iowa Nation (10 yrs).
- Formerly Chief District Judge for Cheyenne and Arapaho Tribes (6 Yrs);
- Formerly Chief District Judge for: Kickapoo Tribe (4 Yrs); Sac & Fox of Oklahoma (18 yrs.).
- Federal Magistrate for Courts of Indian Offences for: Anadarko Area serving the Kiowa, Comanche, Apache, Fort Sill Apache, Wichita, and Affiliated Tribes, Caddo, and Delaware Tribes (20 Yrs);
- Seminole Agency (5 Yrs). Formerly the Chickasaw Agency CFR Court for (4 Yrs).
- Prosecutor: 1978 – 1983 Anadarko Agency CFR Court.

Academic Experience:

Judge Lujan retired as a Professor Emeritus after twenty-five years of teaching at the University of Oklahoma. He was an Associate Professor in the Department of Communication. He taught various courses including Intercultural communication and the First Amendment. He has worked as a consultant and made numerous presentations in Native American communication. He was the Director of Native American Studies for twelve years and wrote the successful proposal to the Board of Regents which established a Native American Studies Major in the Arts and Sciences College

Biography: Charles D. Robertson, Jr.



Charles (Chuck) Durrell Robertson, Jr. is an enrolled member of the Cheyenne River Sioux Tribe. Chuck was born in Eagle Butte, South Dakota on the Cheyenne River Sioux Reservation, the son of two Indian teachers. In his formative years, Chuck lived in a number of places before graduating from high school in Scottsdale, Arizona. Chuck began his undergraduate work at Arizona State University and completed it in 1983 at the University of Minnesota. Chuck completed his *Juris Doctorate* in 1988 at Georgetown University Law Center in Washington D.C.

In his professional life, Chuck has worked in several areas of Indian affairs; including education, law enforcement, Tribal Courts, health care, gaming, and legislative/legal. Chuck has worked for a number of different jurisdictions, including city, state, Federal, national and Tribal. In varying capacities, Chuck has worked for the United States Senate, for (former) U.S. Senator Paul Wellstone, U.S. House of Representatives, National Congress of American Indians, Native American Rights Fund, and the National Indian Gaming Association.

Chuck was most recently the Executive Director of the National American Indian Court Judges Association. Chuck's strongest skills are in the areas of legislative/legal analysis and professional writing of all sorts. Chuck has drafted original testimony for Congress and the Administration more than 50 times and is responsible for numerous pieces of Federal legislative language. Chuck, under his own name or ghostwritten, has been published in several newspapers and periodicals. Chuck is proud to consider himself a strong advocate for Indian Nations and Indian people. Chuck is currently working as a Consultant to Indian Nations and Adjunct Faculty (in the areas of Indian Studies, American Government and English) at Oglala Lakota College in Rapid City SD.

Biography: Ralph E. Gonzales, Esq.



Ralph E. Gonzales is a member of the Pueblo of Laguna of New Mexico. He retired from the Bureau of Indian Affairs in March, 2007, with over 35 years of service with Indian communities. He has provided expertise in various positions with tribal government services, primarily with Indian Tribal Courts and Tribal Government Services. A major portion of this 35 years experience was spent primarily working directly with Tribal courts. He assisted in the creation of many CFR courts, development of codes, procedures and guidelines, and provided advice regarding court management matter such as case and jury management issues. He was also instrumental in the development of review procedures for the BIA, sample Federal charters for Tribes, and support documents for the creation of Federal Charters under § 17, of the Indian Reorganization Act. Additionally, he was responsible for the initial processing of Tribal requests for the creation of a Federal Corporation and recommended approval for the signature of the Assistant Secretary as necessary. In this capacity he coordinated the processing and approval of numerous approvals of Federal Charters for Tribal governments.

He was also associated with training employees on the effects of methamphetamine and the impact on Native American youth. The initiative resulted in over 4,000 BIA employees nationwide trained and has led to a formulation of an internal BIA taskforce who have developed a Memorandum of Agreement with Indian Health Service, BIA, and has ensured involvement of the Bureau of Indian Education (BIE) and the Office of Judicial Services to focus resources to address substance abuse problems.

Ralph has also worked with tribal governments and their Housing Authorities in HUD's Region VIII and developed innovative contract procedures to promote Indian contractor participation. He was also instrumental in developing a data collection protocol which was effective in justifying requests for funding increases for Tribal Courts and elevated Tribal
Prepared by the Independent Court Review Team: Coochise Consulting, LLC

Court Reviews in response to the White House's Office of Budget and Management's performance and improvement plans. He is an alternate reviewer for the Independent Tribal Court Review Team responsible for providing assessments and reviews of Tribal governments and the Bureau of Indian Affairs.

Mr. Gonzales was born at Fort Defiance, Arizona, on the Navajo Reservation and lived in Gallup, New Mexico, where he graduated from Cathedral High School, and then entered college at Creighton University. He completed his BA in accounting at the University at Silver City, New Mexico and graduated from the University of Denver - College of Law. He is a member of the Colorado Bar and the Federal Bar. Ralph served 3 years in the U. S. Army with a tour of duty in the Republic of Vietnam.

His hobbies are boating, hiking, cycling and he enjoys music & dancing. He enjoys spending quality time with his family and his only grand child, Nicholas. Ralph has contributed several years of volunteer service at the Wolf Trap National Park for the Arts in Vienna, VA.

Biography: Myrna Rae Rivera



Myrna R. Rivera is an enrolled member of the Washoe Tribe of Nevada and California. She graduated from Sherman Indian High School in Riverside, California. She was elected to Carson Colony Community Council (1981 - 1985) and served as secretary/treasurer. She represented her community on the Washoe Tribal Council for a one 4-year term. In addition, she served on the Board of Directors of the Inter-Tribal Council of

Nevada.

Ms. Rivera attended Sierra Valley College in Fresno, CA with a concentration in the area of court reporting. Following college, she worked as the Clerk of Court and the Court Administrator for the Washoe Tribal Court of Nevada and California. In this position she was responsible for working with various jurisdictions; including Tribal, state, Federal, and appellate court systems. She has also served as a case manager for the TANF for the Washoe Tribal TANF Program, 2003 - 2004.

Ms. Rivera is currently employed with the Inter-Tribal Council of CA, a consortium that provides health, education, childcare, and victim services to 50 tribal communities in California. In this capacity, she is program manager for the Tribal Law Enforcement Training Program and Rural Domestic Violence Program. She is a victim's advocate and obtained her certificate in Victims Services from California State University Fresno. In addition, she serves as an Advisory Board Member for the Women of Color Network representing the Western Region for the development of leadership skills within the domestic violence programs for women of color.

Ms. Rivera has created and developed a culturally relevant training presentation called the CRADLEBOARD Way. The goal and effect of the presentation is to provide culture based abuse prevention training to tribal communities, organizations, and individuals. The CRADLEBOARD Way is also used to present cultural sensitivity and collaboration training

Prepared by the Independent Court Review Team: Coochise Consulting, LLC

to non-Indian communities and agencies. The CRADLEBOARD Way has been presented to tribal communities; residential treatment facilities; Head Start training conferences; California Indian Education Conferences; Tribal TANF Programs of Torres Martinez, Washoe, CTTTP, to law enforcement agencies at both tribal and non-Indian departments; throughout California; tribal clinics; Elder Centers; domestic violence conferences; and most recently for the University of Oklahoma Men's and Women's Wellness Conference.

As the Court Reporter for the Tribal Courts Review Project, Ms. Rivera documents the interviews and creates meeting summaries for the Review Team's Reports.



INDEPENDENT TRIBAL COURT REVIEWS PROJECT

FY-2009 ANNUAL REPORT

October 22, 2009

**Elbridge Coochise, Chief Justice retired
Charles D. Robertson, Jr., Esquire
Philip D. Lujan, Judge
Ralph E. Gonzales, Esquire
Ramona F. Tsosie, Judge
Jessica R. Roberts, Judge**

**COOCHISE CONSULTING, LLC
Elbridge Coochise, President
8565 W. Granada Rd., Phoenix, AZ 85037
602-418-8937 (Cell) 623-936-8758 (Fax)**

Myrna R. Rivera, Court Reporter

**TRIBAL COURT REVIEWS PROJECT
FY-2009**

TABLE OF CONTENTS

SUMMARY	2
LIST OF COURTS REVIEWED	2
CHART, WITH SCORES	3
LIST OF COURTS REVIEWED FY-06 TO FY-09	4
SCOPE OF WORK	5
METHODOLOGY	7
FEDERAL CONCERNS	9
SPECIAL COURT DATA	9
FINDINGS (102 Findings)	10
BIOGRAPHIES OF TEAM MEMBERS	20

INDEPENDENT TRIBAL COURT REVIEW TEAM

FINAL REPORT

Fiscal Year 2009

A Commercial Contract was awarded to Coochise Consulting, LLC, after a Solicitation with the funding through the Bureau of Indian Affairs to conduct Court assessments of Tribal and CFR Courts throughout the United States. Fiscal Year 2009 represents the fourth year of operation for the Independent Tribal Court Review Team.

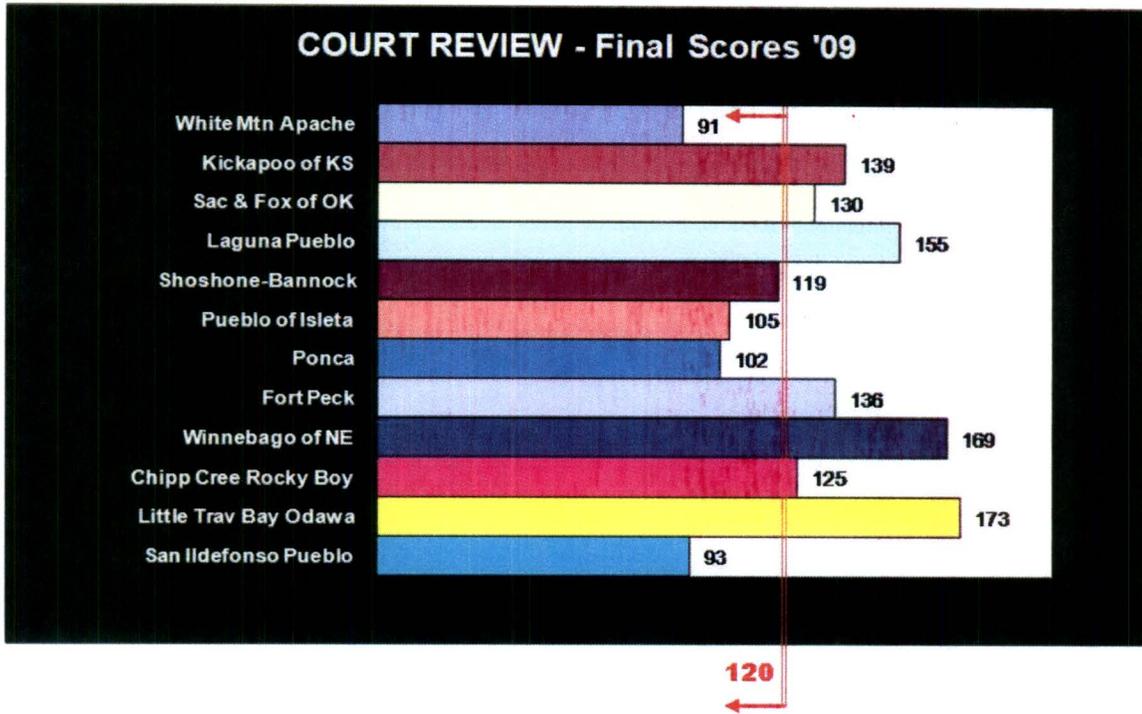
Members of the Team:

Hon. Elbridge Coochise, Chief Justice retired, Team Leader
Hon. Philip D. Lujan, Esq.
Charles D. Robertson, Esq.
Ralph E. Gonzales, Esq.
Hon. Ramona F. Tsosie
Hon. Jessica R. Roberts, Esq.
Myrna R. Rivera, Court Reporter

Biographies of the Team Members are attached at the end of the report.

During FY 2009 the Team reviewed 12 Courts of 17 courts scheduled; listed below.

White Mountain Apache
Kickapoo of Kansas
Sac and Fox of Oklahoma
Laguna Pueblo
Shoshone-Bannock
Pueblo of Isleta
Ponca
Fort Peck
Winnebago of Nebraska
Chippewa Cree (Rocky Boy)
Little Traverse Bay Band of Odawa
San Ildefonso Pueblo



In four years, the Team has Reviewed **58** Courts. (See attached Chart.)

