

# TRIBAL-STATE COLLABORATION

Collaboration to Improve the Effectiveness of Both State Drug Courts  
and Tribal Healing to Wellness Courts



PRESENTED BY  
Charlene Jackson  
Tribal Law & Policy Institute (TLPI)  
Judge Christine Williams  
Shingle Springs Band of Miwok Indians  
Judge Susanne Kingsbury  
Superior Court of El Dorado County

# Collaboration between Sovereigns

- Jurisdictional, administrative, bureaucratic, historical, and cultural conflicts between judiciaries have long impeded their collaborative success, including drug courts.
- However, as courts grow in their sophistication, so too do the creative strategies for collaboration.

# Seek First to Understand, then to be Understood -Habit 5

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Stephen R. Covey, *The 7 Habits of Highly Effective People*

# CHALLENGES TO COLLABORATION

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# History

## Non-Native

- Text books
- Media
  - Movies
  - Books
- Do you live in teepees?
- An Indian is an Indian is and Indian

## Native

- Each tribe has unique history
- Differences in language, culture, norms and traditions

# Federal Indian Law

- Pre-dates the US Constitution
- U.S. law attempts to regulate tribal nations and tribal people
  - U.S. Constitution
  - Treaties
  - Statutes
  - Administrative regulations & decisions
  - Executive orders
  - Judicial decisions

# Doctrine of Discovery

- Framework of Dominance – “Indians conquered”
- *Cherokee Nation v. Georgia*, 30 U.S. 1 (1831)
  - “Guardian-ward”
  - “Domestic dependent nations”
- *U.S. v. Wheeler*, 435 U.S. 313 (1978)
  - Tribal sovereignty subject to limitations
    - Plenary power
    - Infringement
    - Pre-emption
    - Implicit divestiture

# Phases of Federal Indian Policy

- Objective: “How to deal with the Indians”
- Regardless of intent – result was a weakening of tribal sovereignty
  - Assimilation (“Kill the Indian, save the man” – Capt. Pratt)
  - Forced “make over” of Indian nations and societies into own image
- Loss of tribal land



Tom Tolino, Navajo  
Carlisle Indian School





# Phases of Federal Indian Policy

- Colonial Period (1492 - 1774)
  - Sovereign to sovereign relationships
  - Civilization
- Confederation Period (1774 – 1789)
  - Indian support for new government
  - High priority of good relations
  - Indians feared and hated
- Trade and Intercourse Era (1789 – 1825)
  - Federal relationship with the Indians
  - Department of War responsible for Indians
  - Trade and Intercourse Act

# Phases of Federal Indian Policy Cont.

- Removal Era (1825 – 1850s)
  - US Military superiority of Indians
  - Forced removal to west of the Mississippi River
  - Removal Act of 1830
    - President Andrew Jackson
    - Tribes relocated to “Indian Territory” – now Oklahoma
    - Trail of Tears
- Reservation Era (1850 – 1887)
  - Gold discovered in California
  - Treaties, statutes and executive orders
  - Set aside tracts of land for Indian occupation and use
  - Implemented by force, starvation and introduction of diseases such as small pox

# Phases of Federal Indian Policy Cont.

- Allotment & Assimilation Era (1887 – 1934)
  - Assimilate the Indian and destroy Indian way of life
  - General Allotment Act (Dawes Act)
    - Impose land ownership and farming/ranching
    - Tribal land converted to individual allotments
    - Allotments held in trust
  - No separate religions or cultures
  - Significant loss of tribal land
    - Land not allotted was “surplus” and sold to non-Indians
    - Land held in trust could be sold depending on blood quantum of allottee

# Phases of Federal Indian Policy Cont.

- Indian Reorganization Era (1934 – 1940s)
  - 1928 Report – Assimilation attempt “total failure”
  - New Deal
    - Ended allotment
    - Revitalize and support tribal governments and tribal sovereignty
    - BIA drafted model constitutions that allowed BIA to maintain stronghold over Indian nations
- Termination Era (1940s – 1961)
  - Attempts to protect tribal sovereignty abandoned
  - Sought end to federal/tribal relationship
  - 109 Indian nations were denied or terminated federal recognition
  - 1.3 million acres of tribal land lost

# Phases of Federal Indian Policy Cont.

- Self-Determination Era (1961 – present)
  - President Kennedy’s administration refused to terminate more tribes
  - President Johnson’s Poverty Programs invested money into tribal programs and infrastructure (mid 1960s)
  - President Nixon declared policy of “Self-Determination”
  - Indian Self-Determination and Education Assistance Act of 1975
    - Tribes play a major role in self-governance
    - Tribes may contract with federal government for delivery of federal services and programs on the reservation
    - Protect and support tribal governments and courts
  - Current policy

# Tribal Healing to Wellness Court & State Drug Court Distinctions

- Tribes & Indian Country
  - Jurisdiction
  - Tribal Courts
  - Tribal Judges
  - Tribal Affiliation
  - Team members/community members
  - Specific Tribal Populations Served
  
- County/State
  - Jurisdiction
  - Western Model Courts
  - General Populations Served



# Political Issues

## Tribal

- Elections
  - Appointed by “War Chiefs”
  - Elected by membership
- Governmental Structure
  - IRA Constitution/No constitution
  - Branches of government
  - Judiciary may not be independent
  - Membership may be a branch of government

## State

- Elections
  - Political parties
- Governmental Structure
  - Constitution
  - 3 branches of government
  - Independent judiciary

# Misunderstanding Collaboration

- Collaboration is *not* telling or being told what to do
- Slippery Slope to becoming a State Actor or Tribal Actor
  - *Assume responsibilities without compensation*
  - *Assume liability*
  - *Appearance of surrendering sovereignty and/or independence*
- When Historical Issues have not been addressed
  - *Collaborators must understand the cultural trauma underlying each community*
  - *Simultaneously, we must move on: empathy over guilt*



# Sovereignty

- Loss of Sovereignty or Exercise of Sovereignty?



