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"For All My Relations"

Respecting Families and Traditions

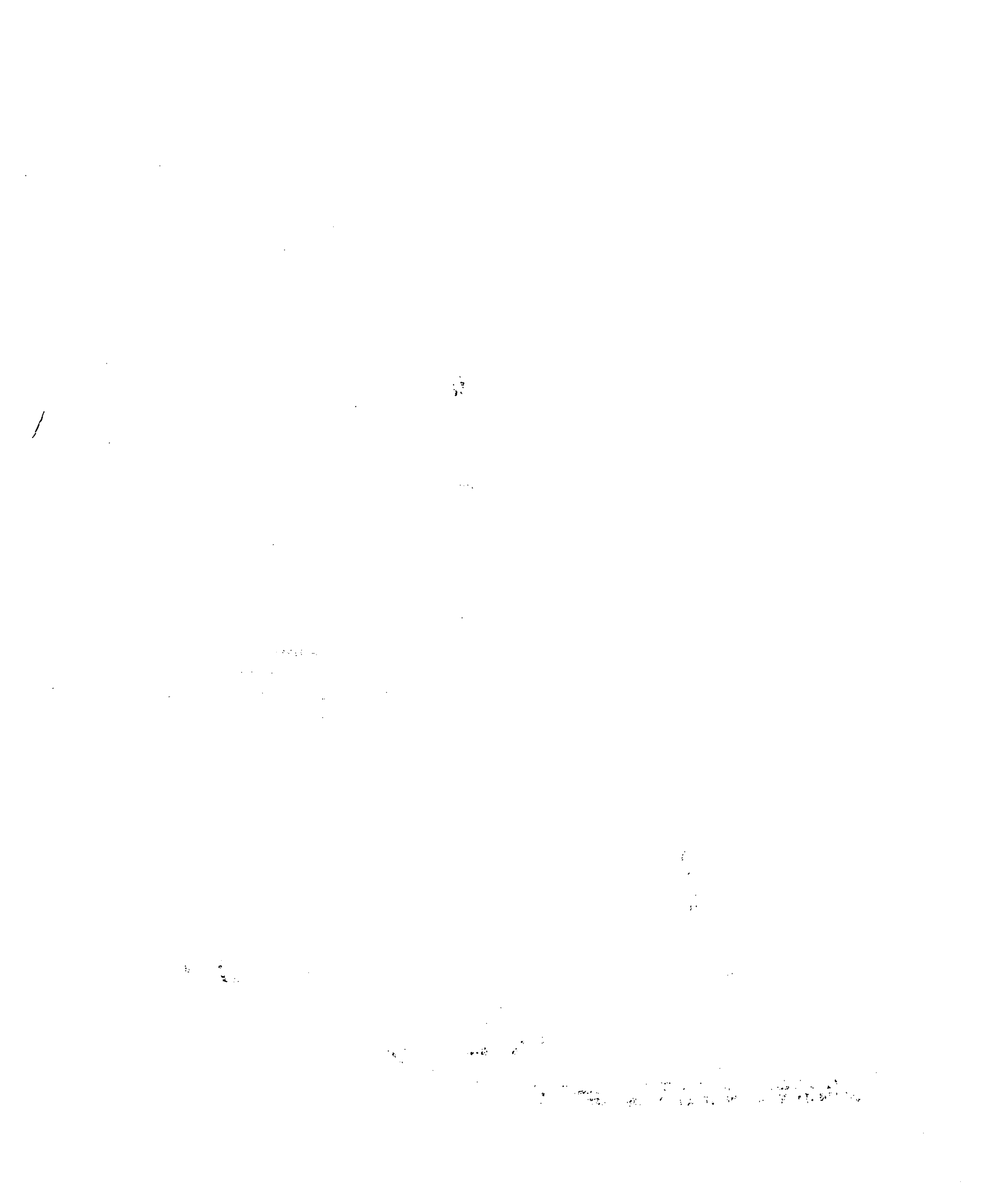
• STRENGTHENING INDIAN NATIONS •

• JUSTICE FOR VICTIMS of CRIME in INDIAN COUNTRY •

• SIXTH NATIONAL CONFERENCE • JANUARY 23-25, 1997 • SAN DIEGO, CA •

Conducted by NATIONAL INDIAN JUSTICE CENTER (707) 762-8113

Funded by Office for Victims of Crime (OVC), U.S. Department of Justice



167382

"FOR ALL MY RELATIONS"
Respecting Families and Traditions

OFFICE FOR VICTIMS OF CRIME
Strengthening Indian Nations:
Justice for Victims of Crime
Sixth National Conference
January 23-25, 1997
San Diego, California

Funded By:
U.S. Department of Justice
Office of Justice Programs
Office for Victims of Crime
Federal Crime Victims Division
633 Indiana Avenue, N.W.
Washington, D.C. 20531
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Conducted By:
National Indian Justice Center
The McNear Building
#7 Fourth Street, Suite #46
Petaluma, CA 94952
Phone: (707) 762-8113
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NATIONAL INDIAN JUSTICE CENTER

"This project was supported by Grant No. 96-MU-GX-K005 awarded by the Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice. The Assistant Attorney General, Office of Justice Programs, coordinates the activities of the following program offices and bureaus: the Bureau of Justice Statistics, National Institute of Justice, Bureau of Justice Assistance, Office of Juvenille Justice and Deliquency Prevention, Office for Victims of Crime. Points of view or opinions in this document are those of the author and do not necessarily represent the official position or policies of the Department of Justice."

U.S. Department of Justice

Office of Justice Programs

Office for Victims of Crime

167382

Washington, D.C. 20531

January 23, 1997

Dear Conference Participant:

Welcome to the Sixth National *Strengthening Indian Nations: Justice for Victims of Crime* Conference. I want to thank the National Indian Justice Center for its dedication to the plight of crime victims throughout Indian country and for its hard work in organizing this conference. I would also like to thank the members of the conference planning committee for their assistance in pinpointing the important issues that will be addressed here. Finally, I want to thank you for your diligent and devoted service to crime victims.

To date, the Office for Victims of Crime (OVC) has provided over $6 million to implement victim services in Indian country. As a result, more than 50 Native American victim assistance programs have been established in 19 states. In addition, OVC has been proud to support a number of groundbreaking initiatives in Indian country, including joint federal and tribal judges training, court appointed special advocate programs in tribal courts, and children's advocacy centers designed exclusively to serve the needs of tribal communities. Finally, we continue to lend our support to Attorney General Reno's strong commitment to tribes, which is exemplified by her establishment of an Office of Tribal Justice and her commitment of Department of Justice resources to an Indian Justice Initiative that establishes comprehensive promising practices at several locations in Indian country.

The purpose of this conference is to bring together victims, victim advocates, volunteers, prosecutors, judicial and law enforcement personnel, social service and mental health professionals, and tribal leaders to share their knowledge, experiences, and ideas for developing programs that serve the needs of victims in Indian country. State Victims of Crime Act Administrators and federal victim-witness coordinators are also here to learn about the dynamics that shape victim services in Indian country. Our hope is that this conference will improve efforts to aid Native American crime victims.

OVC staff will be in attendance throughout the conference. I hope that you will introduce yourself to us and that you will share your thoughts on victim issues.

I thank you for your participation in this conference and extend my best wishes as you continue your hard work on behalf of victims of crime.

Best regards,

Aileen Adams
Director

NATIONAL INDIAN JUSTICE CENTER

The McNear Building
#7 Fourth Street, Suite 46
Petaluma, California 94952

(707) 762-8113
FAX (707) 762-7681
A non-profit corporation

Joseph A. Myers, Executive Director

WELCOME TO THE CONFERENCE

On behalf of the board of directors and the staff of the National Indian Justice Center, I welcome you to this sixth national conference entitled "Strengthening Indian Nations: Justice For Victims of Crime in Indian Country." We are honored to have been selected by the Office for Victims of Crime of the Department of Justice to conduct this important conference. The Office for Victims of Crime has made great strides in meeting the needs of crime victims in Indian country. Because of OVC's efforts, basic infrastructure is being constructed to create justice systems in which "promising practices" can be implemented to assure the victims of crime in Indian country needed relief.

Your participation in this conference is important. To continue to improve services to crime victims in Indian country we must come together to share and learn from each other. When we come together to learn and share, powerful energies and new ideas emerge. The challenge of this conference is to take these energies and ideas and, where feasible, incorporate them into programs and policies. Please make this conference beneficial to the crime victims of Indian country by taking home with you new ideas and new strategies.

We commend you for your dedication and commitment to the victims of crime. Please enjoy your time here.

Sincerely,

Joseph A. Myers
Executive Director

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Judge John St. Clair, *Shoshone*
Chief Justice Robert Yazzie, *Navajo*
Tribal Attorney Gary LaRance, *Hopi*
Chief Prosecutor Timothy Joe, *Navajo*

"FOR ALL MY RELATIONS"

Respecting Families and Traditions

Office for Victims of Crime

Strengthening Indian Nations: Justice for Victims of Crime

SIXTH NATIONAL CONFERENCE REFERENCE MANUAL

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(707) 762-8113
FAX (707) 762-7681
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Joseph A. Myers, Executive Director

INTRODUCTION TO:
THE SIXTH NATIONAL CONFERENCE RESOURCE MANUAL

This resource manual has been produced for the participants of the **Strengthening Indian Nations: Justice for Victims of Crime, Sixth National Conference**. Funding for this project is provided by the Office for Victim of Crimes (OVC) pursuant to a grant awarded to the National Indian Justice Center (NIJC). The purpose of this conference and the resource manual is to help to improve the services to the victims of crime in Indian country.

The Resource Manual is divided into two main parts: Conference Section, and the Resource Section. The table of contents provides an overview of both sections. The first section of the manual provides information about the participants, presenters and the San Diego area. Included are the: conference agenda, hotel and visitors information, presenter and participant rosters and presenter biographies. There are evaluations forms for each workshop. Please take the time to complete the forms. Your views will help us to improve future conferences. Suggestions for additional workshops or materials are welcome. Completed forms may be left at the registration tables or returned after the Conference to NIJC.

Workshop summaries and objectives are provided in the Conference Program Section. Each Conference workshop has a summary describing the workshop, its time, date, if repeated and presenters listed. The summaries are a quick reference for determining a workshop's content. The summaries are grouped in four sections which correspond to your Conference brochure's four categories: Understanding Victimization and its Cycles; Administrative/Program Sessions; Improving Inter- and Intra- Agency Cooperation; Crisis Intervention and Service Providers Sessions. For easy cross-reference, the same symbols used in the brochure are assigned to each workshop summary.

For detailed information about workshop topics, use the Resource Section. This section is its own self-contained book of resources that provides written information for the workshops. It is divided into four subsections which correspond to the four brochure sections. The same workshop order and symbols are used.

The goal of the Resource Manual is to provide a useful, practical reference for service providers and the others who face the crime victim issues of Indian country. We want you to leave the Conference with a resource that will help you in your work on behalf of crime victims.

BOARD OF DIRECTORS

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Judge
John St. Clair
Shoshone

Chief Justice
Robert Yazzie
Navajo

Tribal Attorney
Gary LaRance
Hopi

Chief Prosecutor
Timothy Joe
Navajo

NIJC wishes to thank everyone who submitted written materials and to those who made this Sixth National Conference Resource Manual possible. Special thanks to the staff at NIJC who dedicated themselves to designing, editing and assembling the Conference Resource Manual, especially Jeannie Gregori, NIJC Staff Attorney, who worked tirelessly to produce the manual.

