Tribal-State Court Collaboration Based on Native Justice Traditions

July 25th, 2013
3-4:30 p.m. ET

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Moderator

Cabell Cropper
National Criminal Justice Association

Presenters

Coleta Walker,
Peacemaker Associate
Brett Taylor,
Deputy Director, for Technical Assistance
Center for Court Innovation

Honorable William E. Parnall
District Court Judge,
Second Judicial District Court (NM), Children's Court Division

Honorable William Bluehouse Johnson
Chief Justice,
Isleta Appellate Court (NM)

Honorable P.J. Herne
Chief Judge
St. Regis Mohawk Tribal Court, (Akwesasne, New York)

Heather Valdez Singleton
Program Director
Tribal Law & Policy Institute
Communities working to resolve disputes and heal relationships.

Coleta Walker, Peacemaking Program Associate
cwalker1@courts.state.ny.us (718) 923-8293
Brett Taylor, Deputy Director, Tribal Justice Exchange
taylorb@courtinnovation.org (646) 386-4463

Red Hook Peacemaking Program
Background

Tribal Justice Exchange

The Center for Court Innovation (the Center) created the Tribal Justice Exchange in early 2008 to provide technical assistance to tribal communities seeking to develop or enhance their tribal justice systems.

In addition to providing technical assistance, the Center for Court Innovation was also tasked with seeking out promising tribal court practices that could be tried in a state court system.
Red Hook Peacemaking Timeline

Tribal Justice Exchange

- In 2008, the Tribal Justice Exchange team is exposed to peacemaking for the first time.
- In 2010, Navajo Peacemaker discusses the practice with Red Hook community.
- In early 2011, TJE receives BJA grant to launch pilot peacemaking program.
- In late 2011, a national roundtable of peacemaking experts assembled to discuss the viability of launching a peacemaking program in a state court.
- 2012 saw recruitment of training class and implementation of training program.
- 2013 – the program launched.
The Basic concepts of Peacemaking

**Peacemaking**

- Peacemaking is a traditional Native American form of justice that promotes healing and restoration.
- Although peacemaking varies across tribes, it generally brings together defendants and victims, as well as others affected by the defendant’s behavior.
- Peacemakers, who are trained volunteers from the community, lead the peacemaking sessions and allow each participant to speak about how the case has affected him or her personally.
“Peacemaking is basically just talking things out.”
Red Hook Community Survey on Peacemaking program
October 27, 2010

1. Have you ever heard of Peacemaking?
   Yes   No

2. Would you be able to describe the basic principles of Peacemaking?
   Yes   No

3. Do you believe that a Peacemaking program would work in the Red Hook community?
   Yes   No   Uncertain   Need more information

4. If a Peacemaking program was developed in the Red Hook community, where should the program be used (circle all that apply):
   Red Hook Community Justice Center
   Local schools
   Red Hook Houses (both East and West)
   Non-profit organizations (Rec Center, Red Hook Initiative, etc.)
   Other ________________________________
   Need more information
Goals of Peacemaking

Peacemaking seeks to resolve disputes through an inclusive, non-adversarial process that empowers all of the affected parties. It does this through:

- Healing Relationships
- Giving Victims a Voice
- Holding Participants Accountable
- Empowering the Community
Quotable “Peacemaking focuses more on future relations rather than only past behavior.”

National Roundtable
Red Hook Peacemaking

In July 2012, the Center began implementing its peacemaking program in Red Hook.

**Program Planning Phases:**

- Program Design
  - In Collaboration with Tribal Partners

- Peacemaker Recruitment
  - Search for Elders/Respected members of Red Hook

- Peacemaker Training
  - In depth training to prepare Peacemakers to take cases
Recruitment and Training

- Center staff recruited community members to participate in an intensive training process that would prepare them to serve as peacemakers.
- The Red Hook peacemakers learned about the history, principles, and practices of peacemaking in Native American communities and how the peacemaking program will fit within the state court in Red Hook.
Navajo Peacemaker Training

- Two experienced peacemakers from the Navajo Nation visited Red Hook in November 2012 to explain the fundamental tenets of peacemaking and demonstrate the peacemaking process in action.

Quotable

“It's about time they (state court system) decided to learn from us.”
Case Referral Process

- The peacemaking program accepts referrals from the judge, district attorney, defense counsel, probation.
- If the judge and both attorneys agree to proceed with peacemaking, referrals will be sent to the program associate, who will meet with the defendant and explain how the program works.
- The defendant will decide whether to participate in the peacemaking program.

