



2nd Annual Peacemakers Gathering

October 22 – 23, 2008

Preserving Tribal Justice
through Indigenous Peacemaking



EXECUTIVE SUMMARY



Editor: Michelle Rivard Parks, Associate Director, Tribal Judicial Institute

Contributors: Charlotte Skarr, J.D. Law Clerk, Tribal Judicial Institute
Lynnette Morin, J.D., Law Clerk, Tribal Judicial Institute



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- Nora Antoine, Business Education Department Chair/Instructor, Sinte Gleska University
Philmer Bluehouse, Traditional Peacemaker, Navajo Nation
- James Botsford, Director, Indian Law Office, Wisconsin Judicare
- Kevin Briscoe, Youth Court Judge, Mississippi Band of Choctaw Indians
- Roman Duran, Associate Judge, Jicarilla Apache Nation
- Melissa Johnson, Administrative Associate, Tribal Judicial Institute
- Edward Krueger, Director, Criminal Justice Center for Innovation,
Fox Valley Technical College
- Christine Folsom-Smith, Program Attorney, National Tribal Judicial Center
- Vincent Knight, Executive Director, National Tribal Justice Resource Center
- Steve Moore, Senior Staff Attorney, Native American Rights Fund
- Beckie Murdock, Tribal Justice Programs Manager, Criminal Justice Center for
Innovation, Fox Valley Technical College
- Ada Pecos Melton, President, American Indian Development Associates
- Dave Raasch, Tribal Justice Specialist, Criminal Justice Center for Innovation,
Fox Valley Technical College
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- Eugene White-fish, Chief Judge, Forest County Potawatomi Tribal Court

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Sincerely,

BJ Jones, Director

Michelle Rivard Parks, Associate Director

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I. Introduction to Traditional Dispute Resolution

Traditional dispute resolution methodologies vary from tribe to tribe both in name and in process. For many tribal communities law was, and continues to be, a way of life reflecting community values and norms. When examining the intricate justice systems of the Iroquois Confederacy, the Navajo Nation, the Cherokees, or any of the more than 564 federally recognized tribes, one factor remains consistent: traditional dispute resolution is an integral part of justice system planning as Tribes move forward to provide safety and harmony for their communities.

For many tribes justice is found not only in the operation of court systems, but in the resurrection of restorative justice principles that promote healing within the community, as opposed to punishment or retribution.¹ We see such principles and values alive today as we look at tribal justice programs focused on mentoring the youth in cultural traditions and rituals. These programs give valuable life skills and tools to the youth and bring them back into the traditional mindset of community over individual rights. The ultimate goal for many traditional justice systems, especially those employing traditional peacekeepers, is to attain peace through healing. In modern society these traditional dispute resolution methodologies and procedures provide an alternative method for tribal courts to promote healing for individuals as well as the larger community and to lighten what are oftentimes overwhelming tribal court caseloads. Traditional dispute resolution methodologies generally combine cultural elements within a set of rules thereby making the process more familiar, respectful and relevant in tribal communities.

One of the most studied traditional dispute resolution forums is that of the Navajo Nation. Navajo peacemaking is one of the most renowned restorative justice programs in the world and is a process that was both revived and institutionalized in the 1980s by the Navajo Nation.² Navajo Peacemaking is neither mediation nor alternative dispute resolution; it has been called a “horizontal system of justice” because all participants are treated as equals with the purpose of preserving ongoing relationships and restoring harmony among involved parties. In peacemaking there is no coercion, and there are no “sides.” No one is labeled the offender or the victim, the plaintiff or the respondent and yet the peacemakers assist in resolving disputes of all kinds, including criminal acts. Members of the Navajo Nation have developed many publications, identifying exactly what the Peacemaking process is in the Navajo tradition, and as practiced in the Navajo courts, so that it can be duplicated in other tribal courts.³

Although perhaps the most studied, the Navajo Nation is not the only tribal community that has seen a resurgence of traditional dispute resolution methodology. Much work was done within the Chickasaw Nation Court system to develop a forum for dispute resolution that is centered in peace.⁴ In Chickasaw tradition, peacemaking begins as a voluntary process for individuals who find themselves in conflict. In the Chickasaw Peacemaking court the core values are respect, humility, compassion, spirituality and honesty.⁵ Peacemakers in the Chickasaw Peacemaker Court make every attempt to mediate, educate, heal and guide individuals through a process with peace as an end goal.⁶

In the state of Wisconsin there are also efforts underway to support traditional peacemaking and mediation. Wisconsin Judicare, a program organized in 1966 by the Wisconsin Bar Association with the purpose of providing legal services to low-income individuals, has been a long-time supporter of mediation and peacemaking, seeing it as the way of the future in the development of tribal justice. Wisconsin Judicare, having developed



strong ties with several tribes in Wisconsin, has provided support to several Wisconsin Tribes rejuvenating such procedures. In close-knit tribal communities, relationships are strong, deep and interwoven making the adversarial system ill-suited for sustainable problem-solving in such settings. Recognizing this fact, several tribal courts in Wisconsin are in various stages of development of traditional dispute resolution forums. Many of the tribal judges involved in this effort believe mediation/peacemaking will serve their communities well in civil, criminal and juvenile delinquency areas.

The Native Hawaiian Legal Corporation and Native Hawaiian Bar Association partnered to create a Peacemaking Project to build capacity within native communities to resolve conflicts as an alternative to court interventions. The Native Hawaiian Legal Corporation and Native Hawaiian Bar Association partnered to create a Peacemaking Project to build capacity within native communities to resolve conflicts as an alternative to court interventions. The Ho’oponopono, or the process of disentanglement from interpersonal conflict, is an integral and important part of Polynesian culture that has survived and reemerged for the indigenous inhabitants of the Hawaii islands. The process of disentanglement involves twelve distinct steps that the participants must complete, each step having a distinct purpose or goal. Although widely used, the process itself is employed in various ways by individuals, but the underlying purpose of balance and peace are constant.

While peacemaking provides an excellent example of the resurgence of traditional dispute resolution, it is not the only example. Many tribes across the nation are incorporating important traditions into their justice systems as a means to not only resolve conflict, but also to reflect community norms and standards. Once such example of the incorporation of tradition and custom into a modern justice system can be found on the White Earth reservation in Minnesota. The White Earth Band of Ojibwe have incorporated into their judicial code a process whereby children in need of care may find a level of stability and permanency through a customary adoption process. This process invokes many traditional practices and ceremonies to facilitate an adoption as it would have occurred traditionally within the tribe. However, the development of the existing tribal laws has enabled the court system to recognize such adoptions and to also have such adoptions recognized and subsidized by state and federal agencies.

Although the aforementioned examples of traditional dispute resolution forums and procedures are most certainly not representative of all tribal communities, they provide some excellent examples of how tribes are looking back in order to move forward with the development of their justice systems. By employing traditional dispute resolution methodologies and philosophies, many tribes are finding that they are able to resolve conflict in a manner that is sustainable, meaningful and perhaps most importantly, a manner in which peace is restored to individuals and where individuals are reconnected to the community.

¹ See ex. Iroquois Confederacy, Great Law of peace; see also Navajo Nation

² James, Zion, The Dynamics of Navajo Peacemaking, Journal of Contemporary Criminal Justice, Vol. 14 No. 1, February 1998 58-74

³ Id.

⁴ <http://www.chickasaw.net/judicial>

⁵ Id.

⁶ Id.

⁷ See ex. Ho-Chunk Nation Traditional Court (made up of traditional clan leaders)

⁸ See ex. Stockbridge-Munsee Community Tribal Court

⁹ Id.

¹⁰ John Barkai and Ronda Roberts Callister, Ho’oponopono: Some Lessons from Hawaiian Mediation, Negotiation Journal (January 1995)

¹¹ Id.

¹² White Earth Band of Ojibwe Judicial Code, Title 4a. Customary Adoption Code

¹³ Laura Mirsky, Restorative Justice Practices of Native American, First Nation and other Indigenous People of North America: Part One, www.restorativepractices.org (2004)(quoting Judge Joseph Flies-Away who explained that the purpose of traditional law is to bring people back into the fold stating, “People do the worst things when they have no ties to people!”...”Tribal court systems are a tool to make people connected again.”)



