

U.S. Department of Justice &
U.S. Department of the Interior

Expert Working Group Report:
Native American Traditional Justice Practices



September 2014

Maha Jweied
Access to Justice Initiative
U.S. Department of Justice

AUTHOR'S NOTE

The group of experts that assembled in April 2013 came well prepared to discuss Native American traditional justice practices and the Federal efforts needed to support them. I would like to thank all of the attendees for taking time out of their busy schedules and arriving ready to explore the issues. Without their willingness to participate in open and frank discussions, this meeting would not have been the success that it was.

I would like to extend my deepest thanks to Tricia Tingle, Associate Director of the Bureau of Indian Affairs' Office of Justice Services – Tribal Justice Support, for her partnership in this effort. This meeting was jointly sponsored and supported by her office and the Access to Justice Initiative (ATJ) and would not have been possible without her leadership and commitment to supporting all forms of Tribal justice systems.

I would like to thank my colleagues at ATJ – specifically Deborah Leff, Karen Lash, Melanca Clark, Silvia Dominguez-Reese, Daniel Olmos, Bob Bullock, and Jenni Katzman – for their support throughout the planning of the meeting and preparation of this report. Special thanks to ATJ Office Manager Stephan Matthews, without whom the meeting would not have been possible, and to ATJ's legal interns Lindsey Vawter and Geraldine McIntyre, for their careful note taking.

While this report is primarily a summary of the proceedings, in some instances we have included participants' statements unedited. The points of view or opinions contained in the report are those of the expert working group and do not necessarily represent the views of the author or the official position or policies of the U.S. Department of Justice or the U.S. Department of the Interior.

For more information about the Access to Justice Initiative, please visit <http://www.justice.gov/atj/> and for more information about the Office of Justice Services – Tribal Justice Support, please visit <http://www.bia.gov/WhoWeAre/BIA/OJS/ojs-services/ojs-tjs/index.htm>.

Maha Jweied
Acting Deputy Counselor
Access to Justice Initiative
U.S. Department of Justice
Washington, DC

Dedication

This report is dedicated to the memory of our dear colleague Gaye Tenoso, Deputy Director of the U.S. Department of Justice's Office of Tribal Justice. May her dedication and commitment to protecting the rights of Native Americans and the sovereignty of Tribal nations guide us in our efforts to support indigenous justice.

EXECUTIVE SUMMARY

Throughout the United States, the term “traditional justice” is often associated with an adversarial court-based model of justice. But for American indigenous communities the term signifies a history and culture that evolved separate from judges in black robes. These systems are often based on restoring harmony and peace to the victim and community – while still including elements of offender accountability.

In April 2013, the U.S. Department of Justice’s (DOJ) Access to Justice Initiative (ATJ) and the U.S. Department of the Interior’s (DOI) Bureau of Indian Affairs’ Office of Justice Services – Tribal Justice Support (TJS) jointly convened an Expert Working Group (EWG) on the use of traditional Native American justice interventions to respond to criminal and delinquent behavior.

The meeting was held in furtherance of the Tribal Law and Order Act’s mandate that both Departments work with Tribal court systems to develop a plan to address alternatives to incarceration.¹ The meeting also evidenced the Administration’s commitment to Tribal sovereignty by recognizing and showcasing the importance of traditional Tribal custom.

The meeting brought together 14 experts from multidisciplinary communities, including judges, researchers, government officials and advocates with experience and knowledge in the use of traditional justice practices primarily within indigenous communities, for a one-day roundtable meeting.² The experts were asked to provide short presentations on the traditional justice intervention that they lead in their community or about which they are knowledgeable. The majority of the participants were from the United States, but a Canadian expert was also invited given the shared history and culture of the U.S. Native American and Canadian Aboriginal populations.

Representatives of Federal agencies that support the use of traditional practices, such as DOJ’s Bureau of Justice Assistance, DOJ’s Office of Juvenile Justice and Delinquency Prevention, and the U.S. Department of Health and Human Services Substance Abuse and Mental Health Services Administration, observed the EWG.

In recognition of the United States’ support of the United Nations Declaration on the Rights of Indigenous Peoples and its provisions that support the traditions and customs of indigenous communities and Nations, including Article 5,³ Professor James Anaya, the United Nations Special Rapporteur on the Rights of Indigenous Peoples, delivered the keynote remarks on the Declaration and its aspirations.

¹ Tribal Law and Order Act, 25 U.S.C. § 2802 (2010). See also Indian Law and Order Commission, *A Roadmap for Making Native America Safer*, Chapter 5: Detention and Alternatives: Coming Full Circle, from Crow Dog to TLOA and VAWA (Nov. 2013), available at <http://www.aisc.ucla.edu/iloc/report/index.html>.

² The participant list can be found at Appendix B.

³ The Declaration asserts the right of indigenous peoples “to maintain and strengthen their distinct political, **legal**, economic, social and cultural institutions.” Article 5 (emphasis added).

The goals of the workshop included:

- ❖ Suggesting Federal priorities to support traditional justice,
- ❖ Identifying alternatives to incarceration based on Native American traditional practices, &
- ❖ Identifying ways that tribes and the Federal government can support traditional justice for both Native American and non-Native American communities.

Participants engaged in facilitated discussions around the following panels:

- ❖ Framing the Issue: Traditional Justice Practices of Native American Communities,
- ❖ Examples of Successful Traditional Justice Practices,
- ❖ Overcoming Challenges to Building Successful Programs, &
- ❖ The Future of these Programs.⁴

At the conclusion of the facilitated discussions, the EWG put forward recommendations to the Federal government as to how it could best support these practices, which were refined by the participants through electronic correspondence after the meeting.

As follow-up to the EWG, ATJ and TJS participated in the third Peacemaker's Gathering held in Sulphur, Oklahoma on April 22-24, 2014 hosted by the Chickasaw Nation. The Peacemaker's Gathering was funded in part by TJS and DOJ's Bureau of Justice Assistance. On April 22, 2014, representatives from ATJ and TJS participated in a listening session with conference participants and provided copies of the recommendations included in this report. Participants in the listening session repeated many of the same recommendations.

This report provides an overview of the EWG's discussions and recommendations. ATJ and TJS were pleased to create an opportunity for the Federal government to learn about these important practices and advance recommendations that can support the use of traditional justice throughout the country.

⁴ The Workshop Agenda can be found at Appendix A.

TABLE OF CONTENTS

EXECUTIVE SUMMARY	i
FRAMING THE ISSUE	2
EXAMPLES OF SUCCESSFUL TRADITIONAL JUSTICE PRACTICES	4
Navajo Nation's Peacemaking	4
Lower Brule Sioux Tribe's Talking Circles	5
Village of Kake, Alaska's Adult and Youth Circle Peacemaking	6
Leech Lake Band of Ojibwe's Wellness Court	7
OVERCOMING CHALLENGES TO BUILDING SUCCESSFUL PROGRAMS	8
Appropriate Sentencing – Lessons Learned from Canada's Aboriginal Communities	8
Need for Increased Capacity – Role of Tribal Colleges	9
How to Create Sustainability – Support from Indian Legal Services	10
DISCUSSION	11
Respect for Tribal Sovereignty	11
Need for Funding	11
Appropriately Measuring Success and Conducting Evaluation	12
Importance of Native Languages	13
Community Education, Health, and Healing	13
Safety and Planning	13
Inter-Tribal Information Sharing	14
THE WAY FORWARD	15
The Future of Traditional Justice	15
Transferring Practices to Non-Native American Communities	15
Recommendations to the Sponsoring Agencies from the Tribally-Aligned Participants	16
APPENDIX A: AGENDA	19
APPENDIX B: LIST OF PARTICIPANTS	23
APPENDIX C: RECENT FEDERAL EFFORTS TO SUPPORT TRADITIONAL JUSTICE	25

FRAMING THE ISSUE

The EWG began with a general discussion on the history and use of traditional practices and recent efforts to support their use and integration into present-day responses to criminal and delinquent behavior. This discussion was led by Chief Justice Emeritus Robert Yazzie of the Navajo Nation, Justice Barbara Anne Smith of the Chickasaw Nation, and Steve Moore, Senior Staff Attorney of the Native American Rights Fund.