Quotable

“We have yet to find a case that is not appropriate for peacemaking.”
Peacemaking Session

• Food
  • Every session opens with a meal to create a sense of community.

• Ceremony
  • Every session begins and ends with a short ceremony to create a sense of calm and a safe place.

• Talking Piece
  • A person may speak when they are handed the talking piece. The use of a talking piece creates an equal opportunity to be heard.

• Healing Steps
  • Peacemakers help participants reflect on their past behavior and work with them to determine appropriate future actions.
Results so far (as of July 1, 2013):

- 46 case referrals
- 4 of which were community referrals
- 52 individual intakes including 20 victim intakes (No DV Cases)
- 6 have entered the peacemaking process
- 14 sessions
- 4 completed cases
- Currently 2 cases still in session
- 5 new referrals this week
“People are talking when they leave.”

- At the conclusion of the first case of the two apartment house neighbors, the one participant looked around for her former adversary. Informed that the neighbor had already left, the woman hurried her good-byes to the peacemaking team and told her husband to hurry so they could catch the neighbor at the bus stop and give her a ride home.
“Sometimes others get helped as well.”

- On a positive note, during this case the peacemakers had an opportunity to encourage the youngest son to focus on achieving his goals. With the help of the peacemaking program he began starting his days earlier, he applied to a GED program, created a resume, went to job fairs and after putting out numerous applications he was hired part-time to work in an art gallery. He hopes to gain full-time employment after completing his GED program.
“You never know where a circle will go.”

- However, though the case was not able to be formally resolved, many positive outcomes were still achieved for the participants. The mother has decided to go back to school and is now looking for full-time employment. Also, through the peacemaking program, the son was asked to think through his future goals and seek out employment opportunities that would lead him to achieve them. He now has a summer apprenticeship in carpentry, which guarantees a unionized position in the field upon completion.
And the training continues . . .

- Judge Dave Raasch and Former Supreme Court Chief Justice Robert Yazzie at May 2013 Red Hook peacemaking training
Lessons Learned

• Choose good mentors and listen to them – even if it does not seem to fit into your idea of how it should sound.

• If you implement a program, stay true to the model.

• If you know you have something worth pursuing, do it – no matter who or what tries to get in the way.

Quotable

“Trust the circle.”
Red Hook Peacemaking
New Mexico
Tribal-State Judicial Consortium

NCJA Webinar Series
State & Tribal Collaboration
July 25, 2013
Creation of Consortium

• 2006 – Advisory committee of New Mexico Supreme Court

• 1997 – Committee of New Mexico Court Improvement Project (CIP) Task Force

• Early 1990s - Conference of Chief Justices urged formation of Tribal-State collaborative forums
IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 8500

IN THE MATTER OF THE TRIBAL-STATE JUDICIAL CONSORTIUM

ORDER

WHEREAS, this matter came on for consideration by the Court upon recommendation of the Administrative Office of the Courts to formally recognize the Tribal-State Judicial Consortium as an advisory board of the Supreme Court of New Mexico, and the Court have considered said recommendation and being sufficiently advised, Chief Justice Richard C. Bosson, Justice Pamela B. Minzner, Justice Patricio M. Serna, Justice Petra Jimenez Maes, and Justice Edward L. Chávez concurring;

NOW, THEREFORE, IT IS ORDERED that the Tribal-State Judicial Consortium HEREBY IS FORMALLY RECOGNIZED as an advisory board to the Supreme Court of New Mexico;

IT IS FURTHER ORDERED that the Consortium shall continue to build relationships and foster communication between state courts and tribal courts through the development of basic information about each court, its laws, customs and values;

IT IS FURTHER ORDERED that the Consortium shall be composed of fourteen (14) members appointed by the Supreme Court, provided that half of the Consortium members shall be New Mexico and Colorado Indian Court Judges Association representatives designated by the Association from time to time;

IT IS FURTHER ORDERED that the Consortium shall have two co-chairs, one designated by the Supreme Court and one designated by the New Mexico and Colorado Indian Court Judges Association;
IT IS FURTHER ORDERED that the Court may appoint up to three alternate members, two of which may be designated by the New Mexico and Colorado Indian Judges Association; and

IT IS FURTHER ORDERED that the Court may designate a Justice to serve as liaison.

IT IS SO ORDERED.

Done at Santa Fe, New Mexico, this 29th day of November, 2006.