"FOR ALL MY RELATIONS"
Respecting Families and Traditions
STRENGTHENING INDIAN NATIONS:
JUSTICE FOR VICTIMS OF CRIME IN INDIAN COUNTRY
OFFICE FOR VICTIMS OF CRIME SIXTH NATIONAL CONFERENCE

AGENDA

Wednesday, January 22, 1997
6:30 p.m. - 8:30 p.m. *(Regency Ballroom)*
EARLY REGISTRATION, DISTRIBUTION OF MATERIALS AND RECEPTION

Thursday, January 23, 1997
7:30 a.m. - 9:00 a.m. *(Bayside Pavillion)*
REGISTRATION AND DISTRIBUTION OF MATERIALS

8:30 a.m. - 9:00 a.m. *(Regency Ballroom)*
INVOCATION & OPENING REMARKS
Joseph A. Myers, Executive Director, National Indian Justice Center
Aileen Adams, Director, Office for Victims of Crime
Alan D. Bersin, U.S. Attorney, Southern District of California
Randolph Prillaman, Deputy Assistant Director, Criminal Investigation, FBI
Anthony Pico, Chairperson, Viejas Band of Mission Indians
Young Once, Indian Forever *(Video Presentation)*

9:00 a.m. - 10:15 a.m. *(Regency Ballroom)*
VICTIM SPEAKOUT - Impact of Crime, Victim Participation in *System, Victim Empowerment, Victims Advocacy & Action*
Foster Kalama, Conf. Tribes of Warm Springs (Child Sexual Abuse)
Laura Switzler, Conf. Tribes of Warm Springs (child Sexual Abuse)
Pat Waconda, Laguna Pueblo (Homicide/Domestic Violence)
Larry Echohawk, Professor of Law, BYU (DUI/DWI)

10:15 a.m. - 11:15 a.m. *(Regency Ballroom)*
VICTIM/WITNESS SERVICES - WHAT TO EXPECT:
Partnership, Accountability, Parallel System of Rights, Obstacles & Role of Victim
Dori Arter, U.S. Attorney's Office, Arizona
Ramona Baez, Former Director, Warm Springs Victim Assistance Program
Beth Binstock, V/W Coordinator, U.S. Attorney's Office, Montana

11:15 a.m. - 12:15 p.m.

WORKSHOP PLANNING BREAK

Please use this time to review Workshop Summaries and Resource Materials to determine which workshops to attend. In order to maintain the quality and support of this national conference, we ask that all participants attend workshops, sign workshop attendance sheets and submit conference evaluation forms.

12:15 p.m. - 1:45 p.m. *(Regency Ballroom)*

WORKING LUNCHEON

Hon. Janet Reno, U.S. Attorney General
Sam English, Artist

1:45 p.m. - 2:00 p.m.

BREAK

2:00 p.m. - 3:15 p.m. *(Meeting Room)*

CONCURRENT WORKSHOPS

Workshop	Room
Gang Violence/Juvenile Justice Issues	I-A
Child Abuse and Neglect	G-A
Victim Compensation/Financial Assistance	G-B
Burnout & Stress Management	G-C
Grant Writing	M
Developing Interagency Protocols to Address CA/DV	G-D
DUI/DWI	I-B
Developing Guardian Ad Litem and CASA Programs in Indian Country	G-F

3:15 p.m. - 3:30 p.m.

BREAK

3:30 p.m. - 5:00 p.m. *(Meeting Room)*

CONCURRENT WORKSHOPS

Workshop	Room
Family Violence/Domestic Violence	G-F
Elder Abuse	M
Urban Victimization/PL 280 States	G-A
VAWA	G-B
Establishing & Maintaining Tribal VAPS	G-C
Improving Federal & Tribal Response to Crimes in Indian Country	BR-A
Cultural Sensitivity	BR-B
Forensic Interviews	G-D
Victimization 101	I-A
Spiritual Healing	BR-C
DUI/DWI	I-B

7:00 p.m. - Closing

SPIRITUAL HEALING CEREMONY BR-A

Friday, January 24, 1997

9:00 a.m. - 10:00 a.m. *(Regency Ballroom)*

WOMEN'S PERSPECTIVE ON VICTIMS' RIGHTS:
Violence Against Women in Indian Country
Moderator, **Bonnie Craig,** Director, Native American Studies, University of Montana
Esther Yazzie, Navajo Interpreter for Victims in Federal Court
Iris Heavyrunner, Director, Health Nations Project, Minnesota

10:00 a.m. - 10:45 a.m. *(Regency Ballroom)*

CULTURAL SENSITIVITY & DIFFERING APPROACHES TO ADVOCACY
Moderator, **Karen Biestman,** University of California at Berkeley
Dr. Brian Ogawa, Director
National Academy for Victim Studies, University of North Texas
Dolores Subia Bigfoot, University of Oklahoma

10:45 a.m. - 11:00 a.m.

BREAK

11:00 a.m. - 12:15 p.m. *(Meeting Room)*

CONCURRENT WORKSHOPS

Workshop	Room
By-Standar Trauma: Are You In Danger of Becoming a Victim of Your Work	G-A
Financial Management of Grants	M
Victim Compensation/Financial Assistance	G-B
Establishing & Maintaining Tribal VAP's	G-C
Cultural Sensitivity	I-A
Challenges to Peacemaking	G-D
Using Tribal, State & Federal Forums to Effectively Address Victims' Issues	G-F
Developing Services for Sexual Assault Victims	I-B

12:15 p.m. - 2:00 p.m

LUNCH (on your own)

2:00 p.m. - 3:15 p.m. *(Meeting Room)*

CONCURRENT WORKSHOPS

Workshop	Room
Gang Violence & Juvenile Justice Issues	BR-A
Family Violence & Domestic Violence	I-A
By-Standar Trauma: Are You In Danger of Becoming a Victim of Your Work	G-F
Victims' Issues & Indian Housing Programs	G-A
VAWA	M
CJA & VAIC Program Management Issues	G-B
Building Relations with /Tribal Leaders	BR-B
Establishing Tribal Code Provisions & Victims' Bills of Rights to Respond to Victims' Issues	I-B
Methods to Hold Non-Indian Offenders Accountable for Crimes in Indian Country	BR-C
Community Crisis Response and Community Crisis Teams	G-C
Forensic Interviews	G-D

3:15 p.m. - 3:30 p.m.

BREAK

3:30 p.m. - 5:00 p.m. *(Meeting Room)*

CONCURRENT WORKSHOPS

Victims' Issues & Indian Housing Programs	G-A
I'm Not Evidence; I'm the Victim	G-B
Grieving Violent Deaths	G-C
Judicial Planning & Training to Observe Victim's Rights	G-F
Building Relations with Tribal Leaders	M
Developing Interagency Protocols to Address Child Abuse & Domestic Violence	G-D
Spiritual Healing	I-A
Using CPTs and MDTs in Indian Country	I-B

6:30 p.m. - 9:00 p.m. *(Regency Ballroom)*

CONFERENCE BANQUET
Initiative on Elder Abuse
Tracy King, Vice-Chairman, Fort Belknap Tribes

SALUTE TO VICTIM ADVOCATES:
Challenges and Obstacles to Delivering Services and Rights
Dr. Marlene Young, Executive Director, National Organization for Victim Assistance

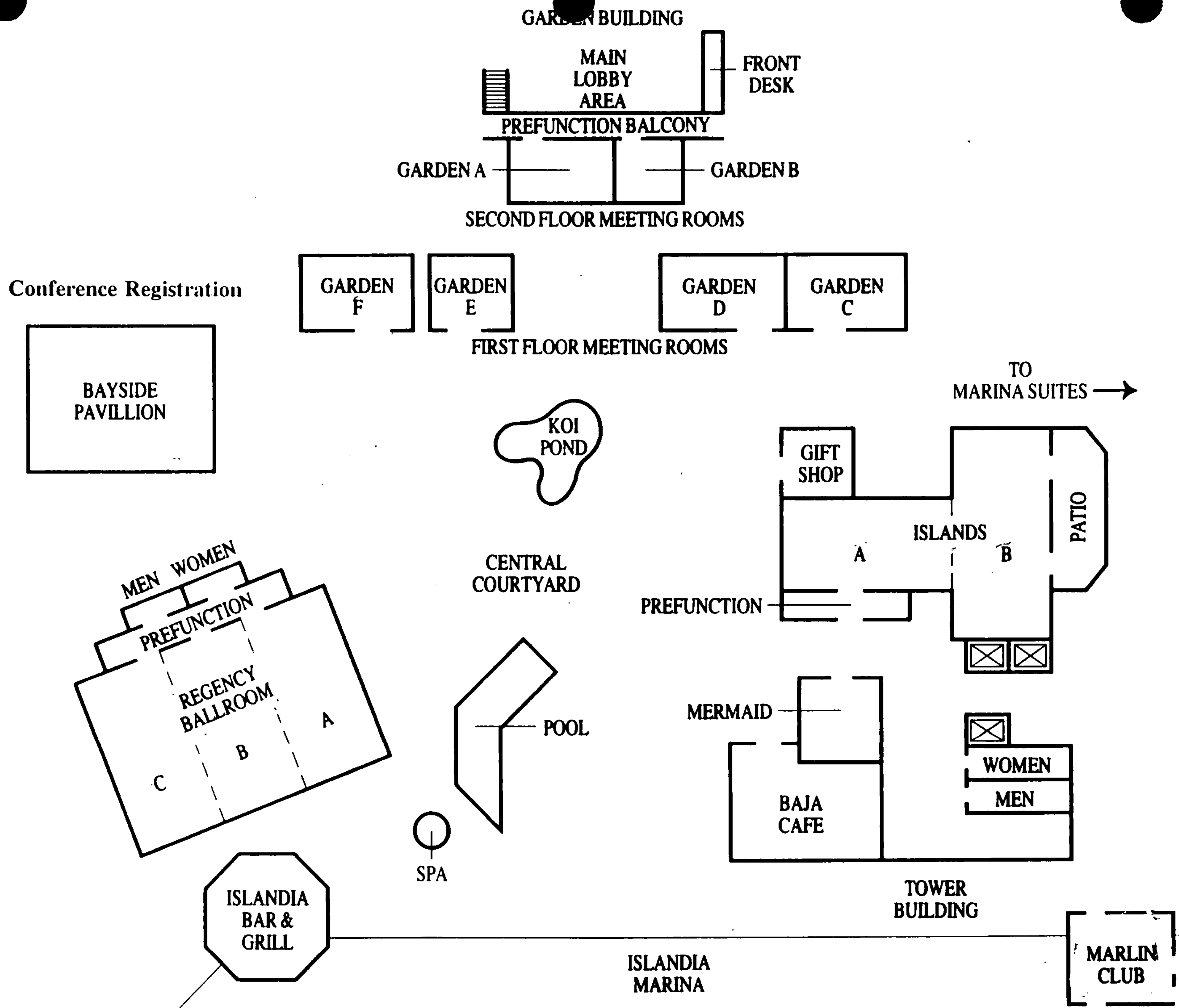
Saturday, January 25, 1997
9:00 a.m. - 11:00 a.m. *(Regency Ballroom)*

PROMISING PRACTICES IN INDIAN COUNTRY
Moderator, **Joseph A. Myers**, National Indian Justice Center
Merelyn Cambridge, VOCA Program Director, Ute Tribe
Ramona Baez, Former Director, Warm Springs Victim Assistance Program
Lorena Sohappy, Yakima Nation
Minnesota Chippewa Consortium (CJA)

11:00 a.m. - 12:00

CLOSING CEREMONY

MAP OF HYATT ISLANDIA MEETING ROOMS



STRENGTHENING INDIAN NATIONS:
JUSTICE FOR VICTIMS OF CRIME
Sixth National Conference
January 23-25, 1997
San Diego, California

EVALUATION FORM: DAY ONE, January 23, 1997

Please circle the number which is closest to your evaluation of each session or workshop and provide additional comments. Please turn the evaluation in to the conference registration desk at the end of the day.