Name	Date Review	Fiscal Year	Region	Cancellation
FY 2009, Reviews Scheduled				5
White Mountain Apache	11-21-2008	FY 09	Western	
<i>Hopi</i>	11-14-2008	FY 09	Western	Canceled
<i>Chitimacha of LA</i>	12-05-2008	FY 09	Eastern	Canceled
Kickapoo of KS	01-09-2009	FY 09	So. Plains	
<i>Confederated Tribes of Siletz</i>	01-23-2009	FY 09	Northwest	Canceled
Sac & Fox of OK	01-30-2009	FY 09	So. Plains	
Laguna Pueblo	02-06-2009	FY 09	Southwest	
Shoshone-Bannock	02-27-2009	FY 09	Northwest	
Pueblo of Isleta	03-13-2009	FY 09	Southwest	
Ponca of OK	04-24-2009	FY 09	Oklahoma	
Fort Peck	05-29-2009	FY 09	Rocky Mtn	
Winnebago of NE	06-12-2009	FY 09	Great Plains	
Chippewa Cree/Rocky Boy	07-24-2009	FY 09	No. Plains	
Little Traverse Bay of Odawa	07-31-2009	FY 09	Midwest	
<i>Passamaquoddy</i>	05-22-2009	FY 09	Eastern	Canceled
San Ildefonso Pueblo	08-21-2009	FY 09	Southwest	
<i>Penobscot</i>	04-24-2009	FY 09	Eastern	Canceled

FY 2008, Reviews Scheduled	17		4
Crow Nation Tribal Court	10-26-2007	FY08	
Ft. Belknap	06-20-2008	FY08	
<i>Ft. McDowell</i>	01-14-2008	FY08	Canceled
Gila River	02-15-2008	FY08	
Havasupai	11-21-2007	FY08	
Hualapai	03-28-2008	FY08	
Oglala Sioux	10-12-2007	FY08	
Ohkay Owingeh	08-01-2008	FY08	
<i>Quinault</i>	06-09-2008	FY08	Canceled
Rosebud Sioux Tribal Court	09-21-2007	FY07	
San Carlos	12-10-2007	FY08	
Sisseton Wahpeton	04-22-2008	FY08	
Standing Rock	05-09-2008	FY08	
<i>Tohono O'dham</i>	03-10-2008	FY08	Canceled
Turtle Mountain	04-13-2008	FY08	
Walker River Paiute	11-06-2007	FY08	
<i>Washoe</i>	02-27-2008	FY08	Canceled
FY 2006, Reviews Scheduled	24		1
Anadarko - CFR (7 tribes)	12-29-2005	FY06	
Blackfeet	06-15-2006	FY06	
Chickasaw	01-13-2006	FY06	
Eastern Cherokee	01-27-2006	FY06	
Kickapoo of OK	12-21-2005	FY06	
Lac Du Flambeau	12-01-2005	FY06	
Lower Brule	03-31-2006	FY06	
Mescalero Apache	03-22-2006	FY06	
Osage	01-18-2006	FY06	
Picuris Pueblo	05-23-2006	FY06	
Pyramid Lake	04-28-2006	FY06	
Red Lake	02-23-2005	FY06	
<i>Salt River Pima Maricopa</i>	02-08-2006	FY06	Canceled
Santa Ana Pueblo	03-17-2006	FY06	
Spirit Lake	09-14-2006	FY06	
Spokane	07-26-2006	FY06	
St. Regis Mohawk	08-29-2006	FY06	
Te'Moak - CFR	04-14-2006	FY06	
Ute (Uintah & Ouray)	08-16-2006	FY06	
Ute Mte Ute	10-20-2005	FY06	
Warm Springs	07-21-2006	FY06	
White Earth	09-26-2006	FY06	
White Mountain Apache (Fire Analysis)	02-15-2006	FY06	
Wind River (Shoshone & Arapahoe)	06-08-2006	FY06	

Tribal/CFR Courts reviews Completed		48		
Tribes refused after on-site		3		
		51		
Tribes Canceled, but after travel arranged		7		
		58		

Scope of Work

This Assessment is divided into sections as determined by the Scope of Work. The Scope of Work is negotiated with the Tribe prior to the Assessment. The Tribe may choose to select several areas of Tribal Court activity for review.

The Scope of Work identifies the particular areas for examination. The Scope of Work includes examination of both specific or fact-based data, such as a Constitution and an examination of variable factors, such as staff interviews. Inferences are made, based on all the data, which lead to recommendations.

Below are the items contained in the Scope of Work:

1. Determine the place of the Court within the Tribe structure. Organizational structure of the Court within the Tribe. Determine the level of judicial independence. Review the Availability of the codes and the maintenance of said codes. Determine the status of the Appellate Court within the Tribe.
2. Review the Court's administrative function (management). Organizational structure of the Court. Review the Court's internal policies and procedures manual. Review the Court's internal financial policies and procedures Financial Management Manual.
3. Review the Court personnel, including experience, qualifications and training.
4. Review the Court's working relationship with other entities: Prosecutor, Law Enforcement, Public Defender, Detention and ICWA.
5. Determine the Court caseload and the ability of the Court to adequately deal with the caseload. Determine the Appellate Court caseload.
6. Review the Court Budget. Is there adequate funding for positions, salary levels and Court activities such as jury trials, appeals, outside counsel. Percentage of Federal funds in total Court budget.
7. Financial Accountability in the use of Federal Funds. How funds are being used?

Regarding the Scope of Work, a more in-depth assessment might have included reviewing the Community Perception of the Courts. The Examiners did not meet with Community members because this was not part of the Scope of Work. However, some interested Community members did make informal comments to the Evaluators and those comments were discussed, and in some cases, included in the Assessment.

This Assessment is not officially or unofficially aimed at any particular problem and, certainly, not at the performance or capability of any particular individual or action. It is, however, an aspect of any Court Review that some individual actions, or inactions, may be discussed and even called into question. It is *NOT* the intent of the Evaluators to pass judgment on former decisions and activities, but to identify areas for improvement from today onward.

Also, in the process of reviewing the capability of the Court, the Assessment will examine the budget regarding financial management. This includes staff and contract costs. This Assessment may make recommendations regarding the reduction or reallocation of staff and contract employee expenses. These recommendations are not pre-conceived. They are based upon data and information provided on-site and the comparative costs of other similarly situated Courts.

Finally, no Assessment can expect to interview each individual associated with the Court, review every case file, or read every document. This Assessment included a two to four day, on-site review. This is a relatively short time to try to locate every problem and to find every solution. The Evaluators, in order to address prominent issues, prioritized the direction of the Assessment prior to arrival and throughout the time spent on-site. In doing so, we rely on decades of experience in working with Tribal Courts, several years of experience doing Court reviews and a range of experience in working with the variety of types of Courts; large or small, old or new, poorly funded or fully funded, PL280 or non- PL280 and Tribal or Federal. We expect, however, that there will still be areas, which might have benefited from enhanced scrutiny. It is our hope that through the process of enacting our recommendations, including several general recommendations to improve Court operations, the Court and the Tribe will achieve these solutions as well.

Recommendations Requiring Additional Funding. Recommendations may be made which will require additional funds which the Federal Government has not supplied and the Tribe, in all likelihood, does not have. We make these recommendations to help illustrate the needs of the Court. It is the Examiners hope the Tribe or Court can use these comments to solicit additional funding. It is also our hope, and our message, that the serious funding needs demonstrated in this Court Review and by other Court Reviews will help persuade the Federal Government of the immediate and compelling need to increase Tribal Court funding.

Methodology

To effectively determine the operational strengths and weaknesses of a court system, a methodical review of its management policies and practices must be accomplished. It is necessary to review not only written policies and procedures, but also to interview staff to determine “unwritten” policies and procedures. Recommendations are provided to correct the any identified shortfalls.

To provide this assessment, the following must be accomplished:

- A review of the Constitution, Bylaws, Code and other governing documents.
- A review of the Court operational policies and procedures.
- A management evaluation of the Courts existing practices and procedures.
- A financial evaluation of the Court’s budget and financial situation.

Notification letters are sent to the Tribe approximately two weeks prior to arrival. The Notification Letters will contain the Scope of Work and a Tribal Court Review Preparation Guide. The week before arrival, contact with the Court is made by telephone and logistics are collected. It is not the intention of the Evaluation that this is a surprise to the Tribe or Court; although, that has occurred at some of the locations.

The Evaluation includes an Initial meeting with the Tribal Governing Body and/or the Chairman/Governor. The Evaluation also includes a Closure meeting, with the Governing Body, Chairman/Governor, and Court staff.

The Assessment includes interviews with the Court staff and those involved in Court activities; including, but not limited to, (next page)

Chief Judge
Associate Judge
Appellate Judge
Court Administrator
Chief Clerk
Civil Court Clerk
Criminal Court Clerk
Juvenile Court Clerk
Appellate Clerk
Receptionist Clerk
Probation Officer
Process Server
Bailiff
Chief of Police
Tribal Attorney
Prosecutor
Public Defender
Detention Officer
Social Services Programs
Tribal Court Oversight Committee/Body

No names of individuals are included in this Assessment; the issues and concerns are the focus of the Assessment. Individuals, however, will be identified by references to their position if the information or activity is particular to that position.

Each person interviewed was asked to describe and answer questions in relation to their function and duties with the Court system, to offer comments concerning potential problem areas affecting Court operations, and to give suggestions concerning how the Court could be improved.

The Assessment also includes reviews and evaluations of Court operations and procedures, records management systems, financial management, including resources and budget, Court equipment and the Court facilities. Court files may also be reviewed, generally or specifically, to determine adherence to law or policy.

In response to Federal concerns, the Team created a numerical scoring sheet, which measures:

- 1) Resources/Budget
- 2) Workload
- 3) Functionality Within: Tribal Government Structure
- 4) Staffing
- 5) Statutory Structure (Codes)
- 6) Functionality Outside: Tribal Government Structure
- 7) Policy (Financial/Operational)

Ultimately, the Tribe will receive a final overall score which generally measures the capability of the Court and can be compared with other Tribes.

This score is then used to determine which Tribes need the most assistance, including which Tribes will be visited again for Corrective Action.

Federal Concerns

In addition to standard Court Review Concerns, the Federal Government has indicated particular Data it wished to have collected. This includes the following questions, and answers;

Are all Federal Funds being spent as intended? Yes. In the **58** Tribes the Team has reviewed, only one Tribe has not spent its Federal funds as intended. For that Tribe, Federal funds represented less than 2% of the Court budget.

Are Judges being fired for decisions against the Tribes? No. Tribal Judges make decisions against the Tribe without being fired. This is a reflection of the improved knowledge of Tribal Councils about the importance of independent Courts.

Are Speedy Trial rights being protected? Yes. Most Courts have adopted speedy trial statutes. Judges and the increased presence of Public Defenders serve to guard against speedy trial violations.

Special Court Review Data

After four years of existence, some data is of interest to the Team. This data may be considered by Congress in making legislation or may be an underlying cause/effect of why Tribal Courts are the way they are.

Do Multi-Jurisdictional Appellate Courts work? No. There is concern about them applying Tribal law and placing a priority on the Tribe. Decisions are slow. The quality of decisions is poor.

Do Court employees continue their education when it is convenient? No. The presence of a local Tribal College, or any college, does not mean Court employees go on to get their degrees. This is unfortunate, particularly when you consider that the more employees a Court has with degrees, the better it will function.

Do Tribes pay for a Public Defender? Yes. More Tribes are paying for of arranging for Public Defender services even though it is not a part of Court funding. These services help guard the civil rights of Tribal members.

What effect does it have on Court funding if a Tribe pays out per capita? Tribes that pay per capita have better funding. However, Court funding is generally low, even for those Tribes who pay per capita.

Are the U.S Attorney's doing a good job in Indian Country? No. As many as 50% of the cases which qualify for Federal prosecution are not being prosecuted by the U.S. Attorneys. This varies by the Attorney. Some do a very good job. Some do not.

FINDINGS - FISCAL YEAR 2009

Below are 102 findings which the Team has made as a result of four years experience reviewing Tribal Courts. They are not intended to be the basic impressions of Courts. These findings are intended to be reflective of the educations and experience of the Project, and the Team, over four years.

1. Tribes are using their Federal funds for Federal purposes. In FY 2009 the Team found no misuse of Federal funding. Federal funding is so low Tribes have no difficulty using it all for the intended Court purpose.
2. Not all Tribes have written Constitutions. Pueblos, in particular, often do not have written Constitutions. While this may be confusing to the more literal dominant society, this does not appear to be a hindrance on the operation of the Tribal government.
3. Tribes with newer Constitutions are better equipped to deal with modern Justice requirements. Older Constitutional systems do not consider all the potential problems modern society presents. Tribes, with the assistance of the Secretary (who has sign-off authority in older Constitutions) should regularly update their Constitutions
4. Two year terms for Tribal Councils are not long enough to provide the governmental consistency the Court needs. Tribal governments, like all governments, takes time to develop. Two years is barely enough time to train a new Council, much less expect productive work.
5. Most Courts are legislatively created. This often means there is some assumed residual control over the Courts by the legislatures.
6. Most Courts are permitted to be independent. Most legislatures know enough to leave Courts along to conduct their activities.
7. Some Courts are subject to Council interference. The interference that goes on is not at a level of firing Judges, but at a level of making an impermissible call about the case or sitting in a Courtroom in a case where there is some personal interest. Staff usually respond to impermissible Council queries.

8. Tribal Councils often do not understand their role in relation to Court systems. When it is explained to Councils why they should not call the Court, Councils understand. No one has ever explained why not before.
9. Separation of powers is not usual among Tribes. Most Tribes are not large enough for a true separation of powers. Most Courts are not capable of handling the administration (usually finance.)
10. Separation of powers is generally not a functional governmental structure for Tribes. Drawing a hard line separating governmental duties is not a traditional/cultural function. Independence is a more realistic goal.
11. Tribal Councils do not change the law (or clarify) when the Court makes an adverse decision. This is the usual means for legislatures to respond to adverse Court decisions. This means legislatures need further training.
12. Some Tribal Councils often view themselves as the final arbiter of all Tribal matters. Some Councils get involved in cases (usually those wrongly decided) even when they know it is wrong. Again, an indication of the need for more training.
13. Courts are often viewed as a Tribal Program. Courts are funded similarly to programs. Lost in this is that Courts have certain requirements, like jury trials, which have to take place.
14. Tribes often have criminal laws prohibiting interference with the Courts. Councils are proud of their stance against interference with the Courts. Councils with these laws do not interfere with Courts.
15. Most Tribes have laws protecting Judges from interference. Judicial terms and contracts with provisions for salary are much more common. Firing of Judges for an adverse decision is rare. Adverse decisions are not rare.
16. Tribal Councils have budgetary authority over Courts, similar to state and Federal systems. Courts (Court Administrators) often develop and keep track of their own budgets. Not getting enough funding is common in all Court systems.
17. Tribes do not generally use a salary scale for Court employees, including Judges. Use of a salary scale will get a better and more consistent rate for Court employees. Court Administrators often do not have time or training to work on this.

18. Most Tribal Codes need amendment and updating. Councils often do not have time or training to keep up with the need for new laws.
19. Tribal Criminal law and procedure often need amendment. If there is something in place, it is usually just left alone. This is a great area of need.
20. The Adam Walsh Act is receiving attention in Indian Country. Adam Walsh was a shot through Indian Country. It would have been better if a model had been developed and coordinated by Justice/Interior that Tribes could adopt.
21. Tribes keep their Codes in three ring binders. There are many changes to Tribal Codes. It is difficult for everyone to keep up to date.
22. Digital versions of Tribal Codes are more common. CD-ROM and internet are ways codes are now being kept.
23. Tribes need assistance with the process of keeping their Codes up to date. There is little coordination at the Tribal level of keeping an updated copy of the Code. Most Courts have only one updated copy of the Code. Or have disputes over which is the updated copy.
24. Younger clerks and Judges tend to be more comfortable with Court Management Software.
25. Tribes are not violating individuals Speedy Trial requirements. Whether through a prompt trial to dismissal by motion of the public defender, defendants are not being subject to speedy trial civil rights violations.
26. Most Tribes codify the Indian Civil Rights Act for speedy trial. Meaning most Tribes do not have a hard and fast time from arraignment to trial. However, most Tribes do not take much time between arraignment and trial.
27. Having Defense Council guards defendant's speedy trial protections. A public defender and even lay council quickly learn to object to formal and informal speedy trial extensions. This guards the rights of Defendants.