[Signatures]

Justice Richard C. Bosson

Pamela B. Minzer

Justice Pamela B. Minzer

Patricio M. Serna

Justice Patricio M. Serna

Justice Elena L. Chavez

Justice Elena L. Chavez

SEAL

Justice Edward L. Chavez
PURPOSE

To encourage and facilitate communication and collaboration between State and Tribal Court judges on common issues, focusing on

- Domestic violence
- Child custody
- Child abuse & neglect
- Domestic relations
- Child support
- Juvenile justice

and addressing questions of jurisdiction and sovereignty as they relate to each particular issue
MEMBERSHIP

14 Members – *equal* number of State Court and Tribal Court Judges

7 State Judges
7 Tribal Judges

✓ Plus 1 State Alternate and 2 Tribal Alternates, voting only when State or Tribal Court is absent
STATE COURT REPRESENTATIVES

All levels of State Courts represented:

• Court of Appeals
• District Courts (felony)
• Magistrate Courts (misdemeanor)
• Supreme Court Liaison

Appointed by Supreme Court
Representing 22 Tribes and Pueblos

- 3 Tribes (Mescalero Apache, Jicarilla Apache, Navajo Nation)
- 19 Pueblos
  - 8 Northern (Nambé, Ohkay Owingeh, Picuris, Pojoaque, San Ildefonso, Santa Clara, Taos, Tesuque)
  - 11 Southern (Acoma, Cochiti, Isleta, Jemez, Kewa, Laguna, Sandia, San Felipe, Santa Ana, Zia, Zuni)

Appointed by Tribal Judges, “recognized” by Supreme Court
TRIBAL COURT REPRESENTATIVES

➢ Recognition of Tribal Judges by the New Mexico Supreme Court is important – allows Tribal Judges to be reimbursed their travel costs to attend quarterly meetings
CONSORTIUM ACTIVITIES

Getting to know one another

Beginning to identify common issues

Working on specific issues
GETTING TO KNOW ONE ANOTHER

Cross-Court Cultural Exchanges

2000 – Navajo Tribal Court/ 11th District Court, Gallup

2001 – Acoma, Isleta, Laguna Pueblo Courts/ 2nd District Court, Albuquerque

2002 – Ohkay Owingeh, Nambé, Tesuque, Santa Clara Pueblo Courts/1st District Court, Santa Fe

2004 – Mescalero Apache Tribal Court/12th District Court, Ruidoso
Regional Training

2008 & 2009 – *Promoting Project Passport* (DV Protection Orders)

2010 – *SORNA Provisions of the Adam Walsh Act: Implications Regarding Non-Indians on Tribal Lands* (educating State and Tribal Courts and justice system partners on SORNA implementation and its implications)

2011 – *Rights of Incarcerated Parents of Indian Children* (helping Criminal Courts understand impact of sentencing on children)

BEGINNING TO IDENTIFY COMMON ISSUES (CONT.)

Small group discussions by discipline with State and Tribal representatives

Moved toward having meetings in Indian Country – closer to home lowers travel costs

Relationship building through opportunities to meet and learn together
Project Passport

Promoting use of standard format on first page of Domestic Violence Protection Orders

Consortium assisted Supreme Court in adopting Uniform First Page for State Court cases

- 7 Tribal Courts in New Mexico have adapted the State’s standard first page for their own use:
  - Pueblos of Laguna, Nambé, Sandia, San Felipe, Santa Clara, Zuni, and the Navajo Nation
Order of Protection

Case No______________________
Judicial District______________________
County, New Mexico______________________

PROTECTED PARTY

First                     Middle                     Last

And/or on behalf of minor family member(s): (list name and DOB)

PROTECTED PARTY IDENTIFIERS

Date of Birth of Protected Party

Other Protected Persons/DOB:

RESTRAINED PARTY

First                     Middle                     Last

Relationship to Protected Party

RESTRAINED PARTY IDENTIFIERS

SEX       RACE       DOB       HT       WT

EYES       HAIR       SOCIAL SECURITY #

DRIVERS LICENSE #       STATE       EXP DATE

CAUTION:

☐ Weapon Involved

THE COURT HEREBY FINDS:

That it has jurisdiction over the parties and subject matter, and the Restrained Party has been provided with reasonable notice and opportunity to be heard.

Additional findings of this order are set forth in the following pages.

