

**MINUTES
of the
SECOND MEETING
of the
INDIAN AFFAIRS COMMITTEE**

**July 13, 2009
University of New Mexico School of Law
Albuquerque**

**July 14 and 15, 2009
Prairie Star
Pueblo of Santa Ana**

The second meeting of the Indian Affairs Committee (IAC) for the 2009 interim was called to order by Senator John Pinto, co-chair, on Monday, July 13, 2009, at 10:08 a.m. in the moot courtroom at the University of New Mexico (UNM) School of Law in Albuquerque, New Mexico.

Present

Rep. James Roger Madalena, Co-Chair
Sen. John Pinto, Co-Chair
Sen. Rod Adair
Rep. Eliseo Lee Alcon
Rep. Ray Begaye
Sen. Eric G. Griego (7/13)
Rep. Sandra D. Jeff
Sen. George K. Munoz (7/14, 7/15)
Rep. Jane E. Powdrell-Culbert
Sen. Nancy Rodriguez
Sen. John C. Ryan (7/13, 7/15)
Rep. Gloria C. Vaughn

Absent

Sen. Lynda M. Lovejoy
Rep. Patricia A. Lundstrom

Advisory Members

Rep. Ernest H. Chavez
Rep. Ben Lujan (7/13)
Sen. Richard C. Martinez
Rep. Debbie A. Rodella
Rep. Nick L. Salazar

Sen. Stuart Ingle
Sen. Timothy Z. Jennings
Rep. Antonio "Moe" Maestas
Sen. William E. Sharer

(Attendance dates are noted for members not present for the entire meeting.)

Staff

Damian Lara
Jennie Lusk

Joshua Sanchez
Tamar Stieber

Monday, July 13 — UNM School of Law

Welcome and Introductions

Senator Pinto asked committee, staff and audience members to introduce themselves. He then turned the meeting over to Representative Salazar to chair.

UNM School of Law — Native American Programs and Priorities

Kevin Washburn, dean, UNM School of Law, introduced himself and members of the law school staff to the committee. Dean Washburn is a member of the Chickasaw Nation of Oklahoma and the first Native American to be dean of UNM's law school and one of very few Native Americans to be dean of any law school in the nation. He noted that he has only been on the job for 12 days.

Dean Washburn described the Indian Law program as one of the law school's marquis programs. He thanked the committee and the legislature for their generous appropriations, which he said make tuition relatively affordable. Still, he said, with tuition at \$12,000 a year plus room and board, law students who complete the three-year program will graduate with a debt load of at least \$90,000.

Dean Washburn said the Indian Law program began about 40 years ago and has been churning out 25 to 30 Indian graduates each year, which he noted is more than at any other law school in the nation and for a much longer time. To date, the program has graduated about 260 Native Americans. The Indian Law program now has competitors, he said, though none has as large a staff as UNM. He recognized law school faculty member Gloria Valencia-Weber, who in 1992 established the Indian Law Certificate program, which Dean Washburn said has granted certificates to well over 100 Native American students. To get a certificate, students must take specialized courses in Indian law; do an externship, often in a tribal court or organization; and write a senior thesis focusing on an issue of Indian law. Certificate students may also work on a law review called the "Tribal Law Journal". Dean Washburn said the Indian Law Certificate program draws students and professors from all over the country and is not just geared toward American Indians.

Introducing additional law school faculty and staff members and describing their areas of expertise, Dean Washburn said that UNM has more tenure track professors in Indian law than anywhere else in the nation and that, together, they comprise the strongest Indian law faculty in the nation.

Indians represent 10 percent of the student population at the law school, with about 30 Native American students enrolled there at any one time, Dean Washburn said. Last year, he said, 31 of the law school's 330 or 340 students were Indian. The Native American Law Student Association vies with the Mexican American Law Student

Association as one of the largest and most active student organizations on campus, he said.

Dean Washburn said that UNM has one of the strongest American Indian law curricula in the country, which makes it not just a law school for New Mexico, but for the entire country. One of the reasons for this is its proximity to 22 Indian tribes, nations and pueblos and the law school's connection to those communities. He said he recently sent a letter to each of New Mexico's tribal chairs, inviting them to visit the law school at any time and thanking them for providing funding and other resources — including scholarships for Indian students, who, he said, are often impoverished — that have helped the law school establish its national reputation in Indian law.

Southwest Indian Law Clinic

Dean Washburn said UNM's Southwest Indian Law Clinic provides an answer to the oft-heard criticism that law schools concentrate too much on classroom, rather than hands-on, learning. The clinic is an effort to get law students practicing law under the supervision of a practicing lawyer before they take the bar exam. Students often represent indigent people from tribes and tribal organizations, e.g., a parent in a child custody lawsuit or a criminal defendant in tribal court, or they might help write bylaws for a Navajo chapter.

The clinic has existed for 40 years and is a model for the rest of the country, Dean Washburn said. He noted that it is an expensive program because the clinic professors work with very few students per semester — something that would be impossible at a larger law school. The clinic receives \$220,000 a year from the legislature, which Dean Washburn said goes toward salaries and fringe benefits for professors and adjunct professors. He said it is a lot of money, "but it is a good investment both for students and the Indian people they help". He added that the clinic has only two full-time faculty members and needs more faculty if it is to run as a year-round operation.

