

SPECIAL FEATURE

THE DUCKWATER SHOSHONE DRUG COURT, 1997-2000: MELDING TRADITIONAL DISPUTE RESOLUTION WITH DUE PROCESS

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The purpose of this article is to explain the development of the drug court on the Duckwater Shoshone Indian Reservation from 1997 to 2000, and demonstrate how this successful form of therapeutic jurisprudence can be replicated by other Western Shoshone and Northern Paiute tribes. In 1997, I and a number of other chief tribal-trial-court judges in other states looked at the drug court phenomenon sweeping state courts,^{<1>} and assessed the ten key components of a drug court:^{<2>}

(1) Drug courts integrate alcohol and other drug treatment services with justice system case processing.

(2) Using a nonadversarial approach, prosecution and defense counsel promote public safety while protecting participants' due process rights.

(3) Eligible participants are identified early and placed promptly in the drug court program.

(4) Drug courts provide access to a continuum of alcohol, drug, and other related treatment and rehabilitation services.

(5) Abstinence is monitored by frequent alcohol and other drug testing.

(6) A coordinated strategy governs drug court responses to participants' compliance.

(7) Ongoing judicial interaction with each drug court participant is essential.

(8) Monitoring and evaluation measure the achievement of program goals and gauge effectiveness.

(9) Continuing interdisciplinary education promotes effective drug court planning, implementation, and operations.

(10) Forging partnerships among drug courts, public agencies, and community-based organizations generates local support and enhances drug court effectiveness.

We recognized almost immediately that many of the key core components were strikingly similar to traditional methods of resolving disputes for our own tribes and/or for many of the tribes who employed us. We also noted that no state or federal drug court design had been challenged as a

violation of a defendant's rights guaranteed by the Due Process Clause of the United States Constitution.<3> For important public policy reasons, and usually in accordance with codified tribal laws, drug court proceedings are open to the public<4> but subject to tribal or federal confidentiality laws.<5>

Allowing tribes to participate in the federally funded drug court movement was important for several reasons. First, it represented a reversal of past federal Indian policies that sought to destroy traditional dispute resolution methods, replacing them with Euro-American preferences in hopes of assimilating Indians (Native Americans), and impose federal court jurisdiction in Indian country.<6> Second, it provided tribes with the initial financial support No. 2]

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to study the drug court concept and their traditional methods of dispute resolution. Tribes then had three choices. First, they could reject the drug court concept, electing to remain as they were, which for many is an essentially Euro-American system of dispute resolution staffed by non-Indians whose focus is punishment and incarceration.<7> Second, tribes could develop a purely volunteer or tribally funded drug court operation thereby avoiding the consequences imposed by federal funding (e.g., excluding all Euro-American defined "violent offenders" from their program and reveal their statistics of success and recidivism) and meld the core key elements of a drug court with traditional dispute resolution. Or, they could apply for drug court implementation funding and adhere to the key components of the Euro-American drug court model and federal funding requirements.

Because of two significant events<8> that occurred less than a year after the official abolishment of the U.S. Department of the Interior's Court of Indian Offenses for the Duckwater Shoshone Tribe and a tribal court taking jurisdiction,<9> the Duckwater Shoshone Tribal Council allowed me to design and implement a dispute resolution system for both adult and juvenile substance abusers consistent with traditional methods of dealing with members and nonmembers alike.

In determining what the tribal court's response to the "revolving door" of substance abuse should be, I used a five-step process.

First, I researched traditional dispute resolution among the Western Shoshone Nation tribes and their neighboring nation to the west, the Northern Paiute. Because few anthropologists have published culture element distributions of Indian nations' tribes or tribes' bands,<10> with little, if any, information on traditional methods of dispute resolution, I primarily talked to elders and other tribal members and observed how dispute resolution evolved and practiced by the Duckwater Tribe's governing and subordinate bodies, and what informal dispute resolution parties to Duckwater Shoshone Tribal Court civil law suits had attempted before filing suit. I also asked defendants who attended residential, in-patient programs prior to their current difficulties what they liked and disliked about their in-patient experience, and what would make an outpatient counseling program attractive.

Second, I looked to see what the federal government's response was to traditional Western Shoshone and Northern Paiute dispute resolution.

Third, I reviewed tribal law to see what substance abuse responses the court was authorized to use.

Fourth, I considered various state, federal, and tribal court responses to substance abuse to determine which one or two would work best on the Duckwater Shoshone Indian Reservation, including attending the "Judicial Response to Alcohol and Other Drugs" course offered by the National College of Juvenile and Family Law/National Council of Juvenile and Family Court Judges, University of Nevada, Reno.

Fifth, I borrowed from my own experiences as former tribal chairman of a combined Northern Paiute-Western Shoshone tribe, judge and prosecutor of Northern Paiute and Western Shoshone tribes over a ten-year period, and what my full-blood grandfather and grandmother, Western Shoshone and Northern Paiute, respectively, who spoke their native languages and knew their nations' customs, taught me as a child.

*Traditional Northern Paiute and Western Shoshone Nations
Dispute Resolution*

Prior to the creation of the U.S. Department of the Interior's Courts of Indian Offenses by non-law trained Indian agents in the late 1800s,<11> and the federal government's introduction and later imposition of the Euro-American concepts of justice of revenge and punishment to Northern Paiute and Western Shoshone nations territory,<12> Northern Paiute (Numu) and Western Shoshone (Newe) Indian doctors resolved our communities' disputes. As a federal Indian agent wrote in the early 1900s, "Indian 'doctor[s]' are not only 'medicine men' . . . but are also judge[s] in civil and political matters of the tribe as well as family disturbances."<13>

The Newe and Numu who utilize the services of a Newe or Numu Indian doctor today know, from oral traditions,<14> that the practices of Numu and Newe Indian doctors have not changed much over time despite both the early criminalization of medicine man practices<15> and the efforts of federal officials<16> and assimilated Newe and Numa to stop their practices and prevent others from learning the profession.

The Indian agents' interpretation that a Newe or Numu Indian doctor would "judge" others, is, of course, either a misinterpretation of the explanation to them or their observations.

Although most Newe and Numu Indian doctors prefer not to explain to non-Indians what they do,<17> Indian doctors do not "judge" in any sense of the word.

Central to the method of traditional Numu and Newe dispute resolution was spirituality and our culture's historic contending principles of justice: truth, harmony, wholeness, apology or contrition, and either restitution or compensation, leading to the ultimate goal of rehabilitation.

Our contending principles of justice flourished because our ancestors focused on developing internal

contentment within a subsistence economy that was respectful of our cultural norms, culture and traditions, and the environment (in a greater sense, our spirituality with what many generically call "Mother Earth" and those things given life and existence by the Creator), not economic growth, materialism, and the resulting environmental and social disruption.

Whether called "doctoring," mediation, or some other term of art, Numu and Newe Indian doctors, calling on the Creator and others for guidance, sought to return spirituality, harmony, and wholeness, to those affected by a dispute or disturbance. Once the truth was known, by a variety of nonconfrontational and noncontentious methods (e.g., sweats, sings, prayers, other ceremonies, or instilling a clearer understanding of one's duties given customs or community norms), apology and restitution (or compensation), allowed the anger generated by the disturbance or dispute to be resolved for all time. Ridicule was reserved for those who did not apologize and, when imposed by a person's family as well as the family of the party injured, it usually caused the nonconformist to eventually apologize and compensate the injured person.