II. The 2008 Annual Gathering: Preserving Tribal Justice through Indigenous Peacemaking

A. CONFERENCE PLANNING & BACKGROUND

The first National Gathering on Indigenous Peacemaking occurred in Oklahoma City, Oklahoma in October of 2007. The two day event was the result of months of planning by representatives of the Chickasaw Nation, peacemakers from across the nation and a number of federally funded training and technical assistance providers, including the Tribal Judicial Institute with financial support from the United States Department of Justice, Bureau of Justice Assistance. The gathering addressed such topics as historical trauma, peacemaking concepts, finding and training peacemakers, and the interplay between peacemaking and present day judiciaries. In addition to such substantive topics, several panelists highlighted the success of indigenous justice strategies by sharing information on existing justice programs that are employing indigenous justice methodology in the administration of justice.

The National Gathering on Indigenous Peacemaking summary and evaluations demonstrated that the event was well-received and that participants expected additional training on such issues at future events. Participants provided input into future topics and suggestions were made to include international indigenous communities. Based upon the success and value of the first gathering, planning partners made the decision to move forward with planning another event in 2008.

The 2008 Gathering took place in October of 2008 and was the result of more than a year of planning on the part of many project partners and peacemakers who are practicing traditional dispute resolution methods in tribal communities. The planning team for this conference was comprised of judges, attorneys, agency directors, Traditional Peacemakers and many others, all of whom contributed valuable insight and personal knowledge.

“my eyes have been opened, my heart enriched, and the basis- HEALING- has struck a chord within me...” [2007]

The planning team was fortunate because it collaborated with the Native American Indian Court Judges Association (NAICJA) to hold its annual conference and the Indigenous Justice Events as separate events occurring the same week to ensure participation from Tribal Judges nationwide. The agencies decided to work together on the agenda to prevent duplication of curriculum so that participants could attend both events. The theory behind this strategy was that both NAICJA and the Tribal Judicial Institute (TJI) would reach a larger audience by conducting the events during the same week then if the events were held at different times and at different venues. In addition the cost for the agencies conducting the events would be greatly reduced as would the travel expenses for the participants.

The data in this Event Summary was collected from the Peacemaker Gathering, held on October 22-23, 2009 in Green Bay, Wisconsin. This conference was made possible through a grant awarded to the Tribal Judicial Institute by the Department of Justice. The Tribal Court Assistance Program (TCAP) was part of a plan that began in 1998 by the Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice to



provide Tribes assistance with the planning, implementation and strengthening of tribal justice systems within Indian Country.

B. CONFERENCE GOALS

The goal of this conference was to promote and highlight traditional forms of justice, addressing the issues of planning and implementing traditional dispute resolution methods and philosophies into contemporary tribal justice systems as an alternative to the western-style justice systems adopted by many tribes.

C. CONFERENCE HIGHLIGHTS

The Peacemaker Gathering Conference brought together Native and non-Native people from across Indian Country to discuss and express their experiences with, and interest in, peacemaking models as an alternative to the western model of justice, which focuses on punishment and not necessarily healing. Ironically, the Peacemaking model is an historically familiar, yet new alternative to many tribal court systems, even though this method of resolving conflicts has been existant in Indian country for centuries preceding the arrival of the Europeans. Overall, the conference focused on the process of implementing the peacemaking model as an alternative to the traditional court system. The model focuses on healing the individual as well as the family and community affected. Peacemaking is a work in progress, but it can change the way the law is handled and also empower tribal members.



One key point discussed was the healing aspect of Peacemaking, as opposed to the relatively punitive nature of many western criminal justice systems. When a person is abusing alcohol or drugs the end result is usually a crime being committed against the community and its citizens. That person may be punished by incarceration or fines, but that punishment does not restore the loss sustained by the community member, nor does it provide insight for the perpetrator into how his conduct has impacted the community. The peacemaking model addresses the underlying historical and inter-personal causes of the misconduct in an attempt to avoid replication of the behavior and to restore harmony to the community. Peacemaking is about relationships within the community and helping those who disrupt those relationships to make amends and regain their place in the community. Peacemaking also involves the act of retribution by the offender and the act of forgiveness by the victims and community if sufficient contrition is demonstrated.

“the gathering was very informative. I obtained knowledge on peacemaking which I will take back to our communities and families”[2007]



The conference had several sessions discussing different aspects of the peacemaking model. One session presented, by Fort Lewis College Professor and Tribal Court Judge Carey Vicenti, provided insight into the peacemaking process and traditional dispute resolution methodology, including the possibility of incorporating the Peacemaking model into the tribal justice system as an alternative form of dispute resolution by use of four core principles. These core principles are the voluntary nature of participation, the neutrality of those involved, the maintenance of confidentiality, and the enforceability of any achieved consensus.

The peacemaking model was grounded in the Native “roots and traditions”, in use for centuries prior to European contact. Peacemakers are working for the assimilation of a Native American process into a fundamentally western legal system and discovering along

the way ;that peacemaking is not only a viable alternative, but oftentimes a much cheaper one, for Tribes strapped for criminal justice resources. In addition peacemaking is a “deep and intense” discipline and if the dedication and determination of the Native community is strong the process can be implemented into the existing tribal court infrastructure.

Other interesting points discussed by the participants were how historical events have impacted the harmony of tribal communities. Losses such as the historical trauma of native families losing their children to the boarding schools, and the concomitant loss of tribal values and languages, played a fundamental role in the destruction of native traditional justice practices. Discussion on how this historical even affected many Native communities dealt with this loss oftentimes in destructive ways such as alcohol dependence and self-destructive behavior. It is ironic that peacemaking was frowned upon by the federal agencies dealing with native affairs many decades ago, but now is being resurrected as an alternative form of conflict/dispute resolution not only by Tribes, but by state courts.

“the gathering was very informative. I obtained knowledge on peacemaking which I will take back to our communities and families”[2007]

D. SESSION SUMMARIES

The 2008 Gathering provided participants with an overview and summary of the prior Gathering. Chief Justice Barbara Smith of the Chickasaw Nation Tribal Court was on hand to inform participants about the highlights and lessons learned from the prior event and to pass the torch to the host Tribe as a symbol of the ongoing effort to share and implement indigenous justice strategies that focus on the restoration and peace and balance to tribal communities. Participants of the 2008 Gathering received information and participated in many discussions relating to the current state and future of tribal justice, restoring balance to tribal communities, and peacemaking in action. In addition to the larger plenary topics participants were able to take in a number of workshop sessions providing valuable information on a variety of topics including:



I. WELLNESS COURTS

This session was presented by Sonny Goggles, Coordinator, Shoshone & Arapahoe Tribal Substance Abuse Court, and focused on the way wellness courts employ and promote the core principals of traditional dispute resolution. Tribal Healing to Wellness Courts have taken the western concept of drug courts and adapted them to incorporate traditional values of peacemaking. This session also provided ways to incorporate wrap-around services into the Wellness Courts and address the diverse needs of individuals to promote healing by providing support for families and the communities.

“This should be an annual conference. This is very important for the future of tribal justice, please keep these gatherings happening.”[2008]

One of the issues addressed during this session was the function of alternative courts such as drug courts and substance abuse courts in tribal communities. The majority of offenders in tribal communities commit crimes while under the influence of drugs and alcohol and this reality must drive tribal justice initiatives. Also, the success rate of cases that proceed through these alternative courts compared to the adversarial courts system must be examined to determine if crime is more effectively addressed through these courts. A focus area was finding that the justice systems of today are failing to address the underlining problems of individuals who have been incarcerated for various crimes because of substance abuse. The wellness courts are designed to address the substance abuse issue and it involves others either from the family, community or elders in the individuals healing process either through treatment programs and/or group therapy. Another issue discussed is the individual as a tribal member assisting in finding their own identity whether culturally or spiritually by providing support groups or other services called wrap-around services that help the individual with their healing process. Interesting points of discussion were that drug dealers have targeted Indian reservations due to the level of poverty and how easy the money was to make. In addition some probation officers have created relationships with the family members of their client to support and to assist in the healing process.

II. CREATING A BALANCED/PEACEFUL ENVIRONMENT FOR THE COURT

This workshop, which was presented by Elbridge Coochise, Coochise Consulting LLC, looked at a judge’s role in maintaining a peaceful court environment by using certain tools to maintain the balance during stressful cases in court and when the parties are upset. One of the duties a judge must perform is to have control of the proceedings in court before them. When an individual has been summoned to appear in court no matter what the reason it is an uncomfortable situation.

One role a judge must perform is to provide a fair process whether informal or formal and provide the community with an understanding of a process to achieve harmony within the Native community. The judge also attempts to find solutions when using the peacemaking approach by providing the parties the opportunity to talk and listen to each other with the possibility of reaching an agreement. This informal process of peacemaking environment created by the judge contributes to the healing process of the individuals and restoring the harmony of the community.