Dean Washburn said that the clinic is a special project and that special projects "have bad names right now". He asked the committee's help in continuing to keep the program funded, even during a time when budgets statewide are hurting, calling it one of the most important operations of the law school. He said he has already reached out to tribal leaders about getting more money for training and assistance, and he has spoken to Uday Desai, who is the director of the School of Public Administration, about a joint training session to teach public employees how to run government bureaucracies better. The training would encompass legal and ethical issues specifically with regard to Indian law. He said he needs to raise funds for scholarships, which requires his talking to people in a private sector around the state and reinvigorating alumni. He added that the law school needs more faculty.

Questions and comments from the committee, and answers from Dean Washburn and faculty members, included the following:

- *Have Indian casinos contributed to funding for the Indian law program?* "Not that I'm aware of". Dean Washburn said he is bashful about asking gaming tribes for money until the law school serves them in some way, especially because gaming tribes complain that people often ask them for money without offering any services.
- *How much support do tribes provide to their own law students?* The Navajo Nation and the law school have a memorandum of understanding whereby they split the tuition costs for Navajo students. A tribe from Connecticut donated \$25,000 toward the program. Local tribes primarily provide students, not funding.
- *Is Dean Washburn the first Native American law school dean?* He is the first at UNM and the second in the country.
- *Why is there no training for the judiciary at the law school?* The law school sends faculty to a national judicial college to teach, but it should probably bring that home.
- *What happens to students who get their law degrees in another state and come to New Mexico to take the bar exam?* The law school does not serve those students directly, though they are welcome to take a course at UNM and/or study there for the bar. The bar passage rate at UNM in February was 100 percent.
- *Can the law school provide some sort of training to navigate and fill in the Navajo Nation Code, particularly in the areas of contracts, joint powers agreements and shepherding projects through the Navajo Nation system?* Federal contracting and appropriations are very challenging under tribal law, and the law school would like to get more involved in those areas. UNM has a business law clinic designed to deal with economic development and business issues, and some of the students in the Indian law program are working in those clinics. The law school will see if there is a way to interact with the Navajo Nation to help write its code.
- *What percentage of enrolled students actually get their degree?* Well above 95 percent get a law degree.
- *Can the law school get Native American high school students involved in a law program?* The law school sponsors major outreach events to minorities — particularly Native Americans, Hispanics and African Americans — in high schools throughout the state to explain what it means to study and practice law. Several faculty members have traveled to reservations in New Mexico to do mock law classes. There is also a collaboration between the

UNM law school office of admissions with other undergraduate programs where law students share their experiences.

- *Is the Indian pre-law program open to all students?* It is aimed specifically at Indians and Alaskan natives. Programs such as the Council for Legal Education Opportunity are open to other minority students.
- *What if students score low on the entry exam?* The test is pretty good at predicting success, but some very good students may not be "test-savvy".
- *There is a dearth of people of color, particularly of Native Americans, in the judiciary, and there is no federal judge who is an American Indian.* Part of the law school's mission is to grow leaders that look like New Mexico.

Pre-Law Summer Institute for American Indians and Alaska Natives

Teaching assistants Terrelene Massey of the Navajo Nation and Veronique Richardson of the Pueblo of Laguna provided a history of the Pre-Law Summer Institute and explained how it works. They said this year's class of 37 students was the largest in its history. They described the program as an "eight-week boot camp" with very high standards to prepare students to be successful in law school. They said the program is sensitive to students' backgrounds and gives Indian students an "alternative basis" for admission to law school. They stressed that the program does not recommend every student, especially if it is in the best interest of either the school or the student not to place that student. "We must maintain our reputation", Ms. Richardson explained.

The program follows the Socratic method of teaching and offers courses in tort and property law, civil procedure and legal writing and analysis. It also provides courses in Indian law, which Ms. Richardson said is unique. Students must take mid-term and final exams, and the teachers grade them as if they were first-year law students. Students are expected to write internal memos as if they were writing to a judge and to make oral arguments before a panel of judges and attorneys.

Questions and comments from the committee included the following:

- *Can a student repeat the program if necessary?* Yes.
- *The program sounds very rigorous. How does one have a family or a job and attend the program?* There are students who have children or are married. They have to balance those issues. They have to make some sacrifices. Scholarships are available.
- *Who provides the scholarship money?* The American Indian Law Center (AILC) through the Bureau of Indian Education (BIE); the Law School Admissions Council, which provides funding for legal education; the UNM law school through private donations; and some Indian tribes and pueblos that

have agreements with the law school to pay part of their students' tuition costs.

AILC and AILC Appellate Project

Helen Padilla introduced herself as a member of the Pueblo of Isleta, a practicing attorney, former vice chair of the Laguna Gaming Control Board and former general counsel of the Indian Affairs Department (IAD). She said that the AILC provides training in Indian tribal law to tribal leaders and tribal courts throughout the southwest and would be happy to provide the same training to New Mexico legislators.