28. Tribal Court schedules are generally well under Speedy Trial limitations. The longest Trial date set during arraignment (in FY09) is about 90 days, well under most speedy trial requirements.
29. Tribes do not use a speedy trial waiver form. Defendants who request extensions of the Trial date should sign a waiver form. Tribes are not trained to do this.
30. Most Tribes have their own Appellate Court. Meaning, usually, the Tribe has Appellate procedures and three Judges who will serve that specific Tribe.
31. Many Tribes cannot afford to hold an Appellate Court. Even minimal payments to Appellate Judges are difficult to make with the small Court budgets most Courts have. This is despite the minimal amount of cases Appealed.
32. In some jurisdictions, the Council is the Appellate Court. This occurs in the more traditional systems, like the Pueblos. A surprising amount of these decisions are appealed because that is the traditional system and those decisions are generally honored.
33. Appellate Court services are needed in Indian Country. Many Tribes were actively looking for Appellate Judges. And, to establish Appellate systems.
34. Multi-Tribal Appellate Courts do not work. There are problems with timely decisions and the quality of decisions.
35. The status of Tribal Courthouses vary greatly. Tribal Courthouses generally reflect just under the financial status of the Tribe. If the Tribe has good economic development, the Courthouse could reflect that. However, this is not a priority for funding for Tribes.
36. Tribal Courthouses cannot be funded with Federal detention funding. Unless the Courthouse is part of the Detention Center. Most Courts do not want to be located 100% of the time near 33% of their cases.
37. Funding for “Cookie-cutter” Courthouses would greatly assist Tribes. If, to save costs, Courthouse construction funds could develop a model Courthouse and offer to build them in Indian Country, many Tribes would stand in line for them.

38. Tribal Court Clerks and staff get cross-trained to do other Court jobs. Because of the limited number of staff, staff learn to do each other's jobs. One positive effect of the low funding.
39. Tribal Court security is a tragedy waiting to happen. In this Year, we found no Courts with security that would stop a Red Lake situation. Few even had cameras and locking doors.
40. Court telephone systems are not up to date. Staff time saving features, like voice mail, were unusual.
41. A significant number of Courts have modern recording systems. One positive byproduct of grants and technology, many Courts have funding and the knowledge to obtain digital recording systems.
42. Courts often do not have Policy and Procedure manuals. There is neither time nor expertise to develop Policy Manuals. Courts are functioning off the knowledge of their staff. When staff leave, there is a large hole to fill.
43. Courts do not use modern case activity sheets. Modern case activity sheets require minimal writing. There is little use (training) of these type of check-off sheets.
44. Courts do not have a policy for maintaining Case files. Case files are nearly always in some level of disarray, meaning more time is required to get through a case. This is another training issue.
45. Courts do not have written Financial policies. Courts handle bonds and fine and fee payments without written direction. Another area where Courts rely on staff knowledge and they suffer when staff leave.
46. Customary and traditional practices are not put into Tribal law as much as they could be. Tribal values could be better reflected in statute (particularly criminal and family law.) If a Tribe does not make use of its unique law-making authority, what is the difference from state law?
47. Courts often use grants to pay for permanent Court services. A funding issue. How else is a Tribe to pay for a Process Server, for example. Eventually, the grant ends and so does the service.

48. Planning for the conclusion of grants to Courts is non-existent. If the grant pays for Juvenile Probation services, for example, there is little planning and those cases go by the wayside.
49. The number of Court staff vary widely, but are always inadequate. Even Tribes with funds to pay for a significant portion of their Court systems have staffing needs. We did not see a fully staffed Court.
50. Almost all Judges are law trained. Perhaps it is the economy, but full or part time, Courts are generally able to find a law-trained individual to serve as Judge.
51. Judges who are not law-trained should be trained as Judges. The team had an unfortunate string of Tribes who were damaged by hiring a Judge who was not law-trained and not trained as a Judge. It took these Tribes years to recover.
52. Many Judges are Indian. Both law-trained and non-law-trained Judges tend to be Indian.
53. The quality of Non-Indian Judges varies greatly. Non-Indian Judges can care a great deal about the Tribe, or see it as just a job. Usually in the extreme.
54. Most Judges are part-time. And doing less Administrative work. Since Judges cost more and Court Administrators do not need law training, this is a positive thing.
55. A good, well-trained Court Administrator can make an entire Court function effectively. This is a significant finding. Courts with one trained and quality staff person are doing very well. It is, however, difficult to find this “take-charge,” natural leader.
56. There is a shortage of clerks in Court systems. Due to lack of training funds, new software systems to learn and secretarial level pay.
57. Bailiffs are in short supply in Indian Country. Almost no Tribe can afford a bailiff who works whenever the Court does.
58. The status of the Bailiff is a security issue. Bailiffs provide physical protection for the Court. Cameras cannot.

59. Process servers are very busy. Even those Tribes with very small caseloads can't seem to get all their papers served.
60. Process servers need transportation. Tribes with Process Servers cite transportation as a need. One Tribe shared the school van.
61. Probation is inconsistent in Court systems. There is little training or formal probationary practices in Indian Country. Probation is very busy. Most on probation do little more than check in once a week.
62. Most Courts do not have formal training plans for new staff. There is little time to develop training documents or conduct even informal training for new staff. There are Clerks who have never been trained to be clerks.
63. Most Courts do not have adequate funding to train the staffs. Even a little training greatly helps Court staffs.
64. Most Court, despite the proximity of a local college, do not provide staff salary increases for completing their education. A higher level of education brings more respect to Court staffs. Yet, even with a Tribal College a few blocks away, Courts do not encourage continuing education.
65. The closer two Court-related entities are in proximity, the better they will get along. This is a significant finding. For example, when law enforcement is next door to the Court, there will be fewer information dis-connects between the two entities. Likewise when Prosecution is close by. People get along with who they see every day. The lesson is to put everyone regularly in the same room..
66. Smaller Tribal Councils of six or less do not have time to adequately oversee Judicial matters. Given the complexity of running a contemporary Tribe, small Councils do not have time or do not make time to get involved in the necessary aspects of their Courts.
67. Larger Tribal Councils use a Committee system to oversee Judicial systems with a degree of success. Committees of Council of members of the general public can focus attention of Court needs such as new laws.
68. Separating properly from a poor Judge is a concern for Tribal Councils. This is a significant finding. Like anywhere, there are Tribal Judges who should not be Judges.

When a Tribal Judge is fired for good cause, there is concern the firing will be viewed as unjustified. Particularly in the media. So Tribes tend to keep poor Judges.

69. Non-Indian lawbreakers are a problem in Indian jurisdictions. Oliphant isn't working. This is a particular problem with Domestic Violence cases.
70. Non-Indians move to Indian jurisdictions to escape prosecution. This is a problem with drug cases. Meth labs are built on Indian reservations because Tribal Law Enforcement often cannot arrest non-Indians.
71. Indian jurisdictions are often better situated to deal with domestic violence case involving a non-Indian. Available services often cannot be offered to non-Indian violators. These services are only available hours away so they go without.
72. A growing number of Tribes have an on-site Tribal Attorney. Legal consultation for the Councils is improving.
73. Tribal Attorneys are often not put to use as consultation for the Court, even when the Court is not law-trained. Even when there is on-site Attorneys, Judges are not comfortable or trained to ask the proper questions to get help.
74. A growing number of Tribal Traffic Codes are civil. A significant finding. A functional method to control the growing number of non-Indians on reservation.
75. Non-Indians pay their civil traffic citations to Tribal jurisdictions. Non-Indians pay traffic tickets at a higher rate than does the Indian population. Meaning they have more resources and are likely on the reservation to purchase something. (Entertainment.)
76. Most Courts have a law-trained Prosecutor. Lay-Prosecutors are becoming fewer. The technical requirements of the job make it more difficult to do without law training.
77. Too many Courts do not have a Public Defender. A significant finding. We choose not to say too many Defendants have their rights violated because the increase in law-trained Judges and Prosecutors works, despite formal training, to functionally help guard the Defendants rights.

78. Outside attorneys substantially practice in many Courts. A reflection of the economy and of Tribal economic development, there is an increase in the number of Attorneys who regularly practice.
79. Lay Counselors have an even more limited practice in Courts. Tribal Courts are becoming technically too difficult for the untrained to practice in. The cases are too complex, not the Courts.
80. Most Courts maintain a limited Tribal Bar. Almost all Courts have a list of Attorneys and Lay Council who have received permission to practice.
81. Most Courts charge yearly Bar fees. These fees are generally less than \$200.
82. Most Courts do not have training requirements or Bar exams for those practicing. Means ideal and effective representation still as a ways to go.
83. Tribal Law Enforcement is underfunded proportionately with Courts.
84. BIA Law Enforcement often does not adequately serve the Tribe. BIA Law Enforcement does not answer to the Tribe. They informally do not enforce Tribal laws. They ticket, arrest or lock up based on Federal policy, not Tribal priority.
85. Methamphetamine continues to be a problem. Meth, despite some success, remains a problem. It is a larger problem closer to the urban areas.
86. Alcohol and marijuana are the largest problems in Tribal jurisdictions. These are the number 1 and 2 problems on every reservation.
87. Detention continues to be a large space, transportation and financial problem. Courts without the ability to lock up soon become ineffective.
88. Juvenile detention is a worse problem than adult. Juveniles learn quicker than adults the lock-up is full or the laws are not strict.
89. U. S. Attorneys are not providing adequate service Tribes. Every Tribe has a tragic story about an abused child, beaten partner or aggravated assault that was not prosecuted.

90. Federal crimes go unprosecuted at a rate of more than 50%. This is a low estimate.
91. Federal prosecutions often hinder Tribal prosecutions. Feds hold on to the evidence for as long as a year before they decide not to prosecute. During this delay, Defendants are often out on bond, harassing witnesses and committing other crimes.
92. Tribal caseloads continue to be large. Tribal Courts handle more cases of all types with fewer resources than all other Courts.
93. Most Courts use Case Management software. This, despite training needs and maintenance costs, has improved the workload for Courts.
94. There is no cost effective Case Management Software for use by Courts. A good under 5,000 Defendant CMS at a low cost would be purchased by 90% of Tribes. Systems designed for states are too large.
95. Younger Clerks and Judges tend to be more comfortable with Court Management Software. Meaning almost all Courts will lose their older Clerks as they make the inevitable change to CMS. Courts have to learn to expect this.
96. Courts are relatively up-to-date in computer equipment and technology. A surprising positive due to Justice grants.
97. Tribes spend a significant portion of funding in support of Court funding. Estimates that 26% of Court funding is Tribal are likely low. Hidden costs are often not factored in such as Public Defender, building maintenance and yearly cost over-runs.
98. Tribes place a priority on Court funding. At the expense of other Tribal programs.
99. Per capita is not a factor in the relative quality of a Court system. Many Tribes pay per capita not amounting to no more than a few \$100 per year. It has no positive or negative effect on Court funding.
100. Tribal economic development is a large factor effecting Court funding. The best staffed and equipped Tribes have positive Economic development.

101. Court personnel and Judicial salaries are low. Local County and state Court staff almost always make more for the same job. Often, Tribal Court staff are better trained.
102. Most Tribes hold only one or two jury trials per year. Most Defendants plead guilty when they see a jury, meaning Jury Trials are rarely held in Indian jurisdictions.

BIOGRAPHIES OF INDEPENDENT TRIBAL COURT REVIEW TEAM:

TEAM LEADER: The Honorable Elbridge Coochise, Retired

Biography: Hon. Elbridge Coochise, Chief Justice Retired



Elbridge Coochise is an enrolled member (4/4) of the Hopi Tribe in Arizona. Chief Justice Coochise retired 7/14/97 has been on the bench for 32 years. Semi-retired and owner & operator of Coochise Consulting, LLC, which provides services to tribes and tribal organizations; including lobbying, training, pro-tem judge, judicial services, administrative services and court evaluations.

In Senior-Judge status; He sits on the Cabazon Court of Appeals, and The Intertribal Court of Northern California. He served on the San Carlos Tribal Court as a special judge. He set up the new court for the Shingle Springs Rancheria Band of Miwok Indians in California, 2009 - 2010 and was their Chief Judge; helped start up and sat on the Sac & Fox Tribe of the Mississippi in Iowa Tribal Court 2005 – 2009; helped start up and sat on the Mohegan Tribal Court 2000 - 2005. Prior to retirement he served as the Chief Justice of the Northwest Regional Tribal Supreme Court 1988 - 1997, served as the Administrator/Chief Judge of the Northwest Intertribal Court System (NICS)(a circuit court system) in western Washington State 1981 - 1997. He was Associate Judge in the Hopi Tribal Court 1976 - 1981.

He served four terms as President of the National American Indian Court Judges Association 1988 -1996. He served three terms as President of the Northwest Tribal Court Judges Association 1988 - 1994. He serves on the Board of Directors of the National Indian Justice Center (NIJC), Santa Rosa, CA; served three terms 2000 – 2006, on the Board of Directors of the Native American Rights Fund (NARF), Boulder, CO; on the Board of Directors of the National American Indian Court Judges Association (NAICJA); elected in 2010 to the Faculty Advisory Council of the National Judicial College, Reno, NV and a member of the Advisory Board to the National Tribal Judicial Center in the National Judicial College, Reno, NV. He is an alumnus and joined the faculty of the National Judicial College, Reno, NV in 1993. He was Chairman of the Tribal Governance Committee of the Affiliated Tribes of Northwest Indians, 1987 - 1997 (a regional tribal governments' organization).