Traditional Newe and Numu dispute resolution was not just reactionary. Our Indian doctors also provided assistance in preventing disputes and disturbances from occurring when either asked to help or when they sensed a dispute or disturbance developing. Traditional Newe and Numu dispute resolution also included the doctoring of not only those immediately involved but all community members affected by a dispute or disturbance.

Although there is at least one reported instance of an execution, where members of a decedent's family stoned a person believed to have caused the death,^{<18>} and banishment undoubtedly became a death sentence for some, because we had no concept of "crime," the white contending principles of justice, the concept of an eye for an eye (e.g., execution), or punishment (e.g., imprisonment), American exaggerations of the English common-law contentious procedures, were unknown.

Newe and Numu Indian doctors were also role models, living a simple, traditional way of life consistent with our contending principles of justice, and content with our historic subsistence economy that was respectful of our cultural norms, culture and traditions, and the environment.

Modern Applications of Traditional Dispute Resolution

The Numu phrase "Numu tumatzidu" (people who help people) or its Newe counterpart applies not only to an Indian doctor's spiritual or doctoring role but includes their, or another Numu and Newe person's, therapeutic jurisprudence role. Modern examples of applying traditional Newe and Numu dispute resolution exist. In a 1986 Numu-Newe tribal court case in Nevada, the defense attorney sought to have the Fallon Tribal Court reconsider its imposition of an anglo-styled punishment on a juvenile charged with the tribal crime of arson and apply a traditional sanction.^{<19>} Several exhibits were appended to the motion, including signed statements of two elders.

One elder recalled, in the rare instance where a young person caused repairable damage to another's property, the young person would be denied the right to hunt, required to talk to the older men to discuss the wrong committed, realize the error of his actions, and help repair the damaged property.^{<20>} The other elder recalled that where a boy joy-rode a horse owned by another, and destroyed the horse owner's corral when the boy attempted to have the horse jump the corral, the boy

was thereafter ridiculed by people calling him a "horse thief."<21> Ridicule was apparently necessary because the boy could not see the error of his actions and would not repair or assist in the repair of the corral.

Neither of the elders attributed their descriptions of traditional dispute resolution to either purely Numu or purely Newe. They were both enrolled members of the federally recognized Paiute-Shoshone Tribe of the Fallon Indian Reservation and Colony, Nevada.

Given the closeness of our language,<22> the bordering of our traditional territories,<23> and the forced location of many of our people to the same land after white encroachment,<24> I believe the elders' statements demonstrate that Numu and Newe dispute resolution was almost identical.

Numerous examples that traditional "doctoring" remains a critical part of many people's lives is seen in several Newe and/or Numu tribal court cases. In 1989, I presided over a criminal prosecution on the Fort McDermitt Paiute-Shoshone Reservation where one tribal member claimed another assaulted him by the use of "bad Indian medicine" (prayers and incantations).<25> In 1996, I heard a juvenile dependency and neglect matter on the Walker River Paiute Reservation, that was the subject of some media attention,<26> in which a half-blood Numu mother, who was adopted at birth and raised outside Numu territory in a predominantly Euro-American culture, sought to use a California tribe's cancer treatment for her son which was more aligned with her personal preference and contrary to Numu custom. Based on the requirements of tribal law and the testimonial evidence of her own witnesses that, traditionally, Numu Indian doctors would not have used Wintu or any other non-Numu tribe's treatment regimens, I denied her request.<27> Later in the same case, enforcing Numu custom, I ordered traditional Numu treatment for the mother's son by a recognized Numu Indian doctor and conventional white Hodgkins lymphoma treatment (chemotherapy and radiation) equally.<28> Still later, I was required to stop the use of chemotherapy and radiation because either the tribe's social worker and/or the university medical center did not comply with my order that the boy receive white cancer treatment equally with traditional Numu treatment.<29>

That truth and apology remain important aspects of Newe and Numu contending principles of justice is reflected in the high percentage of guilty pleas offered by criminal defendants. In 1997, with guilty pleas taken in accordance with the American Bar Associations' Criminal Justice Standards, the Duckwater Tribal Court, like the previous years, had guilty plea rates of: 100% in May and August; 88.88% in September; 85.71% in June; 83.33% in November; 75% in April; 66.66% in October; and, 50% in July.<30> The guilty plea rate for January 1998 was 75%, and 100% for March 1998.<31>

Given all of the above, it appeared a melding of drug court practices with traditional dispute resolution was the most successful option for the court to use based on the direction of the tribal council.

The Duckwater Shoshone Treatment Court Sessions Programs

The four- and twelve-month drug court programs of the Duckwater Shoshone Tribe from 1997 to 2000 were a volunteer effort of Duckwater Shoshone tribal employees and officials, without federal drug court implementation funding and its constraints, supplemented with the services of other

interested Native Americans, including federal employees and officials. Like other tribal court judges, I did not like the nomenclature of "drug court" because our adult client's choice of drug was alcohol and the juvenile client's choice of drug was inhalants, so I named the programs "Treatment Court Sessions Programs" to give evidence of the tribal trial court's therapeutic jurisprudence.

The design of the post-conviction four- and twelve-month Treatment Court Sessions Programs was done with the oversight of an experienced defense advocate and tribal prosecutor, both of whom are Indian and the latter a long-time state admitted attorney, all mindful of the civil rights of tribal court defendants guaranteed by various tribal laws, and the Indian Civil Rights Act of 1968 (ICRA),^{<32>} including the Due Process Clause.^{<33>} The counseling and other supportive services participants received were a meld of traditional dispute resolution methods and goals with the core key components of a drug court,^{<34>} taking participants from orientation and assessment to stabilization and cognitive restructuring, and transition and maintenance.

Many Native Americans, influenced by a number of factors, including television advertisements, television shows and movies, music, and other outside influences, as well as envy and jealousy, are no longer content with living a simple, traditional way of life consistent with our contending principles of justice, and are no longer content with living in a subsistence economy community, respectful of our cultural norms and the environment. In many Native American families, alcohol, nontraditional tobacco product use, and other drugs have played such a dominate role in shaping behavior that the person drinking, inhaling, or ingesting substances in an abusive or addictive manner is neither capable of living a life consistent with our contending principles of justice, nor content with our historic subsistence economy.

To be successful, a tribal drug court must help its participants learn at least two things no matter what their occupation, career or job on a reservation. First, live a life consistent with their tribe's contending principles of justice. Second, be content with the reservation or colony's economy. Tribal drug courts must also keep unemployed or unemployable adult participants, and vacationing student participants, occupied so that boredom does not lead to relapse. To be accepted by the participants, the drug court team members must lead exemplary lives consistent with the tribe's contending principles of justice, and they too must be content with life in a reservation or colony economy. Ideally, tribal leaders must do so also.

Surprisingly, nearly all of the basic elements of a successful tribal drug court exist on nearly every Indian reservation; all that is required is that the services available to reservation residents be identified and used.^{<35>} For example, short visits to social workers not only afforded participants with learning opportunities about HIV, AIDS, and other diseases associated with substance abuse, using videotapes and brochures available to every tribal health clinic, but they also received referral services. One participant who had several rotting and plaque covered teeth hardly ever smiled at a court session or elsewhere, and covered his mouth with his hand when talking to block the smell and appearance of his rotting teeth. During one of her five- to ten-minute sessions with the participant, a social worker referred this man to the regional tribal dental clinic. After a series of dental appointments, the participant sported a smile of healthy looking teeth at each court session and seemed to gain new confidence in himself thereafter.

