

THREE AFFILIATED TRIBES
TRIBAL BUSINESS COUNCIL
TRIBAL CHAMBERS

Judicial Committee Meeting
June 8, 1993

PRESENT: Wilbur D. Wilkinson, Chairman; Ivan Johnson, Vice Chairman; Roger Bird Bear, Treasurer; John J. Rabbithead, Jr., Secretary; Austin Gillette, Council Member; George Fast Dog, Council Member; and Leigh Foote-Wolf, Recording Secretary.

ABSENT: Jim Mossett, Council Member

OTHERS: Anthony Hale, Chief Judge; Curtis Maynard Young Bear, Tribal Prosecutor; FayAnn Moberg, Clerk of Court; Edith Likes Eagle; Tom Gunderson, Attorney; Diane Johnson Avery, Associate Judge; Jim P. Fitzsimmons, Legal Services Attorney ; Lisa Redford, Fort Berthold Housing; Dennis E. Johnson, Alternate Associate Judge; Catherine Smith, Juvenile Clerk; Janet Gunderson, Social Services Director; Abigail Country, Vice Chairman Assistant; Mark N. Fox, Assistant Tribal Attorney; Gerald Irwin, Parshall Resource Center Administrator; Roberta Crows Breast , Domestic Violence Coordinator; Shirlee Mason, FBCC Accountant; Theodora Star, Alcohol Services Director; and Carol Good Bear, Administrative Assistant.

ITEM 01: CALL TO ORDER
Meeting was called to order at 1:05 PM.

ITEM 02: ROLL CALL
Roll called by Secretary Rabbithead.

ITEM 03: TRIBAL COURT UPDATE
Chief Judge, Tony Hale, was requested to give an update. Mr. Hale mentioned the Tribal Court is backlogged by approximately one hundred cases. There is a definite need for additional housing for the people serving jail sentences as the New Town jail is constantly full.

Judge Hale also mentioned that many things are happening that concern children, domestic violence,

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UPDATE (CON'T)
and DUI offenses. Judge Hale also gave an update on some cases which were previously in Tribal Court.

Judge Hale stated this is about all he has to report at this time, as he was unprepared for the meeting.

ITEM 04: COMMITTAL ENFORCEMENT

Secretary Rabbithead mentioned there are some problems concerning committal enforcement that were brought to his attention by Gerald Irwin, of the Parshall Resource Center.

Mr. Irwin explained the Parshall Resource Center is a six bed facility that accomodates people from all communities.

Mr. Irwin explained the main problem he is currently facing is with the after-care of the committals. When people are committed, they serve thirty days in in-house treatment, and are usually to serve an additional sixty days in after care treatment. The State Committal Order is for ninety days total treatment, with the thirty day primary, and sixty day after-care. However, this is not happening. The court only authorizes the thirty day in-house care. Mr. Irwin asked Chief Judge Hale if there is some way a court order could be issued to solve this problem of the sixty day after care treatment. Mr. Irwin explained some of the people who are committed in the Resource Center will leave after the primary treatment sentence is up, and just asking them to "please stay for the follow-up" is not working. They never receive the after-care treatment which is needed.

Mr. Irwin stated the Resource Center could possibly help with some of the overcrowding of the New Town jail by taking in some of the DUI offenders.

Mr. Irwin further stated one of the reasons for the lack of follow-up care is the copy of the court

COMMITTALS (CON'T)
order needs to follow the client.

Judge Hale explained the Circle of Life makes the arrangements for the committals. They are the ones who send out the court orders to where ever the committals are being placed. The Court calls Circle of Life to inform them someone has been committed, then Circle of Life does the paperwork and committal procedures.

Curtis Maynard Young Bear, Tribal Prosecutor, explained the process of committals. There are three copies of the court order. One goes to the respondent, the second goes to the Circle of Life, and the third goes to the institution to where the respondent is committed. The Circle of Life personnel is responsible to issue these orders to the correct places. Mr. Young Bear stated he gave them classes on this himself, to make sure they were aware of the proper procedure.