A recognized leader in his field, Justice Coochise received the Presidential Who's Who Among Business and Professional Achievers for 2010 "Consultant of the Year", the Cambridge Who's Who Registry of Executives, Professionals and Entrepreneurs for 2010, the Who's Who Worldwide Award for Leadership and Achievement in his Profession for 1992-1993, received the Who's Who Global Business Leader award for 1993-1994, and in November 1994 he received the Who's Who among Outstanding Americans award. He served as a member of the National Indian Policy Center's task force on Law & Administration of Justice. He currently is a member of the BIA/Tribal Budget Advisory Committee's Judicial Subgroup. He has had the honor of serving on several national committees and panels, has taught for various tribes on American Indian issues in the U.S. and Canada. He was the key proponent in the passage of the Indian Tribal Justice Act, PL 103-176 passed on December 3, 1993.

Biography: The Honorable Philip D. Lujan, Esq.



Philip D. Lujan is a member of the Kiowa tribe of Oklahoma and Taos Pueblo. He grew up in the Rainy Mountain community of Kiowa County in Oklahoma. He is a graduate of Washburn University and the University of New Mexico, School of Law. He has worked exclusively with tribal governments and courts for more than thirty years.

Legal Experience

1974 – 1977 Staff Attorney, UNM's American Indian Law Center.

Tribal Court Experience: 1978 – Present

Chief District Judge for: Potawatomi Nation (15 Yrs); Kaw Nation (2 Yrs); Iowa Nation (10 yrs).

Formerly Chief District Judge for Cheyenne and Arapaho tribes (6 Yrs);

Formerly Chief District Judge for: Kickapoo Tribe (4 Yrs); Sac & Fox of Oklahoma (18 yrs.).

Federal Magistrate for Courts of Indian Offences for: Anadarko Area serving the Kiowa, Comanche, Apache, Fort Sill Apache, Wichita, and Affiliated tribes, Caddo, and Delaware tribes (20 Yrs);

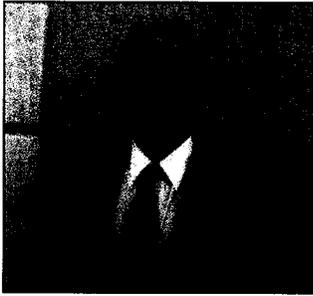
Seminole Agency (5 Yrs). Formerly the Chickasaw Agency CFR Court for (4 Yrs).

Prosecutor: 1978 – 1983 Anadarko Agency CFR Court.

Academic Experience:

Judge Lujan retired as a Professor Emeritus after twenty-five years of teaching at the University of Oklahoma. He was an Associate Professor in the Department of Communication. He taught various courses including Intercultural Communication and the First Amendment. He has worked as a consultant and made numerous presentations in Native American communication. He was the Director of Native American Studies for twelve years and wrote the successful proposal to the Board of Regents which established a Native American Studies Major in the Arts and Sciences College

Biography: Charles D. Robertson, Jr., Esq.



Charles (Chuck) Durrell Robertson, Jr. is an enrolled member of the Cheyenne River Sioux tribe. Chuck was born in Eagle Butte, South Dakota on the Cheyenne River Sioux Reservation, the son of two Indian teachers. In his formative years, Chuck lived in a number of places before graduating from high school in Scottsdale, Arizona. Chuck began his undergraduate work at Arizona State University and completed it in 1983 at the University of Minnesota. Chuck completed his *Juris Doctorate* in 1988 at Georgetown University Law

Center in Washington D.C.

In his professional life, Chuck has worked in several areas of Indian affairs; including education, law enforcement, tribal courts, health care, gaming, and legislative/legal. Chuck has worked for a number of different jurisdictions, including city, state, Federal, national and Tribal. In varying capacities, Chuck has worked for the United States Senate, for (former) U.S. Senator Paul Wellstone, U.S. House of Representatives, National Congress of American Indians, Native American Rights Fund, and the National Indian Gaming Association.

Chuck was most recently the Executive Director of the National American Indian Court Judges Association. Chuck's strongest skills are in the areas of legislative/legal analysis and professional writing of all sorts. Chuck has drafted original testimony for Congress and the Administration more than 50 times and is responsible for numerous pieces of Federal legislative language. Chuck, under his own name or ghost-written, has been published in several newspapers and periodicals. Chuck is proud to consider himself a strong advocate for Indian Nations and Indian people. Chuck is currently working as a Consultant to Indian Nations and Adjunct Faculty (in the areas of Indian Studies, American Government and English) at Oglala Lakota College in Rapid City SD.

Biography: Ralph E. Gonzales, Esq.



Ralph E. Gonzales is a member of the Pueblo of Laguna, New Mexico. He retired from the Bureau of Indian Affairs on March 3, 2007, with more than 35 years of service with Indian communities. He has provided expertise in various positions with tribal government services, primarily with Indian tribal courts. He was also associated with training employees on the effects of methamphetamine and the impact on Native American youth. The initiative resulted in an excess of 4,000 BIA employees nationwide trained and led to a formulation of an internal BIA task force. This

task force developed a Memorandum of Agreement with Indian Health Service, BIA, and Bureau of Indian Education (BIE), promoting the Office of Judicial Services' which focus its resources to address substance abuse problems among Native American youth.

Ralph worked with tribal governments and their housing authorities in HUD's Region VIII and developed innovative contract procedures to promote Indian contractor participation. He was architect in developing a data collection protocol that was effective in justifying requests for funding increases for tribal courts and designed the process to evaluate tribal court operations to provide data in response to the White House's Office of Management and Budget's (OMB) performance and improvement plans.

Currently, he provides consultation services on tribal government matters in general, for independent tribal court reviews, and has assisted in the completion of numerous systemic tribal court reviews. In addition, he has contributed to the enhancement of tribal court operations as a participant in the corrective action initiative, which is the functional result of the tribal court reviews.

Ralph developed, wrote and presents a seminar teaching Native Americans and others the fundamentals of preparing tribal Federal Corporate Charters under 25 USC 477. This initiative is the underpinning for promoting economic development on Indian reservations. These seminars have been held in South Dakota, Montana, and Maine. The seminars take the participants through all of the steps of developing and presenting a tribal Federal Corporate Charter to the Secretary of the Department of the Interior for approval. The seminar, not only focuses on the development of a corporate charter for tribal governments, but addresses relevant tax aspects, and tribal financing issues, which includes bond financing.

Mr. Gonzales was born in Fort Defiance, Arizona, on the Navajo Reservation and lived in Gallup, New Mexico, where he graduated from Cathedral High School, and then entered college at Creighton University, Omaha, Nebraska. He completed his BA in accounting at Western University at Silver City, New Mexico, and his Juris Doctorate from the University of Denver - College of Law, Denver, Colorado. He is a member of the Colorado Bar and the Federal Bar. Ralph served three years in the U. S. Army, as an officer in the Quartermaster Corps, and served a brief tour of duty in the Republic of Vietnam.

His hobbies are boating, hiking, cycling, traveling, and he enjoys music & dancing. He delights in spending quality time with his immediate family and his only grandchild, Nicholas. Ralph has contributed several years of volunteer service at the Wolf Trap National Park for the Performing Arts in Vienna, VA. He has also served as president of the Montgomery Sports, Social & Singles Club for three terms.

Biography: Honorable Ramona F. Tsosie



Ramona F. Tsosie is a member of the Fort Mojave Indian tribe in Needles, California. She has served as the Chief Judge of the Havasupai tribe of Arizona since 1998 with her term expiring April of 2003. Currently she serves as the court administrator for the

Hualapai Tribal Court and served as interim chief judge. She has also served as the court administrator for the Yavapai-Apache tribe and the Fort Mojave Tribe. Prior to joining the Fort Mojave tribe, she worked in the Navajo Nation Tribal Court System. She has dedicated more than 15 years of service working in tribal court systems.

She serves on the Board of Directors for the National Association of the Tribal Court Personnel, and is a member of the Arizona Courts Association. In addition she serves as a faculty member at the National Judicial College in Reno Nevada since 1999. She was selected by the National Registers and awarded the "Who's Who among Executives and Professionals" for the years 2003, 2004 and 2005.

She is a trainer with Fox Valley Technical College, Northern Plains College, J. Dalton and Associates and the National Tribal Resource Center. She provides training and certification to court clerks and court administrators and at times to judges, throughout Indian Country. Training topics covered: Customer Service in Tribal Courts; Roles and Duties of Tribal Court Clerks; Roles and Duties of Court Administrators, Budgets, Record Keeping, Records Management, Fiscal Management, Personnel Management, Jury Management, Calendaring and Ethics.

Biography: Myrna Rae Rivera



Myrna R. Rivera is an enrolled member of the Washoe tribe of Nevada and California. She graduated from Sherman Indian High School in Riverside, California. She was elected to Carson Colony Community Council (1981 - 1985) and served as secretary/treasurer. She represented her community on the Washoe Tribal Council for a one 4-year term. In addition, she served on the Board of Directors of the Inter-Tribal Council of

Nevada.

Ms. Rivera attended Sierra Valley College in Fresno, CA with a concentration in the area of Court reporting. Following college, she worked as the Clerk of Court and the Court Administrator for the Washoe Tribal Court of Nevada and California. In this position she was responsible for working with various jurisdictions; including tribal, state, federal, and appellate court systems. She has also served as a case manager of the TANF for the Washoe Tribal TANF Program, 2003 - 2004.

Ms. Rivera is currently employed with the Inter-Tribal Council of CA, a consortium that provides health, education, childcare, and victim services to 50 tribal communities in California. In this capacity, she is program manager for the Tribal Law Enforcement Training Program and Rural Domestic Violence Program. She is a victim's advocate and obtained her certificate in Victims' Services from California State University Fresno. In addition, she serves as an Advisory Board

Member for the Women of Color Network representing the Western Region for the development of leadership skills within the domestic violence programs for women of color.

Ms. Rivera created and developed a culturally relevant training presentation called the CRADLEBOARD Way. The goal and effect of the presentation is to provide culture-based abuse prevention training to tribal communities, organizations, and individuals. The CRADLEBOARD Way is also used to present cultural sensitivity and collaboration training to non-Indian communities and agencies. The CRADLEBOARD Way has been presented to tribal communities; residential treatment facilities; Head Start training conferences; California Indian Education Conferences; Tribal TANF Programs of Torres Martinez, Washoe, CTTT, to law enforcement agencies at both tribal and non-Indian departments; throughout California; tribal clinics; Elder Centers; domestic violence conferences; and most recently for the University of Oklahoma Men's and Women's Wellness Conference.

As the Court Reporter for the Tribal Courts Review Project, Ms. Rivera documents the interviews and creates meeting summaries for the Review Team's Reports.

Biography of Jessica R. Roberts



Jessica R. Roberts is an enrolled member of the Meskwaki Nation, the Sac & Fox Tribe of the Mississippi in Iowa. She is an Associate Judge, appointed on January 25, 2008. She served as a Magistrate Judge for a year before being appointed to her current position. After graduating from law school, she worked as a Staff Attorney for the Navajo Nation Department of Justice, Office of the Attorney General, in Window Rock, Navajo Nation (AZ), where she primarily focused on economic

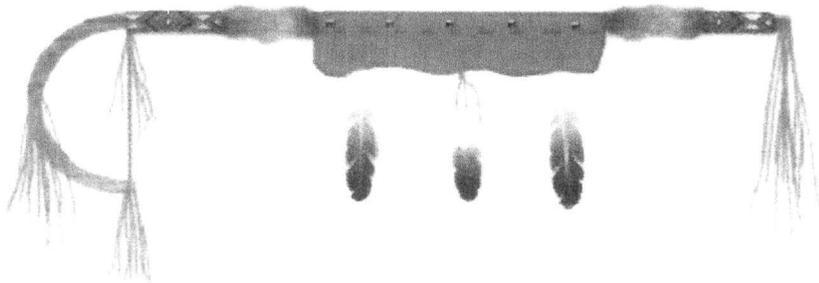
development and community development. She served as one of three Gaming Commissioners for the Sac and Fox Gaming Commission, which is the tribal regulatory body for Meskwaki Bingo-Casino-Hotel in Tama, Iowa.

She graduated from the University of Iowa with an undergraduate degree in Communication Studies and a Certificate in American Indian/Native Studies. She obtained her law degree from the University of Iowa College of Law in May of 2000. During law school, she was a research assistant for Professor Robert Clinton, worked with the University of Iowa Legal Clinic on immigration issues, and was a legal intern for the Council on Environmental Quality for the White House in Washington D.C.

She is licensed to practice law in the State of Iowa, State of New Mexico, and the Navajo Nation, and was admitted to federal practice in the U.S. District Court District of New Mexico.

INDEPENDENT COURT REVIEWS PROJECT

FY-2010 ANNUAL REPORT



November 2, 2010

**Tribal Court Assessments
Under Commercial Contract #CBK16070004
U.S. Department of the Interior**



**COOCHISE CONSULTING, LLC
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INDEPENDENT TRIBAL COURT REVIEW PROJECT
FY-2010

Table of Contents

SUMMARY	Page 2
TABLE: List of Courts Reviewed	Page 2
TABLE: List of Corrective Action	Page 5
FINDINGS	Page 6
BIO's of Review Team Members	Page 11
SCOPE OF WORK	Page 17
METHODOLOGY	Page 19
CASE STATISTICS	Page 20
CUMULATIVE REVIEWS	Page 21

INDEPENDENT TRIBAL COURT REVIEW PROJECT

FY 2010

Year End Report

The end of FY2010 represents the fifth completed year of the Independent Court Review Project. In 2010, the review team completed 18 tribal court reviews and 11 Corrective Actions. Through the end of the five years through FY2010, 79 reviews were scheduled, with 13 refused or cancelled for a total of 66 Reviews completed.

Reviews are comprehensive with most lasting a full week on-site. Extensive data is collected from the tribe. Reviews are systemic in nature. Tribes are assured that they are selected at random and the team is not predisposed to look for or discover any specific item.

Federal component. The funding agency (Interior Department) has indicated that certain data must be collected. This includes: 1) How Federal Funds are spent and 2) Information regarding Speedy Trial, including speedy trial violations, if any.

This document covers FY2010. In this document, the team reveals 17 findings significant to the past year, which is discussed in depth. The team considers these findings indicative of their experience in 2010.