The adversarial process of the court systems today are contributing to the unbalanced harmony of society today and within this type of system there is no healing only more conflict because the underlining problems never get heard or resolved.



III. EQUINE ASSISTED LEARNING

This workshop was presented by William Cavanaugh, Associate Judge, Spirit Lake Tribe, Darla Thiele, Juvenile Intake Officer, Spirit Lake Tribe and Jessica White Plume, Evaluation Partner, Spirit Lake Tribe. The panel focused on the peace and healing process of the youth by implementing the Shunka Wakan Ah Ku project which was created by the Spirit Lake Tribe, court personnel, and the community volunteers.

The project incorporates the traditional values and requires active involvement from participants. The youth can relate to the horse and some were able to see the horse as a “free spirit but is haltered and controlled” by others just like they are controlled and haltered in their lives. This project teaches valuable life lessons and traditional values such as respect, honesty and compassion. Such life lessons and core values are translated to the participants as they begin working with the horse; they learn from the horse and from the relationship that evolves with the horse. Juveniles are court ordered to enroll in this program as an alternative to juvenile detention and the program also offers opportunities for prevention to non-court involved youth.

“I am a tribal member and wish this information could be shared with more tribal member, business committee and commissioner.”
[2008]

IV. THE LONG OPINION

The workshop was presented by Taiawagi Helton, Professor, Oklahoma University Law School and provided information and discussion on the circumstances that arose in a United States Supreme Court case involving the Long Family Cattle Company, an Indian-owned cattle operation, and a South Dakota bank that resulted in the US Supreme Court overturning a tribal jury verdict in favor of the Cattle company against the bank for discriminatory lending practices. Discussion was had on the impact this particular decision will have on tribal civil jurisdiction over non-Indian lenders in tribal communities in light of the Court’s holding that the Tribal Court lacked civil jurisdiction.

Some of the attendees commented on the information provided by the presenter which informed them about the perspective of the Roberts court and that the peacemakers could make a big difference in trying to mediate disputes between Indians and non-Indians to avoid continued erosion of tribal court authority.

The presenter listed 3 critical questions for tribes to consider as they develop politically and judicially:

- 1) what do tribal governments do?
- 2) What do we want to do in tribal government and the Courts?
- 3) How do we get there and what needs to change?

V. HISTORICAL TRAUMA

This workshop. Presented by Faith Spotted Eagle, Consultant from Lake Andes, SD, and member of the Rosebud Sioux Tribe focused on the topic of the impact of historical trauma on Native communities today. The peacemaking process would benefit the Native community by creating a process by which healing can happen and the inter-generational dynamics of historical trauma



VI. ROLES OF TRADITIONAL HEALERS IN PEACEMAKING-

Philmer Bluehouse, Traditional Peacemaker from Ft. Defiance, Arizona has been actively engaged within his community as a peacemaker for many years. This workshop explored the distinction between traditional healers, peacemakers, and judges. During this session the speaker described an individual has having two sides: the warrior and the peaceful sides. These sides are inherited from your parents to provide balance in one’s life. Each person has the choice to use the warrior or peace side when dealing with healing. Everyone is a healer; the individual just needs to find it within himself.

VII. PEACEMAKERS IN PROBATION AND PAROLE-

This workshop provided participants with the opportunity to see first-hand how indigenous justice methodology can be employed at various points and times in an existing justice system. Dave Raasch, a Tribal Justice Specialist with Fox Valley Technical College, provided examples in the application of the core principles of peacemaking in the area of probation and parole within the tribal justice system. Mr. Raasch explained that one of the duties of a probation officer is to track the progress of the individual on probation or parole and at times there is more misunderstanding between the parties than understanding. By employing core principles of peacemaking within the relationship between the officer and the individual who is being supervised, there is oftentimes a more clear line of communication and as such the peacemaking concept benefits the probationer or the parolee.

“This information is so valuable and I know I will do as much advocated for this way of treatments for our people.” [2008]

VIII. THE EQUITY POWER OF TRIBAL COURTS AND PEACEMAKING

This workshop was presented by Dustin Rowe, Special Judge, Chickasaw Nation District Court and Chief Justice Barbara Smith, Chickasaw Nation Tribal Court. The presenters discussed the inequality that exists within a western model court system, based upon vertical relationships of superiority, in comparison to the equality of justice that may be facilitated by peacemaking courts. Courts of equity and courts of law occasionally intersect; however this session focused on and provided concrete examples of the ways that Tribal Courts and Peacemaker courts can co-exist in an effort to maximize equal justice.

IX. PEACEMAKING IN ACTION

This session was presented by Ernie St. Germaine, Elder and Peacemaker, Lac Du Flambeau Tribe and Amanda Rockman, Associate Judge Ho-Chunk Nation. The panelists provided the attendees with information that focused on how peacemaking has been integrated into their tribal justice systems and what resources they used to get the peacemaking concept implemented into the tribal justice systems. Also, the panelists discussed the impact on the community after implementation of peacemaking into their justice systems and the positive changes that it has made. The panelists informed the attendees what has worked and what has not work during the period of implementing the process.



X. RESTORING BALANCE TRIBAL COMMUNITIES

Vernon Lambert, from Ft. Totten, ND is a Cultural Instructor at Cankdeska Cikana Community College and focused his presentation on the oral civilization vs. colonized civilization. The session provided information on the disconnect between the value systems and goals of many tribal communities and those of the colonized world. Participants found the session to be very informative and a view that they had never heard. The second panelist, Steve Moore is the Senior Staff Attorney with the Native American Rights Fund and focused his presentation on the core principals of peacemaking and traditional dispute resolution. Further discussion was had on traditional values and community norms and how they play a role in a contemporary society.



“The conference changed my life for the better.” [2008]

“Thank you for providing the opportunity to learn from people who have a wealth of wisdom.” [2008]

III. Conclusion

In summary, there were over 200 attendees at this conference and many provided feedback both through evaluations and positive reinforcement of peacemaking principles.

Indigenous justice methodology has been active in tribal communities for centuries. Such methodology has maintained balance within communities, promoted healing for tribal people and aided in the resolution of disputes. By revisiting these methodologies in tribal communities, Indian tribes can improve upon their justice systems and resurrect the traditional values that made Indian nations safe communities.

Appendix

INCLUDED:

Guest Articles

Biographies

Participating Tribes/ Agencies





ALTERNATIVE COURTS IN TRIBAL COMMUNITIES

Author: Charlotte Skar, J.D. Law Clerk, Tribal Judicial Institute

Editor: Michelle Rivard Parks, Associate Director, Tribal Judicial Institute

I. INTRODUCTION AND BACKGROUND

The Anglo-American court system used in mainstream America is an adversarial system where typically one party wins and the other loses.¹⁴ Judges are masters of their courtrooms and decide which evidence may be relevant or excluded and what procedures are proper.¹⁵ Criminals are punished with fines, penalties, and jail time.¹⁶ Crime victims generally have very little say in decisions or opportunities to be heard.¹⁷ American courts tend to be emotionless forums.¹⁸ The goal of adversarial courts is to punish or declare a winner, rather than restore the community, rehabilitate the offender, or find a solution that everyone involved can agree upon.¹⁹ Some tribes have chosen to create courts that are based on traditional principles and models instead of the Anglo-American system.²⁰ More commonly, tribes use both an Anglo-American style court and alternative courts based on traditional models.²¹ Often, alternative tribal courts follow customary law, which includes long-established practices that have acquired the force of law by adoption and acquiescence, and do not vary.²² Customary law may be turned into written common law in some tribes where tribal judges use customary law in providing written court decisions, similar to the Anglo-American judicial model.²³

Indian tribes have absolute sovereign authority and so tribes may establish their own courts with inherent jurisdiction over all matters, as long as jurisdiction has not been removed by the United States.²⁴ Tribal governments create and administer their own justice systems although years of United States Supreme Court cases and legislative acts of the United States Congress have placed certain restrictions and parameters on the development of tribal justice systems.²⁵ Tribal courts usually have territorial jurisdiction over their own lands which may become a complex maze in light of prior federal actions and policies that have significantly impacted the land bases for many tribes.²⁶ Not unlike state or federal courts, tribal courts of all forms must obtain personal jurisdiction, which generally exists over members and non-member Indians and may also exist over non-Indians under specific circumstances.²⁷ In terms of subject matter jurisdiction, tribal courts often have subject matter authority over criminal, juvenile, and civil cases, which have not been proscribed by the United States Congress or the U.S. Supreme Court.²⁹