Ms. Padilla said the Southwest Intertribal Court of Appeals (SWITCA) is administered through the AILC, which she stressed is separate from the UNM School of Law and gets no state funding through UNM. As a separate nonprofit organization, it receives grants and donations from numerous organizations and entities, including tribal governments.

Ms. Padilla gave a brief review of tribal court systems and how they differ from other American courts. The Pueblo of Santo Domingo, for example, has a traditional court system that she said is unlike a modern Western-style court. In contrast, the Navajo Nation court system is a combination of traditional and modern. She said that most pueblos utilize a modern system while allowing parties to request to be heard in a traditional court. She described tribal courts as administering a different form of justice than that to which the "typical New Mexican" is accustomed. A tribal council can sit as the appellate court of the tribe, though the SWITCA will often assign judges to sit at the appellate level to make decisions.

Melissa Candelaria, senior policy analyst, AILC, Pueblo of San Felipe, said the AILC's mission includes the following:

- safeguarding the natural resources, health and safety of Indian people;
- building tribal capacity;
- developing tribal justice;
- fostering tribal leadership; and
- assisting tribal leaders at being more effective at their jobs.

Ms. Candelaria said the AILC is working on a number of projects, including:

- simplifying tribal and state government permitting with funding from an environmental justice grant from the federal Environmental Protection Agency;
- conducting traditional planning meetings with the state Department of Environment; the Energy, Minerals and Natural Resources Department; and the Office of the State Engineer regarding preserving Mount Taylor as a sacred site; and
- facilitating discussions between the Bureau of Indian Affairs (BIA) and Indian tribes on procedures involving land interests.

The AILC's goals include:

- improving tribal-federal relations through formal and informal dialogue;
- protecting Indian arts and crafts from exploitation; and
- designing a curriculum in Indian law for tribal leaders.

Responding to questions from the committee, Ms. Padilla and Ms. Candelaria provided the following information:

- the AILC was established in 1988;
- individuals who receive training through the SWITCA must adhere to tribal law;
- the AILC can provide training on the federal principles of Indian law, including recognition of tribal sovereignty;
- the AILC hopes committee members and tribal leaders can work together on the issue of uranium cleanup;
- the AILC will not work on the process of federal recognition of tribes because that is the bailiwick of the federal Department of the Interior;
- the AILC does not have litigators; it provides policy analysis;
- the federal Indian Child Welfare Act of 1978 does not always have a role in placing foster children, who often fall through the cracks; and
- DWI reporting is complicated by jurisdictional issues, which are very sensitive. Requiring tribes to report DWI statistics to another government is an erosion of their sovereignty.

Audience member Joe Lew said he oversees national tribal courts across the country and that they are constantly dealing with the issue of which jurisdiction — tribal, federal, state, etc. — prosecutes a crime committed in Indian country and/or by a Native American. He said the law is split on the issue. He said that tribes could get access, and provide information, to the National Crime Information Center (NCIC), which is a computerized index of criminal justice information (i.e., criminal records, history and information, including fugitives, stolen property, missing persons, etc.), but that they do not uniformly do that. He said the U.S. Department of Justice (DOJ) will not provide funding or award grants to entities that are not tied into the NCIC.

Questions and comments from the committee included the following:

- *Will passage of U.S. Senator Byron Dorgan's bill enhancing law enforcement efforts in Indian country mean mandatory two-year prison sentences for misdemeanor crimes?* Eventually, criminals who face small sentences in tribal courts could face three-year sentences under the Dorgan bill.
- *What about incest?* It is a federal crime in Indian country, which means that the DOJ has jurisdiction.

Tribal-State Consortium

Roman Duran, associate judge, Jicarilla Apache Tribal Court, gave a history of the Tribal-State Consortium and a synopsis of what it has done in the past and what it is working on currently. The consortium is composed of seven state judges appointed by

the New Mexico Supreme Court and seven by the Colorado-New Mexico Indian Court Judges Association. The consortium began in 2000 as a cultural exchange whereby the judges could discuss common issues they face on their respective benches. It focuses on:

- questions of jurisdiction and sovereignty;
- domestic violence;
- custody, support, neglect and abuse of children; and
- juvenile justice.

The consortium's goals include facilitating communication between state and tribal judicial systems and improving awareness about their different judicial and legal systems. The organization has collaborated with the Domestic Violence Commission to draft legislation; it has worked with Project Passport, an organization dedicated to protecting domestic violence victims who flee to a different jurisdiction than the one that issued a protective order; and it is co-sponsoring a four-state symposium in September on drug trafficking issues in and around Indian country.

The consortium was originally funded by the legislature. Now it receives its funding from the New Mexico Supreme Court, Mr. Duran said.

Debra Seeley, domestic violence commissioner, Second Judicial District Court, said the Albuquerque court hears 300 domestic violence cases a week. She said the consortium has been invaluable in helping the court protect domestic violence victims in Indian country by ensuring that protective orders transition smoothly between tribal and state courts and from state to state. She described a case in which a New York woman got an order of protection against her long-time abuser. When she moved out of state, her abuser followed her and threatened her. She called the police department and was told that it did not recognize New York's protection order. Her abuser murdered her later that day. Today, Ms. Seeley said, a police officer on the Navajo Nation can look at a protective order from Taos and recognize it immediately. She said that this is thanks to efforts by the State-Tribal Consortium in designing a uniform protective order recognized by all jurisdictions.