9:00 a.m. - 10:15 a.m. **General Session - Victim Speakout: Impact of Crime, Victim Participation in System, Victim Empowerment, Victims Advocacy & Action**

Excellent Poor

10 9 8 7 6 5 4 3 2 1

Comments:____

____

10:30 a.m. - 11:45 a.m. **General Session - Victim/Witness Services - What to Expect: Partnership, Accountability, Parallel System of Rights, Obstacles & Role of Victim**

Excellent Poor

10 9 8 7 6 5 4 3 2 1

Comments:____

____

12:15 p.m. - 1:45 p.m. **Group Luncheon - Keynote**

Excellent Poor

10 9 8 7 6 5 4 3 2 1

Comments:____

____

2:00 p.m. - 3:15 p.m. **Workshops: (Please place a check by the workshop you have attended and complete the evaluation for that workshop.)**

_______ 1. Gang Violence/Juvenile Justice Issues

_______ 2. Child Abuse and Neglect

_______ 3. Victim Compensation/Financial Assistance

_______ 4. Burnout & Stress Management

_______ 5. Grant Writing

_______ 6. Developing Interagency Protocols to Address CA/DV

_______ 7. DUI/DWI

_______ 8. Developing Guardian Ad Litem and CASA Programs in Indian Country

(Evaluation Continued ->)

Evaluation Continued: DAY ONE

Excellent Poor

10 9 8 7 6 5 4 3 2 1

Comments:____

____

3:30 p.m. - 5:00 p.m. **Workshops:** **(Please place a check by the workshop you have attended and complete the evaluation for that workshop.)**

_______ 1. Family Violence/Domestic Violence

_______ 2. Elder Abuse

_______ 3. Urban Victimization/PL 280 States

_______ 4. VAWA

_______ 5. Establishing & Maintaining Tribal VAPs

_______ 6. Improving Federal & Tribal Response to Crimes in Indian Country

_______ 7. Cultural Sensitivity

_______ 8. Forensic Interviews

_______ 9. Victimization 101

_______ 10. Spiritual Healing

_______ 11. DUI/DWI

Excellent Poor

10 9 8 7 6 5 4 3 2 1

Comments:____

____

____

7:30 p.m. - Closing **Spiritual Healing Ceremony**

Excellent Poor

10 9 8 7 6 5 4 3 2 1

Comments:____

____

STRENGTHENING INDIAN NATIONS:
JUSTICE FOR VICTIMS OF CRIME
Sixth National Conference
January 23-25, 1997
San Diego, California

EVALUATION FORM: DAY TWO, January 24, 1997

Please circle the number which is closest to your evaluation of each session or workshop and provide additional comments. Please turn the evaluation in to the conference registration desk at the end of the day.

9:00 a.m. - 10:00 a.m. **General Session - Women's Perspective on Victims' Rights: Violence Against Women in Indian Country**

Excellent Poor

10 9 8 7 6 5 4 3 2 1

Comments:____

____

10:00 a.m. - 10:45 a.m. **General Session - Cultural Sensitivity & Differing Approaches to Advocacy**

Excellent Poor

10 9 8 7 6 5 4 3 2 1

Comments:____

____

11:00 a.m. - 12:15 p.m. **Workshops:** **(Please place a check by the workshop you have attended and complete the evaluation for that workshop.)**

_______ 1. ICWA & Victims' Issues

_______ 2. Financial Management of Grants

_______ 3. Victim Compensation/Financial Assistance

_______ 4. Establishing & Maintaining Tribal VAP's

_______ 5. Cultural Sensitivity

_______ 6. Challenges to Peacemaking

_______ 7. Using Tribal, State & Federal Forums to Effectively Address Victims' Issues

_______ 8. Developing Services for Sexual Assault Victims

Excellent Poor

10 9 8 7 6 5 4 3 2 1

Comments:____

____

(Evaluation Continued ->)

Evaluation Continued: DAY TWO

2:00 p.m. - 3:15 p.m. **Workshops:** **(Please place a check by the workshop you have attended and complete the evaluation for that workshop.)**

_______ 1. Gang Violence/Juvenile Justice Issues

_______ 2. Family Violence/Domestic Violence

_______ 3. ICWA and Victims' Issues

_______ 4. Victims' Issues & Indian Housing Programs

_______ 5. VAWA

_______ 6. CJA & VAIC Program Management Issues

_______ 7. Building Relations w/Tribal Leaders

_______ 8. Establishing Tribal Code Provision & Victims' Bills of Rights to Respond to Victims' Issues

_______ 9. Methods to Hold Non-Indian Offenders Accountable for Crimes In Indian Country

_______ 10. Community Crisis Response and Community Crisis Teams

_______ 11. Forensic Interviews

Excellent Poor

10 9 8 7 6 5 4 3 2 1

Comments:____

____

____

3:30 p.m. - 5:00 p.m. **Workshops:** **(Please place a check by the workshop you have attended and complete the evaluation for that workshop.)**

_______ 1. Victims' Issues & Indian Housing Programs

_______ 2. Financial Management of Grants

_______ 3. Grant Writing

_______ 4. Judicial Planning/Training to Observe Victims' Rights.

_______ 5. Building Relations w/Tribal Leaders

_______ 6. Developing Interagency Protocols to Address CA/DV

_______ 7. Spiritual Healing

_______ 8. Using CPTs and MDTs in Indian Country

Evaluation Continued: DAY TWO

Excellent Poor

10 9 8 7 6 5 4 3 2 1

Comments:____

____

8:00 p.m. - 9:00 p.m. **Keynote Banquet: Initiative on Elder Abuse**

Excellent Poor

10 9 8 7 6 5 4 3 2 1

Comments:____

____

Keynote Banquet: Salute to Victim Advocates: Challenges and Obstacles to Delivering Services and Rights

Excellent Poor

10 9 8 7 6 5 4 3 2 1

Comments:____

____

(Evaluation Continued ->)

STRENGTHENING INDIAN NATIONS:
JUSTICE FOR VICTIMS OF CRIME
Sixth National Conference
January 23-25, 1997
San Diego, California

EVALUATION FORM: DAY THREE, January 25, 1997

Please circle the number which is closest to your evaluation of each session or workshop and provide additional comments. Please turn the evaluation in to the conference registration desk at the end of the day.

9:00 a.m. - 11:00 a.m. General Session: **Promising Practices in Indian Country**

Excellent Poor

10 9 8 7 6 5 4 3 2 1

Comments:____

____

____

OVERALL CONFERENCE EVALUATION

1. Overall, did you feel that the conference was well organized?

Excellent									Poor
10	9	8	7	6	5	4	3	2	1

Comments:____

2. To what extent did the conference effectively increase your understanding of victims of crime issues?

Excellent									Poor
10	9	8	7	6	5	4	3	2	1

Comments:____

3. How would you rate the performance of the conference staff?

Excellent									Poor
10	9	8	7	6	5	4	3	2	1

Comments:____

4. To what degree will the conference presentations be useful in your professional tasks?

Excellent									Poor
10	9	8	7	6	5	4	3	2	1

Comments:____

5. Did the speakers present their information in a manner that was understandable and interesting?

Excellent									Poor
10	9	8	7	6	5	4	3	2	1

Comments:____

6. Were the accommodations satisfactory?

Excellent									Poor
10	9	8	7	6	5	4	3	2	1

Comments:____

7. Do you think another conference should be held next year?

Yes No

Additional Comments:____

(Evaluation Continued ->)

GENERAL INFORMATION, EVENTS & ATTRACTIONS . . .

Extensive Visitor's guides, maps, menus, etc., are in the Conference Registration Area (Bayside Pavilion). Please note that this information is for all participants and is for Display Only. Please keep all visitor information in the registration area. Thank you.

The Sixth Conference site is:

Hyatt Islandia on Mission Bay
1441 Quivira Road
San Diego, California 92109

Mission Bay is the largest aquatic preserve in the United States covering over 4,600 acres of park land. The Hyatt Islandia is the closest hotel to Sea World, located 15 minutes from San Diego Lindbergh Field Airport; Downtown San Diego; San Diego Zoo; Jack Murphy Stadium. San Diego is 25 minutes from the United States / Mexico International border.

THE HYATT'S RECREATION FACILITIES:

Olympic size outdoor swimming pool with Jacuzzi Spa.
Fitness Room
220 slip full service marina
Seasonal Whale-watching charters (Dec - March)
Daily Sportfishing Trips
Full range of Powerboat and sailboat rentals
Parasailing
Bicycle, paddleboat and canoe rentals

LEISURE TOURS, ACTIVITIES AND AREA ATTRACTIONS:

Jogging and cycling trails
Waterskiing
Thoroughbred horse racing
Sea World
Gas Lamp District
Coronado Island
Cabrillo National Monument
Hot Air ballooning
Jet Skiing
Golf & Tennis nearby
Old Town
Shopping in La Jolla
Tijuana
Temecula Wine Country

RESTAURANTS AND LOUNGES:

ISLANDIA RESTAURANT, a 120 seat Mediterranean and California Cuisine restaurant overhanging the hotel's marina and overlooking Mission Bay. Serving dinner and Sunday Champagne Brunch.

BAJA CAFE, a 160 seat Southwestern influenced restaurant. Open for breakfast, lunch and dinner.

THE CHALLENGER CLUB, located within the Islandia Restaurant, offers cocktail service in an atmosphere of international sportsmanship inspired by the 1992 America's Cup Yacht races. The Challenger Club also has live

THE BAJA CANTINA, located in the Tower lobby adjacent to the Baja Cafe, serves cocktails and snacks in a casual Southwestern setting.

TRANSPORTATION:

CLOUD NINE: For airport transportation to and from the Hyatt Islandia- A special rate is available to hotel guests. Super Shuttle operates 24 hours a day.

HARBOR HOPPER: This unique water taxi service provides transportation to all areas of Mission Bay, including Sea World. Loading is at the hotel marina.

NORDSTROM SHUTTLE: This complimentary shuttle provided by Nordstrom runs between the hotel and Fashion Valley mall. Contact the Concierge for daily departure times.

VISITOR'S INFORMATION: There will be a general information table set up in the registration area at the Bayside Pavilion.

PARTICIPANT ROSTER

Thursday, January 09, 1997

Gary Acevedo
Associate Judge
Salish-Kootenai Tribal Court
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Fax: (406) 675-4704

Kathy Adair
Victim Advocate/Mental Health
Bay Mills Indian Community
RT 1 BOX 306
Brimley, MI 49715
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AILEEN ADAMS, was appointed by the President and confirmed by the United States Senate to be the Director of the Office for Victims of Crime in the Justice Department -- the leading federal advocate for crime victims. In that capacity, she administers over $ 500 million in federal funds which support approximately 3,000 victim compensation and assistance programs around the country, including children's advocacy centers, battered women's shelters, and rape crisis centers. Prior to her Presidential appointment, Ms. Adams worked as an advocate for sexual assault victims, consumers, and Older Americans for more than two decades. Lear's magazine described her as a "dedicated community activist who fights for those who cannot fight for themselves" and a "leading advocate for legal redress for neglected and abused older people and victims of rape and child abuse." She has an extensive background in law enforcement and victims'rights, consumer advocacy, fire safety and emergency medical care, and as a civic leader. She co-authored Sexual Assault on Campus: What Colleges Can Do, and she co-produced an award-winning film about campus rape. Close to 50,000 copies of the book have been distributed, and the film is shown on hundreds of campuses around the country. She is a graduate of Howard University Law School and Smith College, which recognized her as one of its outstanding alumnae. Aileen's husband, Geoffrey Cowan, served as the Director of the Voice of America for three years and is currently the Dean of the USC Annenberg School for Communication. The couple has two children, and for a number of years owned a minor league baseball team, the Stockton Ports.

ADRIENNE ADKINS, is a member of the Minnesota Chippewa Tribe - White Earth Reservation. She is the Human Services Division Director, Minnesota Chippewa Tribe since 1980. She has 24+ years experience working in the Indian communities of Minnesota. She is very knowledgeable and understanding of the culture, values, traditions of the community and understanding of the need for relevant services that will promote the safety, health, welfare and preservation of Indian families. She also has 10+ years experience in the Administration of Human Services and related programs. Her skills include supervision, program development, planning and implementation as well as coordination of existing service to ensure quality services to Indian families, women and children. She has expertise in the area of providing meaningful and needed services to the Indian Community. She is also a current member, Board of Directors's for Minnesota Indian Women Resources Center. She is an ex-officio member, Minnesota State Indian Advisory Committee and Founder of Minnesota Tribal/State Agreement.