Many tribes have courts that are extremely similar to Anglo-American courts in terms of structure and process, but even these “modern” courts may still apply customary law when a situation would benefit from traditional legal principles.³⁰ Finally, tribal for many tribal communities which do not have detention facilities, the use of customary sanctions such as public ridicule, public shaming, whippings, temporary and permanent banishment, withdrawal of citizenship rights, financial and labor restitution, and community service are still actively used.³¹

II. EXAMPLES OF ALTERNATIVE COURTS AND ALTERNATIVE JUSTICE

Many tribal alternative courts are not guided by written laws, but rather by custom, tradition, norms and oral teachings.³² Many alternative courts focus on restorative justice that seeks to restore the community and par-



ties involved rather than punish an offender or losing party.³³ Tribal courts focusing on restorative justice seek to mend relationships and heal a victim.³⁴ Alternative courts tend to evaluate the whole problem and consider all aspects of an issue rather than compartmentalizing and breaking the justice process up into stages.³⁵ Many tribal courts do not have the option of incarcerating a violent offender but still rely on traditional punishments like banishment to protect the community.³⁶ Unlike Anglo-American courts, which rely on the separation of church and state, alternative tribal courts may use spirituality as a part of the justice process since spirituality cannot be separated from other aspects of life.³⁷ Alternative courts may embody traditional judicial methods or seek to tailor a judicial process to meet community needs.

a. Restorative Justice

Restorative justice is a way of seeing crimes and issues as problems that must be fixed in order to restore the community and the offender, rather than merely imposing punishments or judgments upon a wrongdoer.³⁸ Restorative justice systems offer support and healing for offenders, victims, families, and communities.³⁹ Restorative justice principles are being used in Alternative Dispute Resolution (ADR) in many state jurisdictions as well.⁴⁰ In American Indian communities restorative justice is often implemented through judicial bodies like peacemaking courts and talking circles.⁴¹

b. Peacemaking Courts

The Navajo Nation established an institutionalized Peacemaking Court in the 1980's and since then several other tribes have established peacemaker courts or alternative versions of the same.⁴² Navajo law provides the peacemaking process as an alternative to the adversarial method of justice.⁴³ The Navajo Peacemaking Court was based upon Navajo practices, Quaker mediation, American Arbitration Association practices, and small claims courts procedures.⁴⁴ When there is a dispute, everyone affected by the dispute receives notice to gather and “talk things out” and everyone has an opportunity to be heard.⁴⁵ Anyone within the “zone of dispute” is entitled to know what is happening and participate in discussions.⁴⁶ Relatives are involved in the peacemaking process to ensure their family members are protected and also to discuss how the dispute affects the relatives and family structure.⁴⁷ The group method is important in the Navajo court because Navajo clans require “respect and solidarity” and parties are considered to have duties and obligations to each other and the clan as a whole.⁴⁸ Community solidarity is the ultimate goal for many peacemaking courts.⁴⁹

There are no plaintiffs or defendants in the peacemaking court because all are equal in the law and the process.⁵⁰ The peacemaking process does not use rules of evidence or strict rules of procedure.⁵¹ Emotions are an important part of the peacemaking process and shame, anger, and embarrassment actually help in coming to a consensus and ensuring the issues are fully dealt with.⁵² Scoldings and lectures work as coercion instead of physical coercion through incarceration, as in the mainstream judicial systems.⁵³ Tort victims must be compensated so there are no hard feelings in the community and relations among people will be restored.⁵⁴ Resolutions rely on norms and laws but these are not so rigid that parties cannot create a method of redress that adequately fits the situation.⁵⁵ Final decisions are reached only where consensus on a solution has been reached.⁵⁶ Final decisions are as binding as any court judgment is, even though they are determined by group consensus and are not the product of the peacemaker, who acts only as a guide.⁵⁷ The resulting decision of the Navajo peacemaking process is the “hozho nahasdlii” which signifies a new relationship between the parties.⁵⁸



The Navajo peacemaking court uses a peacemaker, or *naat'aanii*, who is a traditional Navajo civil leader chosen by the community.⁵⁹ The peacemaker often has a prior relationship with the parties and knowledge of the background issues.⁶⁰ The peacemaker in many peacemaking courts is not a disinterested party, but rather is from the community and has an interest in the community and prior relationships being restored.⁶¹ The peacemaker usually opens with a prayer and gives an opinion on the matter with a lecture about the right way to do things.⁶² The guidance of the peacemaker suggests how the dispute should be resolved within the values and beliefs of Navajo religion and culture.⁶³ The peacemaker does not impose a judgment but rather guides the interested parties with his or her wisdom until the parties all agree on a result.⁶⁴ The final decision or result is determined by the group and is not the peacemaker's decision.⁶⁵ Peacemaking courts rely on traditional methods like the Navajo court where the procedures use Navajo language, traditional ceremonies, prayers, and teachings.⁶⁶

c. Sentencing Circles

Sentencing circles are a post conviction process with the goals of creating both community healing and closure for all parties involved.⁶⁷ The use of sentencing circles began in the Yukon Territory in Canada where the local indigenous population held the circle as a sacred symbol within which all life exists.⁶⁸ Sentencing circles seek to restore harmony and are a significant enough part of the criminal justice system to be mentioned in the Canadian Criminal Code.⁶⁹ In Canada, the sentencing circle is an alternative to typical sentencing hearings where the usual parties and legal resources are available and community members, elders, and families participate as well.⁷⁰ Sentencing circles are appropriate where the offender agrees to the process, the offender has roots in the community where the sentencing circle will sit, community leaders are willing to participate, the victim willingly participates, the disputed facts have been resolved, and the case is such that the court would be willing to depart from the traditional sentencing.⁷¹ Circles may also be used in pre-release and adjudication proceedings, as well as post-conviction proceedings.⁷²

The sentencing circle is constructed so all parties sit on chairs in a circle without a table or a hierarchy of positions.⁷³ The judge's, or Circle Keeper's, opinion is considered no more important than any other participant's opinion.⁷⁴ Each party is entitled to discuss, and often the person talking holds an object, which precludes others not holding the object from speaking.⁷⁵ The final determination from the sentencing circle must result from consensus.⁷⁶ Attorneys are still present to ensure that the offender's rights are not violated.⁷⁷ Evidentiary and procedural rules are used and sentencing guidelines are still complied with.⁷⁸ Still, the focus of the circle is not on punishment or incarceration, but rather on restoring the community and healing of the victims and offenders.⁷⁹ Therefore sentencing circles are a blending of two legal systems.⁸⁰ Sentencing circles in Canada have been found inappropriate for purely punitive sanctions, repeat offenders, and where the offender has a poor attitude.⁸¹ Sentencing circles are also inappropriate where there are no community sentencing options available for the circle to impose and where the community is not prepared to be involved in a sentencing circle.⁸² Sentencing circles have also been used in Alaska, where two boys were banished and isolated for one year so they could learn the importance of values and community.⁸³



d. Talking Circles, Family and Community Gatherings

Circles may be used in all areas of law like family disputes, civil proceedings, and criminal cases.⁸⁴ Talking circle forums are aided by family members, elders, and community leaders.⁸⁵ Typical cases in these courts include family problems, juvenile misconduct, violent or abusive behavior, spousal and parental misconduct, and property disputes.⁸⁶ These forums generally use customary laws, sanctions, and practices.⁸⁷ Elders lead prayers and provide wisdom and guidance while all other attendees are allowed to speak.⁸⁸ Family members are allowed to speak for vulnerable participants.⁸⁹ In family forums, families monitor the offender's compliance to make sure the offender is complying with the circle's resolution.⁹⁰ Families may choose to record decisions or agreements or they may decline.⁹¹ Community forums are mediated by tribal officials and representatives.⁹² Again, customary laws, sanctions, and practices are used.⁹³

e. Wellness and Drug Courts

Drug courts were first used in state courts across the nation and began to be used by tribes, in part because they were similar to traditional dispute methods.⁹⁴ Drug courts, also known as wellness courts, merge court functions with treatment for drug and alcohol offenders.⁹⁵ Drug courts involve judges, prosecutors, defense attorneys, treatment specialists, probation officers, law enforcement, experts, community leaders, and substance abuse offenders together to confront the substance abuse problem through a continuing program.⁹⁶ Typical features include intense supervision, treatment, repeated drug testing, incentives, sanctions, case management, and aftercare programs.⁹⁷ Offenders must be accepted into, and agree to, drug court dockets through a plea agreement or referral.⁹⁸ Participants should be screened to ensure the drug and wellness court could be successful and that the process is right for that offender based on the offense and the offender's history.⁹⁹ Tribal drug and wellness courts may use traditional justice concepts of restorative, reparative, or peacemaking.¹⁰⁰ The courts may require participation in traditional ceremonies like cleanses or sweats.¹⁰¹ The Drug and Wellness court process often implements a plan and the participant proceeds through phases depending on their treatment and compliance with the program until the offender either graduates with success, or is dismissed and must return to answer a charge or sentence in regular court.¹⁰² Success usually results in either vacating a guilty sentence or dismissal of charges, depending on where the offender was in the criminal justice process.¹⁰³

f. Distributive Justice

In distributive justice models, an offender's kin may be held responsible for an offender's wrongdoing since all are seen as responsible contributing factors behind the issues the offender may have been facing.¹⁰⁴