In order to retain the atmosphere of a treatment-not-punishment jurisprudence orientation and

philosophy, the court sessions were conducted in the conference room of the Duckwater Tribal Health Building until members of the tribal council, unfamiliar with the drug court concept, complained about the court not using the combined tribal court and tribal police structure. In denying a motion by tribal health officials to reconsider use of the four-month juvenile program over a white therapeutic foster home, the Duckwater Shoshone Tribal Court explained:

Drug courts "provide closer, more comprehensive supervision and much more frequent drug testing and monitoring during the program than other forms of community supervision." See Steven Belenko, Ph.D., "Research on Drug Courts: A Critical Review," 1:1 National Drug Court Institute Review 1 (Alexandria, VA: National Association of Drug Court Professionals, Summer 1998).

"The drug court model differs in important ways from previous efforts to provide drug treatment to offenders with underlying drug problems. In the drug court model, the various components of the criminal justice and substance abuse treatment systems work together to try and use the coercive power of the court to promote abstinence and prosocial behavior." Id at 4.

"Drug courts are a significant departure from [the] past system. The process has been transformed by involving the judge directly in the treatment and supervision of the defendant." See Sally L. Satel, MD, "Observational Study of Courtroom Dynamics in Selected Drug Courts," 1:1 National Drug Court Institute Review, supra, at 43, 45.<36>

As the Appendixes demonstrate, there were other essential components of the programs not discussed in the above court decision; however, there are also other elements not visible from the Appendixes.

An after care program that serves graduates of the drug court is absolutely essential. Alumni of the drug court must be encouraged to organize and meet regularly like other self-help groups, receive recognition from the court for their efforts, and, initially, be financially supported by small donations (e.g., to set up a food booth at pow-wows and other sober activities) to assist themselves and, later, current participants (e.g., give short motivation speeches at graduation ceremonies).

Rewards and sanctions were used. When participants did as expected, they were rewarded with small tokens of appreciation (e.g., coupons for them and their families for pizza or ham- or cheeseburgers and fries and non-alcoholic beverages). Many of the adults and juveniles in the programs have had little praise from their parents or guardians, especially by those raised in boarding schools, during their development periods. Conversely, when participants missed a counseling session or test of their blood, breath, or urine for controlled substances, they were subjected to sanctions predetermined by the drug court team and known to the participant. For adults, additional step-meetings or counseling sessions each week, or requiring a participant to sit through the entire day's drug court sessions (about thirty to forty-five minutes in total length) were imposed as sanctions. With the parents' consent, juvenile females were denied the ability to wear makeup, jewelry, hair spray or gel, finger nail polish, etc. Juvenile boys were denied use of like privileges as well as others.

As the program participants progressed from one phase to another, they were required to attend more sober activities preapproved by the Tribe's social worker. For example, in Phase 1, adults and

juveniles had to attend at least two sober activities within thirty days. In each of the next phases, the number of required sober activities usually increased by one. However, in Phase 4, adults were required to attend at least four sober activities while juveniles were required to attend at least five (there were a greater number of qualifying juvenile sober activities in the community than for adults).<37>

Although it was the subject of some debate, when a participant was required to attend a course at a university in another state as a condition of his employment, I appointed a state drug court judge in that community as an associate judge of the tribal court, and required the participant to comply with his drug court requirements before that judge.

An essential and integral part of the adult programs was that motions to enter the adult programs were only granted after a defendant served time at the local U.S. Department of the Interior, Bureau of Indian Affairs (BIA) detention facility on the Duck Valley Indian Reservation of the Shoshone-Paiute Tribes at Owyhee, Nevada, but not entirely for punishment purposes.

In 1997, the BIA detention facility at Owyhee had a excellent Indian oriented alcohol and other drug treatment program called the Eagle Spirit Empowerment Program. Directed by Thelma Simon (Kickapoo), a state certified counselor, the Eagle Spirit Empowerment Program "integrate[d] . . . traditional Native American teachings" "with contemporary counseling,"<38> using "Native American symbolism, such as an eagle feather. . . ."<39> Simon's program also offered "40 hours of domestic violence/anger management, an Alcoholics Anonymous twelve-step program, grieving skills, art therapy, and creative writing" opportunities.<40>

The director of the Bureau of Indian Affairs Branch of Law Enforcement, Washington, D.C., praised Simon's unique program and added that "[n]ationwide, there are very few rehabilitation type programs offered in [BIA] reservation jails"<41> and that the "Eagle Spirit Empowerment Program is a service that needs to be offered in all Indian country jails and has been a long time coming."<42>

The design of a non-federally funded tribal drug court can never be so rigid that it fails when one aspect of it no longer exists. For example, when Thelma Simon left the Eagle Spirit Empowerment Program,<43> and the program effectively ended and was not replicated at another BIA jail, I no longer required defendants to complete that program as a condition of entering the adult Treatment Court Sessions Program and found a replacement, a Native American behavioral counselor who saw clients twice each month on the Duckwater Shoshone Reservation.

The design of the Duckwater Programs required no additional tribal employees or officials to be hired as part of the drug court staff (e.g., probation officer). Adult and juvenile participants carried with them the management information system, a two- or three-page "Treatment Court Sessions Program Proof Sheets" which contained, under the caption of the participant's case:

- (1) A limited waiver of any and all confidentiality laws signed by the participant or the parents of the juvenile and the juvenile, and,
- (2) The appropriate number of rows and columns allowing counselors and other support services providers to date sessions with the participant, sign their name verifying attendance and/or comments, and comment on whether the participant appeared timely for

their appointment or was late, whether they stayed for the entire session or left early, and whether the individual was making progress towards treatment plan goals. Conversations between the participant and their counselors during treatment sessions and the comments of AA group participants were kept confidential. Thus the adult participants and the parents of juveniles became ad hoc probation officers.

Although one participant offered the court his proof sheets bearing a reproduction of a counselor's signature, attempts to thwart the reliability of this inexpensive court procedure failed.

The use of proof sheets also provided each participant with the opportunity to visualize what counseling or other support services appointment had to be completed before the stated court date. Participants were warned when they entered the programs that no excuses were accepted for lost forms and that both a blank space on a proof sheet or a lost proof sheet would be treated the same. Either sanctionable event would subject participants to the decision of the drug court team (e.g., makeup of the missing counseling appointment as well as additional step-meetings, or, in appropriate cases, removal from the program).

The Successes of the Duckwater Programs

Success or failure of a tribal drug court must be measured by external as well as internal evidence.

In 2000, my design of the adult and juvenile Duckwater Shoshone Treatment Court Sessions Programs was a semifinalist for the Honoring Contributions in the Governance of American Indian Nations ("Honoring Nations") Award by the Harvard Project on American Indian Economic Development, John F. Kennedy School of Government, Harvard University.<44>The programs, much stricter than a typical term of probation, reduced the "revolving door" effect of several people who were regularly arrested several times over a period of months each year. In 1999, as my family and I prepared and served a free Indian taco feed to celebrate a thirteen-month period of no alcohol or other drug arrests by the Duckwater Shoshone Police Department, I had to arraign an adult who graduated from the four-month program and another adult for driving under the influence of alcohol. We also had shorter periods of time where no alcohol or drug related crime arrests occurred.

In November 2000, when I left office as the judge presiding over the programs and their coordinator, only two of the graduates of the adult four-month drug court program had been rearrested for substance abuse and none of the adult twelve-month program graduates had been rearrested. Only one graduate of the four-month juvenile program had been arrested. However, at the time she was arrested she was an adult, and there was a significant lapse in time between graduation and rearrest. No juvenile graduates of the twelve-month juvenile program were rearrested for substance abuse during my tenure.