DORI ARTER, has been a Victim Witness Advocate for the United Stated Attorneys Office in Tucson, Arizona, since 1989. In that capacity, she assists victims and witnesses of crime on the Tohono O'Odham, Pascua Yaqui and San Carlos Apache Indian reservations. She has been employed by the U.S. Attorney's Office since 1977, and in addition to her duties as Victim Witness Advocate, she is secretary to the First Assistant U.S. Attorney.

RAMONA A. BAEZ, a Warm Springs\Nez Perce Indian, has worked in the area of Victims of Crime on the Warm Springs Indian Reservation since 1990. She started out as a volunteer in that office, then was asked to be the Children's Advocate and in 1991 was promoted to the Acting Director. She held that job until she was selected as the Director of the program in January, 1992. Ramona belongs to the Oregon Coalition of Domestic and Sexual Assault with the Women of Color Caucus, the Oregon State Domestic Violence Advisory Committee and the Oregon Crime Victims Assistance Network (CVAN). These projects are important to Ramona, her Tribes, and all people in and outside of Oregon. She also tries to network with Indian and Women's programs both in and out of the state of Oregon. Ramona is very willing to be a speaker, panelist or help out in any other way with programs and projects that are going to help relief or eliminate any kind of abuse among the Native American people.

RICHARD BARAJAS, is Chief Justice of the Eighth Court of Appeals in Texas.

JAMES BELL has been staff attorney with the Youth Law Center in San Francisco, CA. for over 10 years. A recognized expert in juvenile justice and child protection issues, he has provided technical assistance to numerous tribal court systems and has assisted in the writing of model juvenile justice and child protection codes for tribal courts. He graduated from Hastings College of Law and has been involved in civil rights litigation on behalf of children in confinement.

MARCELLA BENSON-QUAZIENA, is currently the Education and Training Director for the National Court Appointed Special Advocate Association. In her duties as director she is responsible for the NCASAA's national conference, training curriculum and leads the efforts for the tribal project. Marcella came to National CASA with experience in training, conference planning, mediation, group process, diversity, and organization development. Her prior position was Office Chief of Staff Development, Training, and Diversity with the Children's Administration of the Department of Social and Health Services (DSHS) in Washington state. Prior to her employment with Children's Administration she was the Diversity Coordinator for the DSHS Division of Juvenile Rehabilitation. Marcella has a Ph.D. from the Fielding Institute of Santa Barbara, CA and a MSW from the University of Washington.

KAREN BIESTMAN, J.D., has taught courses dealing with law, race, class and gender for thirteen years in U.C. Berkeley's Native American Studies Program, and more recently at Stanford Law School. She consults regularly in the area of Indian affairs.

DOLORES SUBIA BIGFOOT, Ph.D., is an Assistant Professor in the Department of Pediatrics, at the University of Oklahoma Health Sciences Center. She is the Director of Project: Making Medicine. She is a trainer and consultant on multicultural issues in prevention, intervention, and treatment of American Indian families, including parenting, family violence, and mental health. Dr. BigFoot is

recognized for her efforts to bring traditional Indian practices into the service delivery for Indian people and has publications on cross-cultural issues in treatment and service delivery. Dr. BigFoot is an enrolled member of the Caddo Tribe of Oklahoma and is part Aztec and Mexican.

BETH BINSTOCK, a native of Montana, has been the LECC/VW Coordinator in that District for 4 years. She graduated from the University of Montana with degrees in Interpersonal Communications and Sociology. For three years Beth worked as a Victim Assistant in the Yellowstone County Attorney's Office. She then became employed by the State of Montana for a period of eight years--three as a counselor at a women's pre-release center and five years as an adult probation and parole officer. Beth is an active member of several advisory boards including the D.A.R.E. Advisory Board and Alternatives, Inc., which is a non-profit program consisting of:a pre-release center, pre-diversion program, restitution services and counseling services for victims. Other memberships include the Montana Correctional Association, the Western Corrections Association and the South Central Peace Officers Association. In April 1993 Beth was one of three recipients of the Montana Attorney General's Crime Victim Advocate Award.

HEIDI BOGDA, is a member of the Minnesota Chippewa Tribe - Leech Lake Reservation. She is current the Children's Advocacy Specialist for the Minnesota Chippewa Tribe. She has 7+ years experience working in the Indian communities of Minnesota. She has the knowledge and understanding of the culture, values, traditions of the community and understanding of the need for relevant services that will promote the safety, health, welfare and preservation of Indian families. She has 5 years experience as Assistant Coordinator in the Administration of Human Services and related programs. Her skills include assisting with program development, planning and implementation. She also has expertise in the area of providing meaningful and needed services to the Indian community. She was the president for 7 years for Leech Lake Child Care Committee; Coordinator, Minnesota Tribal/State Agreement during the period 1991-96; Member of Minnesota State Crime Victim & Witness Advisory Council; and Vice-President, American Legion Auxiliary Post #284.

BILL BRANTLEY, serves as Social Science Program Specialist in the Office for Victims of Crime (OVC), Federal Crime Victims Division. He is responsible for managing grants under the Children's Justice Act Discretionary Grant Program for Native Americans and the Tribal Court Appointed Special Advocate Project. He also oversees the Federal Crime Victim Assistance Fund, a program of financial assistance for federal crime victims. Mr. Brantley holds a Bachelor of Arts degree from Emory University in Atlanta, Georgia. He began his career with OVC in 1991.

ROE BUBAR, is a practicing attorney and partner in a Native owned consulting firm, Bubar & Hall. She is the former Director of the Children's Safehouse of Albuquerque, one of the largest multidisciplinary programs in the Southwest. Ms. Bubar presently consults on forensic interviewing of children, legal issues related to

child abuse cases, and multicultural issues within the context of child abuse cases. She has been involved in over 1200 investigations involving child sexual abuse allegations and case involving acute trauma. Ms. Bubar has over 10 years experience as a counselor working with children in a variety of clinical settings and has been an attorney for six years. She has also worked with state, federal and tribal agencies and has worked extensively in Indian Country. In July of 1994 she co-produced a videotape entitled, Forensic Interviewing of Young Children and Children With Developmental Disabilities. Ms. Bubar is a Board member for the National Network of Children's Advocacy Centers and she can be reached at 4209 Saddle Notch Drive, Fort Collins, Colorado 80526, (970) 226-1143.

ALLAN BURSON, is an Attorney with the U.S. Attorney Office, Southern District, San Diego, California.

MERELYNN CAMBRIDGE, is the VOCA Program Director of the Ute Indian Tribe of Utah.

MONICA CARRASCO, is the CSPCN Coordinator with the Jicarilla Mental Health and Social Services in Dulce, New Mexico.

PAUL CASSELL, is a Professor of Law at the University of Utah, Salt Lake City, Utah.

BETTY CASTILLO, Pima/Maricopa/Mohave, has been the Child Protective Services Coordinator for the Salt River Pima-Maricopa Indian Community since 1988. Previously she worked as a Child Protective Services Worker for the Gila River Indian Community for seven years. Betty has provided training throughout the country including training for the Child Protective Services Academy, Women and Wellness Conference, and the National Indian Nurses Association. She is a board member of parents Anonymous of Arizona, a member of the Arizona State Child Abuse Prevention Task Force, and a member of the 1993 Planning Committee member for the State of Arizona Child Abuse Conference.

TOBY CHAVEZ, a 4/4 Santo Domingo Pueblo, lives in Albuquerque, New Mexico with her two younger sons and husband (Navajo). Her eldest son lives nearby with his family. She is now a grandparent of a 6 month old granddaughter. Ms. Chavez' parents live in the Pueblo. All her siblings live within 30 miles of each other. Ms. Chavez is the first of seven siblings. She has a Masters degree in Social Work. She is the Supervisory Social Worker at the Santa Fe Indian Hospital, Santa Fe, New Mexico where she has worked for 15 years. Ms. Chavez also serves on the Board of Directors for the New Mexico Coalition of Sexual Assault Programs (Albuquerque) and the Title IX Parent Committee for Albuquerque Public Schools. She is also a stand up comic, too.

ELBRIDGE COOCHISE, has been on the bench for 19 years, since 1976. Since 1981, he has served as the Administrator/Chief Judge of the Northwest Intertribal Court System in Western Washington State. He is Chief Justice of the Northwest Regional Tribal Supreme Court which is operated by the NICS since 1988. He was Associate Judge at the Hopi Tribal Court from 1976 through 1981. Justice Coochise is currently serving his fourth term as President of the National American Indian Court Judges Association, since March, 1988. He served as President of the Northwest Tribal Court Judges Association 1988-1990/1990-1992/1992-1994. A recognized leader in his field, Justice Coochise received the 1993-1994 "Who's Who Worldwide Award" for leadership and Achievement in his Profession, and again in November 1994 "Who's Who Among Outstanding Americans". He is Chairman of the Tribal Governance Committee of the Affiliated Tribes of Northwest Indians (a regional tribal governments organ.) and a member of the National Indian Policy Center's task force on Law & Administration of Justice. He is an alumnus and joined the faculty of the Hopi Tribe. He has had the honor of serving on several national committees and panels, has taught for various tribes on American Indian issues. His interests range from serving on the board of a children's book publishing company to being a country-rock musician and recording artist.

BONNIE CRAIG, a member of the Blackfeet Tribe, is director of the Native American Studies Program at the University of Montana. She received her Juris Doctor in 1988. She is a former tribal court judge and court administrator with the Blackfeet Tribal Court and a judge with the Flathead Tribal Court. She is a trainer and consultant for the National Indian Justice Center and serves on numerous community boards and committees which focus on health for Native people.

STEVEN A. DARDEN, a student of traditional Native American lifeways, and an apprentice of the Dineh Blessingway, has learned how to weave the intricacies of contemporary society into his many roles. A former Flagstaff, AZ city councilman and judge, a human services agency director, college adjunct faculty, high school administrator, museum curator, and artist, he has extensive experience in working with peoples of various backgrounds. A recent graduate of the international Mastery University (Robbins Research International, Inc.), he is committed to learning from the best in the world. He is dedicated to promoting wellness and creating opportunities for people to achieve self-reliance, and perpetuating the beautiful, rich, viable, and vital heritage and culture of the Native and Indigenous peoples. Honored to speak at over 450 conferences in 39 states and 15 Native Nations, he honors the gift of life.

LEMYRA DEBRUYN, is of French Canadian ancestry from upper Michigan. She is a Behavioral Scientist with the Division of Violence Prevention, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention. Her focus areas include prevention of intimate partner violence against women among diverse populations, adolescent suicide prevention in American Indian and Alaska Native communities, the association between suicide and intimate partner violence in diverse populations, and the impact of community violence on children and

families. Prior to joining the CDC in October 1996, she was the Chief, Family Violence Prevention Team, Mental Health and Social Services Programs Branch, Indian Health Service, since its inception in 1986. The Team provided crisis response and program development for the prevention of suicide, domestic violence, child abuse, and child sexual abuse among American Indian/Alaska Native communities throughout the United States. From 1979-1986 Dr. DeBruyn was a clinician and child abuse prevention program coordinator for the Northern Pueblos of New Mexico. She is a Clinical Assistant Professor of the Department of Psychiatry, University of New Mexico, a member of the White Buffalo Calf Woman Society, the first Native American shelter for victims of partner violence, and on the Advisory Board of Morning Star House, a shelter and advocacy program for Native victims of domestic violence in Albuquerque, New Mexico. She holds a doctoral degree in Medical Anthropology from the University of California at Berkeley.

DEBRA DUMONTIER, is a Tribal CASA Attorney for The Confederated Salish and Kootenai Tribes of the Flathead Nation in Pablo, Montana.

LARRY ECHOHAWK, Pawnee, is the Attorney General of Idaho. He is the first American Indian elected to any statewide office. Attorney General Echohawk is a graduate of Brigham Young University and obtained his law degree from the University of Utah. He headed into legal services in the Bay area of California for a couple of years, serving mainly Indian clients. He had worked as an attorney for the Shoshone-Bannock Tribes on the Fort Hall Reservation, won two terms in the Idaho House of Representatives and then was appointed Bannock County prosecutor.