THE COURT HEREBY ORDERS:

☐ That the above named Restrained Party be restrained from committing further acts of abuse or threats of abuse.
☐ That the above named Restrained Party be restrained from any contact with the Protected Party.
☐ Additional terms of this order are set forth in the following pages.

The terms of this order shall be effective until______________________

WARNINGS TO RESTRAINED PARTY:

This order shall be enforced, even without registration, by the courts of any state, the District of Columbia, any U.S. Territory; and may be enforced by Tribal Lands under 18 U.S.C. Section 2265.

Crossing state, territorial, or tribal boundaries to violate this order may result in federal imprisonment under 18 U.S.C. Section 2262.

As a result of this order, it may be unlawful for you to possess or purchase ammunition or a firearm, including a rifle, pistol or revolver, under 18 U.S.C. 922(g)(8). If you have any questions whether federal law makes it illegal for you to possess or purchase a firearm, you should consult an attorney.

Only the Court can change this order.
State Court Training events

Facilitated inclusion of Tribal Judges at State Judges trainings

Made it easier for them to participate by paying travel costs
WORKING ON SPECIFIC ISSUES

Current work:

Indian Child Welfare Act (ICWA)

Full Faith & Credit

Communications

Working through informal groups of Consortium members and others interested in the issues
INDIAN CHILD WELFARE ACT (ICWA)

Judicial Bench Card summarizes Federal, State law, cases

Best Practices Bulletins beginning with Notice and Jurisdiction issues
## Judicial Bench Card – Indian Child Welfare Act (ICWA) Requirements