I think the two best examples of the programs' success were a husband and wife, enrolled members of Newe (Western Shoshone) tribes in Nevada and Idaho, respectively, who stopped drinking alcoholic beverages and began operating the first twelve-step AA program on the Duckwater Shoshone Reservation. Unlike other AA meetings within 200 miles of the Reservation, this was oriented for Newe and other Native Americans. They had each been involved in offenses some might consider violent which would have likely excluded them from participation in a federally

funded drug court. There were other indications of success, too. An Indian and non-Indian couple started a second twelve-step AA program on the Duckwater Shoshone Reservation for younger residents of the Reservation which was short-lived, likely because of its non-Indian orientation. The tribal court purchased the Indian-oriented written materials and medallions for both on-reservation AA programs.

The Spread of the Drug Court Methodology to Tribes

By 1999, there were twelve operational tribal drug courts in the United States out of forty-five Native American jurisdictions studying (or planning) and implementing drug courts<45> or operating without federal funding. They included: Poarch Band of Creek Indians (Alabama); Chevak Traditional Council, Organized Village of Kwethluk, and Native Village of Napaskiak (Alaska); Salt River Pima-Maricopa Indian Community, Hualapai Tribe, Gila River Indian Community, Pascua Yaqui Tribe, Yavapai-Apache Nation, Navajo Nation, Havasupai Tribe, and Kaibab-Paiute Tribe (Arizona); Shoshone Bannock Tribes (Idaho); Passamaquoddy Tribe and Peneobscot Nation (Maine); Sault Saint Marie (Michigan); Blackfeet Tribe, Fort Belnap Tribe, Fort Peck Assiniboine & Sioux Tribe, and Northern Cheyenne Tribe (Montana); Omaha Tribe (Nebraska); Duckwater Shoshone Tribe and Pyramid Lake Paiute Tribe (Nevada); Pueblo of Taos, Mescalero-Apache Tribe, and San Juan Pueblo (New Mexico); Eastern Band of Cherokee (North Carolina); Turtle Mountain Band of Chippewa and Spirit Lake Sioux Tribe (North Dakota); Muscogee (Creek) Nation, Iowa Tribe, and Citizen Band of Potawatomi Tribe (Oklahoma); Confederated Tribes of the Umatilla Reservation (Oregon); Flandreau Santee Sioux Tribe, Lower Brule Sioux Tribe, Oglala Sioux Tribe, Sisseton-Wahpeton Sioux Tribe, Yankton Sioux Tribe, and Rosebud Sioux tribe (South Dakota); Ysleta Del Sur Pueblo (Texas); Makah Tribe, Spokane Tribe and Yakama Nation (Washington); and Stockbridge-Munsee Tribe and Menominee Tribe (Wisconsin).

Despite some tribes abandoning the option, by 2001, the list of planning and implementation tribes grew and includes nine additional Alaska Native villages.<46>

Problems Encountered in Implementing the Duckwater Treatment Court Sessions Programs

It was my experience as a tribal chairman, chairman of an intertribal organization, and a chief tribal judge for a number of years, that the association of a program with the name of any one individual usually is the death knoll for that program or operation. To prevent such a problem, the Duckwater Shoshone Tribal Council applied for and received in 1999-2000 a juvenile drug court study grant which was used as an assessment tool of the four-month juvenile program. The changes made by the juvenile drug court study team relative to the juvenile program represented a re-identification of the program as a community-designed program.

Another problem faced by tribal drug court staff is a tribe's political response to the drug court programs. Given the Duckwater Shoshone Tribal Council's reaction to complaints of participants and their family members in mid- to late 2000, the judicial approach and response to substance abuse presents tribal councils with some very difficult choices, including whether to refuse to address the concerns of constituents, many of whom are either participants, former participants, and/or their family members. After all, alcohol use, abuse, and addiction has been a problem in tribal

communities since whites entered our lands and federal officials used liquor as a tool for resource concessions during treaty and other negotiations. Ineffective federal responses to alcohol and other drug addiction has become a way of life for many tribal members.

Conclusion

Given the increasing costs of incarceration and its ineffectiveness at curbing antisocial behavior, and the ease of melding traditional Newe and Numu dispute resolution with most of the key components of drug courts, more Numu and Newe tribes ought to consider applying for federal grant funds to study the tribal and state drug court movement and how it fits with their traditional methods of resolving disputes.

APPENDIX 1

DUCKWATER TRIBAL COURT

Treatment (Drug) Court Sessions Program *Program Requirements–Phase I* (Orientation and Assessment)

- *Obtain and submit to court a literacy, general medical, mental health and substance abuse evaluation.* Contact Social Worker at 863-0222 to schedule evaluation and determine costs, if any.
- *Twice monthly appear before judge and treatment court staff.* Court sessions held at the Tribal Court/Police Building, 101 First Street.
- *Four times weekly substance abuse testing–breath* by use of a PBT at the Tribal Court/Police Building, 101 First Street.
- *Four times weekly substance abuse testing–blood or urine* when available. Client will be advised, in writing, if and when this service becomes available and when they must submit to it.
- *Twice weekly AA meetings.* Call 863-0178 or 863-0315 for information on AA groups on the reservation.
- *Twice weekly meetings with Social Worker.* Call 862-0222 to make appointments.
- *Twice monthly individual counseling sessions.* This limited service is provided by Indian Health Service. Appointments arranged through Social Worker.
- *Attend at least two sober activities* planned or approved by the Social Worker.
- *If not high school graduate or does not have GED* enroll in appropriate course per literacy evaluation and obtain diploma or GED by end of Phase IV.
- *Person, home, automobile subject to unannounced search and seizure for alcoholic beverages and other drugs.*
- *FAE and FAS education and counseling.*
- *HIV education and counseling.*

IN ORDER TO COMPLETE PHASE I, the client must within a 30-day period:

- *Submit evaluations within 14-days* of entering the program;
- *If not high school graduate or do not have GED within 14-days* submit proof of enrollment in course to obtain high school diploma or equivalent.
- *Submit proof of attending two individual counseling sessions;*
- *Submit proof of sixteen (16) tests of his/her breath* for alcohol content within 30-days of the first test, *at least fourteen (14) of which must be consecutive* PBT breath tests with readings at or below .03;
- *Submit proof of attending eight AA/NA meetings* two each week;
- *Submit proof of attending eight meetings* with the Social Worker or Alcohol Worker two each week;
- *Submit proof of attending two sober activities* planned by the Social Worker;
- *Report for all scheduled appointments and court appearances;*
- *Make progress toward achievement of treatment plan goals.*

DUCKWATER TRIBAL COURT

Treatment (Drug) Court Sessions Program
Program Requirements–Phase II
(Stabilization & Cognitive Restructuring)

- Twice monthly appear before judge and treatment court staff. Court sessions held at the Tribal Court/Police Bldg., 101 First Street.
- *Three times weekly substance abuse testing-breath* by use of a PBT at the Tribal Court/Police Bldg., 101 First Street.
- *Twice weekly substance abuse testing-blood or urine* when available. Client will be advised, in writing, if and when this service becomes available and when they must submit to it.
- *Twice weekly AA meetings*. Call 863-0178 or 863-0315 for information on the AA groups on the reservation.
- *Twice weekly meetings with Social Worker*. Call 862-0222 to make appointments.
- *Twice monthly individual counseling sessions*. This limited service is provided by Indian Health Service. Appointments arranged through Social Worker.
- *Attend at least three sober activities* planned or approved by the Social Worker.
- *Person, home, automobile subject to unannounced search and seizure for alcoholic beverages and other drugs*.