Chief Justice Emeritus Robert Yazzie of the Navajo Nation

Chief Justice Robert Yazzie opened the EWG meeting with a discussion of how Native Americans approach justice and reform. He described the traditional Navajo perspective in identifying conflict and the difficulty in addressing barriers, problems, or evil – which translates to *naayéé* in Diné. He provided his view of the barriers to improving safety in Indian Country: lack of funds for Tribal courts, fatigue in applying for discretionary grants because the money does not go where it is needed, high crime rates against Native American women, limited number of police officers, overburdened court systems, and lack of jail space. Chief Justice Yazzie noted the approach taken by the rest of the country does not fit the needs of Native American communities.

Instead, he recommended that the paradigm for justice planning should include the following four elements: (1) observation of the problem, which should include mediation, intuition, and prayer; (2) creation of a plan to approach problems from all sides, address them, and involve actors who need to be involved (e.g., this expert working group); (3) discussion of the plan and carrying it out in the most effective way (which he analogized to identifying where the enemy is located and then planning a coordinated attack); and (4) reflection and evaluation to learn whether the response was successful.

He urged the participants of the EWG to talk and share their views. He noted that many know what the problems – *naayéé* – are, but the Federal response needs to be stronger.

Justice Barbara Anne Smith of the Chickasaw Nation

Justice Barbara Anne Smith discussed her efforts on behalf of the Chickasaw Nation to establish peacemaking in her community. She described the assistance of individuals represented in the EWG in guiding her through the process, which she described as life-changing. She encouraged the EWG and individuals interested in peacemaking to become part of a peacemaking circle and stressed that one cannot simply study how it works to understand it. She described her experience teaching a seminar on peacemaking at Columbia Law School by leading her students through peacemaking sessions, which she reported her students found transformative.⁵ She cautioned that rather than looking to “rules” to learn about peacemaking, individuals should experience it in order to understand how to implement it.

⁵ Columbia University School of Law, Seminar in Native Peacemaking, <http://web.law.columbia.edu/courses/L8803>. Judge Smith also teaches a Peacemaking Seminar at The University of Oklahoma College of Law: <http://www.law.ou.edu/content/smith-barbara>.

She explained that from a courts' perspective, peacemaking is about healing relationships. While the adversarial system often destroys relationships by creating winners and losers, peacemaking heals. She explained that participants learn how to listen to other peoples' stories and, in doing so, allow for the healing process to unfold because there is great healing when a person actually gets to tell his or her story. She noted that this was opposite to the experience in an adversarial court, where no one actually gets to tell their story. Moreover, in a peacemaking circle, participants can invite the people they need into the circle, which makes a difference because it allows for building and healing relationships.

Justice Smith reported that the establishment of peacemaking in the Chickasaw Nation has worked very well. Those who are trained as peacemakers are committed to it. Individuals can either request peacemaking through the Supreme Court or can be referred to the process by Tribal judges, but it is not mandatory.

She noted that people often ask if peacemaking "fixed the problem," but she cautioned that that question misses the point. It is about healing relationships and when that is done, the issues fall by the wayside.

Steve Moore, Senior Staff Attorney, Native American Rights Fund

Steve Moore explained that the Native American Rights Fund's (NARF) guiding principle for 44 years has been the restoration of Tribal sovereignty and Tribal justice systems. Starting in the early 1990s, NARF began to focus efforts to support traditional ways of resolving conflict. Led by the Native American Bar Association, efforts to restore peacemaking elements in Indian Country have gained traction. He noted that today Indian Country legal systems are a hybrid that blends adversarial and traditional legal traditions.

He described how the effects of the Federal government's dismantling of Tribal institutions in the late 19th and early 20th centuries continue to be felt today. That included the removal of Indian leaders from places of authority in their communities. He cautioned that the consequent loss of traditional ways of resolving conflict has not been appropriately studied or understood. Those ways, which did not need labels, existed for millennia before European contact and were valid and functional systems.

Mr. Moore described NARF's commitment to supporting the resurgence of these practices, including the launch of an Indigenous Peacemaking Initiative that grew out of a convening with Indian Legal Services and Tribal judges.⁶ He emphasized the necessity in creating a space for peacemakers to come together, but noted it was unclear how to support this work without hindering it. He asked the EWG to reflect on how to make a bridge—a connection between peacemaking and other aspects of criminal justice—without adversely impacting it.

⁶ Native American Rights Fund, Indigenous Peacemaking Initiative's website:
<http://www.narf.org/peacemaking/index.html>.

EXAMPLES OF SUCCESSFUL TRADITIONAL JUSTICE PRACTICES

The EWG then discussed examples of successful traditional justice practices. Given the nature of a one-day convening, only a handful of specific practices were mentioned. Thus, the practices discussed below are only a representative sample and not the universe of successful traditional justice practices.

Navajo Nation's Peacemaking **Chief Justice Herb Yazzie**

Chief Justice Herb Yazzie provided an overview of the Navajo Nation's legal system and use of traditional justice and peacemaking. He explained that Navajo law is not only traditional law, but includes modern human-created law. Traditional laws are fundamental laws of society, which work to protect younger people. He explained the importance of language, teachings, and traditional law and that there is a profound difference between the courtroom and what the elders teach. Chief Justice Yazzie explained that the judiciary's role is to help the Navajo Nation's citizens access their custom – language, ceremonies, teachings, and value system.

He explained that peacemakers are not government employees, but that the Tribal government provides a small contribution to defray the costs of peacemaking and support education about its use. Peacemaking guidelines are available online in the Diné language, where people can learn about recent developments in its practice and the theories around its use.⁷

The Nation's efforts to try to improve access to the system have resulted in a joint Navajo Nation Supreme Court and Navajo Technical University project to establish a bilingual court reporter system funded by the Bureau of Indian Affairs. Transcripts can then be provided in either Diné or English, which are necessary for appellate proceedings. In the past, transcripts were prepared primarily in English because they were using non-Tribal contractors for court reporting services. When an elder or other witness spoke in Diné, the page was left blank. Chief Justice Yazzie expressed that in those instances, the judicial appellate proceeding was inadequate because the exchange in Diné was probably the most useful information offered in the entire trial. He stated that with today's technology, it should be possible to have a system that can transcribe Diné when Diné is spoken.

Chief Justice Yazzie remarked that while the Navajo Nation has a court system, and it is embedded in Navajo life, there is no reason to turn that system into a modern court – it must be compatible with traditional ways. The Nation has an ongoing process of indigenizing procedural rules. For example, when a grandmother accompanies a young person to a hearing and would like an opportunity to speak, many court rules would dictate that unless she is on the witness list, the judge should not allow her to speak. But not allowing elders and community members to speak creates a feeling that nothing was resolved. And in civil cases, people often leave the court angry and unwilling to talk to each another, which is not the Navajo way to resolve disputes.

In addition to enhancing access to justice, using traditional Navajo custom produces cost-savings. The Navajo Nation is expansive, and while technology might be used to allow individuals to avoid traveling long distances to appear as witnesses, the funding needed for

⁷ See The Peacemaking Program of the Navajo Nation's website:
<http://www.navajocourts.org/indexpeacemaking.htm>.

these technological solutions is not available. Therefore, he urged, traditional justice practices should be used whenever possible.

The Nation is also approaching access to traditional peacemaking systems by emphasizing the need to educate the young. The Nation has established relationships with school districts so that from kindergarten to 12th grade, peacemaking is available to resolve problems at school. In this way, the youth can hopefully be diverted from the courts.

Chief Justice Yazzie also expressed his belief that domestic and family matters can be more appropriately handled through peacemaking. He argued that protection orders do not solve problems for Navajos – especially if they cannot communicate to resolve issues. Through peacemaking, healing can be achieved.

Finally, he said in order for the Navajo community to survive and thrive, it is necessary to undo the oppressive system that exists, which results not only from substance abuse and alcoholism, but disrespect of the Navajo way of life. This disrespect is perpetrated by many, including Federal leaders, and impacts Navajo youth. He called for an open and public recognition of the laws and value systems that exist across the continent.

Lower Brule Sioux Tribe's Talking Circles **Chief Judge Lorrie Miner**

Chief Judge Lorrie Miner described the creation of a series of Talking Circles in the Lower Brule Sioux Tribal community starting in 2011. The first Talking Circle came out of a crisis when three young women attempted suicide. Out of these tragedies, Chief Judge Miner started a Girls' Talking Circle, which continues to today.

Funded by Public Law 638 monies from the Bureau of Indian Affairs, Office of Justice Services – Tribal Justice Support, the talking circle for girls has been a success. Used as a component of the girls' juvenile probation when they are adjudicated delinquent, it serves as an alternative to detention.