<table>
<thead>
<tr>
<th>Term</th>
<th>Federal ICWA – 25 USC §§ 1901-1963 and NM Children’s Code Sec. 32A-1 ff and 32A-4 ff</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Applicability</strong></td>
<td>Child custody proceeding, foster care placement, termination of parental rights, pre-adoptive and adoptive placement. ICWA § 1903(1)</td>
</tr>
<tr>
<td><strong>Indian child, defined</strong></td>
<td>Any unmarried person who is under 18 and is either: (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe. ICWA § 1903(d)</td>
</tr>
<tr>
<td><strong>Jurisdiction</strong></td>
<td>Tribal court has exclusive jurisdiction over any child custody proceeding involving an Indian child residing or domiciled within the reservation, and over Indian child who is ward of tribal court notwithstanding residence/domicile of child. ICWA § 1911(a). When Indian child resides or is domiciled off the reservation, tribe and state have concurrent jurisdiction; yet state must transfer proceedings to tribal court on petition of parent, tribe or Indian custodian. (See Right to Transfer below)</td>
</tr>
<tr>
<td><strong>Right to intervene</strong></td>
<td>Indian custodian and tribe have right to intervene any time in the proceedings for foster care or TPR, including placement preferences. ICWA § 1911(c)</td>
</tr>
<tr>
<td><strong>Right to counsel</strong></td>
<td>If court determines indigency, parent or Indian custodian have right to court-appointed counsel in any removal, placement, or termination proceeding. ICWA § 1912(b). Court may appoint counsel for Indian child, if in best interest of child. ICWA § 1912(b)</td>
</tr>
<tr>
<td><strong>Right to request transfer to Tribal Court</strong></td>
<td>In cases of concurrent jurisdiction, State Court shall transfer proceedings to tribe’s jurisdiction upon petition of Indian child’s parent, Indian custodian or tribe, unless parent, Indian custodian, or tribe objects. Children’s Code § 32A-1-9D. Transfer is subject to acceptance by tribal court. ICWA § 1911(b)</td>
</tr>
<tr>
<td><strong>Good cause</strong></td>
<td><strong>Good cause not to transfer proceedings to tribal court</strong> – possible reasons: if there is no tribal court; if proceedings at advanced stage and petitioner did not file promptly after receiving notice; if child over age 12 and objects; if hardship to present evidence when transferred; or if parents of child age 5 or older are not available and child has little or no contact with tribe. Burden on party opposing transfer. BIA Guidelines for State Courts C.3, Fed. Register, Nov. 26, 1979, Part III</td>
</tr>
<tr>
<td><strong>Right to review reports</strong></td>
<td>All records/information concerning party to abuse/neglect proceeding shall be disclosed only to persons or entities of a tribe specifically authorized to inspect records according to ICWA. Children’s Code § 32A-4-33B(10)</td>
</tr>
<tr>
<td><strong>Right to extra time to prepare</strong></td>
<td>No foster care placement or TPR proceeding shall be held until at least 10 days after receipt of notice by parent or Indian custodian and the tribe or BIA. Court shall grant 20 days more to parent, Indian custodian or tribe, upon request, to prepare for proceeding. ICWA § 1912(a)</td>
</tr>
<tr>
<td><strong>Emergency removal</strong></td>
<td>ICWA permits emergency removal of Indian child residing or domiciled on reservation, but temporarily located off the reservation, from parent or Indian custodian, or emergency placement in foster care, in order to prevent imminent physical damage or harm to child. When no longer necessary to prevent imminent damage or harm, the removal or placement terminates, and CYFD shall expeditiously bring custody proceedings, transfer the child to tribe’s jurisdiction, or restore child to parent or Indian custodian. ICWA § 1922; Children’s Code § 32A-4-16</td>
</tr>
<tr>
<td><strong>Taking into custody; investigation</strong></td>
<td>In taking child into custody, CYFD shall make reasonable efforts to determine whether child is an Indian child. Children’s Code § 32A-4-6C. CYFD shall investigate whether the child is eligible for enrollment as a member of an Indian tribe, and if so, shall pursue the enrollment on the child’s behalf. Children’s Code § 32A-4-22. Recipient of a report of child abuse/neglect must take immediate steps to ensure prompt investigation of report, ensure immediate steps taken to protect healthy welfare of alleged abused/neglected child. Children’s Code § 32A-4-3C</td>
</tr>
<tr>
<td><strong>Notice</strong></td>
<td>In involuntary proceedings, when known or reason to know there is an Indian child in foster care/adoptive placement/TPR case, CYFD shall notify parent or Indian custodian, and Indian child’s tribe of proceedings. If identity/location of parent or Indian custodian and tribe cannot be determined, notice must be sent to Sec. of Interior (BIA). ICWA § 1912(a)</td>
</tr>
<tr>
<td><strong>Placement Preferences – Foster Care, Pre-adoption</strong></td>
<td>Foster care or pre-adoptive placement, child must be placed in the least restrictive setting that most approximates family, meets child’s special needs, and is within reasonable proximity of his/her home. Absent good cause, preference shall be given to: (1) Member of child’s extended family, as defined by law/custom of child’s tribe or, absent law or custom, shall be person age 18 or older who is child’s grandparent, aunt/uncle, brother/sister, brother/sister-in-law, niece/nephew, first/second cousin, or stepparent; ICWA § 1903(2) (2) Foster home licensed, approved or specified by the child’s tribe; (3) Indian foster home licensed or approved by authorized non-Indian licensing authority; or (4) Institution for children approved by an Indian tribe or operated by Indian organization which has a program suitable to meet child’s needs. ICWA § 1915(b) * The standards to be applied shall be the prevailing social and cultural standards of the Indian community in which the parent or extended family resides, or with which the parent/extended family maintains ties. ICWA § 1915(d)</td>
</tr>
<tr>
<td><strong>Good cause</strong></td>
<td><strong>Good cause to modify placement preferences</strong> – for foster care, pre-adoption or adoption, reasons are: placement shall be based on request of biological parents or child when of sufficient age; or extraordinary physical or emotional needs of child as testified by QEW; or unavailability of suitable families for placement after diligent search. Burden on party urging preferences not be followed. BIA Guidelines for State Courts F.3, Federal Register, Nov. 26, 1979, Part III</td>
</tr>
</tbody>
</table>
## Judicial Bench Card – Indian Child Welfare Act (ICWA) Requirements

### Placement Preferences – Adoption

<table>
<thead>
<tr>
<th>Preference</th>
<th>Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adoptive placement, absent good cause</td>
<td>(see Good Cause section above), preference shall be given to:</td>
</tr>
<tr>
<td>(1) Member of child’s extended family, as</td>
<td>(1) Member of child’s extended family, as defined by law/custom of child’s</td>
</tr>
<tr>
<td>defined by law/custom of child’s tribe or,</td>
<td>tribe or, absent law or custom, shall be person age 18 or older who is</td>
</tr>
<tr>
<td>absent law or custom, shall be person age</td>
<td>child’s grandparent, aunt/uncle, brother/sister, brother/sister-in-law,</td>
</tr>
<tr>
<td>18 or older who is child’s</td>
<td>niece/nephew, first/second cousin, or stepparent; ICWA § 1903(2)</td>
</tr>
<tr>
<td>(2) Other members of the Indian child’s tribe;</td>
<td></td>
</tr>
<tr>
<td>or</td>
<td></td>
</tr>
<tr>
<td>(3) Other Indian families. ICWA § 1915(a)</td>
<td></td>
</tr>
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<td></td>
</tr>
<tr>
<td>ICWA § 1915(d)</td>
<td></td>
</tr>
</tbody>
</table>