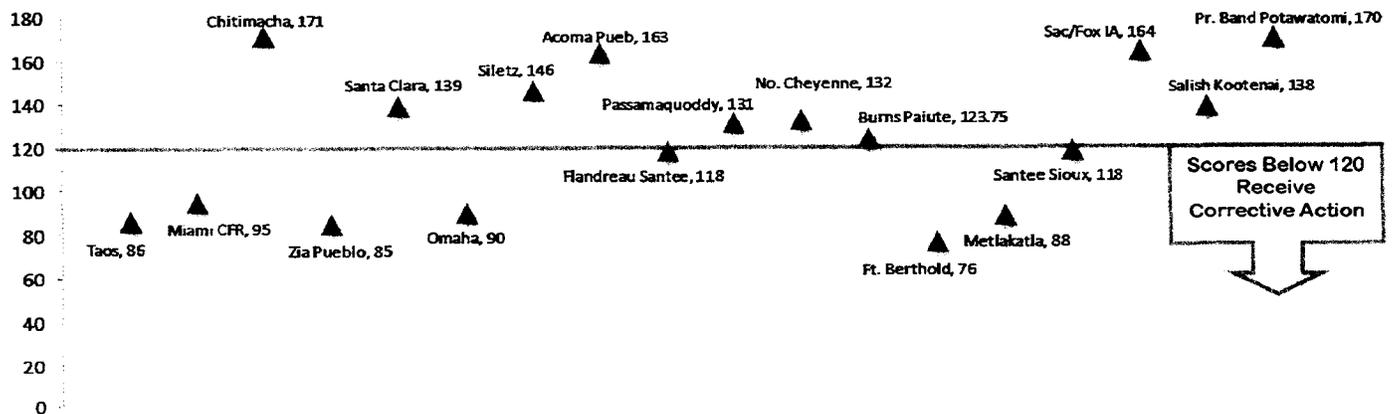
SUMMARY REPORT - INITIAL COURT REVIEWS FY-2010 COMPLETED

FINAL REVISIONS: SEPTEMBER 25, 2010

No.	COURT	DATE	SPEEDY TRIAL			SCORE	CORRECTIVE ACTION		OTHER
			Statute	Violate	Time				
1	Taos	10/30/09	Yes 6mos	No	2 wk	86	Yes	Done	
2	Miami CFR	11/13/09	Yes 6mos	No	90 days*	95	Yes	Done	*Court held once per month
3	Chitimacha	12/4/09	No	No	2 wk	171	No		
4	Zia Pueblo	12/18/09	No	No	8 wk	85	Yes	Done	
5	Santa Clara	1/22/10	Yes 60days	No	2 wk	139	No		
6	Omaha	2/5/10	Yes 6mos	No	4 wk	90	Yes	Done	
7	Siletz	2/19/10	No	N/A	N/A	146	No		Tribe in PL-280, no Criminal Jurisdiction

8	Acoma Pueblo	3/5/10	Yes	No	4 wk	163	No	Statute-no time
9	Flandreau Santee	4/30/10	Yes	No	4wks	118	Yes	Statute no time
10	Passamaquoddy	5/7/10	Yes	No	8wks	131	No	Statute no time
11	No. Cheyenne	5/21/10	No	No	6mos	132	No	No Statute, rule by Tr. case law
12	Burns Paiute	7/1/10	Yes	No	90 days	123.75	No	In jail- 60 days
13	Fort Berthold	7/16/10	No	No	90 days	76	Yes	No statute, handle 90 days
14	Metlakatla	7/30/10	Yes reason	No	3wk	88	Yes	Statute-yes reasonable
15	Santee Sioux	8/6/10	Yes 6mos	No	3wks	118	Yes	Statute- adopt NE
16	Sac & Fox	8/13/10	Yes	No	2wks	164	No	Statute Yes-No time
17	Salish & Kootenai	8/20/10	No	No	6mos	138	No	No Statute-handle 6mos with heavy caseload
18	Prairie Band Potawatomi	9/17/10	Yes	No	4-6 wks	170	No	Statute Yes- No time

Independent Court Review Team
Final Scores FY 2010



One trend the team does not indicate as a finding is that reviews for 1) most large tribes and 2) tribes convenient to air travel have been complete. The review team is seeing more smaller and isolated tribes. Neither of these factors is, however, instructive as to how the court is performing. However, the team is finding that the more isolated the tribe, the more they need the review and corrective action. Even isolated tribes with positive economic development often lack the basic information regarding how to operate a court in the most up to date and convenient manner. Travel and training are inconvenient to these tribes and, in particular, to staff who often must spend two days traveling to get anywhere. If they can afford it, these tribes tend to throw money at a problem instead of seeking out training to overcome simple difficulties.

Finally, the review team is pleased to see that federal tribal court funding has increased, and that the data used to support this funding increase is attributable to the reviews compiled by the team during the five year course of its reviews. The team agrees that the increase has not yet reached the level of need. In particular, the team concurs that increases should be carefully allocated so that the increased funding goes where it is most needed. [The team has noted in many reviews how Justice Department grants often go to tribes with the best grant-writers and that tribes who can afford the best grant-writers often are not the tribes with the most compelling needs.] They further comment that the data they collect from tribes is continually adjusted to find and fit more specific tribal needs which they believe will assist in making those allocation adjustments.

L&O Act

The new Tribal Law and Order Act was passed in 2010. Tribes have not yet adjusted to the Act so the review team's comments are limited. One comment the review team does make, is that tribes have expressed strong concern that the act has several unfunded mandates. The team has adjusted its survey instrument and expects to make further comments on the Act during the coming year.

CORRECTIVE ACTIONS

The **Corrective Actions performed to assist eleven courts** to fix some of the deficiencies found in the initial court reviews were conducted at the following tribal/CFR courts in FY2010:

*See "Corrective Action Completed" Table next page for detail
(page 5 of this report)*

INDEPENDENT COURT REVIEW PROJECT
FY-2010 – TRIBAL COURTS **CORRECTIVE ACTION COMPLETED**

	COURT	SCORE	DATE	TIME	MAIN ITEMS PRODUCED
1.	White Mountain Apache 2008	91	Jan. 11 – 15, 2010	5 days	Court Financial Policy 7 pages Records Retention 4 pages Court Forms 5 forms
2.	San Ildefonso 2009	93	Feb.22-29, 2010	7 days	Court Financial Policy 8 pg Court Policy & Procedures, Policy case files 3 pg, Court Forms 17 pgs, Training on Excel case mgmt. 5 days.
3.	Isleta Pueblo 2009	105	Mar. 8-12, 10 Apr.5-8, 10 4/6-9/10	9 days	Court Financial Policy 9 pg, case mgmt. policy, CMS training on Full Court System 5 days, Court Forms 26 forms.
4.	Ponca OK 2009	102	Mar. 29 – Apr. 2, 2010	5 days	Court Policy & Procedure 43 p Court Financial Policy 9 pgs, Create a CMS System; create policies on case files, file contents, job descriptions.
5.	Zia Pueblo 2010	85	Apr. 19-23, 2010	5 days	Court Policy & Procedures 40 pgs, Court Financial Policy 10 pgs; Policies case files, case tracking; court forms 42.
6.	Taos Pueblo 2010	86	May 24-28, 2010	5 days	Court Policy & Procedure 44 p Court Financial Policy 11 pgs, Jury Trial process 7 pg Children's Code recommendations, Court Forms 24 forms.
7.	CFR Miami 2010	95	Jun. 21-25, 2010	5 days	Court Clerk Manual 40 pgs Court Financial Policy 8 pgs Court Forms 7 forms.
8.	Pyramid Lake 2006	123	July 6-10, 2010 Holiday	4 days	Court Financial Policy 10 pg Edits on proposed L & O Code 47 pg. Court Forms 7 p
9.	Omaha 2010	90	July 19-23, Aug 18-20, 2010	8 days	Court Clerk Manual 18 pgs Court Financial Policy 11 pgs Court Forms 18 forms.
10	Kickapoo, OK 2006		August 23-27, 2010	5 days	Court Clerk Manual 30 pgs Jury Trial Procedures 25 pgs 5 day training on Jury Trial Process, Court Forms 23 form
11	Ute 2006		Aug.30-Sept 2, 2010 Holiday	4 days	Clerks Training Manual 15 pgs Court Financial Policy 13 pgs Draft Rules 14 pgs, 4 day training, Court Forms 25 forms.

FINDINGS

Below are the review team's findings for FY 2010. (Many of these findings are based on generalizations regarding what the team has learned through the course of the year. Not all tribes need coordination of code updates, for example. But there were enough tribes, where this was noted, to be significant.)

Finding #1. Tribes are NOT violating speedy trial rights of defendants. Having collected information for two years, the team finds that data shows tribes are NOT violating the speedy trial rights of defendants. Most tribes have statutes guaranteeing speedy trial rights. About half of those have time limitations. Six months is the norm. When combined with the one third or so tribes that provide defense counsel who raise the issue when necessary (the team was pleasantly surprised to find even lay counsel are very capable in this regard), there is a reasonably good umbrella of protection for the defendants' speedy trial rights. In jurisdictions without tribal statutes (the ICRA is the applicable law) arraignment-to-trial time frames were short enough (and thus, no statute was even deemed necessary by the Legislature) so that the tribe did not bump up against any sort of lengthy time. Most of these tribes were scheduling Trial in 4-6 weeks; some were scheduled for trial in as short as 2-4 weeks. The team did find that U.S. Attorneys were holding evidence that was preventing timely prosecution. This is an unresolved problem that was dealt with mostly by tribes expediting prosecution.

Finding #2. Tribes are not overseeing extradition to federal or state authorities. No matter which jurisdiction has felony authority, law enforcement is handing defendants immediately from tribal custody to federal or state custody. However, each defendant has rights under tribal law that are not guarded by holding a hearing to determine, for example, whether tribal law enforcement searched his car or person legally or whether he is properly charged. It is the opinion of the examiners that there should be a safeguard to the rights guaranteed under tribal law by providing at least a hearing to determine that those rights have been protected.

Finding #3. Most tribal courts are not using the simpler minute order format after hearings. Typical minute orders can be used for criminal, civil or juvenile proceedings. For example...a criminal minute note: the case is set for a trial and both parties stipulated in court that the matter should be continued. A minute order can be used to capture the simple proceeding in court. Or maybe a name change was granted. A civil minute order can be produced granting the name change until a full order can be generated. As an example, a juvenile may have guardianship granted. In this case, a juvenile minute order can be produced until a full order is generated. Tribal courts are making more work for themselves if they do not use this format. This format is being taught in training sessions throughout Indian Country. Instruction in use of this format is also part of the corrective action sessions offered as follow-up by the team.

Finding #4. Tribal courts do not have case file policies. Tribal courts do not use case activity sheets. Case file policies are put into place to give case files an orderly and consistent look. It saves judges time so they don't have to look all through a file to find, for example, whether all parties have been served. Although more tribes use case activity or docket sheets, they are often older versions requiring extensive written comments by the judge or clerk. This is why they do not get used. Newer versions of the case activity sheets require minimal writing... most often only noting a date or check-off. This format is being taught in training sessions throughout Indian Country. Instruction in use of this format is also part of the Corrective Action sessions offered as follow-up by the team.

Finding #5. Tribes do not have code update coordination. Tribes develop Codes haphazardly as they are needed. (The Federal Government is partially to blame for this. The Adam Walsh Act and the Tribal Law and Order Act, to name two, require tribes to develop new code provisions with strict deadlines for statutes to be in place and without providing funds to pay for development of those code provisions.) Tribes do not have formal written policies regarding how to update the code. Tribes do not have policies indicating who physically updates the code. (Often, the Court Clerk has the only updated copy of the tribal code. This task is also assigned to the tribal attorney, where there is one.) Tribes do not have code distribution policies to assure that all necessary individuals get updated code provisions. The review team found one court that discovered a new criminal procedure statute an entire year after it became law. This is a key finding because it does not take funding to fix so much as the experience and coordination of the review team in making recommendations.

Finding #6. Tribes do not have financial policies. Tribal finance offices do have financial policies. However, courts often do not. Yet courts often complete complicated financial activities (like taking in a bond that will either be returned or forfeited) without written policy. The review team found all clerks will know the proper process, but that the process is unwritten. When a clerk leaves, the whole process is subject to change. Or, when new clerk is hired, there is a large learning curve because there are no written procedures. Of greater concerns, when there is no written process, individual clerks develop their own practices. These concerns are resolved when there is a written process and format. Instruction in development and use of this format is also part of the corrective action sessions offered as follow-up by the team.

Finding #7. Tribes have tribal bar practice lists but not formal bar associations. Most every tribe maintains a list of attorneys permitted to practice in court and charges a yearly fee to practice. However, course of study, training requirements or bar exam requirements are limited. Tribal judges, even lay judges, are rarely intimidated by outside attorneys requesting the use of state laws any longer (if they ever were). However, coordinating practice lists, so only good and experienced representatives (including lay counsel) are practicing in court is a goal most tribes should have (as well as meeting some of the requirements of the new Tribal Law and Order Act.) The most obvious way to do this is to improve the influence of the tribal bars in education, training and testing practitioners. Again, this is a key finding because it does not take funding to fix so much as the experience and coordination of the review team in making recommendations.

Finding #8. More tribes are offering public defender services. The new Tribal Law and Order Act makes this a condition of increasing sentencing authority to three years. However, many tribes already offer public defender services as a tribal right. Most tribes hire a single representative or attorney. The team found that lay counsel can be as effective as attorneys in the position of public defender due to the repetitious nature of criminal charges (for example, speedy trial lapses rarely get by lay counsel who act as public defenders) and experience of lay counsel with the community. The team has seen public defenders who act in both tribal court and state court as public defender on the same charge. Most courts hire public defenders before hiring probation and bailiff staff.

Finding #9. The U.S. Attorney provides almost no service to Indian tribes. The U.S. Attorney is supposed to provide felony prosecution services for tribes. However, the examiners have yet to find one tribe that has not prosecuted felony level cases, which were declined or not even considered by the U.S. Attorney's office. Unless the case is "slam dunk" winnable, glamorous or remarkably heinous, the U.S. Attorney's office will decline. This includes all kinds of cases; murder, child sexual abuse, rape,

arson, aggravated assault, weapons offenses, drug offenses, etc. An estimated 50% to 95% of the felony level cases are prosecuted by the tribe. Moreover, the tribe must pay for these prosecutions. The new Tribal Law and Order Act provides that the U.S. Attorney must keep track of declinations and must enhance their staffing to concentrate on reservation crime. It also provides increased sentencing authority to tribes in a ponderous scheme that tribes may or may not choose to follow. (Involving improvement of tribal bar associations and hiring qualified Defense.) This may help improve the U.S. Attorneys compliance. Most have never even visited the tribal jurisdictions for which they are responsible.