Some tribal courts may be structured like modern Anglo-American courts justice systems and use written criminal or civil codes.¹⁰⁵ Typical processes and documents are used.¹⁰⁶ However, these courts may allow family and community member participation throughout the judicial process and be guided by customary laws and sanctions.¹⁰⁷ Customary laws may be established through testimony by elders, sociological studies, or judicial notice where it applies.¹⁰⁸



III. CURRENT ISSUES

While it is certain that traditional law and traditional justice forums have a place in the evolution of tribal justice systems, there remain issues and concerns over how such forums and laws can and should be included in the larger tribal justice system and for some there is dispute as to whether such procedures and laws should be utilized at all. In part the struggle exists due to distinct cultural differences in the very definition of justice. In the European notions of justice, from which the justice institutions of the United States derive, there is a relegation of justice to one distinct forum or court whereas many tribal communities view justice as an integrated system that plays across several institutions.¹⁰⁹ In fact for most indigenous communities justice is played out as a part of daily life and as such how one moves forward in restoring their relationships with one another and the community directly impacts the daily life of the individual and everyone around them.¹¹⁰ For tribal communities it is in these relationships that healing, restoration and justice exist.¹¹¹ It is this apparent distinction between western value systems and tribal value systems that has contributed to mistrust and misunderstanding between these conflicting systems of justice. For some it is anticipated that the future maintenance of social order and the restoration of familial order will fall to tribal courts to decide.¹¹²

Despite such strong sentiments from a sect of legal scholars, there are also concerns among many scholars and practitioners regarding the use of traditional justice forums in certain cases such as domestic violence and sexual assault. Predominant concerns are that alternative courts, like sentencing circles, where all parties sit down and must reach a consensus, may actually perpetuate problems like domestic violence.¹¹³

Just how tradition will shape the future development of tribal justice systems remains to be seen, however, one thing is certain, tradition will play a vital role in the healing process for many tribal communities.

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¹⁵ Robert Yazzie, *Life Comes From It: Navajo Justice Concepts*, 24 N.M. L. REV. 175, 177 (1994).

¹⁶ Robert Yazzie, *Life Comes From It: Navajo Justice Concepts*, 24 N.M. L. REV. 175, 178 (1994).

¹⁷ Robert Yazzie, *Life Comes From It: Navajo Justice Concepts*, 24 N.M. L. REV. 175, 178 (1994).

¹⁸ Robert Yazzie, *Life Comes From It: Navajo Justice Concepts*, 24 N.M. L. REV. 175, 179 (1994).

¹⁹ Robert Yazzie, *Life Comes From It: Navajo Justice Concepts*, 24 N.M. L. REV. 175, 179-80 (1994).

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²¹ Indigenous Justice Systems and Tribal Society, <http://www.ojp.usdoj.gov/nij/topics/courts/restorative-justice/perspectives/indigenous-tribal.htm> (last visited July 6, 2010).

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²⁶ Ada Pecos Melton, *Indigenous Justice Systems and Tribal Society*, 79 JUDICATURE 3 (1995), available at <http://www.tribal-institute.org/articles/melton1.htm>.

²⁷ Ada Pecos Melton, *Indigenous Justice Systems and Tribal Society*, 79 JUDICATURE 3 (1995), available at <http://www.tribal-insti->



tute.org/articles/melton1.htm.

²⁹ Ada Pecos Melton, *Indigenous Justice Systems and Tribal Society*, 79 JUDICATURE 3 (1995), available at <http://www.tribal-institute.org/articles/melton1.htm>.

³⁰ Ada Pecos Melton, *Indigenous Justice Systems and Tribal Society*, 79 JUDICATURE 3 (1995), available at <http://www.tribal-institute.org/articles/melton1.htm>.

³¹ *Indigenous Justice Systems and Tribal Society*, <http://www.ojp.usdoj.gov/nij/topics/courts/restorative-justice/perspectives/indigenous-tribal.htm> (last visited July 6, 2010).

³² Ada Pecos Melton, *Indigenous Justice Systems and Tribal Society*, 79 JUDICATURE 3 (1995), available at <http://www.tribal-institute.org/articles/melton1.htm>.

³³ Ada Pecos Melton, *Indigenous Justice Systems and Tribal Society*, 79 JUDICATURE 3 (1995), available at <http://www.tribal-institute.org/articles/melton1.htm>.

³⁴ Ada Pecos Melton, *Indigenous Justice Systems and Tribal Society*, 79 JUDICATURE 3 (1995), available at <http://www.tribal-institute.org/articles/melton1.htm>.

³⁵ Ada Pecos Melton, *Indigenous Justice Systems and Tribal Society*, 79 JUDICATURE 3 (1995), available at <http://www.tribal-institute.org/articles/melton1.htm>.

³⁶ Ada Pecos Melton, *Indigenous Justice Systems and Tribal Society*, 79 JUDICATURE 3 (1995), available at <http://www.tribal-institute.org/articles/melton1.htm>.

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⁴¹ Gretchen Ulrich, *Widening the Circle: Adapting Traditional Indian Dispute Resolution Methods to Implement Alternative Dispute Resolution and Restorative Justice in Modern Communities*, 20 HAMLIN J. PUB. L. & POL'Y 419, 437 (1999).

⁴² Michelle Rivard Parks, *Tribal Law: Tribal Courts, Alternative Courts, and Tribal Common Law*, March 8, 2010.

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¹¹¹ *Id.*

¹¹² *Id.* (stating that “Tribal courts will become indispensable in the battle for preservation of Indian traditions.”)

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2nd Annual Peacemakers Gathering

October 22 – 23, 2008

Preserving Tribal Justice through Indigenous Peacemaking

Presenter Biographies



Philmer Bluehouse

began his adult working life in Criminal Justice. In 1973, he began at the Window Rock Navajo Police District. Through ranks, he became a patrolman in a short time.

Interest in Criminal Investigations led him to an immediate assignment to “CID”, (Criminal Investigation Division) it was a two man operation both with the rank of Patrolman, there was no Sergeant in Charge.

Phil left policing for 3 months and returned after being a “Legal Advocate” for Navajo Legal Services, just beginning to be named DNA Legal Services. He left DNA to return to Navajo Policing.

Phil read many book on policing, criminal investigations and the “Navajo Police Bulletin.” It was a Policy, Procedure, Rules and Regulations Manual. Phil passed Police Sergeants test in 1974. He was immediately assigned to head up the CID. The IACP (International Association of Chiefs of Police) is contracted to “Modernize Policing on the Navajo.” Phil read their books and applied many procedures; front Line, mid-line command and executive staff functions were initiated. Hands on policing was the practice then, it was great. In the same year, Phil graduated from the Navajo Police Academy and was finally a Certified Police Officer.

In 1975 he was promoted to the rank of Police Captain and assigned to the Chinle Navajo Police District. After one year, he was hired by the BIA Criminal Investigation Division, he served a total of seven years with them. He eventually became the Director of Public Safety in 1988-89.

In January 1991, Chief Justice Emeritus Tso hired Phil and placed him in charge of the Judicial Branch Peacemaking Division. The World Renown Navajo Peacemaking began. Extensive research and information from traditional medicine people to use as much as Navajo Thinking/Traditional Law as customs and usage. He helped to form the thinking and background to what is now called, Navajo Fundamental Law.