SAM ENGLISH, an Ojibway Indian, is an artist who donates much of his art and time to Native American causes. He is especially active in organizations dealing with alcohol and substance abuse prevention. He is on the board of directors for the National Organization of Fetal Alcohol Syndrome and the president of the board for the new Albuquerque Indian Center. English has taken an active interest in the National Association for Native American Children of Alcoholics. An artist all of his life, English's art makes a statement about Native Americans and their issues.

FRED W. GARCIA, has served his nation by functioning in high level leadership positions. Appointed by President William J. Clinton and confirmed by the United States Senate in May of 1994, Mr. Garcia held the appointed office of Deputy Director within the White House Office of National Drug Control Policy. His duties were to provide leadership in the development and promotion of the President's National Drug Control Strategy. In April of 1996 Mr. Garcia agreed to serve as a Senior Advisor to the United States Department of Justice. Here, he has provided leadership in the conceptualization and building of linkages between the Justice Department's community-based initiatives and the nation's substance abuse systems. Prior to arriving in Washington, Fred Garcia was the director of Prevention and Treatment Services for the Colorado Department of Health. Even

though he has been in the nation's Capitol for the last two and a half years, he considers Colorado his home. He is the proud father of an eleven year old daughter.

MAUREEN GEARY, Staff Attorney for the California Indian Legal Services from 1990-1993. In the past she has been Staff Attorney for the National Indian Justice Center. She recently returned to CILS as Staff Attorney.

IRIS M. HEAVYRUNNER, is a member of the Blackfeet Tribe in Browning, Montana. She has been involved in American Indian Education and Advocacy for much of her career. Her work experience includes coordinating programs in Human Services, Indian Child Welfare, Adolescent Treatment/Aftercare, Community-Based Prevention, Mental Health, and Professional Faculty Development. She was involved in coordinating a community-wide needs assessment of the Twin Cities American Indian community involving two hundred informants, facilitated a conference planning committee, for four years, that brought together over five hundred people interested in the mental health of American Indian families and children, and served on the planning committee that set up the public hearings on the American Indian Religious Freedom Act in Minneapolis. Her undergraduate work was at Haskell Indian Nations University and the University of Kansas. My graduate work has been at the University of Minnesota/School of Social Work. In 1994, she was a Bush Fellow in Advanced Studies in Child Welfare and in 1996, a Department of Education Experienced Faculty Fellow. She is currently a second-year Doctoral Student and Project Coordinator for the Tribal College Faculty Development Project in the Office of Equal Opportunity in Graduate Studies at the University of Minnesota. She is also a consultant for the McKnight and Bush Foundations.

TERRI L. HENRY, is a Tribal and Rural Affairs Associate in the Violence Against Women Grants Office at the Office of Justice Programs. She has been actively involved in the development, coordination and implementation of the regional meetings of the sixty-eight (68) STOP Violence Against Indian Women Tribal Grantees. Terri has worked on the development of the FY 1997 STOP Violence Against Indian Women Solicitation. Prior to joining the Justice Department, Ms. Henry was the Executive Administrator in the Office of the Principal Chief for the Eastern Band of Cherokee Indians. Her duties included assisting the Principal Chief, serving on various Tribal Council committees, and the administration of thirty-three (33) tribal programs. She also served as an Appeals Magistrate in the CFR Court of Indian Offences - Appellate Division in Cherokee, North Carolina. She presided **en banc** over a variety of cases on Appeal from the Trial Division. Ms Henry has a background and expertise in the advocacy of Human Rights for Indigenous Peoples with particular emphasis on Indigenous women and issues of concern including gender based crimes such as domestic violence and sexual assault. She is a graduate of the University of Iowa College of Law where she earned her J.D. in 1993 and the University of North Carolina at Ashenville where she earned her B.A. in 1987. Ms Henry is a member of the Eastern Band of

Cherokee Indians from the Qualla Indian Boundary in Cherokee, North Carolina.

CHARLOTTE Y. HERKSHAN, is a member of the Confederated Tribes of Warm Springs of Oregon. She has been an employee of the Confederated Tribes for the past twenty-three years as a community health representative; Outreach Counselor; Indian Child Welfare staff; crisis unit response staff; and Mental Health Counselor. Specialty areas focus on loss/grief and Native American Veterans/P.T.S.D.; suicide prevention; post intervention and education.

WILLIAM D. JOHNSON, is of Umatilla/Nez Perce heritage. Since 1972, he has worked in Indian law, highlighted by being elected Chairman of the Confederated Tribes of the Umatilla Indian Reservation, Oregon and serving since 1980, as Judge for the Umatilla Tribal Court. He is the Vice-President of National Indian Justice Center. He is a member of the Oregon State Bar Association, and serves as Judge pro tem for other Tribal Courts, including the Warm Springs Tribal Court, and for the City of Pendleton, Oregon. He also is a lead trainer for the National Indian Justice Center.

FOSTER J. KALAMA, Sr., is a Liaison for the Madras 509-J School District, for 600+ Native American Youth at the Madras Senior High School, Jefferson County Middle School and the Community of Warm Springs and other Native American Youth. Foster sits in on teacher, parent and youth conferences, and IEP's. He also counsels youth and finds out what best suits their needs. Foster has also worked out with several different departments such as the Warm Springs, Confederated Tribes, Juvenile Coordinator Department, the Madras police officers and schools.

BARBARA KENDALL, of Boulder, Colorado, is Coordinator of Special Projects for Boulder County Community Services. Her duties include special projects in human services and community outreach. Prior to this, she served over 17 years in the prosecutor's office as director of Program Development, Victim/Witness Assistance, and Victim Compensation programs. In 1995, she became president of the National Organization for Victim Assistance. She also serves as a board member of the Colorado Organization for Victim Assistance, having also been its president, and a board member of the Colorado Governor's Victim Assistance and Compensation Coordinating Committee. She was a board member of the National Association of Crime Victim Compensation Boards plus member and past co-chair of the Compensation Advisory Committee on Native American access to victim compensation.

TRACY KING, is Chairman of the Fort Belknap Tribe in Harlem, Montana.

THERESA LAFRAMBOISE, is a Professor in the field of, School of Education, at Stanford University in Stanford, California.

WALTER LAMAR, a Blackfeet/Wichita Indian who has resided on the Blackfeet, Jicarilla Apache, and Navajo Reservations. He received his B.S. in Industrial Arts/Education. For the past 16 years he has been employed with the FBI. His FBI experience is with gang activity.

WAUNETA LONEWOLF, is a Consultant with Dream Weaver Ltd. in Glendale, Arizona.

JANICE HARRIS LORD, ACSA-LMSW/LPC, has received her B.A. in Sociology from Phillips University, Enid, Oklahoma and her MSSW degree from University of Texas at Arlington. She is a licensed social worker and professional counselor, and death educator with the Association of Death Education and Counseling. Janice has worked in the Victim Services since 1983. She has written two books, numerous articles and brochures, and is editor of MADDVOCATE. She received an award from U.S. Attorney General Janet Reno for excellence in Victim Services in 1994.

PATTY MCGESHICK, is an enrolled member of the Fort Peck Assiniboine and Sioux Tribes. For the last 7 years Patty has been the Program Director for the "Center of Services for Children and Families in Crisis." These programs provide services for sexually abused victims, family preservation and Victims of Crime. Prior to this position, Patty served as a Clerk of the Court, Fort Peck Tribal Court for 4 years; Tribal Prosecutor, Fort Peck Tribes for 4 years, Administrative Assistant, Fort Peck Tribes for 2 years and an Investigator, Adams County D.A. Office, Brighton Colorado for 4 years. In 1991 she received an award from the Montana State Attorney General "Victims of Crime" and from the United States Department of Justice Office of Justice Programs, "Victims of Crime" 1992. Patty is the Chairperson of the Indian Country Subcommittee, State of Montana. Patty has her B.A. in Communities Studies.

KATHY MCGREGOR, is of Lakota and European descent. She is currently the Project Coordinator for National Indian Child Welfare Association, Portland, Oregon; private practice with adults (primarily Indian women) suffering the effects of childhood abuse. Member of Neighborhood Emergency Team (Portland Fire Bureau) trained for natural disasters. She has worked on a crisis line; at a shelter for battered women; co-facilitated groups for battered women and Adults Molested As Children; counseled couples who are in domestically abusive relationships. Kathy has her M.S.W. with direct service training in trauma-related issues (sexual, physical, emotional, spiritual abuse and domestic violence); undergraduate degree is in pre-law. Kathy is also mother of a 31 year old son whose father is Clatsop Indian. Her interests are: painting, writing fiction, reading, and gardening.

Kimberly Martus, J.D., is currently in the process of being appointed as the first GAL to practice in an Alaskan tribal court. She worked as a law intern/GAL for a local state agency responsible for appointing GALs to represent children in state court protection proceedings. {re"nsiblo foic} appointing GALs to represent children in state court protection proceedings in 1992. In 1993 she helped found a Tribal

GAL Training Project in conjunction w/Laguna & Acoma Tribal Courts, Indian Pueblo Legal Services & the University of New Mexico Law School Clinic. Tribal elders were recruited and trained to represent the best interests of children in abuse & neglect proceedings in tribal courts.

JOANNE MILLER, is a member of the Grand Traverse Band of Ottawa/Chippewa Indians, Peshawbestown, Michigan. I am the Associate Judge for the tribal court. Before becoming the Associate Judge, I was the Court Development Specialist and assisted with the infrastructure of the court - revising court forms and codes. In addition to my judicial work, I am currently working on three projects for the court. I am developing our CASA - Court Appointed Special Advocates program, creating our own peacemaking court system with the assistance of an consultant and community members, and setting up training for tribal members to become lay advocates for our court. My educational background is an Associates of Applied Science in Legal Assisting from Northwestern Michigan College and a Bachelors of Science in Business Administration from Ferris State University. At this time I am applying to law school and plan to start law school next year.

LOUIS MORAN, is a Criminal Investigator for the Bureau of Indian Affairs out of the San Carlos, Arizona.

JOSEPH A. MYERS, a member of the Pomo Tribe of northern California, is the Executive Director of the National Indian Justice Center. From 1976 to 1983 Mr. Myers served as an associate director of the American Indian Lawyer Training Program, and directed its tribal court advocate training project. He serves as president of the board of directors for California Indian Legal Services. A graduate of the University of California, Berkeley, School of Law at Boalt Hall, he has lectured on Indian affairs at numerous universities and has authored several publications concerning Indian legal issues.

BRIAN OGAWA, is the Director of the National Academy for Victim Studies, Department of Criminal Justice, University of North Texas. Dr. Ogawa has over 25 years of university teaching and research, community service, and professional criminal justice experience. He is recognized nationally as a speaker, trainer, and consultant on post-trauma, crime victim-related issues, multiculturalism, and Eastern psychotherapies. In 1995, Dr. Ogawa received the Crime Victim Service Award presented by the President of the United States and the Attorney General in ceremonies at the White House. He serves as on the National Violence Against Women Advisory Council to the U.S. Departments of Justice and Health and Human Services and the Victim Issues Committee of the American Probation and Parole Association. He is also a past Board of Directors member of the National Organization for Victim Assistance. Dr. Ogawa is the author of a number of important writings in the victim services and counseling fields, including the acclaimed books *Walking On Eggshells*, for abused women *To Tell The Truth*, for child victims and witnesses, and *Color of Justice*, the landmark book on minority crime victims.

ANITA O'RIORDAN, Senior Program Specialist with the Consumer Affairs Section of AARP is currently working to implement a national public awareness program on telemarketing fraud and older adults. Ms. O'Riordan is "on loan" from the Office of the Arizona General where for 10 years she has directed the Elder Affairs Unit. That Unit is the focal point in the office addressing concerns and issues relating to older adults and their families with particular emphasis on consumer frauds and physical abuse and neglect. Ms. O'Riordan sits on many national advisory boards and was the 1994 recipient of the Paul Lichterman Award for Outstanding Achievement in provision of Legal Services to Older Americans presented by the American Bar Association Commission on Legal Problems of the Elderly and the Center for Social Gerontology.