Finding #10. State jurisdiction over Tribal criminal activity, as in P.L. 280, and other state schemes, is a dysfunctional means to combat crime. The examiners viewed such schemes in Alaska, Kansas, Oregon, Nebraska, and Iowa. In each case, the local non-Indian law enforcement had assumed or was provided criminal jurisdiction. (Whether it is legal or not for a tribe to legislatively give up criminal jurisdiction, contrary to broader constitutionally approved jurisdictional limits, was untested.) In every jurisdiction the tribe had surrendered a significant level of control over not just prosecution, but also law enforcement. In some cases, the tribe has reached a point where it even had no desire to prosecute criminal activity (Oregon). Tribes were often reduced to merely paying for law enforcement, which acted mostly as state law enforcement. The tribe received fewer services for their funds, they lost control over criminal laws and authority in their jurisdiction and they functionally became non-Indian communities. If they don't use their sovereignty they lose it. They are either a sovereign or they are not. Some of these tribes have severely compromised their sovereign status by failing to exercise their criminal jurisdiction.

Finding #11. Elected tribal officials at some tribes are working as government employees. This is not common but raises issues such as conflict of interest and creates a disturbing trend in line of authority matters. In these cases, tribal council persons also worked for the tribe in some capacity. We found that in these instances Council was hesitant to question the tribal administrator because that was also their supervisor. We also found that staff had enhanced authority due to spending more time with tribal program data than the tribal council/employee. Council was hesitant to question staff decisions when staff had so much more knowledge. In one case, finance staff refused to pay court bills, including salaries, because staff decided tribal courts were not a reasonable way to spend that tribe's revenue. When staff exercises this level of authority in a tribe, it is the court that suffers.

Finding #12. Tribal Law Enforcement is being trained to a much greater extent by state run police academies. This is occurring because of limited space, making it more difficult to enroll, and extending the time it takes to complete training at the BIA Artesia, New Mexico Academy. The effect on tribes and tribal courts is that tribal police, trained by states, do not receive Indian law and tribal jurisdictional training and they, instead, receive extensive training in state laws and become indoctrinated into the state law enforcement systems. When it becomes time to advocate for rights, the state-trained tribal police become advocates for the state. This results in individuals being cited into state court under state laws or jurisdictional areas that are determined by state officials. Tribal law enforcement becomes a quasi-arm of state law enforcement. The examiners understand the point is to have quality law enforcement, but when that law enforcement is making determinations on tribal sovereignty and jurisdictional distinctions that should be made by the court and tribe, it is no longer quality law enforcement.

Finding #13. Large per capita payments are drawing from tribal infrastructure building and, in particular, court development. In FY09 the examiners added a question to the survey instrument regarding payment of per capita (payments of per capita derived from gaming are approved by the BIA and, by statute, are secondary to development and building of Tribal infrastructure) and the effect on the courts, if any. In particular, examiners were concerned that the downturn in the national economy is stifling tribal economic development and court funding. Those tribes that pay a modest amount per capita show no effect on the courts. However, those tribes paying a significant amount of per capita (more than \$1,000 a quarter per member) showed an amount of financial need in the court not present a year or more prior to the review. The national economic downturn had decreased the tribal economic development revenue and courts (and tribal programs) had their funding similarly decreased. However, (even when per capita was also decreased) the courts struggled to deal with the budget cuts. Most often, court staffing (mostly contracts such as Judges time) was cut. Of course, tribes dealing with the harsh economy and not paying per capita also made cuts, however, these cuts were made without any potential violation of the statutory requirement that tribal infrastructure be supported before per capita be paid.

Finding #14. Alcohol and marijuana are still the drugs of choice on reservation, although methamphetamine use is present. By far, alcohol and marijuana are the drugs which create the most problems for court systems. Measures to educate about and stop methamphetamine use seem to be successful thus far. Use of methamphetamine use seems to be a problem dependent on area. Reservations near urban areas have the largest problem. Efforts to educate about and to stop methamphetamine use should be increased in all areas to stem the problems this horrible drug creates.

Finding #15. Studying tribal courts is a difficult, but not that unusual an endeavor. During the course of our tribal court reviews the past few years the tribal court review team has encountered studies of tribal courts by UCLA (funded by the Justice Department), the General Accounting Office (initiated by Senator Thune), and, now, the new Tribal Law and Order Act. Unlike the reviews the team accomplishes, these studies hold no benefit for tribes. They ask about the same questions. During the course of our reviews, court employees ask specific questions about these various studies. What is the benefit to tribes? What is the benefit to their tribe for responding? Why aren't the studies being carried out by people (usually young, non-Indians) with experience in tribal courts? The UCLA study, in particular, angered tribes because of the cost (it was funded at a multi-million dollar level) and because those asking the questions appeared to be undergraduate students with little knowledge of courts, much less tribal courts. The GAO study, which used young government attorneys with no knowledge of tribal courts, was not much better. Now the new Tribal Law and Order Act will form a commission and a committee to study tribal courts. Prior to the GAO study the examiners met with Senator Thune's staff to offer our assistance. The staff was not receptive to the team's offer of assistance. They would rather discover things without the benefit of experienced and knowledgeable current and former tribal court employees, who spent a week on site at 60 tribal courts. Tribes will not share necessary but potentially harmful information with strangers. That is why there are so many of these studies, because the inexperience of the interviewers in the last study did not uncover the desired information. And, unless the Law and Order Act Study includes experienced individuals, it is the opinion of the Independent Review Team that the results will be more of the same.

Finding #16. Tribes need assistance developing the formal relationship of legislature and executive to court. One of the first things the review team determined five years ago about tribes was that, at the vast majority of tribes, judges were not being fired by meddling councils, and courts were being permitted to be independent. This raises another set of issues the team had not anticipated: How, then, do legislatures and the executive properly relate to courts? Most tribes have similar court funding systems to the US, in which court funding is set by an appropriations mechanism. Also, many tribes, without a permanent appellate court, must exercise administrative oversight of their judges in some fashion. (And, like anywhere else, there are also differing qualities of judges in Indian country.) The examiners have included in reviews permissible and non-permissible activities for legislatures and the executive in their relationship with the court. Examiners recommend most of this activity be shifted to an oversight committee (made up of council or individuals with experience with the courts) with specific and limited authority and duties. They listed specific duties; such as advocacy for staffing needs. Moreover, they made it clear that such a committee must not involve itself with specific cases or matters which might be considered by the court. Tribes seem pleased with this information.

Finding #17. Tribes continue to need increases in the BIA Federal funding contribution. Most every tribe contributes financially to the funding provided by the federal government. (In previous years the review team found that that there was no misspending of federal funds, in large part because the federal contribution was so low. This has not changed.) Previous data indicated that federal funding only accounts for 26% of court funding. However, even if funding were increased to 100% of current funding amounts, that would not be sufficient court funding for most tribes. Tribes have serious staffing (both FTE and Contract) and functional shortfalls (such as court management software, digital tape machines and security cameras). The Tribal Law and Order Act purports to offer help in the form of an increase in tribal authority. This remains to be seen. However, until realistic levels of funding are granted to tribal courts they will continue in their struggle to meet all the needs they can, and there will remain cracks that some fall through. The Independent Tribal Court Review Team is optimistic about tribal courts. They are staffed by dedicated people and do the best they can under a financially burdened system. They provide justice that has never been and never will be provided by local non-Indian courts. Tribal courts do more with less than any other court systems in the US. They need this form of assistance to get better and meet the needs of a growing population and a changing world.

Independent Court Review Team Biographies
TEAM LEADER: The Honorable Elbridge Coochise, Retired

Biography: Honorable Elbridge Coochise, Chief Justice Retired



Elbridge Coochise is an enrolled member (4/4) of the Hopi Tribe in Arizona. Chief Justice Coochise retired 7/14/97 has been on the bench for 32 years. Semi-retired and owner & operator of Coochise Consulting, LLC, which provides services to tribes and tribal organizations; including lobbying, training, pro-tem judge, judicial services, administrative services and court evaluations.

In Senior-Judge status; He sits on the Cabazon Court of Appeals, and The Intertribal Court of Northern California. He served on the San Carlos Tribal Court as a special judge. He set up the new court for the Shingle Springs Rancheria Band of Miwok Indians in California, 2009 - 2010 and was their Chief Judge; helped start up and sat on the Sac & Fox Tribe of the Mississippi in Iowa Tribal Court 2005 – 2009; helped start up and sat on the Mohegan Tribal Court 2000 - 2005. Prior to retirement he served as the Chief Justice of the Northwest Regional Tribal Supreme Court 1988 - 1997, served as the Administrator/Chief Judge of the Northwest Intertribal Court System (NICS)(a circuit court system) in western Washington State 1981 - 1997. He was Associate Judge in the Hopi Tribal Court 1976 - 1981.

He served four terms as President of the National American Indian Court Judges Association 1988 - 1996. He served three terms as President of the Northwest Tribal Court Judges Association 1988 - 1994. He serves on the Board of Directors of the National Indian Justice Center (NIJC), Santa Rosa, CA; served three terms 2000 – 2006, on the Board of Directors of the Native American Rights Fund (NARF), Boulder, CO; on the Board of Directors of the National American Indian Court Judges Association (NAICJA); elected in 2010 to the Faculty Advisory Council of the National Judicial College, Reno, NV and a member of the Advisory Board to the National Tribal Judicial Center in the National Judicial College, Reno, NV. He is an alumnus and joined the faculty of the National Judicial College, Reno, NV in 1993. He was Chairman of the Tribal Governance Committee of the Affiliated Tribes of Northwest Indians, 1987 - 1997 (a regional tribal governments' organization).

A recognized leader in his field, Justice Coochise received the Presidential Who's Who Among Business and Professional Achievers for 2010 "Consultant of the Year", the Cambridge Who's Who Registry of Executives, Professionals and Entrepreneurs for 2010, the Who's Who Worldwide Award for Leadership and Achievement in his Profession for 1992-1993, received the Who's Who Global Business Leader award for 1993-1994, and in November 1994 he received the Who's Who among Outstanding Americans award. He served as a member of the National Indian Policy Center's task force on Law & Administration of Justice. He currently is a member of the BIA/Tribal Budget Advisory Committee's Judicial Subgroup. He has had the honor of serving on several national committees and panels, has taught for various tribes on American Indian issues in the U.S. and Canada. He was the key proponent in the passage of the Indian Tribal Justice Act, PL 103-176 passed on December 3, 1993.

Biography: The Honorable Philip Lujan, Esq.



Philip D. Lujan is a member of the Kiowa tribe of Oklahoma and Taos Pueblo. He grew up in the Rainy Mountain community of Kiowa County in Oklahoma. He is a graduate of Washburn University and the University of New Mexico, School of Law. He has worked exclusively with tribal governments and courts for more than thirty years.

Legal Experience

1974 – 1977 Staff Attorney, UNM’s American Indian Law Center.

Tribal Court Experience: 1978 – Present

Chief District Judge for: Potawatomi Nation (15 Yrs); Kaw Nation (2 Yrs); Iowa Nation (10 yrs).

Formerly Chief District Judge for Cheyenne and Arapaho tribes (6 Yrs);

Formerly Chief District Judge for: Kickapoo Tribe (4 Yrs); Sac & Fox of Oklahoma (18 yrs.).

Federal Magistrate for Courts of Indian Offences for: Anadarko Area serving the Kiowa, Comanche, Apache, Fort Sill Apache, Wichita, and Affiliated tribes, Caddo, and Delaware tribes (20 Yrs);

Seminole Agency (5 Yrs). Formerly the Chickasaw Agency CFR Court for (4 Yrs).

Prosecutor: 1978 – 1983 Anadarko Agency CFR Court.

Academic Experience:

Judge Lujan retired as a Professor Emeritus after twenty-five years of teaching at the University of Oklahoma. He was an Associate Professor in the Department of Communication. He taught various courses including Intercultural Communication and the First Amendment. He has worked as a consultant and made numerous presentations in Native American communication. He was the Director of Native American Studies for twelve years and wrote the successful proposal to the Board of Regents which established a Native American Studies Major in the Arts and Sciences College

Biography: Charles D. Robertson, Jr., Esq.



Charles (Chuck) Durrell Robertson, Jr. is an enrolled member of the Cheyenne River Sioux tribe. Chuck was born in Eagle Butte, South Dakota on the Cheyenne River Sioux Reservation, the son of two Indian teachers. In his formative years, Chuck lived in a number of places before graduating from high school in Scottsdale, Arizona. Chuck began his undergraduate work at Arizona State University and completed it in 1983 at the University of Minnesota. Chuck completed his *Juris Doctorate* in 1988 at Georgetown University Law Center in Washington D.C.

In his professional life, Chuck has worked in several areas of Indian affairs; including education, law enforcement, tribal courts, health care, gaming, and legislative/legal. Chuck has worked for a number of different jurisdictions, including city, state, Federal, national and Tribal. In varying capacities, Chuck has worked for the United States Senate, for (former) U.S. Senator Paul Wellstone, U.S. House of Representatives, National Congress of American Indians, Native American Rights Fund, and the National Indian Gaming Association.

Chuck was most recently the Executive Director of the National American Indian Court Judges Association. Chuck’s strongest skills are in the areas of legislative/legal analysis and professional

writing of all sorts. Chuck has drafted original testimony for Congress and the Administration more than 50 times and is responsible for numerous pieces of Federal legislative language. Chuck, under his own name or ghost-written, has been published in several newspapers and periodicals. Chuck is proud to consider himself a strong advocate for Indian Nations and Indian people. Chuck is currently working as a Consultant to Indian Nations and Adjunct Faculty (in the areas of Indian Studies, American Government and English) at Oglala Lakota College in Rapid City SD.

Biography: Ralph E. Gonzales, Esq.