Currently, he consults in Peacemaking and Traditional Law. He consults to Judges, Attorneys, Organizations, US Govt., Schools, Prisons, private entities and individuals. He does work for the Navajo Nation. He has lectured in many universities, domestic and foreign. (London, South Pacific, Stanford, Harvard, MIT, OU, ASU, NAU, Univ. of Calif., and many others to name a few. He is currently a Special Advisor to the Din ́h Hat’aa’fii Association’s (DHA) President.

Robert Brown

Robert Brown is a Cultural Advisor for the Oneida Nation.



Jason Burwell

Jason Burwell was born and raised in Dallas, Texas and moved to Ada, Oklahoma in 1991 upon which he began working for the Chickasaw Nation. He's held positions of journalist/photographer for the tribal newspaper, grant writer and director of the tribe's planning department.

In 2003, he began working for the Chickasaw Nation Judicial Branch and was introduced to Peacemaking by Supreme Court Justice Barbara Smith. Jason comes from a ministerial background and says he finds it eye-opening and rewarding to have found an occupation that suits who he is and his belief of his purpose here. Since the inception of their Peacemaking Court, Jason sat under some wise Peacemakers absorbing as much from them as he could.

"Forgiveness and peace are mandatory to live life in its fullness. I am honored that Chihowa has placed me where I am today. I have a heart for people and look forward to tomorrow seeing people find peace and common ground through Peacemaking whereas this isn't always the outcome in today's court system. Chukma choo by yah nee kah. (it is good to be with you.)"

William Cavanaugh

William Cavanaugh is currently the Associate Judge for the Spirit Lake Tribal Court, and is responsible for the Juvenile Division. Judge Cavanaugh has been with the Spirit Lake Tribal Court for 12 years. Prior to his work at the Court Judge Cavanaugh was the Woodlake Representative to the Spirit Lake Tribal Council.

Elbridge Coochise

Chief Justice retired July 14, 1997, had been on the bench for 32 years. President and CEO of Coochise Consulting, LLC, which provides services to tribes and tribal organizations; including lobbying, training, pro-tem judge, judicial services, administrative services and court evaluations. In Senior-Judge status; he sits on the Cabazon Court of Appeals, the Intertribal Court of California, the Sac & Fox Tribe of the Mississippi in Iowa Tribal Court, and the San Carlos Tribal Court. He started up and served 5 years on the Mohegan Tribal Court in Connecticut until June 2005. Prior to retirement he served as the Chief Justice of the NW Regional Tribal Supreme Court 1988 - 1997, served as the Administrator/Chief Judge of the NW Intertribal Court System (NICS)(a circuit court system) in western WA State 1981 - 1997. He was Associate Judge in the Hopi Tribal Court 1976 - 1981. He served four terms as President of the National American Indian Court Judges Association from 1988 -1996. He served three terms as President of the NW Tribal Court Judges Association 1988 - 1994. He serves on the Board of Directors of the National Indian Justice Center (NIJC), Santa Rosa, CA; on the Board of Directors of the Native American Rights Fund (NARF), Boulder, CO; on the Board of Directors of the National American Indian Court Judges Association (NAICJA); on the Advisory Board to the National Tribal Judicial Center in the National Judicial College, Reno, NV; and currently is a member of the BIA/ Tribal Budget Advisory Committee's Judicial Subgroup. He is an alumnus and joined the faculty of the National Judicial College, Reno, NV in 1993. A recognized leader in his field, Justice Coochise received the "Who's Who Worldwide Award" for Leadership and Achievement in his Profession for 1992 -1993, received the "Who's Who Global Business Leader" Award for 1993 -1994, and in November 1994 he received the "Who's Who among Outstanding Americans" Award. He was Chairman of the Tribal Governance Committee of the Affiliated Tribes of Northwest Indians, 1987 - 1997 (a regional tribal governments' organization). He served as a member of the National Indian Policy Center's Task Force on Law & Administration of Justice. He has had the honor of serving on several national committees and panels, has taught for various tribes on American Indian issues in the U.S. and Canada. He was the key proponent in the passage of the Indian Tribal Justice Act, PL 103 -176 on December 3, 1993. He is an enrolled member (4/4) of the Hopi Tribe in Arizona. His interests



range from serving on the Board of a children's book publishing company to being a country-rock musician & recording artist with 4 CD's. He started and coordinated the annual Hopi Music Festival in 2001.

Sunny Goggles

is a member of the Northern Arapaho Tribe. She is a graduate of the University of North Dakota with a Bachelor of Science in Psychology and a Bachelor of Arts in Sociology. Ms. Goggles has experience working as a Probation Officer and as a Substance Abuse Counselor and currently is the Coordinator for both the Juvenile and Adult Tribal Substance Abuse Courts on the Wind River Reservation. Ms. Goggles has worked for the Shoshone & Arapaho Tribal Substance Abuse Court for nearly three years and is currently working to also establish a DUI court in 2009. Ms. Goggles is an active member of the Law and Order Code revision team which is focused on implementing stricter DUI laws on the reservation. She also is the organizer of the "Coalition for Change" which is an untied effort among the tribal substance abuse programs to combat substance use on the reservation.

Taiawagi Helton

Taiawagi Helton is a Professor at the Oklahoma University Law School.

BJ Jones

BJ Jones is the Chief Judge for the Sisseton-Wahpeton Oyate Court and the Prairie Island Indian Community Tribal Court. He also serves as an Associate Judge for the Standing Rock and Fort Berthold Tribal Courts and special magistrate/judge for several other Tribal Courts in South Dakota and Minnesota. BJ also directs the Tribal Judicial Institute at University of North Dakota School of Law where he teaches Indian-law related courses. From 1984 to 1993, BJ was the Managing Attorney for Dakota plains Legal Services working with the Rosebud and Standing Rock Sioux Reservations, and was Litigation Director for Dakota Plains Legal Services on the Rosebud Reservation from 1993 to 1995. BJ is a member of the Minnesota and North Dakota State-Tribal Judges committees and the Co-Chair of the South Dakota Indian Child Welfare Act. BJ has been involved with the Indian Child Welfare Act and issues related to child abuse for many years and is the author of several articles as well as the Indian Child Welfare Act Handbook: A Guide to the Custody and Adoption of Indian Children, published by the American bar Association, Family Law Section in 1995. BJ Jones is often called upon to provide training or speak to Tribal groups as well as state and federal justice personnel on issues ranging from tribal jurisdiction, to domestic violence and child abuse. BJ received his Juris Doctorate from the University of Virginia School of Law in 1984.

Vern Lambert

Vern Lambert is an elder member of the Spirit Lake Tribe. He graduated from Fort Totten Community High School in 1957 and is a veteran of the United States Air Force. Vern graduated from UND with a BS in Elementary Education in May 1975. He also received a MS in Education Administration in August 1979. Vern worked in a professional capacity for the Spirit Lake Tribe since 1974. He served as Director of the ECE program for five years, on the Executive Management staff at SMC for 13 years, Director of Tribal Social Services for 6 years, and the Director for the Tribal Education Department for 7 years. He retired in October 2007 but has since started working at Cankdeska Cikana Community College. He lives an active lifestyle by running and playing basketball.



Stacy Leeds

Stacy Leeds joined the KU Law faculty in 2003 after serving as assistant professor and director of the Northern Plains Indian Law Center at the University of North Dakota School of Law. Her law teaching career began at the University of Wisconsin School of Law, where she received her LL.M. as a William H. Hastie Fellow. She received her bachelor's degree from Washington University in St. Louis and her law degree from the University of Tulsa.

Professor Leeds is a nationally recognized leader among tribal judges. She currently serves as Chair of the ABA Judicial Division's Tribal Courts Council and on the Advisory Board for the National Judicial College's Tribal Judicial Center. She is a former Justice on the Cherokee Nation Supreme Court, the only woman and youngest person ever to serve in that capacity. She currently serves as Chief Judge of the Prairie Band Potawatomi Nation District Court, Chief Justice of the Supreme Court for the Kickapoo Tribe of Oklahoma and as an Associate Justice on the Kaw Nation Supreme Court. She has served as a judge and consultant for several other tribal governments.

She is a highly regarded speaker and routinely presents at national conferences on a variety of legal issues affecting American Indian people, tribal governments, property law and natural resources.