# TURNING CHALLENGES TO OPPORTUNITIES

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Crossing Jurisdictional Boundaries

# Collaborative Benefits

- Expression & Exercise of Sovereignty – *Community & Nation Building*
- Cross Sovereign Education & Understanding
- Collective Confrontation - Holistic Approach - *Culturally Accordant*
- Promotes and/or Maintains Culture & Tradition
- Stretches/Strategically Utilizes Limited Resources
- Enhances Services to Citizens/Communities



# Things to Consider

- Mutual Aid Agreements
- MOU/MOA
- Resolutions Policies
- Authority and Responsibility
  - Court
  - Judicial Officers
  - Staff
- Constitutional considerations
- Cultural considerations
- Joint courts
- Jurisdictional issues
- Patience
- Trust
- Willingness to try

# EXAMPLES OF COLLABORATION

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Taking the First Steps

# Promising Practices Generally

- State Police Officer Status and Cross Deputization Agreements
- Arizona Court Rule Providing State Recognition of Tribal Court Judgments
- Arizona Recognition and Enforcement of Tribal Court Involuntary Commitment Orders
- Washington Joint Executive-Legislative Workgroup on Tribal Retrocession
- New York Federal-State-Tribal Courts Forum
- Tribal Representatives in Maine Legislature
- Intertribal Court of Southern California

See [WalkingOnCommonGround.org](http://WalkingOnCommonGround.org) for more examples of Tribal-State Collaborations



# Opportunities for Collaboration in Healing to Wellness Court and Drug Courts

- Transfer Agreement for eligible participants
- Provision of drug testing and other oversight services
- Sharing of database information
- Consultation for particular subject matter (e.g. cultural activity or treatment)
- Consultation for particular participants
- Joint team members
- Communication between Coordinators
- Observation of each other's hearings

# ST. REGIS MOHAWK TRIBE

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A Tribal, State and International Relationship



# Jurisdiction and the St. Regis Mohawk Tribe

- There is concurrent Tribal, State and Federal jurisdiction
- Most cases are handled at the local Town Court in Bombay, NY
- Felony cases are sent to County Court
- Federal cases are prosecuted by the AUSA of the Northern District of New York in either Albany or Syracuse



# Modern Government(s)

- Two separate governments oversee the distribution of monies
- Two “tribal governments”
  - Saint Regis Mohawk Tribe (American)
  - Mohawk Council of Akwesasne (Canadian)
- Two Countries
  - United States
  - Canada
- Two Provinces
  - Ontario
  - Quebec

# St. Regis Mohawk Tribal Healing to Wellness Drug Court

- Collaborative Relationships
  - Local Town Court
  - County District Attorney
  - County Probation
  - Federal Prosecutor
  - Federal Supervision;
  - St. Regis Mohawk Tribal programs
  - Mohawk Council of Akwesasne Justice Program and Mohawk Police – work with Canadian Justice System in two provinces

# LEECH LAKE BAND OF OJIBWE

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Minnesota

# Leech Lake – Cass County Wellness Court

- First joint jurisdiction court in the nation
- Operational in 2006
  - DWI Court Model
  - Court sessions by ITV in Walker and Cass Lake
- Clients include Tribal Members and Non-Indians
- Multi-jurisdictional, multi-agency participation
- Operated on handshake for over a year

# The Leech Lake – Cass County – Itasca County Model

Joint Powers Agreement:

Tribal Court and State Courts agreed to work jointly on common goals of:

1. Improving access to justice
2. Administering justice for effective results
3. Fostering public trust, accountability, and impartiality



# Joint Jurisdiction Wellness Court Teams

- Judges – State District Court Judge & Tribal Court Judge
- County Attorney
- Public Defender – Regional Native Public Defense Corp.
- Probation/Supervision – MN Dept. of Corrections and County Probation
- Law Enforcement – County Sheriff & Leech Lake Police
- Treatment Assessor/Provider – Leech Lake Outpatient & Private Treatment Providers
- Coordinator/MIS – 9<sup>th</sup> Judicial District



# Leech Lake Wellness Court Success Stories

- Participants reunited with children/families
- Valid driver's licenses
- Employment/school
- National award for tutor of year/CNN intern
- Ending abusive relationships
- 42 participants with 10,568 days of documented sobriety
- Significant reduction in recidivism



“The execution of the Joint Powers Agreements between the Tribal Court and State District Courts...are an important example of how broader inter-governmental relations can begin to come full circle back to that of co-equal sovereigns.”

- Leo Brisbois (White Earth Ojibwe)  
President of Minnesota State  
Bar Association

# SHINGLE SPRINGS MIWOK INDIANS & EL DORADO COUNTY

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California

## Tribal Law and Policy Institute



The Tribal Law and Policy Institute is a Native American owned and operated non-profit corporation organized to design and deliver education, research, training, and technical assistance programs which promote the enhancement of justice in Indian country and the health, well-being, and culture of Native peoples.

[www.tlpi.org](http://www.tlpi.org)

[www.WellnessCourts.org](http://www.WellnessCourts.org)

[www.WalkingOnCommonGround.org](http://www.WalkingOnCommonGround.org)

# Learn more about Wellness Courts at: [www.WellnessCourts.org](http://www.WellnessCourts.org)

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