Ralph E. Gonzales is a member of the Pueblo of Laguna, New Mexico. He retired from the Bureau of Indian Affairs on March 3, 2007, with more than 35 years of service with Indian communities. He has provided expertise in various positions with tribal government services, primarily with Indian tribal courts. He was also associated with training employees on the effects of methamphetamine and the impact on Native American youth. The initiative resulted in an excess of 4,000 BIA employees nationwide trained and led to a formulation of an internal BIA task force. This task force developed a Memorandum of Agreement with Indian Health Service, BIA, and Bureau of Indian Education (BIE), promoting the Office of Judicial Services' which focus its resources to address substance abuse problems among Native American youth.

Ralph worked with tribal governments and their housing authorities in HUD's Region VIII and developed innovative contract procedures to promote Indian contractor participation. He was architect in developing a data collection protocol that was effective in justifying requests for funding increases for tribal courts and designed the process to evaluate tribal court operations to provide data in response to the White House's Office of Management and Budget's (OMB) performance and improvement plans.

Currently, he provides consultation services on tribal government matters in general, for independent tribal court reviews, and has assisted in the completion of numerous systemic tribal court reviews. In addition, he has contributed to the enhancement of tribal court operations as a participant in the corrective action initiative, which is the functional result of the tribal court reviews.

Ralph developed, wrote and presents a seminar teaching Native Americans and others the fundamentals of preparing tribal Federal Corporate Charters under 25 USC 477. This initiative is the underpinning for promoting economic development on Indian reservations. These seminars have been held in South Dakota, Montana, and Maine. The seminars take the participants through all of the steps of developing and presenting a tribal Federal Corporate Charter to the Secretary of the Department of the Interior for approval. The seminar, not only focuses on the development of a corporate charter for tribal governments, but addresses relevant tax aspects, and tribal financing issues, which includes bond financing.

Mr. Gonzales was born in Fort Defiance, Arizona, on the Navajo Reservation and lived in Gallup, New Mexico, where he graduated from Cathedral High School, and then entered college at Creighton University, Omaha, Nebraska. He completed his BA in accounting at Western University at Silver City, New Mexico, and his Juris Doctorate from the University of Denver - College of Law, Denver, Colorado.

He is a member of the Colorado Bar and the Federal Bar. Ralph served three years in the U. S. Army, as an officer in the Quartermaster Corps, and served a brief tour of duty in the Republic of Vietnam.

His hobbies are boating, hiking, cycling, traveling, and he enjoys music & dancing. He delights in spending quality time with his immediate family and his only grandchild, Nicholas. Ralph has contributed several years of volunteer service at the Wolf Trap National Park for the Performing Arts in Vienna, VA. He has also served as president of the Montgomery Sports, Social & Singles Club for three terms.

Biography: Honorable Ramona F. Tsosie



Ramona F. Tsosie is a member of the Fort Mojave Indian tribe in Needles, California. She has served as the Chief Judge of the Havasupai tribe of Arizona since 1998 with her term expiring April of 2003. Currently she serves as the court administrator for the Hualapai Tribal Court and served as interim chief judge. She has also served as the court administrator for the Yavapai-Apache tribe and the Fort Mojave Tribe. Prior to joining the Fort Mojave tribe, she worked in the Navajo Nation Tribal Court System. She has dedicated more than 15 years of service working in tribal court systems.

She serves on the Board of Directors for the National Association of the Tribal Court Personnel, and is a member of the Arizona Courts Association. In addition she serves as a faculty member at the National Judicial College in Reno Nevada since 1999. She was selected by the National Registers and awarded the "Who's Who among Executives and Professionals" for the years 2003, 2004 and 2005.

She is a trainer with Fox Valley Technical College, Northern Plains College, J. Dalton and Associates and the National Tribal Resource Center. She provides training and certification to court clerks and court administrators and at times to judges, throughout Indian Country. Training topics covered: Customer Service in Tribal Courts; Roles and Duties of Tribal Court Clerks; Roles and Duties of Court Administrators, Budgets, Record Keeping, Records Management, Fiscal Management, Personnel Management, Jury Management, Calendaring and Ethics.

Biography: Honorable Lisa F. Cook, Esq.



Lisa F. Cook is an enrolled member of the Crow Creek Sioux Tribe of Ft. Thompson, South Dakota and also has significant familial connections with the Cheyenne River Sioux Tribe of Eagle Butte, South Dakota. She obtained her Juris Doctorate from the University of New Mexico School of Law in 2000. She spent three years as an Associate Attorney with the law firm of Viken, Viken, Pechota, Leach and Dewell, LLP, in Rapid City, South Dakota before taking an Associate Judge position with the Oglala Sioux Tribe in Kyle, South Dakota. As an Associate Judge, Lisa served as National

American Indian Court Judges Association (NAICJA) Region V Representative. Lisa has a specialty certification in Indian Law from UNM School of Law, and interned for the Department of Justice, Tax

Division. She clerked for the Honorable Martha Vásquez with the U.S. District Court for the District of New Mexico. Lisa currently serves as a Special Judge to the Rosebud Sioux Tribe. She is an Attorney in private practice. She practices law in numerous tribal courts and has served on several boards specializing in the educational, developmental and legal needs of children. Lisa possesses a Master's Degree in Clinical Psychology from the University of South Dakota and is a former Licensed Professional Counselor in the state of Wyoming.

Biography: Myrna Rae Rivera



Myrna R. Rivera is an enrolled member of the Washoe tribe of Nevada and California. She graduated from Sherman Indian High School in Riverside, California. She was elected to Carson Colony Community Council (1981 - 1985) and served as secretary/treasurer. She represented her community on the Washoe Tribal Council for a one 4-year term. In addition, she served on the Board of Directors of the Inter-Tribal Council of Nevada.

Ms. Rivera attended Sierra Valley College in Fresno, CA with a concentration in the area of Court reporting. Following college, she worked as the Clerk of Court and the Court Administrator for the Washoe Tribal Court of Nevada and California. In this position she was responsible for working with various jurisdictions; including tribal, state, federal, and appellate court systems. She has also served as a case manager of the TANF for the Washoe Tribal TANF Program, 2003 - 2004.

Ms. Rivera is currently employed with the Inter-Tribal Council of CA, a consortium that provides health, education, childcare, and victim services to 50 tribal communities in California. In this capacity, she is program manager for the Tribal Law Enforcement Training Program and Rural Domestic Violence Program. She is a victim's advocate and obtained her certificate in Victims' Services from California State University Fresno. In addition, she serves as an Advisory Board Member for the Women of Color Network representing the Western Region for the development of leadership skills within the domestic violence programs for women of color.

Ms. Rivera created and developed a culturally relevant training presentation called the CRADLEBOARD Way. The goal and effect of the presentation is to provide culture-based abuse prevention training to tribal communities, organizations, and individuals. The CRADLEBOARD Way is also used to present cultural sensitivity and collaboration training to non-Indian communities and agencies. The CRADLEBOARD Way has been presented to tribal communities; residential treatment facilities; Head Start training conferences; California Indian Education Conferences; Tribal TANF Programs of Torres Martinez, Washoe, CTPP, to law enforcement agencies at both tribal and non-Indian departments; throughout California; tribal clinics; Elder Centers; domestic violence conferences; and most recently for the University of Oklahoma Men's and Women's Wellness Conference.

As the Court Reporter for the Tribal Courts Review Project, Ms. Rivera documents the interviews and creates meeting summaries for the Review Team's Reports.

Biography of Jessica R. Roberts



Jessica R. Roberts is an enrolled member of the Meskwaki Nation, the Sac & Fox Tribe of the Mississippi in Iowa. She is an Associate Judge, appointed on January 25, 2008. She served as a Magistrate Judge for a year before being appointed to her current position. After graduating from law school, she worked as a Staff Attorney for the Navajo Nation Department of Justice, Office of the Attorney General, in Window Rock, Navajo Nation (AZ), where she primarily focused on economic development and community development. She served as one of three Gaming Commissioners for the Sac and Fox Gaming Commission, which is the tribal regulatory body for Meskwaki Bingo-Casino-Hotel in Tama, Iowa.

She graduated from the University of Iowa with an undergraduate degree in Communication Studies and a Certificate in American Indian/Native Studies. She obtained her law degree from the University of Iowa College of Law in May of 2000. During law school, she was a research assistant for Professor Robert Clinton, worked with the University of Iowa Legal Clinic on immigration issues, and was a legal intern for the Council on Environmental Quality for the White House in Washington D.C.

She is licensed to practice law in the State of Iowa, State of New Mexico, and the Navajo Nation, and was admitted to federal practice in the U.S. District Court District of New Mexico.

SCOPE OF WORK

Assessment is divided into sections as determined by the scope of work. The scope of work is negotiated with the tribe prior to the assessment. The tribe may choose to select several areas of tribal court activity for review.

The scope of work identifies the particular areas for examination. The scope of work includes examination of both specific or fact-based data, such as a constitution and an examination of variable factors, such as staff interviews. Inferences are made, based on all the data, which lead to recommendations.

Below are listed the items contained in the scope of work:

- Determine the place of the court within the tribe structure, and the organizational structure of the court within the tribe. Determine the level of judicial independence. Review the availability of the codes and the maintenance of said codes. Determine the status of the appellate court within the tribe.
- Review the court's administrative function (management), and organizational structure of the court. Review the court's internal policies and procedures manual. Review the court's internal financial policies and procedures financial management manual.
- Review the court personnel, including experience, qualifications and training.
- Review the court's working relationship with other entities: prosecutor, law enforcement, public defender, detention and ICWA.
- Determine the court caseload and the ability of the court to adequately deal with the caseload. Determine the appellate court caseload.
- Review the court budget. Is there adequate funding for positions, salary levels and court activities such as jury trials, appeals, outside counsel. Percentage of federal funds in total court budget.
- Financial accountability in the use of federal funds. How funds are being used?

Regarding the scope of work, a more in-depth assessment might have included reviewing the community perception of the courts. The examiners did not meet with community members because this was not part of the scope of work. However, some interested community members did make informal comments to the evaluators and those comments were discussed, and in some cases, included in the assessment.

This assessment is not officially or unofficially aimed at any particular problem and, certainly, not at the performance or capability of any particular individual or action. It is, however, an aspect of any court review that some individual actions, or inactions, may be discussed and even called into question. It is *NOT* the intent of the evaluators to pass judgment on former decisions and activities, but to identify areas for improvement from today onward.

Also, in the process of reviewing the capability of the court, the assessment will examine the budget regarding financial management. This includes staff and contract costs. This assessment may make recommendations regarding the reduction or reallocation of staff and contract employee expenses. These recommendations are not pre-conceived. They are based upon data and information provided on-site and the comparative costs of other similarly situated courts.

Finally, no assessment can expect to interview each individual associated with the court, review every case file, or read every document. This Assessment included a two to four day, on-site review. This is a relatively short time to try to locate every problem and to find every solution. The evaluators, in order to address prominent issues, prioritized the direction of the assessment prior to arrival and throughout the time spent on-site. In doing so, they rely on decades of experience in working with tribal courts, several years of experience doing court reviews and a range of experience in working with the variety of types of courts; large or small, old or new, poorly funded or fully funded, PL280 or non- PL280 and tribal or federal. It is expected, however, that there will still be areas, which might have benefited from enhanced scrutiny. It is our hope that through the process of enacting our recommendations, including several general recommendations to improve court operations, the court and the tribe will achieve these solutions as well.

Recommendations Requiring Additional Funding

Recommendations may be made that will require additional funds, which the federal government has not supplied and the tribe, in all likelihood, does not have. The review team makes these recommendations to help illustrate the needs of the court. It is the examiners hope that the tribe or court can use these comments to solicit additional funding. It is also hoped, and the team's message, that the serious funding needs demonstrated in these court reviews, will help persuade the federal government of the immediate and compelling need to increase tribal court funding.

METHODOLOGY

To effectively determine the operational strengths and weaknesses of a court system, a methodical review of its management policies and practices must be accomplished. It is necessary to review not only written policies and procedures, but also to interview staff to determine “unwritten” policies and procedures. Recommendations are provided to correct any identified shortfalls.

To provide this assessment, the following must be accomplished:

- A review of the constitution, bylaws, code and other governing documents.
- A review of the court operational policies and procedures.
- A management evaluation of the courts existing practices and procedures.
- A financial evaluation of the court’s budget and financial situation.

Notification letters are sent to the tribe approximately two weeks prior to arrival. The Notification Letters will contain the Scope of Work and a Tribal Court Review Preparation Guide. The week before arrival, contact with the court is made by telephone and logistics are collected. It is not the intention of the evaluation that this be a surprise to the tribe or court; although, that has occurred at some of the locations.

The evaluation includes an initial meeting with the tribal governing body and/or the chairman/governor. The evaluation also includes a closure meeting, with the governing body, chairman/governor, and court staff.

The Assessment includes interviews with the court staff and those involved in court activities; including, but not limited to:

Chief Judge
Associate Judge
Appellate Judge
Court Administrator
Chief Clerk
Civil Court Clerk
Criminal Court Clerk
Juvenile Court Clerk
Appellate Clerk
Receptionist Clerk
Probation Officer
Process Server
Bailliff
Chief of Police
Tribal Attorney
Prosecutor
Public Defender
Detention Officer
Social Services Programs
Tribal Court Oversight Committee/Body

No names of individuals are included in this Assessment; the issues and concerns are the focus of the assessment. Individuals, however, will be identified by references to their position if the information or activity is particular to that position.

Each person interviewed was asked to describe and answer questions in relation to their function and duties with the court system, to offer comments concerning potential problem areas affecting court operations, and to give suggestions concerning how the court could be improved.

The assessment also includes reviews and evaluations of court operations and procedures, records management systems, financial management, including resources and budget, court equipment and the court facilities. Court files may also be reviewed, generally or specifically, to determine adherence to law or policy.