### Different order of placement preferences

If the child’s tribe established a different order of preference by resolution, CYFD or court shall follow that different order so long as it is the least restrictive setting appropriate for the child; also when appropriate, the child’s or parent’s preference shall be considered. ICWA § 1915(c). Placement within child’s own tribe is preferable. A diligent attempt to find a suitable family includes at a minimum, contact with the child’s tribe’s social service program, a search of all county and state listings of available Indian homes, and contact with nationally known Indian program with available placement resource. BIA Guidelines for State Courts F.1, Federal Register, Nov. 26, 1979, Part III

### Custody Hearing

Court shall determine whether child is an Indian child, tribal affiliation, residence or domicile on or off reservation for jurisdiction/transfer, notice requirements met, and use of placement preferences. NM Child Welfare Handbook, Ch. 13.8

### Adjudicatory Hearing

**Burden of proof – clear and convincing evidence.** At foster care placement, court must find that active efforts were made to provide remedial services and rehabilitative programs designed to prevent breakup of Indian family and such efforts proved unsuccessful, including testimony of qualified expert witness that continued custody by parent or Indian custodian likely to result in serious emotional or physical damage to child. ICWA § 1912(d)-(e); State ex rel. CYFD v. Marlene C., 2009-NMCA-058, 146 N.M. 588, 212, P.3d 1142. **Note:** Evidence showing only the existence of community or family poverty, crowded/inadequate housing, alcohol abuse, or nonconforming social behavior does not constitute clear and convincing evidence that continued custody is likely to result in serious emotional or physical damage to the child. To be clear and convincing, evidence must show existence of particular conditions in child’s home likely to result in serious emotional or physical damage to the child, and the cause and effect relationship between those conditions and damage likely to result. BIA Guidelines for State Courts D.3, Federal Register, Nov. 26, 1979, Part III

### ASFA hearings

ASFA does not alter ICWA’s active efforts requirement, even where ASFA may relieve the State from proving reasonable efforts. Active efforts are required in every ICWA case.

### Termination of Parental Rights, Permanent Guardianship

**Burden of proof – beyond reasonable doubt.** In any proceedings involving child subject to ICWA, grounds for any attempted termination or permanent guardianship shall be proved beyond a reasonable doubt and shall meet the requirements set forth in ICWA § 1912(f) which states that a court must find that active efforts were made to provide remedial services and rehabilitative programs designed to prevent breakup of Indian family and such efforts proved unsuccessful, including testimony of qualified expert witness that continued custody by parent or Indian custodian likely to result in serious emotional or physical damage to child. Children’s Code § 32A-4-291, 32A-4-32E

### Qualified Expert Witness (QEW)

To remove Indian child from family, evidence must include competent testimony from one or more experts qualified to speak specifically to issue of continued custody by parents/custodians likely to result in serious physical/emotional damage to child. Characteristics of person(s) most likely to meet QEW requirements:
(1) member of child’s tribe recognized by tribal community as knowledgeable in tribal customs pertaining to family organization/childrearing; (2) any expert witness with substantial experience in delivery of child and family services to Indians, and extensive knowledge of prevailing social and cultural standards and childrearing within child’s tribe; (3) a professional person with substantial education and experience in area of his/her specialty. Court or any party may request assistance of child’s tribe or BIA to locate QEW. ICWA § 1912(e)-(f); BIA Guidelines for State Courts D.A, Federal Register, Nov. 26, 1979, Part III

### Vol. placement or termination

In voluntary proceedings for termination of parents rights or adoption of an Indian child, consent of parent may be withdrawn for any reason at any time prior to the entry of final decree of termination or adoption, and child must be returned to parent. ICWA § 1913(c)

### Invalidation of proceedings

Any Indian child, any parent or Indian custodian from whose custody the child was removed, and child’s tribe may petition any court of competent jurisdiction to invalidate such action, by showing violations of jurisdiction, pending court proceedings (§ 1912), or parental rights (§ 1913). ICWA § 1914