Steve Moore

Prior to Steve joining the Native American Rights Fund in 1983 as a staff attorney, he represented tribes and individual Indians in northern Idaho, and also represented the Confederated Salish and Kootenai Tribes of Montana. As a NARF staff attorney, Steve has represented Indian tribes in complex litigation involving treaty fishing rights and implied federal Indian reserved water rights. Since 1995, he has represented the Nez Perce Tribe in the Snake River Basin Adjudication in Idaho. A major settlement of the Nez Perce water rights was enacted by Congress and signed by President Bush in 2004. That settlement is now in a multi-year implementation phase. He currently also represents the Tule River Tribe of California in its water rights settlement, and the Kickapoo Tribe in Kansas in water litigation and settlement negotiations. His other work at NARF includes the protection of sacred lands, the repatriation of human remains and the protection of unmarked Native graves, the religious use of peyote by members of the Native American Church, and the religious rights of Native prisoners. Between 2004 and 2008, Steve also administered \$4 million in grant funds from the U.S. Department of Justice for the National Association of Indian Legal Services (NAILS), for a variety of tribal court development projects, including a national peacemaking initiative sponsored by NAILS. He is admitted to practice law in several federal and state courts, courts of appeals, and the United States Supreme Court. He also serves as a member of the Colorado Commission of Indian Affairs, and is currently the co-chair of the Advisory Committee to the Indian Law Clinic at the University of Colorado School of Law. He is a 1979 graduate of the University of Colorado School of Law. He is a co-author with K. Heidi Gudgell and Geoffrey Whiting of "The Nez Perce Tribe's Perspective on the Settlement of Its Water Right Claims in the Snake River Basin Adjudication," 42 Idaho Law Review 563 (2006).

Barbara Norman

Barbara Norman has been a licensed attorney in the State of California since 1982. She graduated from University of Los Angeles, BA Sociology in 1977, and University of LaVerne School of Law, Juris Doctorate in 1980.



Ms. Norman's practice began in Los Angeles County and spanned many of the adjoining counties, including San Bernardino, Riverside, and Orange. The primary areas of practice were in the fields of family law, personal injury, and civil litigation. Throughout her practice in Southern California, Ms. Norman served numerous times in both Los Angeles and San Bernardino Superior Courts as Judge Pro tem and court assigned family law mediator.

In 2000, Ms. Norman and her four children moved north to Gazelle, located in Siskiyou County, California. From 2001 to present, her efforts have been directed towards criminal defense, Indian law, and serving as House Counsel, ICWA attorney, legal consultant, and Peacemaker for the Karuk Tribe.

Barbara Norman is looking forward to expanding her law practice to include assisting other California Tribes, offering services as legal consultant, Peacemaker, Tribal Judge, and facilitator of trainings in "Effective Tribal Governance." You may reach Ms. Norman at higherlaw13@earthlink.net or by phone (530)435-0283.

Eunice Pierre

Eunice Pierre is a policy advisor for the Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice.

David D. Raasch

David D. Raasch is former Chief Judge of the Stockbridge-Munsee Band of Mohicans Tribal Court in Bowler, Wisconsin. He was sworn to the bench in August 1995 and served 10 years as Chief Judge. Dave started his career in the justice system in 1971 as a police officer for 6 years. He also served as the court administrator for the City of Green Bay for 20 years, retiring in 2004. In 2002, Dave joined the faculty of the National Judicial College, teaching in the areas of tribal courts and tribal appellate courts. He also serves as the Vice President of the Tribal Law and Policy Institute in West Hollywood, California, serves on the tribal faculty committee of the National Tribal Justice Center, and has been an invited speaker across the country, including; UCLA School of Law, and the University of California Clark Kerr Campus. In addition, he has spoken at numerous tribal court development trainings in Alaska, speaking for the Athabaskan College, Tanana Chief's Conference, the Alaska Inter Tribal Council and the Bristol Bay Native Association. Dave speaks on subjects of reparative justice and healing concepts for communities, victims and individuals as well as alternative dispute resolution processes. He formerly served as President of the Wisconsin Tribal Judges' Association and currently works as a Tribal Programs Manager for Fox Valley Technical College's Criminal Justice Center for Innovation.

Amanda L. Rockman

The Honorable Amanda L. Rockman is an enrolled member of the Ho-Chunk Nation. Judge Rockman graduated from the University of Wisconsin – Madison in 2001 with degrees in Anthropology, French, and American Indian Studies. She went on to attend the University of Wisconsin Law School, and graduated with a J.D. in May 2005. Last year, Judge Rockman accepted a three-year appointment from the Ho-Chunk Nation's Legislature to preside over and ultimately decide cases as an Associate Judge of the Ho-Chunk Nation Tribal Court. In this role, she handles cases dealing with everything from family law to cases involving intra- and inter-governmental disputes. Judge Rockman served as Vice Chair of the State Bar of Wisconsin Indian Law Section from 2006-2007, and currently serves on the Board as a member. She was a 2007 Featured Attorney for the State Bar of Wisconsin Young Lawyer Division. She is admitted to the Wisconsin and Ho-Chunk Nation Bar Associations.



Dustin P. Rowe

Dustin P. Rowe was born in Ada, Oklahoma, and raised in Tishomingo, Oklahoma. He graduated from Tishomingo High School. At the age of eighteen, during his senior year in school, Dustin was appointed to the Tishomingo City Council, where he was later elected to two consecutive terms as mayor of the City of Tishomingo and served as the youngest mayor in state history.

Dustin graduated with honors from East Central University and from the University of Oklahoma College of Law. Mr. Rowe practices law in Tishomingo. On October 26, 2005, Chief Justice Mark Holmes Colbert administrated the oath of office to Judge Rowe for the Office of Special Judge of the District Court of the Chickasaw Nation. Judge Rowe lives in Tishomingo where his wife, Nicole, is a Pre-K teacher. They have two children, Price and Madison. Judge Rowe is an alumnus of the National Judicial College. Judge Rowe is a lineal descendent of Mamie Cravett Hughes, an original enrollee.

Barbara Anne Smith

Honorable Justice Barbara Anne Smith is a Chickasaw citizen and has been a Supreme Court Justice for the Chickasaw Nation, Ada, Oklahoma since October 1, 2003. Previously, she served the Nation as District Judge for the Chickasaw Nation. Justice Smith also serves as a Special Judge for the Cheyenne and Arapaho Tribal Courts. She has practiced law for 17 years with her brother, Michael Colbert Smith in a general practice with concentrations in family law, guardianships, juvenile law, criminal law and social security disability, with special consultations on issues of Tribal Sovereignty. She earned her Bachelor's degree from East Central State University, Ada, Oklahoma, her Master's from the University of Oklahoma and her Juris Doctor from Oklahoma City University. Prior to her law career, she taught mathematics at Norman High School and at the University of Oklahoma as an adjunct professor. She is a former commissioner of the Human Rights Commission of Norman, a former member of the Board of Directors of the Oklahoma County Diabetes Association, and during her teaching career, president of the Professional Educators of Norman. Currently, she is a facilitator with the Native American Rights Fund Chautauqua Peacemaking Group in Boulder Colorado. Justice Smith is also on the Advisory Council for the National Tribal Judicial Center at the National Judicial College and has taught Continuing Legal Education courses for the Cleveland County Bar Association, Grady County Bar Association, Chickasaw Nation Bar Association, National Tribal Judicial Center with University of Oklahoma School of Law and the Sovereignty Symposium for the Oklahoma Supreme Court. She taught Tribal Sovereignty for the Native American Studies Program at the University of Oklahoma in the spring of 2008 and will be teaching Tribal Courts for the University of Oklahoma Law School in the spring of 2009. She has made several Peacemaking Presentations for the Association of American Indian Physicians and organized the National Gathering of Peacemakers Conference in Oklahoma City in October of 2007. She is an alumna of The National Judicial College in Reno, Nevada and joined the faculty there in 2004. Justice Smith is currently serving on the Board of the National American Indian Court Judges Association.

Faith Spotted Eagle

Faith Spotted Eagle (Tunkan Inajin Win or Standing Stone) is a member of the Ihanktonwan Band of the Dakota/Nakota/Lakota Nation of South Dakota. First and foremost she is the mother of two children, Kip, Brook and Glenn.

She has been a Dakota Language Instructor and most recently has assisted the Smithsonian in Language Repository Development coordinated by Suzann Harjo, of Morningstar Institute. She is the Manager of Brave Heart Lodge, a revived traditional Dakota Society on the Yankton Reservation, whose mission is to restore cultural self-esteem and Dakota lifeways to tribal youth and their families. Through working with Brave Heart,



the “Isnati?; the Coming of Age Ceremony has been restored to a healthy place on the Yankton Reservation. We have also coordinated a revived “Coming of Age” ceremony for Yankton boys/men along the east bank of the Missouri River. Faith facilitates the delivery of cultural services to 150+ families annually.