Questions and comments from the committee included the following:

- *There seems to be a lack of control and uniformity between the tribal court system and the state courts; thus, it is hard to track crimes and criminals. How can that be resolved? Criminals are very clever about evading arrest. There is not much one can do about it.*
- *Tribes need to enter into a joint agreement with the state regarding apprehension, prosecution and sentencing of criminals, especially repeat offenders. This is complicated by issues of sovereignty. Legislating that jurisdictions share crime data, e.g., for DWIs, is up to "you guys" (the legislature) and the tribal councils.*
- *A person will be extradited from one end of the state to another because the person owes money, but someone who violates a restraining order will not be extradited. Why are these people not extradited back to where the restraining*

order was issued? That is a jurisdiction problem. Hearing officers do not have the statutory authority to do that.

- *Are men victims of domestic abuse?* Yes, but it is more difficult for a man to admit being abused and to ask for help.

Several committee members asked staff to draft legislation for state and tribal law enforcement and judicial entities to collaborate. Ms. Lusk explained that the state cannot tell tribal governments what to do. On a motion made, seconded and passed without objection, the committee agreed, instead, to write a letter supporting funding mechanisms for state/tribal collaboration.

The Dorgan Bill — Proposed Federal Legislation Changing Criminal Laws in Indian Country

By way of introducing the next speaker, Ms. Lusk noted that the IAC takes great interest in ensuring that Native American defendants are properly represented in criminal proceedings and that Native American prisoners have decent prison conditions.

Kathleen Bowman, director, Office of Navajo Public Defender, explained that the reason for Senator Dorgan's bill is because of the "huge jurisdictional gap" in Indian country, much of which came to light because of hearings on violence against Native American women, she said. Tribes have no jurisdiction among non-Indians, so Native American women abused by non-Natives have no legal recourse, she said.

Ms. Bowman said DWI suspects will often plead guilty in a tribal jurisdiction because they are told by jailhouse lawyers that even if they plead guilty, they will not go to jail because there is no room in the tribal jails. In the Navajo language, she explained, guilty or not guilty translates to, "Did you do it?". Many defendants will say, "yes", with no opportunity to give an explanation. Ms. Bowman said her concern is that a huge number of people who plead guilty in tribal courts are then convicted in state or federal court, often without an attorney, when they may have had a legitimate defense.

Ms. Bowman explained that the Dorgan bill will make most sentences in Indian country an automatic three years and that tribes can send their prisoners to federal prisons at no cost to the tribe. She said this provides an incentive to incarcerate Indians in federal prisons, which are usually far from their families and friends. Native Americans accused of major crimes are tried in federal court, where sentences are much harsher than in tribal or state courts.

Ms. Bowman said she had a client who was in jail for 584 days instead of his sentence of 364 days because he was told he could not get out of jail until he paid \$90.00 for a window he broke while committing his crime. This is tantamount to an open-ended sentence, she said. She told of a judge who sentenced the father of a special needs child to 30 days in jail because he tried to speak for his son, who was unable to speak for himself. She described a case in which a child defendant with attention deficit hyperactivity disorder was taken off his medications during his hearings. She said these

are just a few examples from her 15 years as a public defender that explain why tribal defenders and judges should be trained in law school and licensed by a state court.

Questions and comments from the committee included the following:

- *What is a "public law 280 state"?* This is a state that has opted to take on the criminal jurisdictions of all the tribes in the state. New Mexico is not a public law 280 state.
- *Would public law 280 help in providing properly trained individuals?* No, because the law is an unfunded mandate. Congress did not give the states money to pay for extra judges, increased patrols, etc. So even public law 280 states have jurisdictional gaps because of lack of funding.

The committee recessed at 5:00 p.m.

Tuesday, July 14 — Pueblo of Santa Ana

Senator Pinto reconvened the committee at 9:15 a.m. He asked committee members to introduce themselves. He turned the chair over to Representative Madalena, who welcomed the people from his district.

American Recovery and Reinvestment Act of 2009 (ARRA) Provisions for Corrections and Public Safety

Alvin H. Warren, secretary, IAD, outlined the ARRA funding related to corrections and public safety for which his department has applied, including:

- \$225 million for correctional facilities on tribal lands;
- \$21 million in set-asides to tribal governments for the STOP Violence Against Women program and transitional housing;
- \$17 million for BIA construction of a rehabilitation and detention center;
- \$125 million for rural law enforcement;
- \$5 million for victims' compensation;
- \$225 million in Byrne competitive grants;
- \$1 billion to hire law enforcement officers for three years;
- \$125 million to protect the U.S./Mexican border; and
- \$210 million for assistance to firefighters.

