

TRIBAL-STATE COLLABORATION

How Tribes and States Can Collaborate to Better
Improve the Effectiveness of Both State Drug Courts
and Tribal Healing to Wellness Courts



PRESENTED BY
Carrie E. Garrow

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*

Historical Perspective

- Understanding of United States historical and contemporary treat of Indian Nations and Indian sovereignty is critical to understanding current perspectives
- Each Indian Nation has a unique history of contact with non-Indians, but there are common themes
- Each Indian Nation has unique culture, norms and values
- No “one size fits all”



Tribal Law vs. Federal Indian Law

- Tribal law is the law of each Indian Nation and pre-dates the Constitution
- U.S. law attempts to regulate Indian nations and Indian people
 - Treaties
 - U.S. Constitution
 - Statutes
 - Administrative regulations & decisions
 - Executive orders
 - Judicial decisions

The Foundation of Federal Indian Law

- Framework of Dominance - *Johnson v. McIntosh*, 8 Wheat. 543 (1823)
 - Discovery gave title to discoverers, Indian people hold right to occupancy
 - Foundation of Indian title in U.S.
- *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

Tribal Land over American History

1492



1744
Lancaster
Treaty



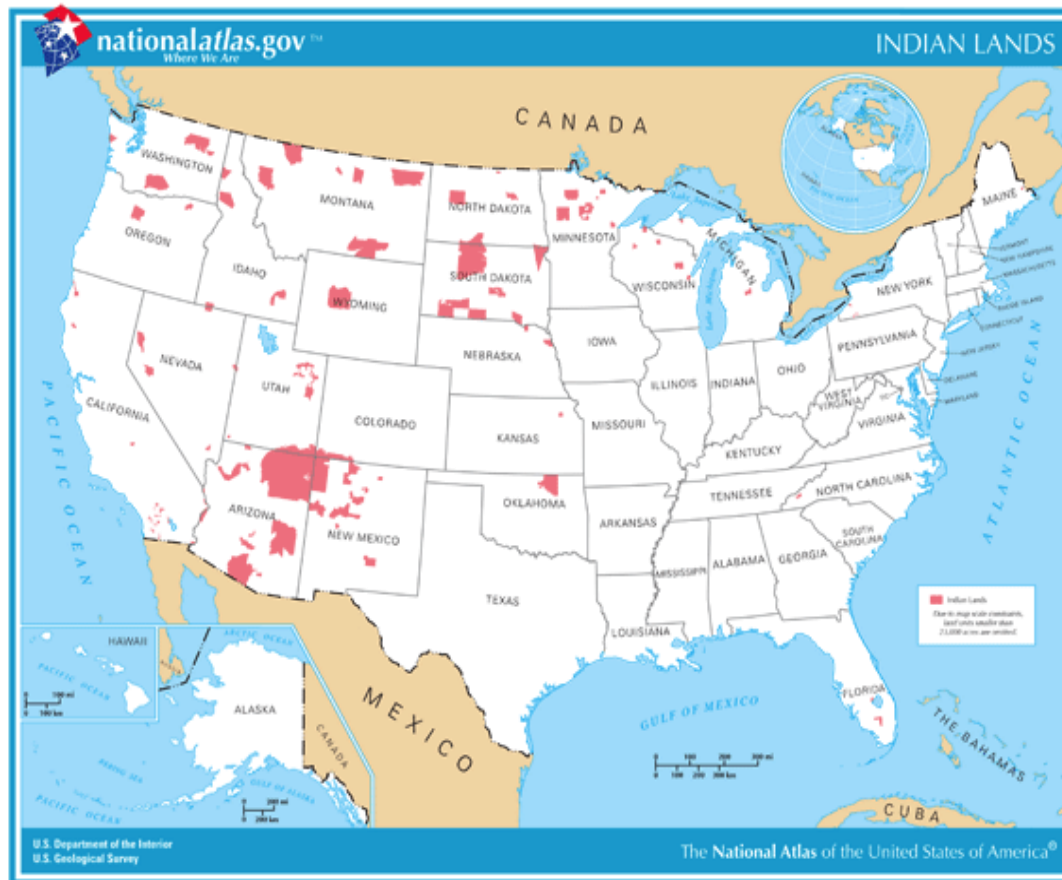
1830
Indian
Removal



1850



Tribal Land Today



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 – social experiment
 - Implemented by force, starvation and introduction of diseases such as small pox

Phases of Federal Indian Policy Cont.