The talking circle provides a safe and respectful forum where the young women can share whatever is on their mind – good or bad. It can help to resolve conflict in their lives. For example, in April 2013, a young woman shared that she had been assaulted by her uncle, which resulted in an investigation that uncovered more victims and an indictment and criminal proceeding.

A key component of its success is that the girls choose, with their parents' approval, how to manage the circle. The probation officers can take the girls on field trips that are fun and safe – such as going out for pizza and a movie.

Evaluating programs such as these is hard, but Chief Judge Miner noted that the metrics they use include reduced suicide attempts and gang activity, improved school attendance and graduation rates, and an overall better compliance with probation conditions. The talking circle now includes a substance abuse counselor, who has helped some of the girls with dependency issues. And while those markers can be measured, Chief Judge Miner also notes the outcome of the talking circle itself is a measure of success: connecting troubled youth with positive role models and mentors from their community.

Since the creation of the Girls' Talking Circle, Lower Brule Sioux Tribe has added a Boys' Talking Circle (funded through a South Dakota state grant), a Talking Circle for Women on Probation (funded through a Bureau of Indian Affairs Secured Continuous Remote Alcohol Monitor (SCRAM) grant, which incorporates cultural practices into the treatment program),⁸ and a Talking Circle for Men on Probation (funded by the Substance Abuse and Mental Health Administration's Access to Recovery funds, which employs a case manager). The funding streams are disparate, but because the programs are gaining community support, Chief Judge Miner indicated that she intends to include a request for funding of these programs in her Tribal court budget request to the Tribal government going forward.⁹

Village of Kake, Alaska's Adult and Youth Circle Peacemaking **Magistrate Judge Mike Jackson**

While he was unable to attend the EWG meeting in-person, Magistrate Judge Mike Jackson submitted written information on the Village of Kake, Alaska's Adult and Youth Circle Peacemaking.

Judge Jackson noted that the Circle Peacemaking Flow Chart, available on the Village of Kake's website, explains how matters are referred to the process. The circle peacemaking is generally considered the dispute resolution mechanism for the Tribal court¹⁰ and is administered according to a Judicial Code for Peacemaking and specific court rules.¹¹

For the Youth Circle Peacemaking, the Alaska State Court System orders that minors consuming alcohol and first time offenders be diverted to the Alternative Dispute Resolution Group – Kake Youth Circle Peacemaking for Circle Sentencing. The Tribal Court works with the State Juvenile Probation Officer to support the Circle Sentencing for juveniles, and the Kake School District will call upon the Youth Court to facilitate in bullying cases or other concerns on school campus. The Youth Circle is facilitated by the youth, but adults are often invited to participate.

Judge Jackson noted that success is measured through Tribal members' participation, the time taken to hear cases, and the restoration of relationships – with victims being made whole and victims and wrongdoers finding support in their community. He explained that follow-up circles and celebration circles are held for participants who have reached milestones.

The costs associated with the circles are minimal due to the generous donations of coffee, tissue, food, and other items by faithful volunteers and supportive community organizations.

⁸ SCRAM is an alcohol monitoring anklet system that is worn by an offender after release from jail to monitor alcohol intake. Chief Judge Miner noted that the SCRAM program creates a cost-savings for tribal jails. Individuals who would otherwise be incarcerated are released using the ankle monitoring devices, which allows them to continue to work and provide for their families. The SCRAM devices cost \$4.50 per day, while jail costs \$125 per day. Chief Judge Miner reported a savings of over 6000 jail days have using the SCRAM devices. She noted her desire that these cost savings be reinvested to develop alternatives to detention.

⁹ Importantly, none of the costs are borne by the participants; otherwise participation would be cost prohibitive.

¹⁰ The Circle Peacemaking Flow Chart is available at http://www.kakefirstnation.org/flow_chart_CPM.pdf.

¹¹ Keex' Kawaan Judicial Peacemaking Code is available at http://www.kakefirstnation.org/OVKTribalCourts/judicial_peacemaking_code.pdf.

Leech Lake Band of Ojibwe's Wellness Court

Associate Judge Korey Wahwassuck

Also unable to attend, Associate Judge Korey Wahwassuck of the Leech Lake Band of Ojibwe Tribal Court (currently a District Court Judge in Minnesota's Ninth Judicial District) submitted written testimony for the EWG's consideration.

In 2006, the Leech Lake Bank of Ojibwe Tribal Court and the Cass County District Court (Minnesota), with the Cass County Probation Department and Minnesota Department of Corrections, entered into an agreement to create the multi-jurisdictional Cass County and Leech Lake Band of Ojibwe Wellness Court.¹² The first of its kind, court jurisdiction is shared by the tribe and state.¹³ Judge Wahwassuck explained that the mission of the Wellness Court is to reduce the number of repeat substance dependent and driving while intoxicated (DWI) offenders by using a coordinated team approach with the Tribal Court Judge, the County District Judge, prosecutor, defense attorney, law enforcement personnel, social services workers, probation and treatment specialists, to quickly identify and intervene with selected non-violent substance-abusing offenders to break the cycle of substance abuse, addiction, and crime.¹⁴

The Wellness Court is a post-conviction, post-sentencing DWI court that serves both Tribal members and non-Indians. She explained court sessions are held in the Tribal and district courtrooms connected by interactive videoconferencing and clients have the option of appearing in whichever courtroom is more convenient for them. In 2009, a similar program for offenders charged with controlled substances was established with the Itasca County District Court.

In 2010, a related program was launched for juvenile delinquency cases, where Tribal and non-Indian youths eligible for diversion may participate. She noted that this is the first step to creating a multi-jurisdictional juvenile delinquency program.

Judge Wahwassuck reported that joint jurisdiction has infused culture into the judicial process. The process has become key to helping people reconnect and learn about their culture and tradition and restore relationships. Spiritual healers have conducted naming ceremonies, sweat lodges, and talking circles. Participants previously disconnected from the Anishinabe traditions are becoming involved with their culture to great success—and in the process creating healing for the participants. And the partnership between the two courts and two sovereigns – the tribe and the state – has created healing between the communities.

Judge Wahwassuck reported that the joint jurisdiction Wellness Court continues to operate successfully and with a significant reduction in recidivism.

¹² The Memorandum of Understanding that created the multi-jurisdictional Cass County and Leech Lake Bank of Ojibwe Wellness Court can be found at <http://ccllwellnesscourt.files.wordpress.com/2010/10/memorandum-of-understanding.pdf>.

¹³ It should be noted that Minnesota is a Public Law 280 state and, thus, the tribe is without general criminal jurisdiction.

¹⁴ See Cass County and Leech Lake Bank of Ojibwe Wellness Court, General Information, <http://ccllwellnesscourt.wordpress.com/general-info/>. A flowchart of how the process works can be found by visiting: <http://ccllwellnesscourt.files.wordpress.com/2010/10/general-overview-flowchart.pdf>

OVERCOMING CHALLENGES TO BUILDING SUCCESSFUL PROGRAMS

Appropriate Sentencing –

Lessons Learned from Canada's Aboriginal Communities

Professor Jane Dickson-Gilmore, Carleton University, Ottawa, Canada

Professor Jane Dickson-Gilmore of Carleton University in Ottawa, Canada described two sentencing-related initiatives in Canada that work with incarcerated people from Aboriginal communities using traditional customs and the challenges that were encountered.

She noted that while Aboriginal people are 4% of the overall population of Canada, they make up 20% of the Federal prison population and 27% of the provincial prison population.¹⁵ She explained that Aboriginal communities suffer high rates of poverty, trauma, substance abuse, and violence and reservations are afflicted with high rates of crime and conflict. Despite efforts to reduce the overrepresentation of Aboriginal persons in prison through de-incarceration, recidivism remains a problem. Professor Dickson-Gilmore noted that underlying issues of poverty, historic trauma, and local power struggles within Aboriginal communities entrench these problems. She reported that in the meantime, many people are leaving their communities to escape the crime.