Questions and comments from the committee included the following:

- *Are the Mescalero Apache Tribe and other tribes aware of the available funding?* The IAD sent out notices, but some tribes are just starting to get things in order.
- *To whom and how do the tribes apply for the funding and how are the applications evaluated?* They apply through the internet to the federal agencies handling the funds. Some applications are peer-reviewed; others are reviewed internally.
- *Does former Governor Toney Anaya, who heads the New Mexico Office of Recovery and Reinvestment, have a role in approving tribal projects?* No, but

Governor Richardson may ask Governor Anaya for recommendations on \$50 million of Governor Richardson's discretionary ARRA funds.

Representative Jeff asked about stimulus funding for a pending medical/trauma center in Gallup, which she said is urgently needed. She asked if it is on the priority list for the Indian Health Service (IHS) and asked how the IHS selects recipients for ARRA funding. Secretary Warren said that while he knows that the IHS has a process for prioritizing projects, he does not know what that process is. Senator Munoz said that if Gallup can get a \$1 million loan for land for the medical/trauma center, the federal government would help fund the project, and it could get started. Senator Rodriguez agreed that the medical/trauma center needs to be a priority and that it needs to get into the right hands. Secretary Warren said that it is part of the IAD's job to help shepherd along such projects, but that nobody from the medical center has asked the IAD to get involved. He said he would work on getting the project reauthorized, and he encouraged the committee to write a letter to New Mexico's congressional delegation in support of the medical/trauma center. Representatives Salazar and Vaughn reminded the committee that projects have to be "shovel-ready" to be approved. Secretary Warren agreed that it would be a big challenge to get the medical center approved if it is not shovel-ready.

On a motion made, seconded and unanimously approved, the committee agreed to write a letter to Governor Richardson asking him to support in principle and with funding the construction of a Gallup regional medical/trauma center.

Secretary Warren said the IAD's biggest challenge is to get information back from the tribes about which projects need funding. With 22 tribes, his department has not been able to track projects on a daily basis. However, the department had just created a new position specifically to track stimulus funding in Indian country. The position has not yet been filled, he said, but the department is advertising it.

Representative Jeff said she is concerned that tribes will lose opportunities for funding because of missed deadlines. She asked how the IAD determines which tribes get awards. Secretary Warren said the state has no role in deciding which tribe gets money directly from the federal government; it can only make those decisions if the money comes through the state.

Senator Adair asked about state-funded projects with two-year deadlines for which there have not yet been allocations, in some cases because regulations to apply for and use the funds were not issued. He said that it would behoove the state to extend those deadlines. Secretary Warren said that if a tribe asks him to request a deadline extension from the governor, he would be happy to do that.

Representative Madalena asked if New Mexico could get Alaska's stimulus money since Alaska said it did not want it. Secretary Warren said, "Absolutely. We're going next week and we'll bring a big bag."

An audience member from Zuni noted that it is not just deadlines that hamper tribes in getting federal and state funding, but also that many tribes have not complied with the state Audit Act, which requires entities receiving public money to be audited annually so the granting agencies can look at the prior funding history and see how the entities spent the money. She extended an invitation to the committee to attend a three-day sexual offender seminar sponsored by the Pueblos of Acoma, Isleta and Zuni. Among the topics of discussion will be whether Indian tribes opt in to the national sex offender registry.

Minutes

The committee unanimously adopted the minutes of the previous meeting without objection or discussion.

Disproportionate Incarceration in Indian Country

Stephen McCue, federal public defender, provided the committee with a copy of the federal statute that places major crimes committed on Indian land under federal jurisdiction. The rationale, he explained, was to protect Native Americans from states that were not particularly sensitive to treaty rights or the rights of tribes. "We say, 'With friends like these, who needs enemies' ", Mr. McCue commented. A "garden variety" aggravated assault case that might warrant 18 months incarceration or probation in a state district court could earn a 10-year sentence in federal court, where there is no parole, he explained. For New Mexico Indians, that not only means much longer sentences, but it is also tantamount to banishment from their tribes because there are no federal prisons in New Mexico. Mr. McCue said his clients typically wind up in Arizona, Texas or Colorado, while sex offenders go to special facilities on the east coast.

Mr. McCue referred to statistics from the Federal Bureau of Prisons indicating that of the 3,700 Native Americans in federal prisons, a substantial number come from the southwest. He said he was unable to get more specific information, but estimates that at least several hundred are from New Mexico. Typically, he said, the crimes are either alcohol-driven or violent or sexual in nature. Sex offenses carry "extraordinarily severe sentences" of 30 years, he said, and the victims are often family members who want their abusers to get help, not go to prison.

Mr. McCue said that federal prisons make no attempt at helping released prisoners reintegrate into society. Sex offenders are usually forbidden by the courts to be around children. For released prisoners who come from multi-generational families, that means they cannot go home, and they often cannot find the means to visit their families. Mr. McCue said defendants and victims would be better served by tribal courts than in the federal system.

Questions and comments from the committee included the following:

- *What is the statute of limitation for molestation charges?* There is no statute of limitation for sex crimes.