### Return of custody

When final adoption decree of Indian child is vacated/set aside, or adoptive parents voluntarily consent to TPR, court shall grant petition for return of child by a biological parent or prior Indian custodian unless not in child’s best interest. ICWA § 1916

### Improper removal

When Indian child has been improperly removed from parent or Indian custodian or improperly retained in custody after visit, court must return child to parent or Indian custodian unless would subject child to substantial and immediate danger or threat of immediate danger. ICWA § 1920

### IGAs

Some tribes may have Intergovernmental agreements with the state that specifically address these types of child custody proceedings. ICWA § 1919(a)
FULL FAITH & CREDIT

Provisions in Federal and State laws

• Violence Against Women Act
• Child Support
• Indian Child Welfare Act
• State Recognition of Tribal Court Orders for Involuntary Commitment of Child

2 New Mexico Supreme Court cases

➢ *Jim v. CIT Financial Services Corp.*
  533 P. 2d 751 (1975)

➢ *Halwood v. Cowboy Auto Sales, Inc.*
  964 P.2d 818 (1998)
Surveys of State and Tribal Courts

- 80-90% of respondents requested training on NM Foreign Judgments Act and Full Faith & Credit
- Working with Court clerks who see these orders
IMPROVED COMMUNICATIONS

Revamped Website:  https://tribalstate.nmcourts.gov

Creating “go to” place where judges can easily locate contact information on other Courts when addressing a pending case

Putting a “face” on Consortium literally by posting members’ photos and bios

Helping people understand some of the basics of Federal Indian law

Starting with ICWA – currently no such page exists in NM, but important to have tool to help judges quickly find help when deciding case

Developing new page for Full Faith and Credit
QUESTIONS?

Contact Information

Tribal-State Judicial Consortium

**Tribal Co-Chair**
William Bluehouse Johnson,
Chief Justice
Pueblo of Isleta Appellate Court
P. O. Box 730
Isleta, NM 87022
(505) 869-9693

**State Co-Chair**
William E. Parnall
Judge, Children’s Court
Second Judicial District
P. O. Box 488
Albuquerque, NM 87107
(505) 841-7602

Staff: Kathy Spurgin
237 Don Gaspar. Room 25 – Santa Fe, NM 87501
Phone: 505-827-4808 – Fax: 505-827-4824 - E-mail: aockbs@nmcourts.gov
https://tribalstate.nmcourts.gov/
Collaboration in Tribal Nation Drug Courts: The SRMT Experience

Micaeleelie Horn, Coordinator
Chief Judge PJ Herne
Unique Geography

- The community of Akwesasne has the unique distinction of having the International Border for the United States and Canada running straight through it.
- Involved in protracted litigation on taxation, land claims, and gaming.
Saint Regis Mohawk Tribe:

- Like a PL 280 State (25 USC 232, 233)
- There is still a Federal Role!

We have:

1. Police Department-Officers have stand alone State Legislation to arrest non-Natives and Natives
2. Court-Expanding every year Vehicle and Traffic, General Civil, Land Disputes, Drug Court, Child Support and a possible Re-entry court
3. Mixed Revenue-Gaming and Tribal fees on cigarettes and gas
Jurisdiction and Saint Regis Mohawk Tribe

- There is concurrent Tribe, State and Federal Jurisdiction
  - Most cases are handled at the local Town Court in Bombay, NY
  - Felony cases are sent to Franklin County Court
  - State cases prosecuted by Franklin County District Attorney
  - Federal cases are in the Northern District of New York in either Albany or Syracuse
Modern Government

- Because there are two different Governments who oversee the distribution of ‘Federal’ (US/Canada) monies, there developed two different governments on the territory. The Saint Regis Mohawk Tribe (American) and the Mohawk Council of Akwesasne (Canadian)
  - Further complicated by the provincial border of Ontario and Quebec, and NYS
Saint Regis Mohawk Tribe

- Health Services: includes Substance Abuse Treatment Providers
- Human Services (DSS)
- Police (uniform and investigative branch)
- Court (SRMT)

Mohawk Council of Akwesasne

- Health Services
- Human Services
- Police
- Court
United States & Canada

- Crossing the border requires International Customs check-in (passport issues)
- Flow of information isn’t always quick
- Collaboration important for agencies that work together to target criminal activity
Saint Regis Mohawk Tribal Healing to Wellness Drug Court

- Work with local Town Court, County District Attorney, County Probation, Federal Prosecutor, Federal Supervision
- Saint Regis Mohawk Tribe programs
- Mohawk Council of Akwesasne programs
  - Through our relationship with the Akwesasne Justice Program and the Akwesasne Mohawk Police Service, we are able to work with the Canadian Justice System in Ontario and Quebec
Important factors for collaboration

1. Look for and retain Experience
   - Find service providers, prosecutors, defense lawyers, police, probation officials that are familiar with Problem Solving/Drug courts, particularly those in your area

2. Familiarize yourself with the Criminal Justice System you will be dealing with (PL 280/non-PL 280)

3. Be willing to go in DEPTH!
   - Know what the crimes are, who prosecutes, who defends, who sentences, how do those persons become the “who”. Create your own flow chart.