FRANCES ONSTAD, is the youth Program Director of the Blackfeet Tribe of Montana.

ANTHONY PICO, is the Chairman of the Viejas Band of Kumeyaay Indians in Alpine, California.

RANDOLPH PRILLAMAN, is an Deputy Assistant Director, Criminal Investigation

MARIA DIANA RAMOS, J.D., Maria's exposure to domestic violence and child abuse began in 1974, when her mother opened her family home as a shelter for victims of domestic violence and their children. Since that time, she has worked with the Family Violence Project as an advocate in the criminal justice system and has taught several law courses on domestic violence and family law at New College School of Law in San Francisco.

JANET RENO, was sworn in as the nation's 78th Attorney General by President Clinton on March 12, 1993. From 1978 to the time of her appointment, Ms. Reno served as the State Attorney for Dade County, Florida. She was initially appointed to the position by the Governor of Florida and was subsequently elected to that office five times. Ms. Reno was a partner in the Miami-based law firm of Steel, Hector & Davis from 1976 to 1978. Before that, she served as an assistant state attorney and as Staff Director of the Florida House of Representatives Judiciary Committee, after starting her legal career in private practice. Ms. Reno was born and raised in Miami, Florida, where she attended Dade County public schools. She received her A.B. in Chemistry from Cornell University in 1960 and her L.L.B. degree from Harvard Law School in 1963.

MARY J. RISLING, an enrolled member of the Hoopa Valley Indian Tribe, is directing attorney of the Eureka office of California Indian Legal Services, a statewide non-profit corporation organized to provide legal representation to low income Tribes and Native Americans for legal problems unique to Native American people. Ms. Risling engages in Federal, State and Tribal administrative and judicial practice (both trial and appellate) on a wide range of issues, with emphasis in Federal Indian Law. She conducts training on specialized legal and Indian law

issues for Tribes, client community, state and federal agencies, post-secondary institutions and continuing legal education providers, including Continuing Education of the Bar and the Center for Judicial Education and Research. She works with numerous Tribes, Indian organizations and individuals on matters involving the Indian Child Welfare Act. She is currently serving on the California Judicial Council, Family and Juvenile Law Standing Advisory Committee, a committee that identifies issues and concerns confronting the California judiciary regarding cases involving marriage, family, and children and suggests appropriate solutions and responses to the Judicial Council.

H. TED RUBEN, became a private consultant to juvenile/family court and justice agencies in August 1992. As a consultant, he is employed by governmental and private associations to conduct research, provide direction on policy issues, help implement organizational or programmatic changes, assist with demonstration projects, and make presentations to conferences. His clients include state and local court systems, national and state juvenile delinquency agencies, legal organizations seeking to improve court handling of child abuse and neglect proceedings, and national court and Native American organizations. From January 1971 to August 1992, he served as Director for Juvenile/Criminal Justice and then Senior Staff Attorney for the Institute for Court Management of the National Center for State Courts, Denver, Colorado. There, he directed ICM's national juvenile justice training program (89 national workshops) and participated in a wide variety of court and justice agency studies (more than 150). He served as director for the Civil Jurisdiction of Tribal Courts and State Courts: The Prevention and Resolution of Jurisdictional Disputes Project, 1989-92, and as Co-director for the Integration of Child and Family Legal Proceedings Project, 1990-92. He was a principal in the national scope Restitution Education, Specialized Training, and Technical Assistance Project (RESTTA) (1984-92) and has been a member of the Board of Directors of the Colorado Children's Trust Fund (1990-94). Rubin was honored in 1990 with the National Center for State Courts' Award of Excellence. He served as reported for the volume on Court Organization and Administration, IJA-ABA Joint Commission on Juvenile Justice Standards. Judge of the Denver Juvenile Court (1965-71), he has been consultant to numerous commissions concerned with juvenile and criminal justice. A Colorado State Representative (1961-65), Rubin was a lawyer in private practice in Denver (1957-65) and held social service positions in Denver and Chicago prior to that. He obtained his law degree from DePaul University, a Master's Degree in Social Service Administration from Case Western Reserve University, and his A.B. degree from Pennsylvania State University. During the fall semester, 1978, he served as Visiting Professor of Criminal Justice, School of Criminal Justice, State University of New York at Albany. During July, 1982, he was primary American instructor for the American University Institute on Juvenile Justice in Great Britain and the United States, London, England. He has authored more than 90 articles and research reports concerned with juvenile justice and corrections.

CATHY SANDERS, is a Social Science Program Specialist within the Federal Crime Victims Division of the Office for Victims of Crime. She manages the Children's Justice Act Grant Program for Native Americans (CJA), and is responsible for the policy that guides the content of this program. She is responsible for the development of programs and materials, training and technical assistance for the program. In addition, Ms. Sanders monitors the grants with the tribes and manages the Cooperative Agreement that provides the training and technical assistance for the grantees.

PATRICK SHANNON, is a County Prosecutor for the Chippewa County, Chippewa County Court, Sault Ste. Marie, Michigan.

TIM SIMMONS, is a graduate of University of Redlands and Northwestern School of Law Lewis and Clark College. He worked as an attorney at the Native American Program of Oregon Legal Services from 1991-1995. He is presently as Assistant United States Attorney in the District of Oregon serving as the Tribal Liaison.

LARENA B. SOHAPPY, now retired, but kicked off her career with the Yakama Nation governmental offices in 1965. Worked in the offices of Yakama Nation Housing Authority as housing technician; Community Services Dept. as technical secretary; Tribal Administration as Administrative Assistant; Prevention of Elder Abuse, Neglect & Econ. Exploitation as Program Coordinator; Environmental Restoration-Waste Management as Office Manager; Victims of Crime Assistance as Program Coordinator. She also held positions with the BIA as lease clerk, social service support and credit offices. Began her career in 1960 in Washington, D.C. as a clerk-steno in the Office of the Chief of IHS. She is a 1960 graduate of Haskell Institute and attended UNM, American Indian Law Center in Albuquerque, NM where she became a certified Paralegal/Grants-Contracts.

LOLA SOHAPPY, is of Wasco, Warm Springs descent, and an enrolled member of The Confederated Tribes of Warm Springs. Employment has been with the Warm Springs Tribes for over twenty seven years, with Headstart as Assistant Teacher and Cook; the Police Department as Jailer/Matron; Family and Children's Services; and Juvenile Associate and presently Chief Judge. Served on the Warm Springs Tribal Law and Order Committee for one three year term. Has an Associate of Arts degree in Social Work/Mental Health and numerous Law and Judicial Trainings certificates. A Board Member of the National Indian Child Welfare Association.

LAURA SWITZLER, is an enrolled member of The Confederated Tribes of Warm Springs of Oregon. She is 1/2 Yakima and 1/2 Warm Springs. She is married and has four daughters and one son. She also is the grandmother of 13. She is employed for Work Experience and Development Program as Specialist helping people on the reservation in education needs, GED, computer classes and assisting them in finding employment. She also volunteers for the Victim Assistance Program and V.A.P. Board. She would like to acknowledge that an accomplishment of the Tribe's is their support to have a shelter on the Warm

Springs Reservation.

LARRY TACKMAN has been the director of the New Mexico Crime Victims Reparation Commission since January 1990. In this capacity he administers New Mexico's victim compensation program as well as overseeing the federal Victims of Crime Act (VOCA) grants. The S.T.O.P. Violence Against Women Act (VAWA) grant program is also administered by Mr. Tackman. Mr. Tackman initiated bimonthly training workshops for victim advocates to assist them in filing compensation claims for victims. He also conducts frequent workshops for subgrantees in financial reporting requirements for the VOCA and VAWA grants and quarterly performance reporting. Mr. Tackman has developed a computerized claims processing system which generates letters, vouchers, reports, statistics, and tracks compensation claims from receipt to pay out. The New Mexico compensation program has gone from a four year backlog of claims to an average of 120 day turnaround on all claims. The agency has also initiated an aggressive effort to collect restitution from offenders. Currently the agency is conducting a state wide outreach effort to inform law enforcement, social services, and providers in the compensation program. He currently serves on the National Association of Crime Victims Compensation Boards' Board of Directors.

HENRY THOMPSON is a member of the San Carlos and White Mountain Apache Tribes. He has been the Victims Assistance/Compensation Coordinator for the Apache County (AZ) Attorney's office for the past seven years. Mr. Thompson has served as Chair of the Native American Advisory Committee under the National Association of Crime Victims Compensation Boards. Mr. Thompson also served as Chair of the Arizona Coalition for Victim Services, a Victims' Rights Organization.

WILLIAM THORNE, is a Pomo Indian from northern California. He received a B.A. from the University of Santa Clara in 1974 and a J.D. from Stanford University in 1977. He has served as a tribal court judge in Utah, Idaho, Montana, Colorado, Arizona, Wisconsin and Michigan on a part-time basis for the last 17 years. For the last 10 years he has served as a full-time state judge, currently serving in Salt Lake City as a District Judge. He is currently president of the National Indian Justice Center, a member of Utah's Statewide Domestic Violence Advisory Council, and a member of the Board of Directors for the National Indian Court Judge's Association (the national tribal judge's group) and a former member of the Utah Judicial Council (Utah's governing organization for the state judiciary). He is married and has two daughters.

IRENE TOLEDO, is currently presiding as a District and Family Court Judge of the Navajo Nation at Ramah, New Mexico. She was officially appointed to this position in August, 1989. Prior to Judge Toledo's appointment to the bench, she was actively engaged in the practice of Indian law since 1979, including employment with DNA People's Legal Services, private practice, as well as the Navajo Nation Department of Justice. Her practice involved all aspects of law including representation of the Navajo Tribe in administrative forums, and

individuals in federal, state and tribal judicial and legislative. Her practice of law entailed other tribal courts with other Indian Tribes for a period of ten (10) years. In 1994, Judge Toledo participated and served as an Advisory Board Member to the Education Development Center, Inc. (EDC) of Newton, Massachusetts in the development of the National Bias Crimes Training Curriculum for Law Enforcement and Victim Assistance Professionals, entitled: "National Bias Crimes Training". She will also assist as an Advisory to Department of Justice, Office of Victim Of Crimes with regards to roles of Judges regarding victims of crime. Judge Toledo also periodically assists the National Indian Justice Center in conducting trainings on Child Abuse, Domestic Violence, Civil Law, Probate Law, etc. Judge Toledo's professional membership includes: The Navajo Bar Association; Currently serving as a Board of Directors and Secretary for the National American Indian Court Judges Association.

DARLENE TOOLEY, is the Executive Director of Northern Circle Indian Housing Authority since its formation in 1980. She was instrumental in the organizing and development of the housing authority in the 1970's. Under her leadership, Northern Circle has grown from four (4) member tribes to thirteen (13) member tribes, serving a five county area in Northern California. The agency has administered construction contract in excess of $45 million, producing 305 homes and related infrastructure support systems. Northern Circle currently manages 293 homes, 91 rentals and 102 homeownership, with 55 more in the preconstruction planning phase of development. Northern Circle has ranked consistently in the top 10 percent of Indian Housing Authorities nationwide. Ms. Tooley is recognized for her years of service in developing housing for Indian people. Northern Circle received the 1996 HUD award for sustained excellence in management of the HUD-IHA programs and has been acknowledged for the positive impacts it makes on the communities it serves through the HUD drug elimination, youth sports and modernization programs. Darlene currently serves as Treasurer of the Nevada California Indian Housing Authorities Association and is on the Board of Directors of the Southwest Indian Housing Authorities Association. She has recently been named by the Secretary of HUD to serve on the committee which will develop the basis of the formula funding system to be implemented under the Native American Housing Assistance and Self-Determination Act of 1996. This new Indian Housing legislation will provide housing assistance to tribes through block grant funding and the Title VI Loan Guarantee Program.