- *What determines whether a person is charged in state or federal court?* The jurisdiction is determined by where the crime occurs. If the crime was committed on a reservation and the defendant is Indian, it goes to federal court. If a Native American is charged with a crime off native land, that person is tried in state district court. Interstate commerce usually involves the federal courts.
- *Racial profiling is not uncommon and it is unfair. Some Native Americans are innocent and go to prison.* The system really is stacked against Native Americans.
- *How do Native Americans get representation when their attorneys are 200 miles away?* That is a problem. The frame of reference is skewed. An attorney has to go out there and sit down and talk to a defendant and get a sense of reality and how things actually work.
- *How many Native American public defenders are there?* There are no Native American federal public defenders. The state has two or three.
- *How long does it take to settle a case under your purview?* There is not a set time to complete an investigation. Some cases move very quickly; others might still be pending a year later.

Public Defender Office Plans for Gallup

David Eisenberg, deputy chief public defender, state Public Defender Department, said his department "felt it incumbent upon us" to use a small budget increase of \$267,000 to open a public defender office in Gallup with an anticipated opening date of March 2010. The office will be under the auspices of the Aztec district public defender and will have 14 full-time staff members, including six lawyers. The office should be able to handle up to 50 percent of the caseload in the Gallup area. He said the department will eventually have 19 employees, at which time it will handle 70 percent of the cases.

Mr. Eisenberg said the department is actively searching for attorneys with a heavy recruitment effort at the UNM School of Law. He said the department will hire promising young attorneys contingent upon their passing the bar exam. He said it is important to have Native American lawyers representing the native population in Gallup.

Noting that he was a magistrate judge for two years in Gallup, Representative Alcon expressed concern that the new lawyers will be trained in metropolitan court but will be representing clients in magistrate court, calling the courts "two different animals". Mr. Eisenberg said both courts handle misdemeanors, so the transition should be smooth. He said more senior lawyers will handle felony cases. Representative Alcon said he expects that Mr. Eisenberg will have "very discouraged public defenders on your hands".

Senator Munoz said he does not think \$267,000 will suffice to run an office of 14 people. Mr. Eisenberg assured him that the budget will be supplemented by the approximately \$500,000 the department pays to contract lawyers. Senator Munoz also said he was worried that lawyers fresh out of law school would not have the experience

to provide adequate representation to their clients. Senator Martinez, who was a magistrate judge in Rio Arriba County, said he would be "in awe" if the Public Defender Department put three new attorneys in Espanola and said he is 100 percent in favor of the department's efforts. "I applaud you. I support you. You have a friend here", he told Mr. Eisenberg. "I sit on the judiciary committee. Let me know if there is anything I can do to support you.". Representatives Jeff, Powdrell-Culbert and Rodella also expressed their strong support.

The chair recognized the governor of the Pueblo of Zia before recessing for lunch at 12:15 p.m. The committee reconvened at 12:46 p.m.

Gallup Inter-Tribal Indian Ceremonial Association

Ernest C. Becenti, commissioner, McKinley County, told the committee that the Gallup Inter-Tribal Ceremonial does not have enough funding to put on its upcoming 88th annual event, scheduled to open in six weeks. He asked the committee to write a letter to Governor Richardson requesting that he allocate emergency funds to support the event. Mr. Becenti said he is requesting \$179,000 to put on this year's event and another \$121,000 — for a total of \$300,000 — for "any future consideration". On a motion by Representative Jeff and seconded by Representative Alcon, the committee unanimously approved writing a letter to the governor urging him to use emergency funds to ensure that the 88th Gallup Inter-Tribal Indian Ceremonial goes on as scheduled.

Letters

The committee agreed to write letters to the U.S. Federal District Court for New Mexico regarding adding tribal registration lists to be used in jury selection and to the Department of Environment requesting that the IAC become a stakeholder or consulting party for purposes of governing Mount Taylor. The committee also agreed to review a 2008 Sandoval County stipulated agreement.

The committee recessed at 2:30 p.m.

Wednesday, July 15 — Pueblo of Santa Ana

Representative Jeff reconvened the committee at 9:07 a.m. and asked committee and staff members to introduce themselves. She then asked members of the next panel to introduce themselves. They included Martin Aguilar, Larry Dominguez and Savaleah Begay-Tsosie, Bureau of Elections, Secretary of State's Office; and Native American Election Information program (NAEIP) coordinators Peter Magdalena from Sandoval County, Shirlee Smith from Bernalillo County, Vince Abeyta from Socorro County, Arlenta Horse-Dickie from San Juan County and Hvtce Miller from Santa Fe County. Secretary of State Mary Herrera sent her regrets.

NAEIP Coordination — Preparing for the 2010 General Election

The committee listened to a freewheeling discussion of voting issues in Indian country by election officials from several counties and representatives of the NAEIP. Among the issues raised were the following:

- voting sites should have enough room for at least five voters simultaneously;
- Native American voting coordinators are working on a joint powers agreement to ensure that voting sites in Indian country conform to requirements for all voting sites, including all necessary voting equipment, translators and federal Americans with Disabilities Act of 1990 accessibility, and that they have fax capabilities, broadband internet access and telephone access so precinct officials can contact their county clerks, if necessary. These minimal requirements apply to early voting sites and mobile voting units as well;
- in Zuni, voters were not aware of the mobile voting unit; and precinct officials closed it for two hours at lunch when it should have stayed open for eight straight hours; and
- currently, McKinley County has one mobile voting unit; additional mobile units would enfranchise more Native American voters.