A question was raised concerning the consequences of a respondent who walks, once he or she is committed. Mr. Young Bear explained a criminal complaint is issued, and, if they walked, they did not follow the court order. However, in certain cases, a bench warrant for an arrest may then be issued.

Chairman Wilkinson mentioned that in some of the documents he has seen, the complaint and the warrant are issued at the same time, and the person is arrested as the complaint is issued. He further stated, that to him, it seems something is wrong with this. Judge Hale explained, the reason for this, is he sometimes gets recommendations from the prosecutors, or the prosecutors will ask for a warrant, mostly in cases where there is possible endangerment of others, or the accused is intoxicated. Judge Hale further explained this is a discretionary call from one case to another. There are about fifty percent of the complaints that come in, when a warrant is requested, Judge Hale does

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COMMITTALS (CON'T)
issue the warrent.

Judge Avery was questioned of her feelings of the existing procedures of the complaint and arrest warrants. Judge Avery stated the issue of the warrent for arrest being on the complaint form is irrelevant. She feels the percentage of arrests is a little high, because the person could be summoned in only if the threat is continuing. There is not always a need for the arrest each time a complaint is issued.

Discussion on withdrawing a complaint.

Discussion on the "Tables". This area is just north of the reservation on the Williston road.

ITEM 05: DISCUSSION ON LONG TERM SENTENCING

Curtis Maynard Young Bear mentioned that suspended sentences are sometimes given due to lack of room in the jail.

Chairman Wilkinson inquired about the Bureau agreement with Watford City and Williston.

Judge Avery explained there is no valid agreement currently in place. The New Town facility is not for long term sentencing.

Chairman Wilkinson suggested a meeting with the judges and the Superintendent to find out about this agreement, or what can be done to alleviate this problem.

Dennis Johnson, Alternate Associate Judge, mentioned the possibility of serving thirty days in the New Town jail, and the rest of the sentence in Watford City, this might also reduce the cost to the Tribe.

Discussion on New Town jail problems by Jim Fitzsimmons. This jail is ideal for up to ten day sentencing, but not for the long term sentencing.

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SENTENCING DISCUSSION (CON'T)

Further discussion on the sentencing conditions.

ITEM 06: CONTINUED DISCUSSION ON COMMITTALS

Theodora Star was present to discuss this issue. Ms. Star was informed of the previous discussion on the issuance of the court orders to the committal institutions, especially to the Parshall Resource Center. Ms. Star stated most of the time, the orders are submitted on a timely basis to the institutions.

Chairman Wilkinson suggested the court work something out with Circle of Life to get these orders out to the institutions.

More discussion on the after care treatment. Mr. Irwin mentioned, again, his interest in taking some of the people who need treatment to the Parshall Resource Center, and if the Tribal Court could extend jurisdiction on these people to the full ninety days. Judge Hale mentioned the Council would have to pass this as it is a legislative act.

Discussion on the review of the commitment procedure. It might be a good idea to extend the committal time to ninety days.

Attorney Dennis Johnson stated the Tribal Court Committal Code is "open ended", it does not have the limitation of ninety days that the State Court System has. The problem here, therefore, lies in the Commitment Order.

Chairman Wilkinson suggested Circle of Life, Mr. Irwin, and Mr. Dennis Johnson try to work this out.

Judge Avery suggested a recommendation be made for out patient aftercare be made, to ensure the after care treatment is given. Judge Hale mentioned this has been done in the past, but it does not always work out as planned.

Discussion on possible problems transferring people

DISCUSSION ON COMMITTALS (CON'T)
to alcohol treatment facilities from the jail.

Discussion on types of clientele currently being placed in the Parshall Resource Center.

It was determined that the three formerly mentioned offices work this out to accomodate the Parshall Resource Center.

ITEM 07: DISCUSSION ON TRIBAL COURT PROCESS

Dennis Johnson mentioned one problem he has noticed is there is no set job description for the Tribal Court personnel. Also, who fills in when someone is out of the office.