PATRICIA WACONDA, was born in Albuquerque, NM and grew up in Richmond, CA. She is a Native American currently living on the Pueblo of Laguna Reservation in Laguna, NM. She is the mother of three. She is currently employed with the Southwestern Indian Polytechnic Institute (SIPI), a community college for Native Americans in Albuquerque, NM. Her current position at SIPI is working as preventionist with a grant SIPI received from the State of New Mexico to conduct comprehensive primary prevention activities for Native American communities. The prevention model used is the Gathering of Native Americans (GONA), which empowers Native American communities to heal from multi-generational trauma

and cultural oppression, conduct team-building and community mobilization and create community based action plans for prevention of alcohol/drug abuse, domestic violence, gang violence, child abuse, elderly abuse, etc. She is currently on the Board of Directors of Morning Star House, Inc. which is a domestic violence shelter and program for Native American Families in Albuquerque, NM. She is a member of the New Mexico Chapter of Parents of Murdered Children wherein they offer one another support in the grieving and healing process as well as conduct meetings with topics which are survivor specific such as anger, guilt, suicide prevention, legal/court proceedings, the media, lobbying issues and conflict resolution. She is also a member of the New Mexico Native American AIDS Task Force.

JAMES WAGENLANDER, is the founder and principal of the Denver law firm of Wagenlander & Associates, which has affiliate offices in Omaha, Billings, and Ulaanbaatar, Mongolia. Since 1976, this cross-cultural law firm has been primarily involved in HUD-assisted housing, construction, and Indian law. In the last decade it has expanded into International law, fair housing/fair lending law, and intellectual property law. Currently the firm includes among its clients a number of tribes, twelve Indian housing authorities, and ten public housing authorities. From the inception of this firm, Mr. Wagenlander has counseled Indian tribes and tribal housing authorities as they have greater control of their own housing, economic development and construction activities. In representing public and Indian housing authorities and other managers of assisted housing, the Wagenlander law firm has championed the rights of tenants to live in decent and safe housing free from crime and illegal drug activity. Mr. Wagenlander is a graduate of the University of Denver and Case Western Reserve University Law School. From 1973 to 1976, he was a regional attorney for the U.S. Department of Housing and Urban Development in Denver.

BEVERLY J. WILKINS, is a Muscogee Creek and Cherokee woman who is employed by the Indian Health Services/Mental Health and Social Services Programs Branch at Headquarters West. She is the Family Violence Prevention Team Leader and Coordinator for the new IHS Initiative on Domestic Violence and Child Abuse. Bev has provided education and training on issues of domestic violence, suicide, child abuse, and sexual assault locally, in tribal communities, and nationally in conjunction with Indian Health Services, Office for Victims of Crime, Department of Justice, and the Family Violence Prevention Fund. She serves on several national domestic violence program steering committees a regional VAWA steering committee, the Bernalillo County Domestic Violence Coalition, and on the Board of Directors of Morning State House, a domestic violence shelter program for Native American women and children in Albuquerque, NM.

ESTHER YAZZIE, grew up south of Farmington, New Mexico on the Navajo Reservation and did My Western schooling at the Navajo Methodist Mission in Farmington, New mexico. In 1971 she worked for the Navajo Police Department as a radio dispatcher, police officer, and police clerk. In 1975 she was employed by

the window Rock District Court as a Deputy Court Clerk and later as a Probation Officer. In 1979 she entered her undergraduate studies at the University of New Mexico and matriculated with a Bachelor of science (B.S.) in Political science in 1985. In 1990 she received a Master's in Public Administration (M.P.A.) at the University of New Mexico. She is presently pursuing a Master of Arts (M.A.) in the American Studies program, also at the University of New Mexico. Esther is currently employed as the Official Navajo Court interpreter for the United states District Courts in Albuquerque, New Mexico. Chief Justice Yazzie and her put together the Navajo/English Legal Glossary which was published by the United States District Courts in 1984. She is also a leading staff member to the National Center for Interpretation Testing, Research and Policy (NCITRP) based at the University of Arizona, Tucson, Arizona, who put together the Federal Navajo interpreting certification examination in 1989 and the New Mexico State Navajo interpreting certification examination in 1993. Esther is the trainer for NCITRP With the Navajo Interpreters Institute, University of Arizona in Tucson, Arizona. She is also the founder and director to the Dine Spiritual Land Recovery Project, which is a youth leadership project for Navajo youths. The project goal is to reteach the Traditional Navajo life management skills through Navajo culture and history by going into tie local schools on and off the Navajo country. I am a member and a spokesperson for the Southwest Indigenous Uranium Forum (SWIUF). I have lectured both nationally and internationally on Native American issues. I am a consultant for the Peoples Institute for Survival and Beyond in New Orleans, Louisiana and for the National Center for Neighborhood Enterprise in Washington, D.C. Recently I have served as a member on the Diversity Advisory Committee with the Federal Judicial Center also based in Washington, D.C. for which I assisted in composing a Guide for Assessment and Training. I am a member of the justice arid Women-i of color Committee, National Consortium of Task Forces and Commissions on Racial and Ethnic Bias in the Courts with the National center of State Courts. Presently, I have been invited to serve as a peer review consultant to the National Institute of Justice through the Technical Assistance and support Program in Washington, D.C.

ROBERT YAZZIE, was appointed as the Chief Justice of the Navajo Nation on January 20, 1992. His appointment followed seven years as the presiding judge of the Window Rock District Court. Yazzie is a 1973 graduate of Oberlin College, with a B.A. degree in sociology, and he received his J.D. degree from the University of New Mexico School of Law in 1982. His legal experience includes work as an advocate with D.N.A.-People's Legal Services, Inc. from 1974 through 1979. He also served as an interpreter in the Federal court system and co-authored the first glossary of legal terms in an Indian language.

MARLENE YOUNG, is the Executive Director of NOVA in Washington D.C.

JAMES W. ZION, is a 1966 graduate of the University of St. Thomas (B.A.) and a 1969 graduate of the Columbus School of Law, Catholic University of America (1969). He is the Solicitor to the Courts of the Navajo Nation. He has published extensively on traditional Indian law, international human rights law, and Indian policy. He is an adjunct professor of the Department of Criminal Justice, Northern Arizona University.

GANG VIOLENCE / JUVENILE JUSTICE ISSUES

Thursday, January 23, 1997 **2:00 - 3:15 p.m.**
REPEAT: Friday, January 24, 1997 **2:00 - 3:15 p.m.**

Moderator: Walt Lamar, ***Investigator, Federal Bureau of Investigation***
James Bell, ***Attorney at Law***
Randolph Prillman, ***Deputy Assistant Director, Criminal Investigative Division***
James Zion, ***Solicitor, Navajo Nation***

WORKSHOP SUMMARY

Gangs are a reality in Indian country. Whether they are located on remote reservations or those near urban areas, they bring the shock of drive-by shootings, gang fights, drug dealing, tagging and vandalism. What are the causes of gang activity? What approaches should we use? Suppression? Traditional methods? This workshop will explore the nature of gang activity in Indian country and possible community-oriented approaches to it.

This workshop is recommended for any tribal communities faced with gangs or the threat of gang activity.

OBJECTIVES
This workshop will focus on:
1. Understanding the scope and extent of gang violence in Indian communities;
2. Describing the dynamics of gang activity and effective response to gang activity;
3. Identifying criminal activity associated with gangs and ways to reduce the activity;
4. Identifying primary and secondary victims of gang violence;
5. Examining the Navajo Nation policy considerations for a comprehensive gang plan.

UNDERSTANDING VICTIMIZATION AND ITS CYCLES

FAMILY VIOLENCE / DOMESTIC VIOLENCE

Thursday, January 23, 1997 — **3:30 - 5:00 p.m.**
REPEAT: Friday, January 24, 1997 — **2:00 - 3:15 p.m.**

Myra Debruyn, ***Mental Health Specialist, Indian Health Service***
Maria Ramos, ***Professor of Law, New College of California***
Beverly Wilkins, ***Mental Health Specialist, Indian Health Service***

WORKSHOP SUMMARY

Domestic violence in Native Communities is a nontraditional problem. This presentation will focus on the causes of violence against Indian women and the various ways the problems are being addressed in tribal communities nationwide.

The **Prisoners of Abuse** report issued by the Taylor Institute will be discussed. This includes its findings regarding Women, Welfare and Abuse, and its outline of victims of domestic violence that attempt to leave abusive situations, but are sabotaged by abusive men. Shelters for battered women and how they can assist victims, who are trying to leave an abusive situation, will also be discussed.

OBJECTIVES
This workshop will focus on:
1. Providing information about the realities that face women who attempt to leave abusive relationships;
2. Exploring the historical roots of violence;
3. Perpetuation of myths as justification for violence;
4. Western v. Traditional intervention modalities;
5. New Initiatives in tribal communities and in Urban Indian programs;
6. Prevention.

CHILD ABUSE AND NEGLECT

Thursday, January 23, 1997 **2:00 - 3:15 p.m.**

Moderator: Maria Ramos, ***Professor, New College of Law***
Mary Jane Risling, ***California Indian Legal Services***
William Thorne, ***Judge, District Court, Utah***

WORKSHOP SUMMARY

This session examines the similarities between child abuse and neglect and domestic violence. The objective is to give participants a better understanding of the connectedness between these two crimes so that service providers develop more effective strategies for intervention.

OBJECTIVES
This workshop will focus on:
1. Describing the dynamics between child abuse and neglect and domestic violence;
2. Developing response strategies that are sensitive to the unique concerns and needs of victims of child abuse and neglect and domestic violence.

ELDER ABUSE

Thursday, January 23, 1997 **3:30 - 5:00 p.m.**

Anita O'Riordan, ***Director of Elder Affairs, Arizona Attorney General's Office***
Lola Sohappy, ***Chief Judge, Confederated Tribes of Warm Springs***

WORKSHOP SUMMARY

Abused and neglected elderly persons are among the most isolated victims of family violence. They are maltreated by their spouses, adult children or other relatives. Because most are dependent, infirm or mentally impaired, they tend not to be linked to social networks that could intervene with help. Further, elderly victims are reluctant to tell anyone about the abuse and neglect. They typically are physically and financially unable to move away from the abusive or neglectful situation, fear that more severe maltreatment will result from their making a disclosure, or blame themselves for their plight. Protective service ordinances, and the need for developing or revising existing tribal codes protecting against elder abuse will be analyzed and the Warm Springs Tribal Code examined.

Highlighted will be the development of a response system that not only reflects the difference between tribes but also concentrates on what the elders themselves have said about abuse. Pursued will be the belief that abuse is in violation of the idea of the circle of life for which the senior years are the times for teaching and preserving traditional values and passing them on to the younger generation to ensure that the culture survives and that Indian Nations are strengthened.

A video created by the Arizona Tribal Council about elder abuse will be shown. The characters are not portrayed by actors but by elder volunteers from several of the Arizona tribes. This video is informative and also serves as a starting point for discussion and testimony from the participants.

OBJECTIVES
This session will focus on:
1. Realizing that elder abuse occurs and Identifying at-risk factors in elder abuse;
2. Why victims of elder abuse are unlikely to seek intervention and how to overcome this problem;
3. Response strategies which are sensitive to the unique needs and concerns of elder abuse victims;
4. The process of facilitating community involvement and the formation of multi-disciplinary teams.

URBAN VICTIMIZATION / PUBLIC LAW 280 STATES

Thursday, January 23, 1997 **3:30 - 5:00 p.m.**

Moderator: Maria Ramos, ***Professor, New College of Law***
Karen Biestman, ***Professor, Native American Studies, University of California Berkeley***
Maureen Geary, ***Staff Attorney California Indian Legal Services***

WORKSHOP SUMMARY

The session will analyze the legal, political and social implications of Public Law 280 on California's urban Indian communities, particularly for victims of crime. Participants will explore the demographic and multi-ethnic shifts associated with urban relocation and assimilation. Current needs and service models will be explored, with an emphasis on expanded, ethnic-specific programs for urban Indian victims of crime.

