

## 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



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NADCP 19th Annual Training Conference  
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## 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.

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

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

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## Historical Perspective

- Understanding of Native history – critical to understanding current perspectives
- Each tribe has a unique history of contact with non-Indians, but there are common themes
- Each tribe has unique culture, norms and values
- No “one size fits all”



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## Federal Indian Law

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

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## Doctrine of Discovery

- Framework of Dominance
- *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

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## Phases of Federal Indian Policy

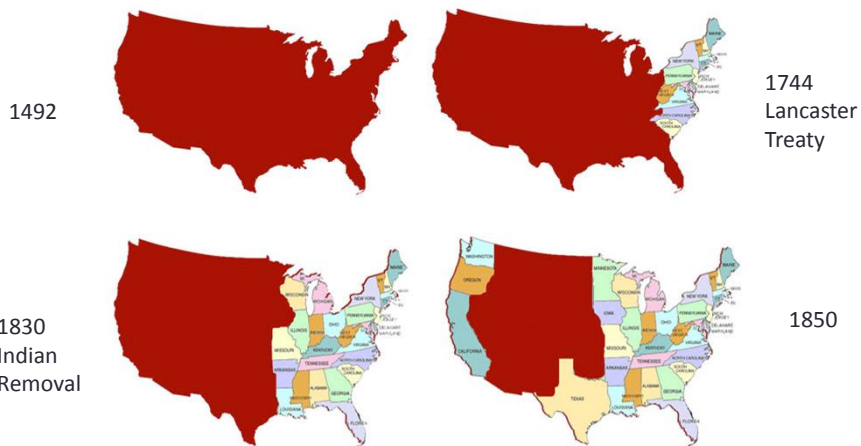
- Objective: “How to deal with the Indians”
- Regardless of intent – result was a weakening of tribal sovereignty
  - Assimilation (“Kill the Indian, save the man” – Capt. Pratt)
  - Forced “make over” of Indian nations and societies into own image
- Loss of tribal land



Tom Tolino, Navajo  
Carlisle Indian School

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## Tribal Land over American History



1492

1744  
Lancaster  
Treaty

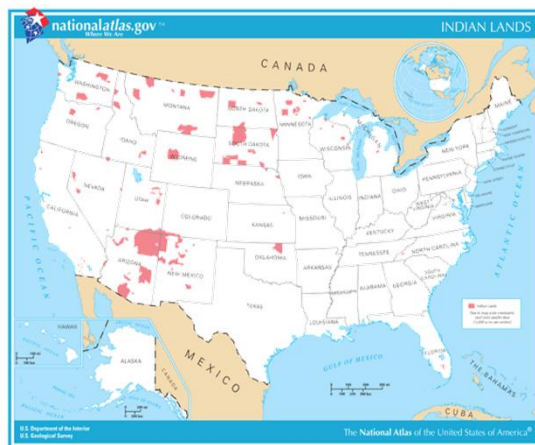
1830  
Indian  
Removal

1850

[www.indianvillagemall.com](http://www.indianvillagemall.com)

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## Tribal Land Today



[www.nationalatlas.gov](http://www.nationalatlas.gov)

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## 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

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## Phases of Federal Indian Policy Cont.

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

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## Phases of Federal Indian Policy Cont.

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

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## 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

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## 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

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## Tribal Courts

Prior to European contact, native 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.

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.

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## Every Native 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

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## Addiction in Indian Country

- Alcohol/Drugs introduced by traders in Indian country
- Cigarette Addiction 52% - highest among all other ethnic groups
  - Childhood trauma increases smoking risks
  - Daily smokers are 5 times more likely to abuse alcohol
- Alcoholism is at an all time high among Native people
- Most violent crimes committed in Indian country involve alcohol/drugs on both the part of the offender and the victim

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## Impacts of Addiction

- Tends to mask the real source of the problem
- Enhanced Low Self-Esteem
- Loss of sense of belonging or connection to the tribal community or group
  - Possibly stemming from historical trauma
  - Negative boarding school experience
  - Relocation
  - Assimilation

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## 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 Native concepts - Healing and Wellness; and
  - (2) promote the program’s efforts to promote wellness as an on-going journey.

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## Tribal Healing to Wellness Courts



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

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



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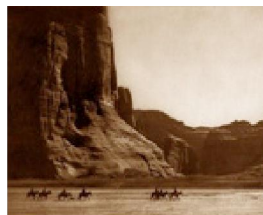
## Treatment of Alcohol/Drug Use & Trauma Among Native American's

- 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

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## Tribal Healing to Wellness Court & State Drug Court Distinctions

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



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## 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 native 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](http://www.samhsa.gov)

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## 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



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## 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*

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## Promising Practices Generally

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

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



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## 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

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# ST. REGIS MOHAWK TRIBE

Micaelee Horn, Coordinator, Healing to Wellness Drug Court

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## 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



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## Modern Government(s)

- Because there are two separate governments that oversee the distribution of federal monies, two different governments have developed on the territory: the Saint Regis Mohawk Tribe (American), and the Mohawk Council of Akwesasne (Canadian).
- This is further complicated by the provincial borders of Ontario and Quebec on the Canadian side.

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## 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

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# LEECH LAKE BAND OF OJIBWE

Hon. Korey Wahwaasuck

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## The Leech Lake – Cass County – Itasca County Model

Joint Powers Agreement:

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

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



## Joint Jurisdiction Wellness Court Teams

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



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## Leech Lake – Cass County Wellness Court

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

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## 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

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

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

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## Stepping Forward

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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.

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## Thank You



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

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