Representative Jeff said she was disappointed that McKinley County did not send a representative to the day's meeting. Other comments and questions from the committee included the following:

- *McKinley County only has three commissioners that decide on issues concerning uranium, development and other concerns that affect the community, but the community is not truly represented by those commissioners. Can the commission be expanded?* The Bureau of Elections would have to look at the requirements of the statute to see if the commission can be expanded. Everything has to happen in a legal way.
- *How does a county commission expand from three to five commissioners?* The board of county commissioners by unanimous vote can increase the size of the board.
- *Are voting information ads, including those for early voting, provided in native languages?* Yes, primarily on local radio stations. In San Juan County, many Navajo people use pictorial ballots.
- *Has anyone, including the American Civil Liberties Union, sued for putting pictures on the ballot?* No, because the pictures are only on the sample ballots.
- *Is there specific authority under law or regulation to put pictures on a ballot?* It is done because it is thought to be the right thing to do. (Senator Adair said he "sure would have voted for Sarah Palin based on this".)

Minority Language Assistance Requirements Under Section 203 of the Federal Voting Rights Act

Richard Dellheim, trial attorney, Voting Section, Civil Rights Division, DOJ, explained that Section 203 of the federal Voting Rights Act requires that if more than five percent of the population of an area speaks another language or has limited English proficiency, then voting materials must be provided in their language. Eighty-seven political subdivisions across 17 states are subject to Section 203, he said. In New Mexico, they include Bernalillo, Cibola, McKinley, Rio Arriba, San Juan, Sandoval, Socorro and Valencia counties. The requirement applies not only to the ballot, but to all election information, including ballot registrations, sample ballots, polling place information, absentee ballots, etc.

Because Native American languages tend to be oral, that poses additional challenges, Mr. Dellheim said, including properly trained translators. Mr. Dellheim gave an example of a ballot containing a proposition for a judicial retention. A poll worker translated "judge" as "the man who puts you in jail". So the ballot question read, "Should the man who puts you in jail be retained?". The answer was, not surprisingly, "no", Mr. Dellheim said.

Mr. Dellheim said he filed lawsuits in Cibola, McKinley, Sandoval and Socorro counties that resulted in negotiated court-ordered consent decrees to fund Native American election programs that open the process up to Indians, including many who do not speak English, and included hiring voting rights coordinators trained in all aspects of the election process and making sure tribal officials follow the rules.

The consent decrees also require that county governments open satellite election offices at or near tribal offices so tribal members can register to vote or file absentee ballots. Mr. Dellheim said that McKinley and Sandoval counties have fulfilled their consent decrees while Cibola and Socorro counties are still bound by them. He said his department is in active litigation with Cibola County. He said his department hopes it can achieve a resolution short of contempt proceedings.

Sandoval County has been under a consent decree the longest — since 1988, said Mr. Dellheim. The decree was extended numerous times, he said, most recently in the 2008 election cycle. In the view of his department, Sandoval County has made "substantial compliance", so the department will allow most of the provisions of the consent decree to expire. Responding to questions from the committee, Mr. Dellheim said that the Sandoval County clerk in the 1980s was "particularly hostile" to the Minority Assistance Language program, which is why the responsibility for the consent decree was transferred from the county clerk to the county attorney. The current county clerk is "interested and cooperative", Mr. Dellheim said.

Sandoval County Attorney David Matthews said he and Mr. Dellheim have been working closely on the county's compliance with the consent decree. He said Keres-speaking pueblos are particularly problematic because of the difficulties and nuances of

their language. He compared the voting experience of Keres-speaking voters to "dropping me in Cajun country on election day".

Mr. Matthews said the Pueblos of Jemez and Zia took language training courses, and he hopes the Pueblos of San Felipe and Santo Domingo do the same, especially because voter registration at the pueblos has increased tremendously. He said his department has also invited the Pueblos of Santa Ana and Cochití to join the language training. He stressed that his group is nonpartisan.

Representative Alcon asked if members of Mr. Matthews' staff personally deliver ballots and, if so, how they know where to go. Mr. Matthews said his department gets \$29,000 a year to deliver ballots, which enabled him to hire 12 to 15 people to work the elections. All must speak the native language, he said. They can get an alphabetized list of registered voters and their addresses from the county clerk's office.

Senator Adair asked whether people in Rio Rancho get the same service. Mr. Matthews said they do not. Senator Adair asked where the fairness is. Mr. Matthews replied that it is part of the service his department provides to Native American voters to increase their participation in the election process. He said Indian country is a "unique community" and that his liaisons know the voters. Senator Adair said that if the service is not available to Spanish- or English-speaking voters, then it is not covered by the Voting Rights Act in New Mexico. Mr. Matthews said that his staff does hand-carry ballots to voters who request them, and he said he believes that they are following the Voting Rights Act. "We have the authority under federal law", Mr. Matthews said.