- Allotment (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
 - Significant loss of tribal land
 - Land not allotted was “surplus” and sold to non-Indians
 - Boarding schools

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

Phases of State Indian Policy

Tribal Courts

Prior to European contact, Indigenous peoples practiced various forms of meaningful and productive dispute resolution.



First modern iteration of tribal courts:
“Courts of Indian Offenses” (CFR), established in 1883 to resolve disputes and enforce federal regulations, such as the criminalization of Indian dances.

1934: Indian Reorganization Act: permitting tribes to organize and adopt constitutions under federal law.

Today, tribal justice systems are diverse in concept and character and are at various stages of development.

Many courts apply large bodies of written law, as well as custom and tradition to settle disputes and address crime.

Every Indian Nation is Different

Criminal and Civil Jurisdiction is complex in Indian country, and often depends on the

- Indian status of the offender/defendant
- Indian status of the victim/plaintiff
- Location of the offense/act
- The nature of the offense/act

Additional factors include

- Federal prosecutorial discretion
- Development of the Tribal Court and/or Tribal Code
- Possible state jurisdiction (e.g. PL 280)
- Joint Powers Agreements and/or Memorandums of Understanding



Tribal Healing to Wellness Courts



Tribal Healing to Wellness Courts are tribal adaptations of a drug court.

There is particular interest in how drug courts can address alcoholism and its associated crime that is prevalent in Indian country, especially in a non-adversarial nature.

The term “Healing to Wellness Courts” was adopted to

- (1) incorporate two important Indigenous concepts - Healing and Wellness; and
- (2) promote the program’s efforts to promote wellness as an on-going journey.

Treatment of Alcohol/Drug Use & Trauma Among Indian people

- Wellness Court process is not a new method
 - Crime and conflict were historically addressed through customary and traditional methods
- Traditional Native people focus on community
 - Modern ways are individualized
 - Community vision is what guides Native people

Tribal Healing to Wellness Courts



There are currently over 65 Healing to Wellness Courts in the country, including Adult, Juvenile and Family Wellness Courts.

Learn more about Wellness Courts at: www.WellnessCourts.org

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Tribal Healing to Wellness Courts

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Welcome

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Tribal Healing to Wellness Court & State Drug Court Distinctions

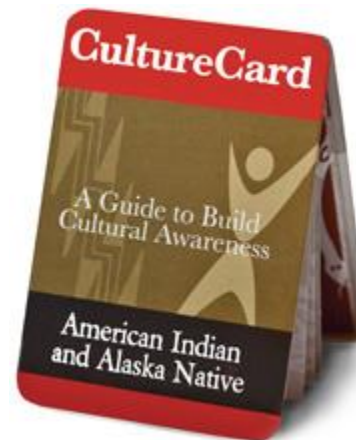
- Tribes & Indian Country
 - Jurisdiction
 - Use of culture
 - Team members - community members
 - Specific Tribal Populations Served

- County/State
 - Jurisdiction
 - Western Model Courts
 - General Populations Served



Cultural Sensitivity

- Cultural competency is one of the critical principals of care
- Not all tribal customs and traditions are the same
- Not all methods of seeking traditional healing are the same
- Not all Indian people will be open to participating in cultural orientated activates
- Must give careful consideration on the team's approach to cultural teaching and customs in their programs



www.samhsa.gov

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



Barriers to 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*

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

Micaelee Horn, Coordinator, Healing to Wellness Drug Court

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



St. Regis Mohawk Tribal Healing to Wellness Drug Court

- Work with
 - Local Town Court, County District Attorney, County Probation, Federal Prosecutor, and Federal Supervision;
 - St. Regis Mohawk Tribal 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

LEECH LAKE BAND OF OJIBWE

Hon. Korey Wahwaasuck

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 – 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

Stepping Forward

Collaboration begins with a first step.

Closing Challenge

Consider what you and your team can do to collaborate with your neighbors in order to provide more effective healing for your participants.

Thank You



Your support of Tribal Healing to Wellness Courts is greatly appreciated.

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

www.WellnessCourts.org

www.WalkingOnCommonGround.org