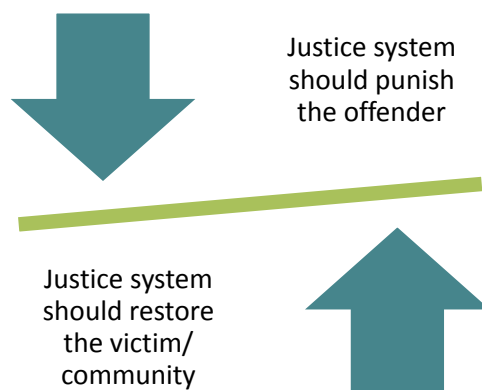


The Right to be Heard: Enhancing the Role of Victims in Tribal Courts

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Center for Court Innovation

Background: The Role of Victims in the “Anglican” Court System



Center for Court Innovation

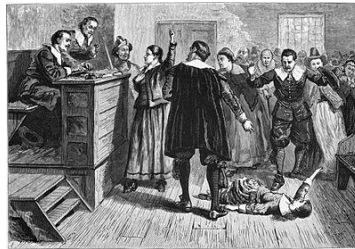
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Colonial justice system

Victims (or their survivors)

- Brought their own actions;
- Conducted their own investigations;
- Argued their own cases.

There was no difference between civil or criminal cases.



Enter the prosecutor

- ▶ Gradual creation of civil and criminal divisions.
- ▶ Theory of “protecting the community” or representing “the people” emerges.
- ▶ Victim’s role becomes removed.
You give the evidence to the prosecutor and the case proceeds without you.



As a result...

Criminal process looks like this:



What is everyone afraid of?



WHY WOULD A TRIBAL JUSTICE SYSTEM WANT TO ENHANCE THE ROLE OF VICTIMS IN PROCEEDINGS?



Four Justifications

- Comprehension by offender
- Fairness
- Therapeutic for victim
- Information sharing

Rights vs. Rites

Rights

- Checks and balances
- Giving victims the right to speak signals 1) their suffering; 2) the behavior is not tolerated; 3) the crime was important in the life of the victim.

Rites

- Victims process the crime in public, feel empowered
- Move on with their lives

Other outcomes

- ▶ May decrease total time and cost invested in proceeding
- ▶ Victim satisfaction
- ▶ Gives court credibility and support
- ▶ May lead to more alternative sanctions with meaningful results rather than simply jail or fines

Victims Rights Movement

Gained traction in the 1980s
and 90s

48 states guarantee victims
the right to be heard at
sentencing

Victim impact statements are
allowed in all 50 states

U.S. Crime Victims Rights Act
of 2002

What kinds of enhancements are other tribal courts using?

- ▶ Victims' Rights Codes
- ▶ Diversion to victim-offender rehabilitation
- ▶ Community impact panels
- ▶ Court process enhancements
- ▶ Victim advocates

Crime Victims Code

Sault Ste. Marie Tribe of Chippewa Indians

Notice

Confidentiality

Restitution

Status of offender when incarcerated

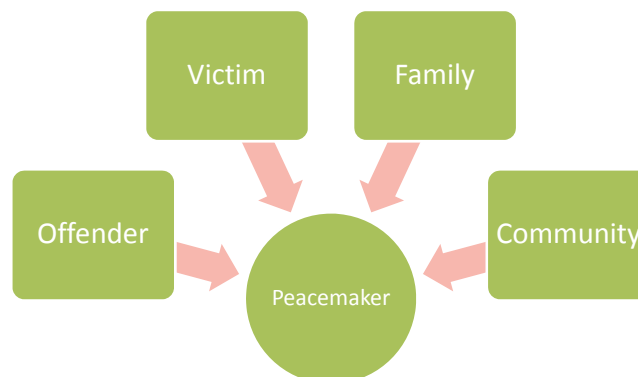
Right to be present

Impact statement at sentencing

Victim-offender rehabilitation

(Healing Circles, Peacemaking, Peacemaker's Court)

Mnaweejeendiwin (Walking Together in a Good Way) –



Community impact panels (Circle sentencing, family group conferencing, accountability boards)

*Akwesasne
Justice
Department
Council of Neh-
Kanikonriio
(The Good
Mind)*

- Panel of 3-4 council members reviews each case
- Hearing includes panel, offender, victim(s), resource staff
- At the request of the victim, prosecutor will divert the case to the Council rather than bringing charges

Recognition of victim

- ▶ Moment of silence for victims of crime
- ▶ Empty chair
- ▶ Hall of photos/names

Courtroom procedures - PROCESS

Create private waiting areas

Apply same sentencing for non-stranger crimes

Limit additional intimidation factors

Encourage accelerated trial dates/ discourage continuances

Schedule hearings with victim(s) needs in mind

Courtroom procedures - PERSONNEL

Provide court staff training (include bailiff/ clerks!)

Permit advocates in courtroom

Encourage specialized courts/ prosecution units

Create victim assistance program

Thank you for your attention!

Questions or comments?

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