TRIBAL-STATE COLLABORATION
Collaboration to Improve the Effectiveness of Both State Drug Courts and Tribal Healing to Wellness Courts

PRESENTED BY
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Judge Christine Williams
Shingle Springs Band of Miwok Indians
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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

Stephen R. Covey, The 7 Habits of Highly Effective People
CHALLENGES TO COLLABORATION
History

Non-Native

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

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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

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

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 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
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
LEECHE LAKE BAND OF OJIBWE

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
- 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 – 9th 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
California
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
www.WellnessCourts.org
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