With this backdrop, Professor Dickson-Gilmore described two criminal justice interventions based on traditional Aboriginal practice and challenges that have emerged:

Sentencing Circles: The practice of Sentencing Circles are intended to give community input into an offender's sentence – with the rationale that those who know the person well are in the best position to decide a fair sentence and how it would be perceived by the community. There are two main types of Sentencing Circles in Canada: (1) Moses Circles, which include court personnel; and (2) Community Circles, which are organized outside of the court structure and run by a trained professional from the community with a sentencing determination made solely on the recommendation of the circle members. Importantly, research has shown no difference in recidivism between typical court sentences and these community based sentences.¹⁶

Gladue Courts and Sentencing Reforms: The second practice she described was that of a Gladue Court,¹⁷ where a presentencing report called a “Gladue report” is prepared by a social

¹⁵ Jane Dickson-Gilmore Presentation, available at http://prezi.com/idsd4_ittpid/expert-working-group-on-tribal-justice/.

¹⁶ *Id.*

¹⁷ See Maha Jweied and Miranda Jolicoeur, Expert Working Group Report: International Perspectives on Indigent Defense (NCJ 236022) at 49-51 (Sept. 2011) (available at <https://ncjrs.gov/pdffiles1/nij/236022.pdf>) (“Another restorative justice model used in Canada for Aboriginal communities is problem-solving courts staffed with Aboriginal community members. The most common problem-solving court in Canada is the Gladue Court. In Gladue Courts, court-personnel obtain extensive training on Aboriginal communities and the possible reasons why individuals from these communities are overrepresented in the criminal justice system. The Gladue workers create a comprehensive pre-sentencing report, which includes information obtained through meetings conducted with family and community members. They then work with offenders to help resolve problems and to prevent recidivism. The pre-sentencing report includes a risk-needs assessment to consider the resources the individuals need to overcome their problems. To date, evaluations of Gladue Courts indicate that they work well and are cost effective.”).

worker documenting the background of the offender, his or her involvement with the community, and a description of Aboriginal culture and related factors for the provincial judge (i.e., non-Aboriginal court) to consider in sentencing. But there remains uncertainty as to whether this process is successful. From 2001-2011, despite overall reductions in crime rates, the Aboriginal inmate population (both men and women) has risen significantly.¹⁸

Professor Dickson-Gilmore suggested that one reason for this result is that the Gladue requirements do not trump any other rules that a court must follow in sentencing. Thus, offenders' risk and need profiles continue to trump their Aboriginal status. Also, many communities that would seek to support the offenders at home simply lack the resources to do so.

How to Improve these Processes: Professor Dickson-Gilmore concluded her presentation with some guidelines on how to make Aboriginal Justice more effective: (1) strengthen the capacity of the community before adding new processes ("build up the community before building on the community") because the important work must come from the community; (2) create clear goals from the outset; (3) do not demand that the communities take on challenges that outside communities have been able to resolve only through adequate funding – unless resources and funding are made available; (4) recognize that the solution is not simply more money – even wealthy communities face these same challenges (e.g., marginalization, historic trauma); and (5) think more broadly about success (e.g., a circle is not a failure if the offender ends up in jail; circles are empowering).

Need for Increased Capacity – Role of Tribal Colleges

Professor Nora Antoine of Sinte Gleske University of the Rosebud Sioux Tribe

Professor Antoine discussed the importance of Tribal colleges in supporting traditional justice interventions. She cautioned that in deconstructing problems that exist in Indian Country – such as those related to crime and criminal justice – it is important to be aware of all of the factors that influence decision making in Indian Country. Tribal colleges serve an important role in these decisions: they impact community members and can influence outcomes.

She noted that while ideally peacemaking belongs in the community independent of a Tribal court setting – the resources and skills are not available to support these programs in this way. Thus, peacemaking is often linked with the courtroom. As such, community members perceive the Tribal court as the only place where conflicts can be resolved. But Professor Antoine suggested that Tribal colleges can provide input and support relatives in their homes where peacemaking should also occur.

Professor Antoine asserted that Tribal colleges are long-term players with a stake in the community and the capacity to help facilitate peacemaking. Thus, any forward movement to support traditional justice should include Tribal colleges.¹⁹

¹⁸ Jane Dickson-Gilmore Presentation, available at http://prezi.com/idsd4_ittpid/expert-working-group-on-tribal-justice/.

¹⁹ More information about tribal colleges and universities (TCU) can be found on the American Indian Higher Education Consortium website at <http://www.aihec.org/>.

How to Create Sustainability – Support from Indian Legal Services

James Botsford, former Director of Wisconsin Judicare's Indian Law Office

Mr. Botsford discussed the role of Indian Legal Services in supporting indigenous and traditional justice and the rule of law. He noted that the indigenous way of thinking is more intuitive and cyclical – and thus very powerful. He noted it deals more with relationships and as a result, Native Americans struggle with the idea of retribution. As such, he urged that all civil problems and many of the criminal justice problems that exist in Indian country be resolved through mediation – and he noted that Indian Legal Services' programs are positioned to assist these efforts.

He explained that there are 25 Indian Legal Services offices in the United States – collectively known as the National Association of Indian Legal Services (NAILS).²⁰ These offices serve Native Americans both inside and outside of Indian Country. Mr. Botsford was formerly the director of one of these offices: Wisconsin Judicare's Indian Law Office.

In 2003, his office received some Federal funding, which was used to support a peacemaking initiative based on the recommendation of the Wisconsin Tribal Judges Association. Wisconsin Judicare trained 40 individuals in mediation and peacemaking using a formal mediation training with cultural and Tribal-specific components. But when funding was not renewed in 2005, sustaining the program was difficult. As a consequence, a number of trained peacemakers remain unemployed.

Fortunately, in 2010, NAILS offices working with NARF successfully obtained specific Federal funding to support their work: the Tribal Civil and Criminal Legal Assistance (TCCLA) Program administered by DOJ's Bureau of Justice Assistance.²¹ Working with the Federal government and local communities, NAILS offices can use this and other sources of funding and expertise to help support and sustain the reemergence of indigenous justice in Native American communities.

²⁰For a complete list of the National Association of Indian Legal Services (NAILS) offices, visit: <http://www.judicare.org/content.cfm?PageID=52>.

²¹ For more information about the Tribal Civil and Criminal Legal Assistance Program, visit https://www.bja.gov/ProgramDetails.aspx?Program_ID=102.

DISCUSSION

Throughout the day, the EWG engaged in thoughtful discussions on the resurgence of traditional justice. Key themes emerged:

Respect for Tribal Sovereignty

All of the EWG participants stressed the need for the Federal government to respect Tribal sovereignty as a predicate to revitalizing traditional practices.

A participant stressed that the impact of racism, colonization, and historical trauma is the root problem of crime in Indian Country. He noted that revitalization of indigenous processes is only possible once Tribal people perceive themselves as respected by the Federal government. Participants pointed out that they viewed the strained Congressional deliberations over the Violence Against Women Reauthorization Act of 2013 evidence of this lack of respect. Another participant asserted that Tribal communities will heal if the Federal government stops its disrespectful treatment of Tribal nations. Another participant concurred and stressed the need for the Federal government to give deference to Tribal tradition.

One participant stated that the Federal government must respect the traditional processes even if the outcomes are not always clear. She explained that the peacemaker plants a “seed” that takes root to heal people and create peace. So even if it does not look like much was accomplished, the seed was planted and much will come from it in the future. Respect of Tribal governments, their people, and their ways is needed for the seed to take root. Another participant noted that indigenous systems themselves should be allowed to flourish, and all governments must be supportive of rebuilding indigenous systems.

Need for Funding

The EWG discussed the availability of existing Federal funds that support Tribal justice systems – both DOJ grants and DOI base funding – to support traditional justice institutions and processes.

Experts noted that the use of grants creates problems for sustaining successful programs in future years when grant funding is not guaranteed or available. They stressed that the Federal government must commit to supporting these programs continuously. A participant asserted that funding for Tribal courts is treated as discretionary when it should be recognized as a treaty obligation.

Participants noted the importance of educating Tribal governments that they can include requests for funding of these programs in grant applications. Others remarked that Tribal communities must come together and develop these programs collaboratively and from a multidisciplinary approach.

Participants also noted that Federal grant officers must be educated to support this work and possibly provide guidance on how to incorporate traditional justice into existing programs. A participant proposed creating a working group to inform Federal leadership about these practices. EWG participants also discussed the difficulties with evaluating these practices, which is often required to obtain funding.