IN ORDER TO COMPLETE PHASE II, the client must within a 30-day period:

- *Submit proof of attending two individual counseling sessions;*
- *Submit proof of twelve (12) tests of his/her breath* for alcohol content within 30-days of the first test, *at least ten (10) of which must be consecutive* PBT breath tests with readings at or below .03;
- *Submit proof of attending eight AA/NA meetings* two each week;
- *Submit proof of attending eight meetings* with the Social Worker or Alcohol Worker two each week;
- *Submit proof of attending three sober activities;*
- Report for all scheduled appointments and court appearances;
- Continue to make progress toward achievement of treatment plan goals.

DUCKWATER TRIBAL COURT

Treatment (Drug) Court Sessions Program *Program Requirements–Phase III* (Transition)

- *Once monthly appear before judge and treatment court staff.* Court sessions held at the Tribal Court/Police Bldg., 101 First Street.
- *Twice weekly substance abuse testing-breath* by use of a PBT at the Tribal Court/Police Bldg., 101 First Street.
- *Twice weekly substance abuse testing-blood or urine* when available. Client will be advised, in writing, if and when this service becomes available and when they must submit to it.
- *Twice weekly AA meetings.* Call 863-0178 or 863-0315 for information on the AA groups on the reservation.
- *Once weekly meetings with Social Worker.* Call 862-0222 to make appointments.
- *Once monthly individual counseling sessions.* This limited service is provided by Indian Health Service. Appointments arranged through Social Worker.
- *Attend at least four sober activities* planned or approved by the Social Worker.

IN ORDER TO COMPLETE PHASE III, the client must within a 30-day period:

- *Submit proof of attending one individual counseling session;*
- *Submit proof of eight (8) tests of his/her breath* for alcohol content within 30-days of the first, *all eight must be consecutive* PBT breath tests with readings at or below .03;
- *Submit proof of attending eight AA/NA meetings* two each week;
- *Submit proof of attending four meetings* with the Social Worker or Alcohol Worker once each week;
- *Submit proof of attending four sober activities;*
- Report for all scheduled appointments and court appearances;
- Continue to make progress toward achievement of treatment plan goals.

DUCKWATER TRIBAL COURT

Treatment (Drug) Court Sessions Program *Program Requirements–Phase IV* (Maintenance)

- *Appear before judge and treatment court staff once.* Court sessions held at the Tribal Court/Police Bldg., 101 First Street.
- *Once weekly substance abuse testing-breath* by use of a PBT at the Tribal Court/Police Bldg., 101 First Street.
- *Once weekly substance abuse testing-blood or urine* when available. Client will be advised, in writing, if and when this service becomes available and when they must submit to it.
- *Once weekly meetings with the Social Worker.* Call 862-0222.
- *Attend one individual counseling session.* This limited service is provided by Indian Health Service. Appointments arranged through Social Worker.

- *Attend at least four sober activities* planned or approved by the Social Worker.
- *If not high school graduate or do not have GED by end of Phase* show you have obtained diploma or GED.

IN ORDER TO COMPLETE PHASE IV, the client must within a 30-day period:

- *Submit proof of attending one individual counseling session;*
- *Submit proof of four (4) tests of his/her breath* for alcohol content within 30-days of the first, *all four (4) must be consecutive* PBT breath tests with readings at or below .03;
- *Submit proof of attending four meetings* with the Social Worker or Alcohol Worker once each week;
- *Submit proof of attending four sober activities;*
- *If not a high school graduate or do not have GED, submit proof of obtaining high school diploma or equivalent.*
- Report for all scheduled appointments and court appearances;
- Complete all treatment requirements and goals.

APPENDIX 2

DUCKWATER JUVENILE COURT

Treatment (Drug) Court Sessions Program *Program Requirements–Phase I* (Orientation and Assessment)

- Obtain and submit to court substance abuse, mental and general medical health, and literacy evaluations. Contact Social Worker at 863-0222 to schedule evaluations.
- *If no longer attending school, and not high school graduate or do not have GED, enroll in GED program and obtain GED by end of Phase IV.*
- *Twice monthly appear before judge and treatment court staff, present probation proof sheet, and answer questions of judge and staff. If attending school, show judge each and every Report Card and samples of graded exams, book reports, etc.* Court sessions held at the Tribal Court/Police Building, 101 First Street, Duckwater.
- *Five times weekly substance abuse testing–breath* by use of a PBT at the Tribal Court/Police Bldg., 101 First Street.
- *Four times weekly substance abuse testing–blood or urine* when available. Client will be advised, in writing, if and when this service becomes available and when they must submit to it.
- *Twice weekly adolescent NA/AA meetings* when available. Client will be advised, in writing, if and when this service becomes available and when they must submit to it.
- *Twice weekly meetings with Social Worker.* Call 862-0222 to make appointments.
- *Twice monthly individual counseling sessions.* This limited service is provided by Indian Health Service. Appointments arranged through Social Worker.
- *Attend at least two sober activities* planned or approved by the Social Worker.
- *Person, home, automobile subject to unannounced search and seizure for alcoholic beverages and other drugs.*
- *HIV, FAS, FAE and tobacco education and counseling.*

Parent(s) and Guardian(s) Obligations

- *Enroll in Court approved parenting class* and complete same by start Phase III.
- *Assist police conduct search and seizures.*
- *Attend all Court sessions.*
- *Abstain from use of tobacco, alcohol and other drugs.*

IN ORDER TO COMPLETE PHASE I, the client must within a 30-day period:

- *Submit evaluations within 14-days of entering the program;*
- *In good faith, abstain from use of tobacco, alcohol and other drugs;*
- *If no longer attending school, and not high school graduate or do not have GED, within 14-days submit proof of enrolling in course to obtain high school diploma or equivalent by end of Phase IV;*
- *If attending school, show judge each and every Report Card and samples of graded exams, book reports, etc.;*
- *Submit proof of attending two individual counseling sessions;*

- *Submit proof of twenty (20) tests of his/her breath* for alcohol content within 30-days of first breath test, *at least sixteen (16) of which must be consecutive* PBT breath tests with readings at or below .03;
- *Submit proof of attending eight meetings* with the Social Worker or Alcohol Worker twice each week;
- *Submit proof of attending two sober activities* approved by the Social Worker;
- Timely appear for all scheduled appointments and court appearances; and,
- Make progress toward achievement of treatment plan goals.

DUCKWATER JUVENILE COURT

Treatment (Drug) Court Sessions Program *Program Requirements–Phase II* (Stabilization & Cognitive Restructuring)

- *Twice monthly appear before judge and treatment court staff, present probation proof sheet, answer questions of judge, and staff. If attending school, show judge each and every Report Card and samples of graded exams, book reports, etc.* Court sessions held in the Tribal Court/Police Building, 101 First Street.
- *Four times weekly substance abuse testing-breath* by use of a PBT at the Tribal Court/Police Bldg., 101 First Street.
- *Twice weekly substance abuse testing-blood or urine* when available. Client will be advised, in writing, if and when this service becomes available and when they must submit to it.
- *Twice weekly adolescent NA/AA meetings* when available. Client will be advised, in writing, if and when this service becomes available and when they must submit to it.
- *Twice weekly meetings with Social Worker.* Call 862-0222 to make appointments.
- *Twice monthly individual counseling sessions.* This limited service is provided by Indian Health Service. Appointments arranged through Social Worker.
- *Attend at least three sober activities* planned or approved by the Social Worker.
- *Complete five-page, double-spaced, essay with bibliography* on how your drug of choice affects the human body.
- *Complete two-page, double-spaced, essay with bibliography,* on how your drug of choice affects a fetus in the first trimester.
- *Person, home, automobile subject to unannounced search and seizure for alcoholic beverages and other drugs.*