Edith Likes Eagle, Tribal Court Administrator, stated she does have the job descriptions. She will give Mr. Johnson a copy of these job descriptions.

Mr. Johnson suggested Judge Avery discuss with the court personnel who will fill in for those absent whenever absences may arise, and also the definite duties of each person.

Ms. Likes Eagle commented on this issue. There are some monies set aside for special hearings, which could be used to reimburse Judge Avery and Mr. Johnson to come in to meet on possible improvements in the Tribal Court System and also on other issues that need to be taken care of such as backlogged cases.

Mr. Gunderson mentioned moving the entire Tribal Court staff into New Town. Chairman Wilkinson asked the Council their thoughts on this proposal of relocating the Tribal Court Office to New Town. Judge Avery, Edith Likes Eagle, and Judge Hale will develop a plan to relocate the office which will be discussed at the next judicial committee meeting for approval.

Vice Chairman Johnson requested to reintroduce the

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DISCUSSION ON TRIBAL COURT (CON'T)
issue of the assessment of Tribal Court, for review, update, recommendations, and grant writing. Judge Hale mentioned this was done about twelve years ago, during Austin Gillette's administration. Judge Hale further mentioned this can be done if a committee is organized consisting of two or three, with some of the councilmen.

Judge Avery mentioned some of the problems arise in the scheduling of court cases. Another problem area is the low rate of pay on fines or the collection of fines.

Chairman Wilkinson suggested a review team with both judges, Edith, and Curtis Maynard to submit a report in a month's time.

Judge Hale suggested a couple of the Tribal court personnel meet with Vice Chairman Johnson on this issue. Urban Bear Don't Walk and Dennis Johnson will also meet on this assessment issue.

ITEM 08: DOMESTIC VIOLENCE ISSUE

Roberta Crows Breast, Domestic Violence Coordinator stated Domestic Violence had moved out of the office in the Law Enforcement Services in February. The Captain of Law Enforcement and Special Investigator informed her Domestic Violence could then use their office. However, this was not working, so Domestic Violence then moved into the Community College in the old library building. Because of renovations, they must now move out of that office. Domestic Violence then requested to move back into the Law Enforcement Office. She was told Judge Hale did not agree with this move. The court room is too small to accomodate their needs.

Chairman Wilkinson mentioned moving Domestic Violence into one of the trailers we are procuring from the Air Base. Councilman Fast Dog will check into possibly locating a trailer near the Police Department, for police protection.

DOMESTIC VIOLENCE (CON'T)

Theodora Star mentioned Domestic Violence could use the basement at Circle of Life, until other arrangements are made regarding the trailer.

Discussion on legal representation of Social Services. Judge Avery mentioned there have been several cases in which Social Services were lacking legal representation. Mr. Bear Don't Walk, Tribal Attorney, stated now that Mark Fox is working with him, this should not happen again.

Discussion on child custody cases concerning removal of children from the reservation by one parent. Chairman Wilkinson mentioned the need for procedures to be in place to deal with this issue.

Discussion on Foreign Judgement procedure and hearings.

ITEM 09: FUNERAL HOMES

Chairman Wilkinson discussed funeral homes "holding a body hostage" until they are paid in full. Questions were asked concerning what legal procedures are there that could remedy this problem.

There is a federal law that was passed within the last few years dealing with regulations on funeral loans. The family in question could file a federal complaint and have the federals review this. However, it would be hard for a grieving family to deal with this in addition to the death in the family.

This is a concern for the Tribe because of the many funeral loans that are given out in order to get the bodies released from the funeral homes.

Discussion on funeral homes "racing to get the bodies" when someone dies.

Chairman Wilkinson suggested Mr. Fox and Mr. Bear Don't Walk work on a policy dealing with this sensitive issue.

FUNERAL HOMES (CON'T)

Councilman Gillette mentioned the Thomas Family Funeral Home in Minot, North Dakota, has handled some arrangements for his family. They have been fairly good to deal with. Councilman Gillette suggested some arrangements could possibly be made between the Thomas Family Funeral Home and the Tribe for taking care of funeral arrangements for tribal members.