Faith is a contractor for the Southern Arizona VA system, the Albuquerque VA and the Black Hills VA as a Post Traumatic Stress Disorder Therapist and works extensively with veteran’s in recovery and wellness. She contracts with organizations such as the BIA Office of Indian Education; National Indian School Board Association; the Army Corps of Engineers and numerous schools and colleges throughout the country; and into Canada. She has also been a corporate contractor for entities such as IDS/American Express, and the former US West.

Faith has developed a widely-received training/wellness component called “Healing from Red Rage”; and is currently writing a book on this affliction that has caused internalized oppression, dysfunction and paralysis in Indian Country; due to years of oppression and trauma inflicted by outside parties. It is a roadmap to recognizing the role of anger in Indian country and how we can heal from it and thus develop healthy systems and leadership. She is an activist for her tribe in Historic Preservation on the Missouri River; and recently coordinated a contract for the surveying of sacred Native sites on the Missouri River. She has a Master’s Degree in Counseling and has 25+ years experience as a school teacher/counselor/principal; social work/therapist; and manager of human service programs. Her children are Kip, Brook & Glenn; and granddaughter Marisa.

Ernest H. St. Germaine

By Tribal tradition, he was named Minode’i by his grandmother. Later, he was given the name Bineshi, the name of his mentor and teacher and his name thus became, Minode’i Bineshi. His name means, “lifts your heart, bird.”

Although educated in public schools, Judge St. Germaine still says that his most important teachings came from those elders who instilled in him his Anishinabe identity. He firmly believes that nothing he knows is his own but rather was given to him by those teachers as well as from the directions in his dreams. By that tradition, he gives this knowledge to others when they ask for it.

Judge St. Germaine was appointed to the Lac du Flambeau Tribal Court in 1990 and served the Tribe as Chief Judge for twelve years. He also served as Chief Trial Judge for five years for the Lac Courte Oreilles Tribe. Today he continues to serve as an instructor at the National Judicial College at the University of Nevada-Reno. Judge St. Germaine continues to hear cases and appeals for Tribal Courts in Wisconsin but has mostly been focusing his energy as a Peacekeeper. He works with families and especially tribal youth.

Darla Thiele

Darla Thiele has worked for the Spirit Lake Tribal Court, Juvenile division for 11 years. She has worked in all areas of the Juvenile Division with most of her time being in her latest position of Juvenile Intake Officer. Prior to her work at the Spirit Lake Tribal Court, Juvenile division, she worked for the Youth Healing and Wellness Center as a Prevention Specialist.



Carey Vicenti

Carey Vicenti is a member of the Jicarilla Apache Nation of northwest New Mexico. He is a graduate of Oregon State University, B.S., and of the University of New Mexico, School of Law. He is an associate professor and chairs the Sociology Department at Fort Lewis College in Durango, CO, an institution that serves 700 American Indian students out of a student body of 4,200. As a professor he teaches courses in Juvenile Delinquency, Native American Societies, Native American Law and Justice, Social Dimensions of Law and Policy, Indigenous Peoples of the World, and Hunger and World Cuisine. Judge Vicenti served on the Jicarilla Apache Court for over 20 years. In his judicial capacities he worked on congressional legislative initiatives affecting housing and the tribal courts. He is an advocate of building legal institutions based upon peacemaking and tribal tradition. His interest in cultural preservation and protection led him to organize the nine Apache tribes of Oklahoma, New Mexico and Arizona into a joint agreement on repatriation. He has written on the use of traditional concepts of justice in the development of a new and emerging tribal jurisprudence. He is a former President of the Native American Bar Association. In addition to teaching, he sits as a judicial official in the following capacities: Associate Justice of the Yavapai-Apache Nation Court of Appeals and Associate Justice of the Supreme Court of the Mississippi Band of Choctaw Indians. Vicenti appeared on C-SPAN in an open forum with U.S. Supreme Court Justices Sandra Day O'Connor and Steven Breyer at the National Judicial College discussing recent Supreme Court decisions in Federal Indian law.

Jessica White Plume

Jessica White Plume is an Evaluation Partner at the University of North Dakota Center for Health Promotion.

Eugene L. White-Fish

Eugene L. White-Fish is the Chief Judge of the Forest County Potawatomi Tribal Court. He was elected to this position by the tribal members in June of 1994. He was the first Judge elected to serve the newly established court system. Tribal Court Judges are elected for a 6 year term, in accordance to the tribal court code. In June 2006, he was honored to be re-elected to serve the Tribal Court as the Chief Judge for a 3rd term.

Due to his position as Judge, he was also requested to become involved with the Wisconsin Tribal Judges Association (WTJA). WTJA is an association comprised of sitting Judges from all of the 11 sovereign Native American Nations in Wisconsin. Since his involvement, he has served as an officer of WTJA and been involved with the State/Federal/Tribal forum committee. The State/Federal/Tribal forum committee works together to address issues of jurisdiction, sovereignty of Native Nations, and working together for the best interest of the justice systems.

In 1996, he was elected by the WTJA to sit on the National American Indian Court Judges Association (NAICJA) as a steering committee member for our region. In 1998, WTJA elected him to serve on the Board of Directors for Region 10. Region 10 is comprised of the Tribal Courts in the states of Michigan, Minnesota, Illinois, Indiana, and Wisconsin that are members of NAICJA. The mission of NAICJA is to "STRENGTHEN AND ENHANCE TRIBAL COURT JUSTICE SYSTEMS." In 2001, the Board of Directors of NAICJA elected him to serve as the President of this national association. He has served as the President of NAICJA for three consecutive 2 year terms and was recently elected as President for a fourth consecutive term in October 2007.

He is an enrolled tribal member of the Forest County Potawatomi Community. He is married, has 4 children (3 reside in Rhinelander and one in the spirit world), and has been blessed with 3 grandchildren. He has maintained sobriety for 23 years.



Tribe(s)/ Agencie(s) - Roster

Tribe/Agency

Bad River Band of the Lake Superior Tribe of Chippewa Indians
Bureau of Justice Assistance
Center for Court Innovation
Cheyenne-Arapaho Tribes of Oklahoma
Chickasaw Nation
Colville Confederated Tribal Court
Confederated Salish & Kootenai Tribes of the Flathead Reservation
Confederated Tribes of the Grand Ronde Community of Oregon
Criminal Justice Center for Innovation, Fox Valley Technical College
Crow Tribe of Montana
Forest County Potawatomi Community
Fort Lewis College
Ho-Chunk Nation of Wisconsin
Hoopa Valley Tribe
Huron Potawatomi, Inc.
Jicarilla Apache Nation
Karuk Tribe of California
Kenaitze Indian Tribe
Kickapoo Traditional Tribe
Lac Courte Oreilles Band of Superior Chippewa Indians
Lac Du Flambeau Band of Lake Superior Chippewa Indians
LacVieux Desert Tribal Court
Little River Band of Ottawa Indians
Little Traverse Bay Band of Odawa Indians
Lower Sioux Indian Community in the State of Minnesota
Mashpee Wampanoag Tribe
Match-e-be-nash-she-wish Band of Pottawatomi Indians
Menominee Indian Tribe of Wisconsin
Mescalero Apache Tribe
Mississippi Band of Choctaw Indians
Multicultural Center of Green Bay
Muscogee Creek Nation
National Tribal Judicial Center



National Tribal Justice Resource Center
Native American Rights Fund
Native Dispute Resolution Network
Navajo Nation
NW Intertribal Court System
Oglala Sioux Tribe
Onedia Nation
Oneida Tribe of Indians of Wisconsin
Osage Tribe
Pokagon Band of Potawatomi Indians
Ponca Tribe of Oklahoma
Prairie Band Potawatomie Nation
Saginaw Chippewa Indian Tribe
Santee Sioux Nation
Seminole Tribe of Florida
Seneca Nation of Indians
Shoshone and Arapahoe Tribal Court
Sisseton-Wahpeton Sioux Tribe
Smiley & Co., Ltd.
Smith River Rancheria
Spirit Lake Nation
St. Croix Chippewa Indians of Wisconsin
Stockbridge-Munsee Community
Tanana Chiefs
Tohono O'odham Nation
Tribal Judicial Institute
UND Center for Health Promotion
University of Wisconsin Green Bay
Village of Atmautlauk
Winnebago Tribe of Nebraska
Wisconsin Judicare
Ysleta del Sur Pueblo of Texas