



**UNM School of Law Southwest Indian Law Clinic and
the American Indian Law Center, Inc. present**

**FUNDAMENTAL KNOWLEDGE AND SKILLS FOR TRIBAL COURT
PROSECUTORS**

Funded by the BIA Office of Justice Services

Agenda **DRAFT 5/29/2012**

June 13-15, 2012

Bureau of Indian Affairs, National Indian Program Training Center
1011 Indian School Rd. NW, Albuquerque, NM 87104

This course has been approved by the New Mexico Minimum Continuing Legal Education Board for 17.7 hours of general credit and 1.0 hour of ethics/professionalism credit.

Please arrive 10-15 minutes before the daily starting time to go through security.

Day 1: Wednesday, June 13

8:30-9:00 Opening prayer, welcome, introductions, announcements, and group count-off

9:00-9:45 **Unit 1: Tribal Criminal Misdemeanor Jurisdiction**
Jeff Harmon, Esq., Assistant Chief Prosecutor, Salt River Pima Maricopa Indian Community

- Territorial
- Subject matter
- Personal: Who is an Indian?
- Public Law 280

10-Minute Break

9:55-10:40 **Group Exercise**
Jeff Harmon

- Review scenario
- Analyze and report to class: Who gets charged with what crime(s) in which court?

10-Minute Break

10:50-11:20 **Unit 2: Separation of Powers; Professional Responsibility**
Alane Breland, Esq., Deputy Prosecutor, Salt River Pima Maricopa Indian Community

- Autonomy of prosecutor
- Independence of prosecutor
- Ethical duties of prosecutor/power asymmetry

10-Minute Break

- 11:30-12:15 **Unit 3: Criminal Case Process**
Part A: **Alane Breland and Jeff Harmon**
Internal Law and Process
- No written law
 - Tribal custom and tradition as law
 - Code development and maintenance
 - Non-binding federal and state authority
 - Charging document: criminal complaint or citation
 - Elements of the offense
- Domestic Violence Mock Scenario (police reports; code provisions, complaint, evidence)
- Roles in the investigation
 - Victims Bill of Rights
 - Victim Advocates
 - Civil Remedies (contempt citations, protective orders, exclusion)
- 12:15-1:00 Group Photo and Lunch Provided
- 1:00-2:00 **Group Exercise:** Elements of Offense and Drafting Complaint or Citation
Jeff Harmon and Alane Breland
- 10-Minute Break
- 2:10-3:25 Part B: **Professor Barbara Creel**, UNM School of Law and **Jeff Harmon**
- Indian Civil Rights Act basics
 - Right to counsel
 - Arrest without warrant
 - Arrest with a warrant
 - Summons; distinction
 - Prosecutorial discretion
- 10-Minute Break
- 3:35-4:35 Part C: **Jeff Harmon**
- Initial Appearance
 - Arraignment
 - Detention and release/Tribal-State relations for jail space
 - Scheduling and pretrial hearings
 - Discovery

Day 2: Thursday, June 14

- 8:00-9:30 **Unit 3: Criminal Case Process** (continued)
Part D: **Alane Breland**
Motions and Motion Practice
- Motions: Purpose and function
 - A written or oral application to the court to obtain a ruling or order
 - The goal is to convince the court that your position is legally valid
 - Motions: Request and supporting memorandum; format and content
 - Introductory paragraph
 - Facts; non-persuasive style
 - Argument, analysis, discussion
 - Motion Practice: Oral argument
 - Use written motions whenever possible

- Use oral motions sparingly, usually at trial
- Persuasive authority: invite the court to adopt the *legal reasoning*
- Untimely oral motions: request a briefing schedule
- Do not read the motion or response during oral argument

Group Exercise: Analyze and respond to defense Motion to Suppress based on delay due to lab's failure to give police an analysis report of a substance believed to be meth

10-Minute Break

- 9:40-11:00 **Part E: Jeff Harmon**
 Evidence (Facilitator uses flip chart and calls on participants to give an example of evidence, followed by discussion below.) 30 minutes of ethics content is included.
- Physical evidence
 - Direct
 - Circumstantial
 - Demonstrative
 - Testimonial evidence
 - Fact witness
 - Expert witness
 - Rules of Evidence
 - Tribal
 - Federal/State

10-Minute Break

- 11:10-11:55 **Part F: Kyle Nayback**, Assistant U.S. Attorney
- Trial preparation
 - Use of checklists
 - Preparation of physical evidence
 - Preparation of witnesses
 - Preparation of victims
 - Negotiating and plea bargaining

11:55-1:10 Lunch on your own

- 1:10-2:25 **Part G: Alane Breland**
- Bench trial
 - Introduction of Evidence – Exhibits
 - Foundation
 - Objections

10-Minute Break

2:35-3:35 **Group Exercise:** Trial Objections (using mock scenario)
Alane Breland and Jeff Harmon

10-Minute Break

3:45-4:35 **Group Exercise** (continued)

Day 3: Friday, June 15

8:00-9:15 **Unit 3: Criminal Case Process** (continued)

Part H: **Alane Breland**

Examination of witnesses

- Direct examination
- Cross examination
- Impeachment

10-Minute Break

9:25-10:40 **Group Exercise:** Witness examination (two facilitators)

Alane Breland and Jeff Harmon

- Mock scenario
- Two groups will serve as prosecutors for direct examination (tag-team examination, each group participant asks 3 or 4 questions, be prepared for objections)
- Two groups will serve as defenders for cross examination (tag-team examination, each group participant asks 3 or 4 questions, be prepared for objections)
- Each facilitator will work with one prosecutor group and one defender group

9:30-10:00 group prep

10:00-10:40 prosecutor direct examination

10-Minute Break

10:50-11:45 10:50-11:30 cross examination
11:30-11:45 recap and discussion

11:45-1:00 Lunch on your own

1:00-2:30 Part I: **Cynthia Aragon**, Attorney at Law, LLC

Sentencing, suspended sentence, and alternatives

- Victim input; victim statement (written or oral)
- Restorative justice
- Banishment/ Exclusion
- Suspension of rights & benefits (tribal voting, housing, student aid, per capita, etc.)
- Diversion programs and deferred prosecution
- Probation or parole
 - Community service
 - Counseling/treatment
 - Violations of conditions

2:30-2:40 Break

2:40-3:50 **Unit 4: TLOA and VAWA**

- **TLOA Jeff Harmon**
 - Tribal perspective
 - Sentence stacking
 - Working with Liaisons
 - Dual investigations
 - *Habeas corpus*
- **VAWA Alane Breland**
 - Expansion of tribal criminal jurisdiction
 - Requirements/ Conditions imposed – realistic?

3:50-4:00 Final announcements and closing prayer