Parent(s) and Guardian(s) Obligations

- *Give judge proof of completion of Court approved parenting class* by start of Phase III.
- *Assist police conduct search and seizure.*
- *Attend all Court sessions.*
- *Abstain from use of tobacco, alcohol and other drugs.*

IN ORDER TO COMPLETE PHASE II, the client must within a 30-day period:

- *Submit proof of attending two counseling sessions* (group or individual);
- *Submit proof of sixteen (16) tests of his/her breath* for alcohol content within 30-days of first test,

at least the last fourteen (14) of which must be consecutive PBT breath tests with readings at or below .03;

- *Submit proof of attending eight meetings with the Social Worker twice each week;*
- *Submit essays by second monthly court appearance;*
- *If attending school, show judge each and every Report Card and samples of graded exams, book reports, etc.;*
- *Submit proof of attending three approved sober activities;*
- *Timely appear for all scheduled appointments and court appearances; and,*
- *Continue to make progress toward achievement of treatment plan goals.*

DUCKWATER JUVENILE COURT

Treatment (Drug) Court Sessions Program *Program Requirements–Phase III* (Transition)

- *Once monthly appear before judge and treatment court staff, present probation proof sheet, and answer questions of judge and staff. If attending school, show judge each and every Report Card and samples of graded exams, book reports, etc. Court sessions held at the Tribal Court/Police Bldg., 101 First Street.*
- *Three weekly substance abuse testing-breath by use of a PBT at the Tribal Court/Police Bldg., 101 First Street.*
- *Twice weekly substance abuse testing-blood or urine when available. Client will be advised, in writing, if and when this service becomes available and when they must submit to it.*
- *Once weekly meetings with Social Worker. Call 862-0222 to make appointments.*
- *Once monthly individual counseling sessions. This limited service is provided by Indian Health Service. Appointments arranged through Social Worker.*
- *Complete two-page, double-spaced, essay with bibliography on any topic related to your drug of choice; could be a short story on how a person got started on your drug of choice.*
- *Once weekly adolescent NA/AA meetings when available. Client will be advised, in writing, if and when this service becomes available and when they must submit to it.*
- *Two (2) hours community service with Police Department.*
- *Attend at least four sober activities planned or approved by the Social Worker.*

Parent(s) and Guardian(s) Obligations

- *Remove any liquids or sprays from home containing alcohol or other drugs to help child[ren] remain substance free.*
- *Attend all Court sessions.*
- *Abstain from use of tobacco, alcohol and other drugs.*

IN ORDER TO COMPLETE PHASE III, the client must with a 30-day period:

- *Submit proof of attending one individual counseling session;*
- *Submit proof of twelve (12) tests of his/her breath for alcohol content within 30-days of first test, all twelve (12) of which must be consecutive PBT breath tests with readings at or below .03;*
- *Submit proof of attending four consecutive weekly meetings with the Social Worker or Alcohol*

Worker;

- *Submit proof of attending four (4) approved sober activities;*
- *Submit proof of completing two (2) hours of community service;*
- *Submit essay by second monthly court date;*
- *If attending school, show judge each and every Report Card and samples of graded exams, book reports, etc.;*
- *Timely appear for all scheduled appointments and court appearances; and,*
- *Continue to make progress toward achievement of treatment plan goals.*

DUCKWATER JUVENILE COURT

Treatment (Drug) Court Sessions Program *Program Requirements–Phase IV* (Maintenance)

- *Once every other month appear before judge and treatment court staff.* Court sessions held in the Tribal Court/Police Building, 101 First Street.
- *If applicable (see Phase I), submit proof of obtaining high school diploma or equivalent.*
- *Enroll in Western Shoshone customs and traditions course and complete within 30-days.*
- *Twice weekly substance abuse testing-breath* by use of a PBT at the Tribal Court/Police Building, 101 First Street.
- *Once weekly substance abuse testing-blood or urine* when available. Client will be advised, in writing, if and when this service becomes available and when they must submit to it.
- *Once weekly meeting with Social Worker.* Call 862-0222 to make appointments.
- *Once monthly individual counseling session.* This limited service is provided by Indian Health Service. Appointments arranged through Social Worker.
- *Once monthly adolescent NA/AA meetings* when available. Client will be advised, in writing, if and when this service becomes available and when they must submit to it.
- *Two (2) hours of community service* with Police Department.
- *Attend at least five sober activities* planned or approved by the Social Worker.

Parent(s) and Guardian(s) Obligations

- *Remove any liquids or sprays from home* containing alcohol or other drugs to help child[ren] remain substance free.
- *Attend all Court sessions.*
- *Abstain from use of tobacco, alcohol and other drugs.*

IN ORDER TO COMPLETE PHASE IV and graduate from program, the participant must within a 30-day period:

- *Within five days, submit proof of enrolling in Western Shoshone customs and traditions course and completing by end of this Phase;*
- *Submit proof of attending one individual counseling session;*
- *If applicable (see, Phase I description), submit proof of obtaining high school diploma or equivalent.*
- *Submit proof of eight (8) tests of his/her breath* for alcohol content within 30-days of first test, *all*

eight (8) must be consecutive PBT breath tests with readings at or below .03;

- *Submit proof of four meetings, once each week, with the Social Worker or Alcohol Worker;*
- *Submit proof of completing two (2) hours of community service;*
- *Submit proof of attending at least five (5) approved sober activities;*
- *Timely appear for all scheduled appointments and court appearances; and,*
- *Continue to make progress toward achievement of treatment plan goals.*

1See Drug Courts Program Office, Office of Justice Programs, U.S. Dep't of Justice, *Healing to Wellness Courts: A Preliminary Overview of Tribal Drug Courts 1* (1999) [hereinafter *Healing to Wellness Courts*] ("The drug court movement began in the late 1980s in response to the growing number of drug-related court cases and the resulting overcrowded jails and prisons. The standard law enforcement and corrections policies alone were not having the impact on drug supply and demand that the proponents of the 'War Against Drugs' had hoped . . .").

2See Drug Court Standards Comm., Nat'l Ass'n of Drug Court Professionals, *Defining Drug Courts: The Key Components* (1997) [hereinafter *Defining Drug Courts*] (produced with support by Grant No. 96-DC-MX-K001, awarded by the Drug Court Program Office, Office of Justice Programs, U.S. Department of Justice); *see also* *Healing to Wellness Courts*, *supra* note , at 5 (listing the ten key components and adapting the term "drug court" for tribal justice systems).

3U.S. Const. amend. V.

4See *Florida v. Bush*, No. 48-02-CF-6371-0 (Fla. Cir. Ct. Oct. 18, 2002) (daughter of Florida Governor was unsuccessful in moving drug court to close proceedings to public and press given national press coverage).

5Federal laws governing the confidentiality of counseling and medical treatment information are codified at 42 U.S.C. § 290dd-2, and implementing regulations are codified at 42 C.F.R. pt. 2. The criminal procedure of the Duckwater Shoshone Tribe contains no provision for closure of any criminal proceedings, including drug court proceedings. *See generally* *Duckwater Shoshone Law & Order Code* tit. 4 (Criminal Procedure). The criminal procedure of the Pyramid Lake Paiute Tribe expressly states, "The Court Clerk should record all proceedings before the Court by any means deemed practicable, including the use of mechanical devices The recordings of proceedings shall be made available to the public." *Pyramid Lake Paiute Law & Order Code* tit. 3, ch. 3.03 (Court Procedure), § 3.03140(d).