Appropriately Measuring Success and Conducting Evaluation

The EWG agreed that evaluating this work is difficult and challenged funders and grant officers to help determine how to evaluate these programs properly. One participant noted that a usual measurement of criminal justice processes, length of time of proceeding, is unlikely to be a helpful guidepost in measuring peacemaking's success because of the nature of the process. And while some peacemakers want to know how the process works out – i.e., whether conflict is resolved – sometimes not having people return is evidence of success. Alternatively, sometimes people come back six or seven times because they like the process, and they learn how to talk to each other.

Another expert noted that it is not possible to evaluate possible additional harms that are prevented as a result of this process.

An expert noted that the metrics she uses to measure the traditional justice practice she leads include rates of gang activity, suicide, compliance with probation conditions, class attendance, drug use, and alcohol use. Another simple measurement that was suggested was the number of times the process was used in the community.

Another expert stressed that the community must specify what the goals are in order to establish metrics that can be linked to community needs. Over three years, she worked with communities through stakeholder circles of youth and elders (men and women) to create a set of goals that helped identify where the community wanted to be in five years after setting up the traditional justice system. The clear goals allowed for a clear path. She cautioned it was not easy and did not happen quickly, but was integral to help determine how to evaluate the program and assess whether the practice is logically connected to community goals.

Participants acknowledged that research is important to respond to evidence-based demands and that some research has already been funded, such as Eric Gross' evaluation of Navajo peacemaking funded by DOJ's National Institute of Justice.²² But the EWG agreed more research is needed. A participant recommended that young Native researchers and statisticians should be brought in to help devise evaluation methodology because they are most familiar with these processes.

One participant encouraged the group to think about evaluation outside of the United States and to draw on international models that have been developed for systems that are more similar to Native American traditional justice practices. She also encouraged that evaluation and research be based on the questions that the community wants to know, not the evaluator. She urged cooperation between the communities and the Federal agencies so that the communities can come up with the evaluations themselves as a way to indigenize the courts and identify the correct evaluation process.

Another expert cautioned that evaluation by the Federal government may be inappropriate altogether and wanted to avoid having the Federal justice system evaluate Native American justice, which is perceived as judgment by the Federal government. Instead, he recommended

²² Eric Gross, "An Evaluation/Assessment of Navajo Peacemaking," NCJRS No. 187675 (Feb. 15, 1999), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/187675.pdf>; see also U.S. Department of Justice, National Institute of Justice, Tribal Resources Page at <http://www.nij.gov/topics/tribal-justice/Pages/bibliography.aspx>.

that the Federal government change its approach to providing assistance rather than grants. He recommended that the Federal government simply help with building the correct facilities needed for these practices to thrive -- instead of funding courthouses with benches and jury boxes.

Importance of Native Languages

Another expert noted the need for bilingual court reporters for transcription services. Responses translated into English do not always appropriately reflect the meaning of the exchange that took place. For example, the meaning of *Bibahazaanii* in Diné is not simply *fundamental law*, but rather *how the law originated in the first place*. So supporting bilingual services supports all types of justice interventions in Indian Country.

Community Education, Health, and Healing

The EWG also discussed the role of the community in supporting these processes. One expert recommended that immediately after a session, the leader of the intervention should solicit feedback from those community members who participated and continue to follow-up with them over time, which will allow people to learn whether they are achieving social change. She cautioned that a lot of advance work must be done in order for these communities to succeed. It is not possible to simply “dive-in.” She encouraged that experts ensure that the community is in a position to support the work and gauge feedback by following-up with the participants over time. Suggested questions to ask include whether the process is accessible and whether people are really using it. She cautioned that the problems are vast, so if the people are not using the process, then the community must first be educated before the full potential of the process can be achieved. Moreover, she noted that there may be people who want to be leaders of these processes who are not fully healed themselves and that it is important to have individuals who are not in crisis lead these efforts.

Another expert observed that teenagers who go through these processes educate and guide other teens about them. This often results in participants being healthier, happier, and more trusting of the system.

A participant also noted that in order to determine who from the community should be included, it is necessary to look to the underlying issue. In other words, the intervention should include more than the two people involved in the core dispute, because the family will also likely need to be included to mend relationships.

Safety and Planning

The EWG also discussed the need for victim safety and planning. One expert noted that sometimes people participate in these interventions for the wrong reasons and elders who are the perpetrators of some of the worst harms try to participate, which can be counterproductive. She cautioned that these programs should be run by people who are well along in their own healing journey to prevent revictimization and new trauma.

Many of the experts agreed that communities should have good safety planning in place for women and children in domestic relations cases handled by these processes.

Another participant recommended that in establishing these processes, communities should ensure that they are accessible across a Tribal nation because people will not drive 200 miles to participate in one. This is a particular issue for tribes with large land masses.

Inter-Tribal Information Sharing

An expert noted that tribal members are eager to know their culture and learn how other tribes are integrating traditional justice practices into their justice systems. Sharing information helps make this work accessible to everyone. Another participant noted the value of existing infrastructure to help bring together as much information as possible for continued research, media, and other resources so that the Tribal community feels connected to other tribes.

Relatedly, the experts agreed that flexibility is key to the success of these practices. An expert noted that communities must be able to define the approach that works best for them. She acknowledged that peacemaker courts and sentencing circles are wonderful tools, but other tools in other communities could also be effective. Communities must identify their own resources. They can reach out to tribes successfully using peacemaking for guidance, but that should not limit them from establishing a system that works best for their unique community.

THE WAY FORWARD

The Future of Traditional Justice

Associate Judge David Raasch, Stockbridge-Munsee Tribe

Associate Judge David Raasch described his commitment to peacemaking and his experience in overseeing both adversarial dispute resolution and peacemaking, which he called the original alternative dispute resolution process. He urged Tribal communities and governments to consider alternatives to the modern adversarial system – practices that he asserted have value in international settings.

He explained that when a crime occurs, there is more at stake than merely the fact that laws were broken. He noted that sentencing circles provide more accountability to the community than a Western sentencing scheme. Judge Raasch recommended that Tribal governments move their focus from following the modern adversarial system back to traditional processes. Only after traditional processes are found to be insufficient, he argued, should Tribal governments turn to modern ways. He noted the need for strong leadership to support this work.

He recommended that the Federal government replace an overreliance on arrest and prosecution with funding these healing ways of the spirit. He acknowledged that Federal money is available through funding streams like DOJ's Coordinated Tribal Assistance Solicitation (CTAS), but noted the difficulties tribes have in fitting peacemaking into some of the designated purpose areas because they lack evidence-based research on the effectiveness of traditional justice. Efforts should be made to develop evidence-based research to more easily secure such funding.

He also cautioned that good code writing is critical to supporting these programs because peacemaking cannot compete with mandatory sentences.

Judge Raasch concluded his remarks by recommending an annual coming together for all cultures in the spirit of peace to discuss and support peacemaking.

Transferring Practices to Non-Native American Communities

Brett Taylor, Deputy Director, Center for Court Innovation

Brett Taylor described the Center for Court Innovation's (the Center) Tribal Justice Exchange, which, in addition to working with tribes to instill problem-solving justice principles into their Tribal justice systems, seeks to identify practices in Tribal courts that could translate to state court systems.²³ While on a site visit to the Navajo Nation to help plan and launch the first community court in a Tribal court setting, Center staff witnessed the power of peacemaking and, with DOJ's Bureau of Justice Assistance support, worked to develop a peacemaking pilot project in a state court, the Red Hook Community Justice Center in Brooklyn, New York.²⁴

²³ The Center for Court Innovation's Tribal Justice Exchange website is <http://www.courtinnovation.org/topic/tribal-justice>.

²⁴ The Center for Court Innovation's Peacemaking Program's website is <http://www.courtinnovation.org/project/peacemaking-program>

Mr. Taylor explained that in planning the Red Hook Peacemaking Program, the Tribal Justice Exchange held a roundtable of national leaders on peacemaking to discuss the feasibility of using peacemaking in a state court and how such a program could be implemented. Throughout 2012, the Center worked with Red Hook officials and community members to design the peacemaking program and recruited approximately 15 neighborhood volunteers to be trained as peacemakers. Experienced peacemakers from the Navajo Nation provided hands-on training to the Red Hook volunteers and helped guide the program to fruition.