4. Know where a majority of criminal justice matters occurs for your Nation (Tribal, Federal, State)
   - Gather Statistics
   - Learn where the costs are, learn where the money is spent (and do not be surprised if those 2 things are illogical)
5. KNOW WHAT HAPPENS WITH RESPECT TO PENALTIES
   › Jail sentences
   › Probation
   › Splits
   › Interim Probation
   › RUS (release under supervision of probation)
   › Violation of Probation (VOP)

6. Honestly assess your Nation’s Relationship with the Persons/Entities Involved in the Current Process
   › Prosecutors
   › Courts
   › Probation Officers
   › Parole Officers
   › Service Providers
   › Public Defenders and Lawyers
   › Tribal Council/Court/Probation
Reminder- Governments like problem solving courts as they are effective and cheaper
Potpourri (or insider info)

- Utilize those with experience in the field! SRMT Court- Judge Herne, ACDP liason
- Use statistics! SRMT: 670+ cases in T/Bombay Court, 150+ on Probation, 50+ federal supervision, 282 arrests in 2012. Can NOT arrest your way out of a Problem!
Think ‘outside the box’, AND challenge those who refuse to think ‘outside the box’.
  > “Insanity” is doing the same exact thing repeatedly and expecting a different result!”

Sound investments: Dedicated and willing to learn Coordinator, AND GPS monitoring (anklet, $5 per day vs. $75-$110 per day!)
Many people in the participants life will have ‘quit’ on them before they came into contact with you and Drug Court. These will include family members, teachers, counselors, police. Be the one thing that does not quit!
The **Tribal Law and Policy Institute** is pleased to announce the launch of the enhanced & updated [www.WalkingOnCommonGround.org](http://www.WalkingOnCommonGround.org). The primary focus of the website is:

- **Identify and develop resources concerning tribal/state court collaboration & promising practices**
- **Identify and develop resources concerning Public Law 280 tribal/state court collaboration & promising practices**
- **Subject areas include: courts, law enforcement, detention, child welfare, and multi-agency agreements**
Promising Strategies: Tribal State Court Relations

Tribal courts and state courts interact across an array of issues, including child welfare, cross jurisdictional enforcement of domestic violence orders of protection, and civil commitments. Since the early 1990s, initiatives by judges’ organizations within both judicial systems have focused on an agenda of greater mutual understanding and cooperative action. This publication spotlights some of the most successful strategies within these initiatives.

Promising Strategies: Public Law 280

In PL 280 jurisdictions, the concurrent jurisdiction of state and tribal courts over criminal prosecutions and civil actions arising in Indian Country creates many interactions and complications. Tribal and state authorities encounter one another across an array of issues, including government-to-government recognition, concurrent jurisdiction, cross-jurisdictional enforcement of domestic violence orders of protection, cross-deputization, and civil commitments. Tensions and misunderstandings have been common features of tribal and state policing relations in the past, sometimes erupting in jurisdictional conflicts. This publication highlights unique ways in which tribal and state jurisdictions have entered into collaborations to overcome barriers to effective justice provision.

To download please visit: https://www.walkingoncommonground.org/promising-strategies.cfm
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Cabell Cropper
National Criminal Justice Association

Presenters

Coleta Walker & Brett Taylor,
Center for Court Innovation

Honorable William E. Parnall & Honorable William Bluehouse Johnson
Second Judicial District Court (NM), Children's Court Division/ Isleta Appellate Court (NM)

Honorable P.J. Herne
St. Regis Mohawk Tribal Court, (Akwesasne, New York)

Heather Valdez Singleton
Tribal Law & Policy Institute
THANK YOU FOR JOINING US

Today’s slides and a recording of this webinar will be available at:

http://www.ncja.org/webinars-events/state-tribal-collaboration-webinar-series

and

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