6See Sidney L. Harring, *Crow Dog's Case: A Chapter in the Legal History of Tribal Sovereignty*, 14 *Am. Indian L. Rev.* 191 (1990) (describing how key federal officials misrepresented a tribe's traditional dispute resolution methods after a decade-long campaign for federal court jurisdiction, culminating in the passage of the Major Crimes Act).

7The Pyramid Lake Paiute Tribe has employed non-Indian, Nevada-admitted attorneys as their chief judges for the last six years in accordance with tribal law. *See* *Pyramid Lake Paiute Law & Order Code* tit. 3, § 3.02.130(b) (1941) (as amended by Tribal Council Resolution No. PL 29-96 (Apr. 12, 1996)) ("A person shall be eligible to serve as the Chief Judge . . . if that person (1) has a degree from an accredited law school; (2) is licensed to practice law by the highest court of any state and (3) is familiar with federal Indian law and the laws of the Pyramid Lake Tribe"). The current chief judge is not licensed to practice law by any state. *See* Susan Voyles, *Candidate Profile: Yacobozzi Wants Past Forgotten*, *Reno Gazette-J.*, Aug. 18, 2002, at 1B, 5B (explaining why chief judge is no longer licensed as a lawyer). Each of the chief judges over the last six years has been reversed by the regional tribal appellate court for violating the civil rights of tribal members and left office shortly thereafter for a variety of reasons. *See* *Opinion and Order, Green v. Pyramid Lake Paiute Tribe*, Nos. PL 95-00335, 95-00336 (Inter-Tribal Ct. App. Nev., June 12, 1995) (reversing judgment of conviction for denying defendant due process); *see also* *Order, Mandell v. Pyramid Lake Paiute Tribe*, PL.CR.99-0321 (Inter-Tribal Ct. App. Nev., Jan. 17, 2001) (remanded with instructions to reverse judgment of conviction and dismiss prosecution with prejudice for denial of due process); *Order Denying Stay, Pyramid Lake Paiute Tribe v. Mandell*, PL.CR.99-0321 (Pyramid Lake Tribal Ct., Jan. 20, 2001) (acknowledging appeals court remand and instructions; associate judge merely denies stay that is already moot); *Decision and Order, Mandell v. Pyramid Lake Paiute Tribe*, PL.CR.99-0321 (Inter-Tribal Ct. App. Nev., Jan. 22, 2001) (acknowledging associate judge's order denying stay; appeals court reaffirms prior order of remand); *Decision and Order, Mandell v. Pyramid Lake Paiute Tribe*, PL.CR.99-0321 (Inter-Tribal Ct. App. Nev., Mar. 9, 2001) (denying motion for reconsideration and reaffirming prior order of remand); *Order Dismissing Charges with Prejudice, Pyramid Lake Paiute Tribe v. Mandell*, PL.CR.99-0321 (Pyramid Lake Tribal Ct., May 2, 2001); *Amended Order Dismissing Charges with Prejudice, Pyramid Lake Paiute Tribe v. Mandell*, PL.CR.99-0321 (Pyramid Lake Tribal Ct., May 2, 2001) (associate judge explains inaction since March 9, 2001, without citing authority for inaction and complains of chief judge's action); *Decision and Order* at 2,

ll, 16-18, *Tobey, Jr. v. Pyramid Lake Paiute Tribe*, PL.CR.99-0719, 99-0720, 99-0735 (Inter-Tribal Ct. App. Nev., May 5, 2000) (reversing judgment of conviction and dismissing prosecution with prejudice after finding that court's actions were "egregiously illegal and improper which displayed a pattern of behavior apparently designed to deny the [a]ppellant due process").

8One was the embezzlement of a very large amount of money by a tribal member who was director of the tribe's finance department which placed the tribe in the awkward position of funding only essential services and no longer being able to afford the daily costs of post-conviction incarceration at local county jails. The second was tribal police finding evidence of a large number of member and nonmember juveniles huffing spray paint at the same time, after one juvenile nearly died. Under tribal law, all juveniles could have been sent to a maximum "sixty (60) days" residential, in-patient treatment program ("an appropriate facility" for inhalant abuse). See *Duckwater Shoshone Law & Order Code* tit. 4, ch. 7, § 7.07 (Inhaling Toxic Vapors). Given the lack of such facilities in-state, placement would be out-of-state.

9 See 25 C.F.R. § 11.100(a) (2001).

10See Omer C. Stewart, *Culture Element Distributions: XIV Northern Paiute*, 4 *Anthropological Records* 361 (1941).

11See *United States v. Clapox*, 35 F. 575 (D. Or. 1888) (describing creation of Courts of Indian Offenses by Secretary of the Interior). Courts of Indian Offenses continue to exist. See 25 C.F.R. §§ 11.100-12.105 (2001) (providing a major rewrite of federal regulations governing trial and appellate divisions, and children's courts of Courts of Indian Offenses effective November 22, 1993).

12See Roscoe Pound, *The Causes of Popular Dissatisfaction with the Administration of Justice*, 40 *Am. L. Rev.* 729, 730 (1906), reprinted in 8 *Baylor L. Rev.* 1, 7 (1956) ("punishment seems to have greater interest for the lay mind than the civil remedies of prevention and compensation Revenge and its modern outgrowth, punishment, belong to the past of legal history"); see also *Clapox*, 35 F. at 576 (describing the original Code of Indian Offenses) ("Nos. 4, 5, 6, 7, and 8 of said rules prescribe the punishment for certain acts called therein 'Indian offenses,' such as the 'sun,' . . . [']dance' . . . [and] 'the usual practices of so-called medicine men'") (Deady, J.).

13See Martha C. Knack & Omer C. Stewart, *As Long as the River Shall Run: An Ethnohistory of Pyramid Lake Indian Reservation* 101 (1984) (quoting 1924 letter of Indian agent at Walker River Paiute Reservation to his superior in Washington, D.C.).

14Women also play a prominent role as Newe and Numu Indian doctors. Because federal Indian agents were, apparently unaware of their role, given the absence of any identification of them, I use only the term "medicine man" not "medicine person," but I use "Indian doctor" to refer to both male and female.

15See *Clapox*, 35 F. at 576 (describing the original Code of Indian Offenses) ("Nos. 4, 5, 6, 7, and 8 of said rules prescribe the punishment for certain acts called therein 'Indian offenses,' such as the 'sun,' . . . [']dance' . . . [and] 'the usual practices of so-called medicine men'") (Deady, J.).

16See Jack D. Forbes, *Nevada Indians Speak* 173 (1967) (quoting letter from federal Indian agent at Walker River Paiute Indian Reservation, Nevada, writing to superior in early 1900s) ("3rd. My effort to control the practices of medicine men. These "Doctor Sings," [] occur principally at night . . . I have also barred any more young aspirants to medical prominence from beginning the practice"); see also Knack & Stewart, *supra* note , at 101 (quoting letter from Indian agent at Walker River Paiute Reservation in early 1900s) ("I have almost completely broken up the practice of the Indian 'Doctors' on this Reservation, and am satisfied that if it is possible to make an example of one or two cases by sending them to the penitentiary, that a great good will be accomplished for those who remain.").

17See, e.g., *Inter-Tribal Council of Nev., Life Stories of Our Native People* 7 (1974) (describing briefly an Indian doctor who was "a quiet and unpretentious person who ha[d] the respect of all those who [knew] him"); see also Frank Mullen, Jr., *Humility a Key Attribute for Traditional Healers*, *Reno Gazette-J.*, Nov. 18, 1996, at 3A.