Mr. Taylor reported that just prior to the scheduled training with the Navajo peacemakers, Superstorm Sandy created massive devastation to the Red Hook neighborhood and flooded the Red Hook Community Justice Center, where the training was scheduled to take place. Nonetheless, the Red Hook volunteers agreed that the training should continue. The Navajo peacemakers used the trauma of the storm as an opportunity to use peacemaking for healing. The Red Hook Peacemaking Program was successfully launched in January 2013. At the time of the EWG, the program had received 18 referrals, and three cases had been completed. Mr. Taylor explained that the fourth case turned out to be problematic, but noted that as he learned from his mentors there is no case too difficult for this process.

State courts in Michigan and Arizona have asked the Center for training and technical assistance to support the creation of similar peacemaking programs in their jurisdictions.

Recommendations to the Sponsoring Agencies from the Tribally-Aligned Participants

At the EWG meeting and subsequently through electronic correspondence, the experts prepared the following recommendations to the Federal government on ways it could support traditional justice for both Native American and non-Native American communities:

1. Tribal court judges should have more opportunities to learn from each other. Support should be provided for creating such opportunities, especially in coordination with, or in response to requests from, organizations of Tribal courts and/or judges working in those courts.
2. Financial incentives should be offered to Tribes in order to further their vision of peace in their communities.
3. Non-native criteria, especially in the context of grant or other funding requirements, should not be imposed on Tribes. It would be more suitable to collaborate with Tribes and other grantees concerning development of meaningful performance indicators in this field.
4. Joint-jurisdictional opportunities, such as in Leech Lake/Cass County Minnesota, should be supported when appropriate by all relevant jurisdictions.
5. Support should be provided for entire Tribal justice systems, rather than only court systems, when Tribes desire peacemaking implementation support.
6. The National American Indian Court Judges Association and other organizations serving Tribal court officials should be supported financially to help Tribal courts reintegrate traditional justice models.

7. Trainings offered by, or supported financially by, Federal agencies should utilize qualified American Indian/Alaska Native trainers whenever possible.
8. Tribes should be allowed to apply for funds for new ideas that do not fit into currently defined purpose areas on grant applications.
9. The Federal government should sponsor a National Day of Peace to raise awareness of the availability of, and successes of, peacemaking and other traditional justice systems in native and mainstream contexts.
10. The Federal government should allocate funding for training on peacemaking.
11. Native American organizations, such as the Native American Rights Fund and others, should be funded so that they can continue peacemaking training and provide a platform for sharing best practices in Tribal peacemaking implementation.
12. Tribes should be allowed flexibility to define and measure program success in ways that may not necessarily match Federal benchmarks.
13. Competitive grants are not sufficient to sustain successful programs, so the Federal government should commit to sustaining Tribal programs that it currently funds through competitive grants.
14. Funding should be treated as something that is necessary for the fulfillment of treaty obligations, rather than discretionary.
15. When the Tribal Law and Order Act is funded, tribes should be allowed to utilize funds for peacemaking rather than simply on more law enforcement and prosecution, because of the potential economic efficiencies to be gained.
16. Federal technical support should be provided to help tribes develop the statistical record necessary to qualify peacemaking as either an “evidence-based practice” or a “promising practice” or both, and thereby open up the possibility of currently available funding for such practices to support peacemaking.

APPENDIX A: AGENDA

Monday, April 29, 2013

8:30 – 8:45 Registration and Networking

8:45 – 9:05 Opening Remarks and Prayer

Deborah Leff, Acting Senior Counselor for Access to Justice, U.S. Department of Justice
James Cole, Deputy Attorney General, U.S. Department of Justice
Kevin Washburn, Assistant Secretary for Indian Affairs, U.S. Department of the Interior
Jodi Gillette, Senior Policy Advisor for Native Americans, White House Domestic Policy Council

Opening Prayer: Chief Justice Emeritus Robert Yazzie, Navajo Nation

9:05 – 9:15 Introductions and Workshop Goals & Outcomes

Maha Jweied, Senior Counsel, Access to Justice Initiative, U.S. Department of Justice
Tricia Tingle, Associate Director, Tribal Justice Support, Office of Justice Services, Bureau of Indian Affairs, U.S. Department of the Interior

Overview of the Expert Working Group meeting's goals and outcomes.

**9:15 – 10:45 Framing the Issue:
Traditional Justice Practices of Native American Communities**

9:15 – 9:45 ***Presentations:*** This panel discussion will provide an overview of the history and use of traditional practices and recent efforts to support their use and integration into present-day responses to criminal and delinquent behavior.

- ❖ Chief Justice Emeritus Robert Yazzie, Navajo Nation
- ❖ Justice Barbara Anne Smith, Chickasaw Nation
- ❖ Steve Moore, Senior Staff Attorney, Native American Rights Fund

9:45 – 10:45 ***Facilitated Roundtable Discussion***

Facilitators

Maha Jweied, Senior Counsel, Access to Justice Initiative
Tricia Tingle, Associate Director, Tribal Justice Support,
Office of Justice Services, Bureau of Indian Affairs

All participants will have an opportunity to discuss their goals for the workshop and the questions they would like to explore over the course of the day.

10:45 – 10:55 Break

10:55 – 12:30 Examples of Successful Traditional Justice Practices

10:55 – 11:25 ***Presentations:*** Panelists will describe the traditional justice programs in their communities.

- ❖ Chief Justice Herb Yazzie, Navajo Nation
- ❖ Chief Judge Lorrie Miner, Lower Brule Sioux Tribe
- ❖ Magistrate Judge Mike Jackson, Village of Kake, Alaska

11:25 – 12:30 ***Facilitated Roundtable Discussion***

Facilitators

Brett Taylor, Deputy Director, Center for Court Innovation
Aaron Arnold, Director, Tribal Justice Exchange

The presentations will be followed by a discussion with all participants to understand benefits and challenges of these programs and processes. Federal participants who have incorporated Native American traditional justice into Federal programs will also describe these programs and goals.

12:30 – 1:30 Lunch

Eric Wilson, International Affairs Coordinator, Bureau of Indian Affairs
Keynote: Professor James Anaya, UN Special Rapporteur on the Rights of Indigenous Peoples

1:30 – 1:40 Break

1:40 – 3:10 Overcoming Challenges to Building Successful Programs

1:40 – 2:10 ***Presentations:*** Panelists have assisted tribes in developing procedures for traditional justice programs and will identify potential challenges as well as strategies for overcoming obstacles to developing successful programs.

- ❖ Professor Jane Dickson-Gilmore, Carleton University
- ❖ Professor Nora Antoine, Sinte Gleska University, Rosebud Sioux Tribe
- ❖ James Botsford, Former Director, Indian Law Office, Wisconsin Judicare

2:10 – 3:10 ***Facilitated Roundtable Discussion***

Facilitators

Brett Taylor, Deputy Director, Center for Court Innovation
Aaron Arnold, Director, Center for Court Innovation's Tribal Justice Exchange

Continuation of the discussion on the benefits and challenges of these programs and processes.

3:10 – 3:20 Break

3:20 – 5:40 Moving Forward

3:20 – 3:40 ***Presentations:*** Panelists will explore what is needed to sustain these programs and processes across the country—including programs for non-Native American communities.

- ❖ Associate Judge David Raasch, Stockbridge-Munsee Tribe
- ❖ Brett Taylor, Deputy Director, Center for Court Innovation

3:40 – 5:40 ***Facilitated Roundtable Discussion***

Facilitators

Brett Taylor, Deputy Director, Center for Court Innovation
 Aaron Arnold, Director, Center for Court Innovation's
 Tribal Justice Exchange

The Expert Working Group will be asked to develop recommendations on the use and/or support of traditional justice practices.