Tribal Justice Support

Joseph Little of the Mescalero Apache Tribe, who developed the Division of Tribal Justice Support for the BIA and helped implement the Indian Tribal Justice Act of 1993, said the division has an office in Albuquerque in order to be near the Indian nations. Regarding the Dorgan bill, he said that three-year sentences are not mandatory for the tribal court system; rather, he said, the bill offers an opt-in provision for tribes, provided that any attorneys handling those cases are licensed and that the tribal courts' policies are transparent. Long sentences are subject to federal review under the federal Indian Civil Rights Act of 1968 and generally result in habeas corpus trials. He stressed that these requirements demand a court system that can withstand such scrutiny, which means that a lot of tribal courts will not opt in, he said.

Mr. Little said that U.S. attorneys often decline cases from Indian country because litigation standards in federal court are high and "they don't like to lose". These cases should go back to the tribal courts, he said, but there is a very large gap of cases that are not being tried at all. He said the DOJ is looking at establishing new federal court districts to handle the case overflow, though he cautioned that it will not happen any time soon. However, he said, there may be an opportunity to pressure Congress to establish additional federal magistrate courts, such as Colorado is doing in Durango to accommodate the Ute Mountain Ute Tribe.

Mr. Little told the committee that the DOJ is "about as confused as you" regarding federal stimulus money, but that the department has \$225 million in the pipeline to be used toward construction of federal detention facilities in Indian country. He said the DOJ will make the final decision as to where any such facilities will be located, but it is likely that two of them will be in New Mexico.

Regarding access to crime information, Mr. Little said the BIA has direct access to the NCIC through the DOJ. He said the DOJ is looking at giving tribes direct access.

Questions and comments from the committee included the following:

- *Is it possible to develop a protocol with the courts and the police for tribes to get access to the NCIC?* New Mexico has been working with a consortium to allow tribes not only access to, but also to input information into, the NCIC, but that requires being audited to ensure that an entity is adding correct information.
- *What is the incentive for Senator Dorgan's bill?* It establishes how the DOJ works in Indian country. The DOJ feels there is a lack of law enforcement in Indian country, including too few law enforcement officers, and additional training to include homeland security issues.

Voting at the Pueblo of San Felipe

Charlotte Little, president and chief executive officer of Little and Associates, a government relations firm, and a tribal administrator for the Pueblo of San Felipe, said voter turnout at the Pueblo of San Felipe is increasing every year. Last year's presidential election marked the highest turnout rate ever, she said, partly due to the "Next Step" absentee ballot project, which provided another way to follow up on absentee ballot requests.

Reading from a handout, Ms. Little described the history of voting turnout at the pueblo and the tribe's commitment in 2006 to increase turnout through education and easily accessible voter information. The tribe plans to provide early in-person voting sites for tribal members at least seven miles from a county courthouse as per Senate Bill 685. Ms. Little thanked committee members for supporting that legislation.

Electronic Communications in Indian Country

Former state Senator Leonard Tsosie asked the committee to endorse a shovel-ready communications venture to bring internet, radio, television and cell phone service to Indian country. He said it would require putting up a tower, but not on sacred land. He said it is a joint venture with the State of New Mexico and will cover areas represented by Senator Munoz and Representatives Begaye and Jeff. He said the signal will not go much beyond Window Rock, but that it will represent an expansion westward to "bring down the digital divide" by bringing new technology to Indian communities.

Upon a motion made and seconded, the committee voted without objection to write a letter to Governor Richardson and to the New Mexico congressional delegation supporting the use of federal stimulus money for the project.

Preparing for the 2010 Census; Getting out the Vote

The committee listened to a panel discussion on the upcoming census and how it relates to getting out the vote. Speakers included Amber Carrillo, voter engagement consultant, Native American vote director, National Obama Campaign; Ms. Little; Mr. Aguilar; Kimmeth Yazzie, program and project specialist, Navajo Election Administration; and Merlin Cassador, Jicarilla Apache Election Administration. Discussion points included the following:

Voting

- Locating rural voters in Indian country is challenging.
- Locating Native American voters in urban centers is challenging.
- Getting accurate information to voters can be more difficult than getting people to the polls.
- The Bureau of Elections has a Native American Election Information program whose basic objective is to help Indian tribes understand the Election Code and to assist them in interpreting the laws.
- The Navajo Nation is working with counties and the states of New Mexico and Arizona to implement an election information program with an emphasis on primary elections, in which "elections are won", according to Mr. Yazzie.

Census

- Education and advertising are essential to taking an accurate census in Indian country, which traditionally has been undercounted. There is a public campaign underway to dispel the mistrust and fear of the census and census workers.
- Monetary awards for cooperating with the census provide a strong incentive for participating.
- It is important to get native census takers, who look like the people they are interviewing and speak their language.
- The U.S. Census Bureau has opened a temporary regional office in Window Rock and is talking about making it permanent.
- There is great concern about redistricting based on the census.
- Representatives from the U.S. Census Bureau will be invited to a future IAC meeting.

Adjourn

The committee adjourned at 3:50 p.m.