18See Knack & Stewart, *supra* note , at 119; see also Lalla Scott, *Karnee: A Paiute Narrative* 68-69 (1996) (detailing the alleged killing of a Western Shoshone witch).

19See *Motion for Reconsideration of Order for Purpose of Allowing Paiute Custom to be Used in Lieu of Anglo-Imposed Punishment, In re L. W., a Minor Child Under the Age of Eighteen*, No. J-FT-86-01 (Fallon Paiute-Shoshone Tribal Ct., Nev., Sept. 3, 1986).

20See *id.* at exhibit 19 (interview with Bessie Breckenridge Johnny, Northern Paiute-Fallon, age 80, on Aug. 26, 1996).

21See *id.* at exhibit 17 (interview with Helen Brown Stone, Northern Paiute-Fallon, age 73, on Aug. 28, 1986).

22For example, the Newe word for "water" is "baa"; "pinenut" is "dība"; "coyote" is "izhapi"; and, "nose" is "mubi." See *Duckwater Shoshone Dictionary 2* (Duckwater Shoshone Bilingual Curriculum Development Team, 1988). The Numu word for "water" is "paa." "Pinenut" is "tuba" for Yerington Paiutes and "tupaa" for Fort McDermitt Paiutes. "Coyote" is "etza'a" and "nose" is "moobe" for Fort McDermitt Paiutes. Interview with Ione Crutcher, Northern Paiute of the Fort McDermitt Paiute-Shoshone Tribe (June 11, 2001). Ms. Crutcher has taught Northern Paiute as spoken by

all existing Northern Paiute tribes (e.g., Confederated Tribes at Warm Springs, Oregon; Burns Paiute (Oregon), Summit Lake Paiute (Nevada), Pyramid Lake Paiute (Nevada), Yerington Paiute (Nevada)) for the Washoe County, Nevada, School District at Natchez Elementary School on the Pyramid Lake Paiute Reservation, Wadsworth, Nevada, and at the Pyramid Lake High School, Nixon, Nevada.

23See Omer C. Stewart, *The Northern Paiute Bands*, 2 Anthropological Records 127, at map 1 (1939) (attachment to back of article) (marking limits of boundaries of eastern Northern Paiute bands from north of what is now Boise, Idaho, south to a point east of what is now Hawthorne, Nevada, and the Shoshone territory immediately to east thereof).

24See, e.g., *id.* at 133 (describing how the "Koa aga' itōka ('salmon eaters'), of Boise, Idaho . . . were removed to the Fort Hall Reservation in 1869"). In response to the siren song of future economic development, a number of Northern Paiute and Western Shoshone tribes abandoned their traditional forms of government and reorganized themselves under the Indian Reorganization Act of 1934 and became federally recognized with English titles incorporating their Western Shoshone and Northern Paiute heritage. Examples include the Shoshone-Paiute Tribe of the Duck Valley Indian Reservation, Paiute-Shoshone Tribe of the Fallon Indian Reservation and Colony (dba "Fallon Paiute-Shoshone Tribe"), and the Fort McDermitt Paiute-Shoshone Tribe of Nevada and Oregon.

25People v. Snapp, 16 Indian L. Rep. 6053 (Ft. McDermitt Tribal Ct., Nev., 1989).

26Stephen Magagnini, *Indian Boy with Cancer Caught Between Two Worlds*, Sacramento Bee, Oct. 25, 1996, at B1, B2; Stephen Magagnini, *Paiute Mom's Quest to Save Son Leads Her to Jail*, Sacramento Bee, Oct. 27, 1996, at B1, B3 (detailing accounts of state court warrants); Stephen Magagnini, *Mother Charged for Refusing Chemotherapy for Son, 12*, News & Observer (Raleigh, N.C.), Oct. 28, 1996, at 2A; Stephen Magagnini, *Tribal Judge Halts Chemotherapy: Don't Treat Youth, Med Center Told*, Sacramento Bee, Nov. 9, 1996, at B1, B5; Frank Mullin Jr., *Mom Wants Indian Medicine Used on Sick Son*, Reno Gazette-J., Nov. 18, 1996, at 3A; Janine DeFao, *Mother Jailed over Son's Tribal Cancer Treatment*, Sacramento Bee, Nov. 22, 1996, at B1, B3; Frank Mullen Jr., *Paiute Tribal Judge Affirms Decision on Child with Cancer*, Reno Gazette-J., Dec. 7, 1996, at 2D; *Mom's Treatment Plan Rejected*, San Diego Union-Tribune, Dec. 8, 1996, at A3; Nancy Vogel, *Judge Won't Halt Boy's Treatment*, Sacramento Bee, Dec. 8, 1996, at B2.

27See Order, 24 Indian L. Rep. 6005, 6008-10 (Walker River Tribal Ct., Nev., Nov. 28, 1996) (order following disposition hearing).

28See Order Denying Motion and Making Child Ward of Court, 24 Indian L. Rep. 6005, 6006, 6007 (Walker River Tribal Ct., Nev., Oct. 22, 1996) (order following predisposition hearing).

29See Order Stopping Conventional White Medical Treatment Until Child Seen and Diagnosed by Traditional Northern Paiute Indian Doctor, 24 Indian L. Rep. 6005, 6006, 6007 (Walker River Tribal Ct., Nev., Nov. 7, 1996).

30See Duckwater Shoshone Tribal Court, Annual Court Report (Dec. 1997) (report does not contain statistics for January-March 1997).

31See Duckwater Shoshone Tribal Court, Monthly Court Reports (Jan.-Mar. 1998) (no arraignments were conducted in February 1998).

32See Act of Apr. 11, 1968, Pub. L. No. 90-284, tit. II, 82 Stat. 73, 77 (codified as amended at 25 U.S.C. §§ 1301-1303 (2000)). The United States Constitution does not apply to tribal governments, tribal governmental entities like tribal courts, and their officials. See, e.g., *Talton v. Mayes*, 163 U.S. 376 (1896) (declaring provisions of the U.S. Constitution, there the Grand Jury Clause (U.S. Const. amend. V), inapplicable to tribes).

3325 U.S.C. 1302(8) (2000).

34See generally *Defining Drug Courts*, *supra* note .

35See app. 1, app. 2 (showing the actual structure of the four-month Duckwater Shoshone adult and juvenile drug court programs).

36In re H.M., 1998 Duckwater Supp. No. 006, at *5 (Duckwater Shoshone Juvenile Ct., Nev., June 19, 1998).

37See app. 1, app. 2.

38See John Keegan, *Native American Beliefs, Symbols Used in Prisoners Rehabilitation at Owyhee Facility*, Nev. Appeal, July 22, 1996, at A3, A6 (describing Eagle Spirit Empowerment Program directed by Thelma Simon); see also Bill Hayne, *The Eagle Spirit Empowerment*, in 3 *An Eagle's View; Sharing Successful American Indian/Alaska Native Alcohol and Other Drug Prevention Programs* 4-5 (1995) (describing in detail Thelma Simon's Eagle Spirit Empowerment Program).

39Keegan, *supra* note , at A3.

40Id.

41Id.

42Id.

43Ms. Simon, LADC/BSW, can now be reached through the Health Clinic for the Yerington Paiute Tribe (Nevada) at

(775) 463-3335.

44A copy of award is in possession of the author. The original hangs on a wall of the courtroom.

45See *Healing to Wellness Courts*, *supra* note , at 16-17.

46See E-Mail from L Winnemucca, Board Member, Native American Alliance Foundation (www.naaf.org), to Ronald Eagle Johnny (June 4, 2001