5:40 – 6:00 Concluding Remarks and Prayer

Maha Jweied, Senior Counsel, Access to Justice Initiative
 Tricia Tingle, Associate Director, Tribal Justice Support,
 Office of Justice Services, Bureau of Indian Affairs

Closing Prayer: Associate Judge David Raasch, Stockbridge-Munsee Tribe

APPENDIX B: LIST OF PARTICIPANTS

S. James Anaya
Special Rapporteur on the
Rights of Indigenous Peoples
Office of the High Commissioner
for Human Rights
Geneva, Switzerland

James Antal
Deputy Associate Administrator
Youth Development
Prevention and Safety Division
Office of Juvenile Justice and
Delinquency Prevention
U.S. Department of Justice
Washington, DC

Nora Antoine
Professor
Sinte Gleska University
Mission, SD

Aaron Arnold
Director
Tribal Justice Exchange
Center for Court Innovation
Syracuse, NY

James Botsford
Former Director
Indian Law Office
Wisconsin Judicare, Inc.
Wausau, WI

James Cantrall
Deputy Director
Office for Victims of Crime
U.S. Department of Justice
Washington, DC

Melanca Clark
Senior Counsel
Access to Justice Initiative
U.S. Department of Justice
Washington, DC

Sheila Cooper
Senior Advisor for Tribal Affairs
The Substance Abuse and
Mental Health Services
Administration
Rockville, MD

Patrick Dunckhorst
Juvenile Justice Program
Specialist, OJJDP
U.S. Department of Justice
Washington, DC

Jane Dickson-Gilmore
Professor
Department of Law and Legal
Studies
Carleton University
Ottawa, ON, Canada

Silvia Dominguez-Reese
Senior Counsel
Access to Justice Initiative
U.S. Department of Justice
Washington, DC

Kathleen ME Gless
Victim Justice Program
Specialist
Office for Victims of Crime
U.S. Department of Justice
Washington, DC

Kathi Grasso
Senior Policy and Legal Advisor
Office of Juvenile Justice and
Delinquency Prevention
U.S. Department of Justice
Washington, DC

Leslie A. Hagen
National Indian Country Training
Coordinator
U.S. Department of Justice
Columbia, SC

Nicole Hanna
Liaison, U.S. Department of the
Interior – U.S. Department of
Justice
Washington, DC

Norena-Ann Henry
Senior Policy Advisor
Bureau of Justice Assistance
U.S. Department of Justice
Washington, DC

Paige Hausburg
Tribal Coordinator
Office of Child Support
Enforcement
Administration for Children and
Families
U.S. Department of Health and
Human Services
Washington, DC

Sam Hirsch
Deputy Associate Attorney
General
U.S. Department of Justice
Washington, DC

Magistrate Judge Mike Jackson
Customary & Traditional Officer
Kake Circle Peacemaking
Kake, AK

Maha Jweied
Senior Counsel
Access to Justice Initiative
U.S. Department of Justice
Washington, DC

Karen Lash
Senior Counsel
Access to Justice Initiative
U.S. Department of Justice
Washington, DC

Deborah Leff
Acting Senior Counselor for
Access to Justice
Access to Justice Initiative
U.S. Department of Justice
Washington, DC

Chief Judge Lorrie Miner
Lower Brule Sioux Tribal Court
Lower Brule, SD

Steven C. Moore
Senior Staff Attorney
Native American Rights Fund
Boulder, CO

David Morrisette, Ph.D. LCSW
Senior Program Manager
Center for Mental Health
Services
The Substance Abuse Mental
Health Services Administration
Rockville, MD

Steven W. Perry
Statistician
Bureau of Justice Statistics
U.S. Department of Justice
Washington, DC

Associate Judge David Raasch
Stockbridge-Munsee Tribe
Bowler, WI

Brett Shelton
Staff Attorney
Native American Rights Fund
Boulder, CO

Justice Barbara Anne Smith
Chickasaw Supreme Court
Ada, OK

Brett Taylor
Deputy Director
Center for Court Innovation
New York, NY

Gaye Tenoso
Deputy Director
Office of Tribal Justice
U.S. Department of Justice
Washington, DC

Patricia Thackston
Policy Advisor
Bureau of Justice Assistance
U.S. Department of Justice
Washington, DC

Tricia Tingle
Associate Director
Office of Justice Services - Tribal
Justice Support
Bureau of Indian Affairs
U.S. Department of the Interior
Washington, DC

Tracy Toulou
Director
Office of Tribal Justice
U.S. Department of Justice
Washington, DC

Vicki Turetsky
Commissioner
Office of Child Support
Enforcement
U.S. Department of Health and
Human Services
Washington, DC

Eric Wilson
International Affairs Coordinator
Bureau of Indian Affairs and
Bureau of Indian Education
U.S. Department of the Interior
Washington, DC

Chief Justice Herb Yazzie
The Supreme Court of the
Navajo Nation
Window Rock, AZ, Navajo
Nation

Chief Justice Emeritus
Robert Yazzie
Navajo Nation
Window Rock, AZ, Navajo
Nation

APPENDIX C:

RECENT FEDERAL EFFORTS TO SUPPORT TRADITIONAL JUSTICE

U.S. DEPARTMENT OF THE INTERIOR, BUREAU OF INDIAN AFFAIRS (BIA)

<http://www.bia.gov/>

- ❖ **Public Law 638 Contracts:** The Bureau of Indian Affairs funds 190 Tribal Courts through Public Law 638 Contracts. Tribes may use this funding to support traditional justice processes, which many do including recently awarded base increase to Navajo Nation to support traditional peacemakers.
- ❖ **One-Time Funding to Tribal Courts:** The Bureau of Indian Affairs also provides one-time funding for Tribal courts that receive funding under the Public Law 638 contracting and competing process at the end of each fiscal year. Requests for funding under this mechanism must be submitted as a direct request by the tribe to fund costs associated with the traditional justice. Some tribes have requested and successfully received funding to support this activity in the past.
- ❖ **Tribal Court Assessment:** The Bureau of Indian Affairs provides specific funding to tribes who participate in Public Law 638 contracting or compacting have gone through the Tribal court assessment. In the event that there is a strategic plan developed, the Bureau provides financial assistance and training and technical assistance to the reviewed Tribal court to the extent funding is available. If deficiencies are identified, additional resources might be available in this way.
- ❖ **Court of Indian Offenses (Code of Federal Regulation Courts):** The Bureau of Indian Affairs, in collaboration with the Santa Fe Indian School owned by the nineteen pueblos, has launched an initiative to address student discipline infractions through traditional interventions, requiring the students to apologize to their pueblo governor. The students are also provided with a success counselor who will work as a liaison between the student and school administration, tribal government, and the court.
- ❖ To learn more about these opportunities, please contact the Bureau of Indian Affairs Office of Justice Services – Tribal Justice Support:
<http://www.bia.gov/WhoWeAre/BIA/OJS/ojs-services/ojs-tjs/index.htm>.

U.S. DEPARTMENT OF JUSTICE, OFFICE OF JUSTICE PROGRAMS (OJP)

<http://www.ojp.usdoj.gov/>

- ❖ DOJ Tribal Training and Technical Assistance Providers for Tribal Courts:
<http://www.justice.gov/tribal/tta.html#s4>

U.S. DEPARTMENT OF JUSTICE, NATIONAL INSTITUTE OF JUSTICE (NIJ)

<http://www.ojp.usdoj.gov/nij/>

- ❖ OJP and NIJ-funded work on this topic can be found at: <http://www.nij.gov/topics/tribal-justice/Pages/bibliography.aspx>.

U.S. DEPARTMENT OF JUSTICE, BUREAU OF JUSTICE ASSISTANCE (BJA)
<http://www.ojp.usdoj.gov/BJA/>

- ❖ **Tribal Courts Assistance Program** (which is found in Purpose Area 3 of the Coordinated Tribal Assistance Solicitation or CTAS): The purpose of the Tribal Courts Assistance Program (TCAP) is to support the development, implementation, enhancement and continuing operation of Tribal judicial systems. Competitive grant funding is available to federally recognized tribes of any size for implementing, enhancing and continuing the operation of Tribal courts, including improving indigent defense. Tribes can, and many do, use this fund to support traditional justice models. TTA is available to both tribes who receive grant funding and those who do not.

TTA resources:

- Tribal Judicial Institute at University of North Dakota's School of Law, more information can be accessed and assistance requested by visiting: <http://law.und.edu/tji/tcap.cfm>
- National Tribal Judicial Center: <http://www.judges.org/ntjc>
- Center for Court Innovation Tribal Justice Exchange Peacemaking Program: <http://www.courtinnovation.org/project/peacemaking-program>.

- ❖ **Indian Alcohol and Substance Abuse Program** (available through CTAS Purpose Area 3): The purpose of the Indian Alcohol and Substance Abuse Program (IASAP) is to assist tribes in addressing alcohol and other substance abuse concerns through culturally relevant programs. Competitive grant funding is available to federally recognized tribes of any size. Tribes can, and many do, use these funds to support traditional practices and traditional justice models. TTA is available to both tribes who receive grant funding and those who do not.