FY-2010 TRIBAL/CFR COURT STATISTICS.Table

INDEPENDENT COURT REVIEW TEAM

FY-2010 TRIBAL COURT CASE LOAD 18 TRIBAL COURTS

TRIBAL COURT	CRIMINAL	CIVIL	JUVENILE	TRAFFIC	CASES		POP.	ACRES
					TOTAL	Score		
Taos Pueblo	447	90	21	426	984	86	2500	100,00
Miami CFR	37	7	0	0	44	95	20,000	unknown
Chitimacha	13	258	11	66	348	171		
Zia Pueblo	438	23	12	0	473	85	850	200,000
Santa Clara Pueblo	93	31	8	3,339	3,471	138		55,000
Omaha	713	225	267	0	1,205	90	6,000	31,000
Siletz	N/App.	486	0	0	486	146	4,700	3,666
Acoma Pueblo	438	138	63	1,011	1,650	163	4,941	378,114
Flandreau Sioux	74	66	15	0	155	118	760	2,200
Passamaquoddy	26	24	0	0	50	131	1,323	
Northern Cheyenne	3,818	364	199	0	4,381	132	9,700	699
Burns Paiute	54	11	12	3	80	124		
Fort Berthold	1,936	577	371	0	2,884	76	4,300	1,000,000
Metlakatla	265	146	48	155	622	88	2,144	
Santee Sioux	713	225	267	0	1,205	118	3,800	204
Sac & Fox Iowa	N/App.	38	39	0	77	164	1,350	7,000
Salish & Kootenai	2,392	637	119	0	3,148	138	26,500	1.35 mil
Prairie Potawatomi	25	115	17	53	210	170	5,000	11 sq. mi.

CUMULATIVE INITIAL TRIBAL/CFR COURT REVIEWS 2006 – 2010*. Table

**Scores not calculated in all cases prior to FY07*

Tribal/CFR Courts Reviewed: Completed = 66 (all years) Canceled = 13 TOTAL = 79

Name	Date Review	Fiscal Year	Region	Score
FY-2010 , REVIEWS COMPLETED	18			Canceled 3
TAOS PUEBLO, NM	10/30/2009	FY10	Southwest	76
MIAMI CFR, OK	11/13/2009	FY10	Southern Plains	95
CHITIMACHA, LA	12/4/2009	FY10	Eastern	171
ZIA PUEBLO, NM	12/18/2009	FY10	Southwest	85
SANTA CLARA, NM	1/22/2010	FY10	Southwest	139
OMAHA, NE	2/5/2010	FY10	Great Plains	90
SILETZ, OR	2/19/2010	FY10	Northwest	146
ACOMA PUEBLO, NM	3/5/2010	FY10	Southwest	162
FLANDREAU SANTEE SIOUX, SD	4/30/2010	FY10	Great Plains	118
PASSAMAQUODDY, ME	5/7/2010	FY10	Eastern	131
NORTHERN CHEYENNE, MT	5/21/2010	FY10	Rocky Mountain	132
BURNS PAIUTE, OR	7/1/2010	FY10	Northwest	123.75
FORT BERTHOLD, ND	7/16/2010	FY10	Great Plains	76
METLAKATLA, AK	7/30/2010	FY10	Alaska	94
SANTEE SIOUX, NE	8/6/2010	FY10	Great Plains	118
SAC & FOX (Meskwaki), IA	8/13/2010	FY10	Midwest	164
SALISH & KOOTENAI, MT	8/20/2010	FY10	Rocky Mountain	138
PRAIRIE BAND PATOWATOMI, KS	9/17/2010	FY10	Southern Plains	170
KAW	1/4-8/10	FY10	So. Plains	REFUSED
QUINAULT	3/8-12/10	FY10	Northwest	CANCELED
WASHOE	3/22-26/10	FY10	Western	CANCELED

Name	Date Review	Fiscal Year	Region	Score
FY-2009, Reviews Scheduled	17			Canceled 5
White Mountain Apache	11-21-2008	FY09	Western	
<i>Hopi</i>	11-14-2008	FY09	Western	Canceled
<i>Chitimacha of LA</i>	12-05-2008	FY09	Eastern	Canceled
Kickapoo of KS	01-09-2009	FY09	So. Plains	141
<i>Confederated Tribes of Siletz</i>	01-23-2009	FY09	Northwest	Canceled
Sac & Fox of OK	01-30-2009	FY09	So. Plains	130
Laguna Pueblo	02-06-2009	FY09	Southwest	155
Shoshone-Bannock	02-27-2009	FY09	Northwest	119
Pueblo of Isleta	03-13-2009	FY09	Southwest	105
Ponca of OK	04-24-2009	FY09	Oklahoma	102
Fort Peck	05-29-2009	FY09	Rocky Mtn	136
Winnebago of NE	06-12-2009	FY09	Great Plains	169
Chippewa Cree/Rocky Boy	07-24-2009	FY09	No. Plains	125
Little Traverse Bay of Odawa	07-31-2009	FY09	Midwest	173
<i>Passamaquoddy</i>	05-22-2009	FY09	Eastern	Canceled
San Ildefonso Pueblo	08-21-2009	FY09	Southwest	93
<i>Penobscot</i>	04-24-2009	FY09	Eastern	Canceled

Name	Date Review	Fiscal Year	Region	Score
FY-2008, Reviews Scheduled	17			Canceled 4
Crow Nation Tribal Court	10-26-2007	FY08		137
Ft. Belknap	06-20-2008	FY08		101
<i>Ft. McDowell</i>	01-14-2008	FY08		Canceled
Gila River	02-15-2008	FY08		
Havasupai	11-21-2007	FY08		
Hualapai	03-28-2008	FY08		
Oglala Sioux	10-12-2007	FY08		
Ohkay Owingeh	08-01-2008	FY08		93
<i>Quinault</i>	06-09-2008	FY08		Canceled
Rosebud Sioux Tribal Court	09-21-2007	FY07		
San Carlos	12-10-2007	FY08		
Sisseton Wahpeton	04-22-2008	FY08		
Standing Rock	05-09-2008	FY08		
<i>Tohono O'dham</i>	03-10-2008	FY08		Canceled
Turtle Mountain	04-13-2008	FY08		
Walker River Paiute	11-06-2007	FY08		111
<i>Washoe</i>	02-27-2008	FY08		Canceled

Name	Date Review	Fiscal Year	Region	Score
FY-2006, Reviews Scheduled	24			Canceled 1
Anadarko - CFR (7 tribes)	12-29-2005	FY06		No score
Blackfeet	06-15-2006	FY06		117
Chickasaw	01-13-2006	FY06		No score
Eastern Cherokee	01-27-2006	FY06		193
Kickapoo of OK	12-21-2005	FY06		
Lac Du Flambeau	12-01-2005	FY06		
Lower Brule	03-31-2006	FY06		
Mescalero Apache	03-22-2006	FY06		
Osage	01-18-2006	FY06		
Picuris Pueblo	05-23-2006	FY06		
Pyramid Lake	04-28-2006	FY06		
Red Lake	02-23-2005	FY06		
<i>Salt River Pima Maricopa</i>	02-08-2006	FY06		Canceled
Santa Ana Pueblo	03-17-2006	FY06		131
Spirit Lake	09-14-2006	FY06		No score
Spokane	07-26-2006	FY06		165
St. Regis Mohawk	08-29-2006	FY06		
Te'Moak - CFR	04-14-2006	FY06		
Ute (Uintah & Ouray)	08-16-2006	FY06		
Ute Mte Ute	10-20-2005	FY06		
Warm Springs	07-21-2006	FY06		
White Earth	09-26-2006	FY06		
White Mountain Apache (Fire Analysis)	02-15-2006	FY06		
Wind River (Shoshone & Arapahoe)	06-08-2006	FY06		

Pictures

SOLICITATION / CONTRACT / ORDER FOR COMMERCIAL ITEMS
OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24, & 30

1. REQUISITION NUMBER
7J35100161

PAGE 1 OF 9

2. CONTRACT NO CBK16070004	3. AWARD/EFFECTIVE DATE 09/05/2007	4. ORDER NUMBER	5. SOLICITATION NUMBER	6. SOLICITATION ISSUE DATE
7. FOR SOLICITATION INFORMATION CALL:		a. NAME	b. TELEPHONE NUMBER (No collect calls)	8. OFFER DUE DATE/ LOCAL TIME

9. ISSUED BY BIA-Southwest Acquisition Simplified Acquisition, PO Box 26567 Albuquerque, NM 87125-6567 TEL (505) 563-3128 ext. FAX (505) 563-3030 ext.	CODE M0214	10. THIS ACQUISITION IS <input checked="" type="checkbox"/> UNRESTRICTED <input type="checkbox"/> SET ASIDE: 0.00% FOR <input type="checkbox"/> SMALL BUSINESS <input type="checkbox"/> HUBZONE SMALL BUSINESS <input type="checkbox"/> 8(A) NAICS: SIZE STANDARD:	11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED <input type="checkbox"/> SEE SCHEDULE	12. DISCOUNT TERMS 10 days % 20 days % 30 days % days %
		13a. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700) <input type="checkbox"/>		13b. RATING
		14. METHOD OF SOLICITATION <input type="checkbox"/> RFQ <input type="checkbox"/> IFB <input type="checkbox"/> RFP		

15. DELIVER TO BIA-OJS-Tribal Justice Support 1001 Indian School Road NW Albuquerque, NM 87104 Attn: Simone Toya	CODE	16. ADMINISTERED BY BIA-Albuquerque Acquisition Office 1001 Indian School Road NW, Suite 320 Albuquerque, NM 87104	CODE 00016
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17a. CONTRACTOR/OFFEROR Elbridge Coochise 8565 W. Granada Road Phoenix, AZ 85037-4121 TELEPHONE NO. (623) 936-8746 ext.	CODE	FACILITY CODE	18a. PAYMENT WILL BE MADE BY BIA - Division of Fiscal Services 2051 Mercator Drive Reston, VA 20191	CODE fiscal
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17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN <input type="checkbox"/> OFFER	18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a UNLESS BLOCK BELOW IS CHECKED <input type="checkbox"/> SEE ADDENDUM
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19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES	21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT
<p>Obligated via the IDEAS-FFS Interface Date <u>09/04/07</u> Initials <u>MPerry</u></p> <p>(Use Reverse and/or Attach Additional Sheets as Necessary)</p>					

25. ACCOUNTING AND APPROPRIATION DATA 2007 - 2008 - - K0L600 - - 252Z - - J3510 - - - - -	26. TOTAL AWARD AMOUNT (For Govt. Use Only) \$ 400,000.00
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27a. SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1, 52.212-4, FAR 52.212-3 AND 52.212-5 ARE ATTACHED. ADDENDA <input type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED	27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4, FAR 52.212-5 IS ATTACHED. ADDENDA <input checked="" type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED
--	--

28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY ADDITIONAL SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED HEREIN	29. AWARD OF CONTRACT. REF. OFFER <input type="checkbox"/> DATED _____ YOUR OFFER ON SOLICITATION (BLOCK 5), INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN, IS ACCEPTED AS TO ITEMS
---	--

30a. SIGNATURE OF OFFEROR/CONTRACTOR	31. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER) <i>Michael D. Perry</i>		
30c. NAME AND TITLE OF SIGNER (Type or print)	30c. DATE SIGNED	31b. NAME OF CONTRACTING OFFICER (Type or print) Michael D. Perry 1420-4129-1208	31c. DATE SIGNED 09/04/2005

19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES	21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT

32a. QUANTITY IN COLUMN 21 HAS BEEN

RECEIVED INSPECTED ACCEPTED, AND CONFORMS TO THE CONTRACT, EXCEPT AS NOTED: _____

32b. SIGNATURE OF AUTHORIZED GOVERNMENT REPRESENTATIVE	32c. DATE	32f. PRINTED NAME AND TITLE OF AUTHORIZED GOVERNMENT REPRESENTATIVE
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32e. MAILING ADDRESS OF AUTHORIZED GOVERNMENT REPRESENTATIVE	32f. TELEPHONE NUMBER OF AUTHORIZED GOVERNMENT REPRESENTATIVE
	32g. E-MAIL OF AUTHORIZED GOVERNMENT REPRESENTATIVE

33. SHIP NUMBER <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL	34. VOUCHER NUMBER	35. AMOUNT VERIFIED CORRECT FOR	36. PAYMENT <input type="checkbox"/> COMPLETE <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL	37. CHECK NUMBER
--	--------------------	---------------------------------	--	------------------

38. S/R ACCOUNT NUMBER	39. S/R VOUCHER NUMBER	40. PAID BY
------------------------	------------------------	-------------

41a. I CERTIFY THIS ACCOUNT IS CORRECT AND PROPER FOR PAYMENT	42a. RECEIVED BY (Print)		
41b. SIGNATURE AND TITLE OF CERTIFYING OFFICER	41c. DATE	42b. RECEIVED AT (Location)	
		42c. DATE REC'D (YY/MM/DD)	42d. TOTAL CONTAINERS

Line Item Summary	Document Number CBK16070004	Title SVC/Reviews Contract	Page 3 of 9
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Total Funding: \$400,000.00

FYs	Fund	Budget Org	Sub	Object Class	Sub	Program	Cost Org	Sub	Proj/Job No.	Sub	Reporting Category
2007 2008		KOL600		252		J3510					
Division	Closed FYs	Cancelled Fund									

Line Item Number	Description	Delivery Date (Start Date to End Date)	Quantity	Unit of Issue	Unit Price	Total Cost (Includes Discounts)
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0001	TRIBAL COURT REVIEWS CONTRACT	09/01/2007	1.00	LO	\$400,000.000	\$ 400,000.00
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(09/05/2007 to 09/30/2008)

SCOPE OF WORK: The contractor in conjunction with BIA-OJS, tribal government and tribal court personnel will conduct review of tribal court grantees and execute/implement the court improvement plan. Typically the scope of work will entail a review of codes, court procedures and rules and/or tribal courts' performance using the attached "Court Performance Inventory" (or an approved substitute approved by the contracting officer). The contractor shall identify strengths and weaknesses relative to functions for which Federal funds are allocated and make a determination as to whether a court will receive an acceptable rating with the federal funds allocated for tribal court operations. The contractor will also develop a list of potential judges that could serve as tribal judges where vacancies occur or are identified to exist in Indian country.

TERM: The contract is to be performed under a basic one (1) year period with an option to continue for an additional four (4) years. The scope of work will remain the same over the five (5) year option period, but the specific courts to be reviewed will change. The basic period of this contract commences on September 5, 2007 and ends on September 30, 2008.

Ref Req No: 7J35100161
 Funding Information:
 2007 - 2008 - - KOL600 - - 252Z - - J3510 - - - - -
 \$400,000.00

Total Cost: \$400,000.00

JUSTIFICATION: This contract is necessary to continue the ongoing process of performing tribal court reviews that was begun in fiscal year '06. These court reviews are performed to insure the appropriate expenditure of federal funds for tribal and CFR court perations & to provide recommended changes.