It was mentioned that some of the funeral homes do offer prepaid plans, which the Tribe could also investigate.

Councilman Gillette volunteered to discuss this with Thomas Family Funeral Home, with the help of Mr. Fitzsimmons.

ITEM 10: NON-INDIAN CRIMES ON THE RESERVATION

Judge Avery mentioned problems on other reservations who have gaming, dealing with bad checks written by non-Indians. They are having problems prosecuting them, as they cannot be prosecuted in Tribal Court. They need to be turned over to the local State's Attorney. The Attorney General issued an opinion stating the State's Attorney does not have jurisdiction to prosecute these offenders either. They need to go before a Federal Magistrate. Judge Avery mentioned the Tribes have been working out agreements with either the U.S. Attorney's office, or get the Tribal judges to serve as Federal Magistrates as well.

Chairman Wilkinson stated three things that could be done. The first being, the checks will be made out to Lien & Co., a non-Indian entity. The second, if the Tribal Court people and the Tribal Council meet with Heidi Hietcamp to see if she will back off from her position on this issue, and a meeting with the U.S. Attorney.

Mr. Johnson, Judge Avery, Legal Department, and a Gaming Commission member attend these two meetings.

CRIMES (CON'T)

Judge Avery mentioned the long term sentencing of repeat DUI offenders. It might be possible to meet with Heidi Hietcamp on the possibility of sending some of these offenders to the state penitentiary.

The issues therefore, are the Heidi Hietcamp opinion, the federal magistrate, and the repeat DUI offenders. Councilman Gillette mentioned another option could be to present this opinion to the State Supreme Court for litigation.

Those designated to follow up on this will be Judge Avery, Mr. Dennis Johnson, someone from Tribal Court, such as Judge Hale and Edith Likes Eagle, and Councilman Fast Dog.

Discussion on long term sentencing. Some alternatives would be upgrading the Watford City jail, alternate sentencing such as house arrests, renewed contracts, and contracts with McKenzie and Williams County to house those serving longer sentences.

ITEM 11: FORMULATION OF A JURY LIST

Mark Fox explained there is no uniform combined system of jury selection. Under the criminal system, the responsibility falls to the Council to submit a list, the clerk then randomly selects the jury. Under the civil system, there is a jury selection board composed of two members who are the Clerk of the Court and the Chairman.

The solution would be for the Tribal council to enact into the code, a list of random selection of the jury on an annual basis.

The Legal Department will present some resolutions on this at the next judicial committee meeting for Council approval of one of the resolutions.

Discussion on jury selection.

Under the Civil portion of the Code, jurors are to be selected each January. Judge Avery suggested

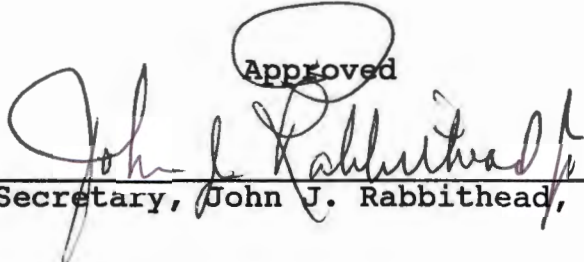
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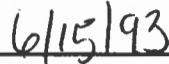
JURY SELECTION (CON'T)
two alternatives instead of only one.

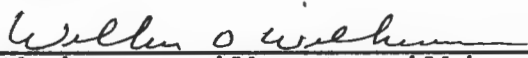
Discussion on rate of pay for the jury.

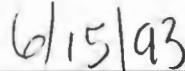
Discussion on appointment of Alternate Associate
Judge, William McLees.

ITEM 12: ADJOURNMENT
Meeting adjourned at 3:41 PM.

Approved

Secretary, John J. Rabbithead, Jr.

Disapproved

Date

ATTEST:

Chairman, Wilbur D. Wilkinson


Date