TTA resources:

- o National Criminal Justice Training Center at Fox Valley Technical College: <https://www.ncjtc.org/iasap/Pages/default.aspx>

- ❖ **Healing to Wellness Courts** through both IASAP and the Adult Drug Court Program, funds and TTA are available to support healing to wellness courts which rely heavily on traditional justice practices. Competitive grant funds are available to federally recognized tribes of any size. TTA is available to both tribes who receive grant funding and those who do not.

TTA resources:

- o Tribal Law and Policy Institute: <http://www.tribal-institute.org/lists/bja.htm>

- ❖ **Tribal Justice Systems Strategic Planning** (available through CTAS Purpose Area 2): This program designed to support tribes in developing a comprehensive tribal justice system strategic plan. A strong emphasis is placed on tailoring the process to each individual tribe's unique resources and needs and many tribes chose to place an emphasis on incorporating traditional justice practices into their overall plan. Competitive grant funds are available to federally recognized tribes of any size. TTA is available to both tribes who receive grant funding and those who do not.

TTA resources:

- o National Criminal Justice Training Center at Fox Valley Technical College:
<https://www.ncjtc.org/TJSPP/Pages/default.aspx>

- ❖ **Tribal Justice Systems Infrastructure Program** (available through CTAS Purpose Area #4). The Tribal Justice Systems Infrastructure Program (TJSIP) is designed to assist tribes with planning, renovating and constructing justice system facilities such as correctional facilities, multipurpose justice centers (including courts), correctional alternative facilities, and transitional living facilities. TTA is available to both tribes who receive grant funding and those who do not.

TTA resources:

- o National Indian Justice Center: <http://www.nijc.org/CTASArea4.html>

- ❖ **Tribal Civil and Criminal Legal Assistance Program (TCCLA)**

The Tribal Civil and Criminal Legal Assistance (TCCLA) Program provides grants, policy leadership, and TTA to support federally recognized Indian tribes in enhancing their tribal justice systems and improving access to those systems. The grants are targeted to nonprofit organizations with a 501(c)(3) tax status to provide legal assistance services under tribal jurisdictions for Indian tribes, tribal justice systems, tribal members and where appropriate non-Indians. Resources serve to strengthen and improve the representation of all indigent defendants in criminal proceedings and tribal member, indigent litigants in civil causes of action under tribal jurisdiction. Legal support to tribal governments and tribal justice systems may include but are not limited to the enhancement of court policies, procedures, and code. Lastly, training and technical assistance funds are targeted to national or regional membership organizations and associations whose membership or membership section consists of judicial system personnel within tribal justice systems. TTA funds support the development and enhancement of tribal justice systems, including peacemaking. Visit the BJA Tribal Civil and Criminal Legal Assistance Program web page at https://www.bja.gov/ProgramDetails.aspx?Program_ID=102

The National Tribal Justice Resource Center (Resource Center) of the National American Indian Court Judges Association (NAICJA) serves as BJA's primary TTA provider to TCCLA grantees and provides TTA to tribal justice systems personnel, indigent defense services, tribal leaders, and those organizations seeking to provide civil legal assistance or public defense services to tribal communities and Alaska native villages. For more information, visit: www.naicja.org

The American Probation and Parole Association (APPA) in partnerships with the Tribal Judicial Institute of the University of North Dakota and the National Tribal Judicial Center of the National Judicial College provides training and technical assistance to Indian tribes and tribal justice systems who are implementing or plan to implement enhanced sentencing authority provision authorized in the Tribal Law and Order Act. For more information, visit: <http://www.appa-net.org>

- ❖ **Tribal-State-Local Intergovernmental Collaboration**

Under Section 222 of the Tribal Law and Order Act directs the Attorney General to provide technical assistance on strategies to promote intergovernmental collaboration among state, tribal, and local partners to develop successful cooperative relationships

that effectively combat crime in Indian Country and nearby communities. Topic areas include law enforcement, prosecution, public defense, courts, including traditional forms of peacemaking, corrections probation and parole and offender reentry. As part of this effort, BJA is working with federal and Training and Technical Assistance partners to coordinate resources. BJA supports its grantees and nongranttee tribes to help build, enhance, or expand their activities as they relate to crime prevention, the administration of justice, and other significant efforts. A current list of BJA tribal justice TTA providers can be accessed through the tribal justice and safety web site: www.justice.gov/tribal

❖ **National Training and Technical Assistance Center**

BJA's National Training and Technical Assistance Center (NTTAC) is a major source of criminal justice TTA information and resources, offering specialized assistance on current laws and evolving trends that affect the criminal justice field. BJA-sponsored TTA provides direct assistance to develop and implement comprehensive, systemwide strategies for public safety that also improve criminal justice systems. NTTAC supports criminal justice practitioners, elected officials, and citizen advocates in the following areas: training, information dissemination, technical assistance, and conference facilitation. For more information, visit the NTTAC web site at <http://bjatraining.org/>

U.S. DEPARTMENT OF JUSTICE, BUREAU OF JUSTICE STATISTICS (BJS) <http://bjs.ojp.usdoj.gov/>

- ❖ 2014 National Survey of Tribal Court Systems, includes questions on traditional systems: <https://www.tribalcourtsurvey.org/>

U.S. DEPARTMENT OF JUSTICE, OFFICE OF JUVENILE DELINQUENCY AND PREVENTION (OJJDP) <http://www.ojjdp.gov/>

- ❖ OJJDP Tribal Youth Training and Technical Assistance Center, <http://www.tribalyouthprogram.org/about-training-and-technical-assistance-center>.
- ❖ OJJDP and BJA, in partnership with the American Probation & Parole Association and the Education Development Center, Webinar: Alternatives to Incarceration in Indian Country on Thursday (June 20, 2013) (The goal of this webinar was to provide Tribal justice agencies with an overview of the wide variety of alternatives to incarceration that can be implemented into a menu of sentencing options and programs to enhance the community-based services provided to justice-involved Tribal members.) (<https://www2.gotomeeting.com/register/458326794>)

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION (SAMHSA)

- ❖ Addiction Technology Transfer Center Network, June 5, 2013 Webinar: “The Utilization of Traditional Based Practices for American Indians/Alaska Natives with Substance Use Disorders: Research and Treatment Implications” (Information regarding the use of traditional based practices for American Indians/Alaska Natives with substance use disorders and the research and treatment implications.)
(<http://www.attcnetwork.org/regcenters/EventDetails.asp?rcID=22&eventID=10533>)

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, INDIAN HEALTH SERVICE (IHS) <http://www.ihs.gov/>

- ❖ The Indian Health Service’s Division of Behavioral Health, Webinar: Partnering with Justice Systems for Behavioral Health Treatment and Prevention (September 24, 2013) (This webinar looked at both Healing to Wellness Courts and the Victim Advocate support system, the goals of the approaches, the barriers encountered, and the ways behavioral health practitioners can forge productive partnerships with stakeholders in the justice system.)

U.S. DEPARTMENT OF VETERANS AFFAIRS (VA) <http://www.va.gov/>

- ❖ **Veterans Justice Outreach (VJO) Program & Health Care for Re-Entry Veterans (HCRV):** VJO Specialists are responsible for direct outreach, assessment, and case management for justice-involved Veterans in local courts and jails, and liaison with local justice system partners; their contact information is available at: <http://www.va.gov/homeless/vjo.asp>. HCRV Specialists provide outreach to Veterans approaching release from state and Federal prison; their contact information is available at: www.va.gov/HOMELESS/Reentry.asp. Both VJO and HCRV Specialists can be used as a resource by Tribal courts to help divert justice-involved veterans from incarceration and get them the help they need and have earned through their military service. Traditional processes may be integrated into this activity.
- ❖ **Resource for Justice Involved Veterans – A Guide for Tribal Justice Systems:** The Guide describes several efforts currently underway to address the need for treatment and other services among Veterans in the criminal justice system. Veterans Treatment Courts (VTC) are an example of one approach, although not the only one, and receives particular attention. The Guide discusses the components common to most VTCs and suggest the steps a Tribal government may take to implement a certain piece of the model. One purpose of the Guide is to provide interested Tribal governments with a breakdown of how VTCs work and identify the movable parts of various programs that would allow Tribal governments to choose the parts it wants to explore using in its Tribal justice system – including systems that incorporate traditional justice. No less important, the Guide is intended to identify resources available to justice-involved Veterans, regardless of whether their communities have adopted the VTC model. The Guide can be accessed at:
http://www.va.gov/TRIBALGOVERNMENT/docs/resources/Resources_for_Justice-Involved_Veterans-Final_Version.pdf