OBJECTIVES
This workshop will focus on:
1. A better understanding of the impact of P.L. 280 on urban crime victims;
2. A better understanding of the demographic and identity patterns of urban Indians;
3. A better understanding of the scope and need for urban victim assistance services, and value of ethnic-specific training models for service-deliverers.

BY-STANDER TRAUMA: ARE YOU IN DANGER OF BECOMING A VICTIM OF YOUR WORK

Friday, January 24, 1997 **11:00 a.m. - 12:15 p.m.**

Kathy McGregor, *National Indian Child Welfare Association*

WORKSHOP SUMMARY

People whose work (teacher, child welfare, law, administrator, police, counselor, employment, child care, and many other fields) involves healing others cannot help but experience by-stander trauma (also called vicarious traumatization). Those who come into direct contact with children in need or in crisis are the most susceptible to it. This is even more true if the worker has unresolved or unacknowledged crises from their own childhood. People who work with adults or who supervise those who work directly with adults or children in crisis also experience by-sander trauma. The topic is even larger than this, however. It includes our heritage of genocide, the monetary crunch that demands more work from fewer people for (perhaps) less pay. This workshop teaches awareness about the wide variety of ways we experience by-stander trauma, how it affects us and what we can do to keep it under control. The workshop is interactive.

There is precious little printed about this topic. Two informative articles referred to by this workshop include: Vicarious Traumatization: The Emotional Costs of Working with Survivors, by Lisa McCann and Laurie Anne Pearlman and What is Post-Traumatic Stress, What Some Indian Youth and Vietnam Veterans Have in Common, by Nancy Gale. For more information on attaining these articles contact the Kathy McGregor at the National Indian Child Welfare Association (503) 222-4044.

OBJECTIVES
This workshop will focus on:
1. An Overview of by-stander trauma and how it impacts your life;
2. Maintaining a balance and control over trauma.

I'M NOT EVIDENCE, I AM THE VICTIM

Friday, January 24, 1997 **3:30 - 5:00 p.m.**

Dori Arter, *U.S. Attorney's Office, Arizona*
Louis Moran, *BIA Criminal Investigator*

WORKSHOP SUMMARY

Summary not available at time of printing.

OBJECTIVES

VICTIM COMPENSATION / FINANCIAL ASSISTANCE

Thursday, January 23, 1997 — **2:00 - 3:15 p.m.**
REPEAT: Friday, January 24, 1997 — **11:00 a.m. - 12:15 p.m.**

Larry Tackman, *VOCA State Administrator, Crime Victim Reparation*
Henry Thompson, *Program Director, Apache County Victim/Witness*

WORKSHOP SUMMARY

Crime victim compensation programs across the country offer crucial financial assistance to victims of violence. This workshop will cover the main functions of Victim Compensation as a standard throughout the country. Areas depicted will generally be the programs in the states of New Mexico and Arizona. The Arizona's Crime Victim's Compensation Programs will be highlighted as well as general Financial Assistance available for crime victims. Special emphasis will be on eligibility, expenses covered, the claims process and how to obtain information from these programs. In addition, specific issues relevant to Crime Victims Compensation in Indian Country will be examined. These problem areas will be explored in detail and recommendations will be made on how to best confront and attempt to alleviate these obstacles.

The workshop will be useful to tribes who are considering starting a victim assistance program as well as tribes with on-going programs. The presenters will share their experience as program administrators.

OBJECTIVES
This workshop will focus on:
1. Finding money for victims of crime and eligibility requirements for funding to provide financial assistance to victims of crime;
2. Identifying techniques for an on-going victim assistance program.

VIOLENCE AGAINST WOMEN ACT (VAWA)

Thursday, January 23, 1997 **3:30 - 5:00 p.m.**
REPEAT: Friday, January 24, 1997 **2:00 - 3:15 p.m.**

Terri Henry, ***U.S. Department of Justice, VAWA Programs (VAWGO)***

WORKSHOP SUMMARY

This workshop will examine the Violence Against Women Act (VAWA). The Act is part of the Violent Crime Control and Law Enforcement Act of 1994 which provides federal tools for the purpose of prosecuting domestic violence, in situations involving firearms or interstate travel or activity. VAWA allocated funds to the Department of Justice (DOJ) with the intent that such funds be distributed to various communities and used to address issues involving domestic violence in each respective community.

OBJECTIVES
This workshop will focus on:
1. An overview of VAWA;
2. Examining the requirement that protective orders issued in one jurisdiction be fully enforced in others;
3. Examining the impact of the Full Faith and Credit requirements for Tribal Courts.

UNDERSTANDING VICTIMIZATION AND ITS CYCLES

VICTIMS' ISSUES AND INDIAN HOUSING PROGRAMS

Friday, January 24, 1997 — **2:00 - 3:15 p.m.**
REPEAT: Friday, January 24, 1997 — **3:30 - 5:00 p.m.**

Moderator: Maureen Geary, *Staff Attorney, California Indian Legal Services*
Darlene Tooley, *Executive Director, Northern Circle Indian Housing Authority*
James F. Wagenlander, *Principal Attorney, Wagenlander & Associates*

WORKSHOP SUMMARY

The complex relationship among Indian housing, purchasers, tenants housing boards and tribal councils requires a comprehensive programmatic approach. This workshop will prepare participants for implementing victim protections at all levels of tribal government. This will include assessing the role of tribal housing boards, tribal councils and tribal, state and BIA law enforcement from the point of view of policy making and implementation.

OBJECTIVES
This workshop will focus on:
1. Standard rules for occupation of Indian housing;
2. Reporting functions between tribal law enforcement and Indian Housing Authority;
3. Dispute resolution, due process and eviction;
4. Lease provisions;
4. A victim's cause-of-action and sovereign immunity.

CJA & VAIC PROGRAM MANAGEMENT ISSUES

Friday, January 24, 1997 **2:00 - 3:15 p.m.**

Adrienne Adkins, *Human Division Director, Minnesota Chippewa Tribe*
Ramona Baez, *Director, Warm Springs Victim Assistance Program*
Heidi Bodga, *Children's Advocacy Specialist, Minnesota Chippewa Tribe*
Bill Brantley, *Program Specialist, Office of Victim of Crimes*
Cathy Sanders, *Program Specialist, Office of Victim of Crimes*

WORKSHOP SUMMARY

Since 1987, the Office for Victims of Crime (OVC) has focused Victims of Crime Act (VOCA) funds for Victim Assistance in Indian Country (VAIC) programs and have provided Children Justice Act (CJA) funds to improve the investigation, prosecution and handling of child abuse cases.

This session will be geared toward assisting other Indian programs from a Tribal perspective of "Been there - Done that." The establishment of a successful CJA program for Indian country now serving nearly 100% of this population will be examined. Included are the issues, downfalls and stepping stones which hindered the development and maintenance as well as the positive aspects of support from other helping agencies. The main goal is to share what worked well and what did not.

OBJECTIVES
This workshop will focus on:
1. Budgeting Grants and in-kind tribal support;
2. Making a Children's CJA Program work for Indian country in Public Law 280 State;
3. Personnel selection and training;
4. Reporting requirements.

ESTABLISHING AND MAINTAINING TRIBAL VAPs

Thursday, January 23, 1997 **3:30 - 5:00 p.m.**
REPEAT: Friday, January 24, 1997 **11:00 a.m. - 12:15 p.m.**

Ramona Baez, *Director, Warm Springs Victim Assistance Program*
Patty McGeshick, *Program Director, Fort Peck Tribe, Montana*

WORKSHOP SUMMARY

This workshop will examine victim assistance programs and describe how they were established and maintained. The implementing steps needs to develop victim programs, recruit and retain volunteers and the components of service delivery will be discussed, particularly services offered for different types of victims. General program assessment methods will be highlighted as will overall reporting and eligibility requirements.

O B J E C T I V E S
This workshop will focus on:
1. Overview of establishing a service delivery system;
2. Defining program goals and parameters;
3. Eligibility requirements for VOCA assistance grant program requirements;
4. Performance guidelines.

GRANT WRITING

Thursday, January 23, 1997 **2:00 - 3:15 p.m.**

Fred Garcia, *Senior Advisor to the Office of Justice Programs*

WORKSHOP SUMMARY

Funding victim assistance programs is an on-going challenge. More and more, programs are seeking funds through a competitive grant process. The workshop will provide information on locating funding sources, grant writing skills, and managing grants.

Participants will learn how to write competitive grants, focusing on the process of developing an idea into a grant application. How grants are reviewed and rated will be explained. Participants will be provided with grant-writing examples, definitions of terms used in grant-writing, and funding sources. The session will focus on writing grants to fund victim assistant services.

OBJECTIVES
This workshop will focus on:
1. Identifying grant funding sources;
2. Grant Management skills;
3. Identifying grant components.

IMPROVING FEDERAL & TRIBAL RESPONSE TO CRIMES IN INDIAN COUNTRY

Thursday, January 23, 1997 **3:30 - 5:00 p.m.**

Moderator: Joseph Myers, ***National Indian Justice Center***
Walt Lamar, ***Special Agent, FBI***
Randy Prillaman, ***Assistant Deputy, FBI, Criminal Investigation***
Patrick Shannon, ***County Prosecutor, Chippewa County***
Tim Simmons, ***Assistant U.S. Attorney, Oregon***

WORKSHOP SUMMARY

The Department of Justice (DOJ) and the United States Attorney's Office (USAO) has taken steps to establish cooperative relationships between tribal and federal courts. This workshop will discuss this project and the steps the U.S. DOJ is presently taking to include tribal courts and tribal governments in coordinated efforts to address criminal justice issues in Indian Country.

O B J E C T I V E S
This workshop will focus on:
1. Recent DOJ and USAO projects that are establishing cooperative relationships between tribal and federal courts;
2. The Federal Magistrate Court Project on the Warm Springs Reservation;
3. An overview of the Tribal Liaison positions.

CULTURAL SENSITIVITY

Thursday, January 23, 1997 — **3:30 - 5:00 p.m.**
REPEAT: Friday, January 24, 1997 — **11:00 a.m. - 12:15 p.m.**

Fred Garcia, ***Senior Advisor to the Office of Justice Programs***
Joseph Myers, ***Executive Director, National Indian Justice Center***
Brian Ogawa, ***Director, National Academy for the Victim Studies, University of North Texas***

WORKSHOP SUMMARY

O B J E C T I V E S
This workshop will focus on conducing an in-depth explanation of:
1. Inter-racial and inter-racial biases and prejudices;
2. Myths and realities of Indian people in today's world;
3. Non-Indians working in Indian affairs;
4. Looking at your own personal prejudices.

*Excerpts from the *Color of Fear* video will be used.

JUDICIAL PLANNING / TRAINING TO OBSERVE VICTIMS' RIGHTS

Friday, January 24, 1997 **3:30 - 5:00 p.m.**

Moderator: Richard B. Barajas, ***Chief Justice, 8th Cir. Ct. of Appeals, Texas***
William Thorne, ***Judge, District Court, Utah***
Irene Toleda, ***Judge, Navajo Nation District Court***

WORKSHOP SUMMARY

The emphasis of the workshop will be protecting victims rights. Current local statutes and service provider information needs to be reviewed in order to better plan for providing for victims. Trainings among service providers will be emphasized and the need to develop or review current protocol enhancing victim services while protecting their rights.

OBJECTIVES
This workshop will focus on:
1. The need to review your and know applicable victim statutes;
2. Establishing a committee among service providers that reviews existing statutes, referral systems, protocol and other issues impacting victims.

CHALLENGES TO PEACEMAKING

Friday, January 24, 1997 **11:00 a.m. - 12:15 p.m.**

Myra DeBruyn, ***Mental Health Specialist, Indian Health Service***
Beverly Wilkins, ***Mental Health Specialist, Indian Health Service***
Robert Yazzie, ***Chief Justice, Navajo Nation Supreme Court***
James Zion, ***Solicitor, Navajo Nation***

WORKSHOP SUMMARY

Around the world, justice planners are beginning to recognize that suppression methods of social control do not work. Moreover, many nations now see that traditional indigenous methods of justice are not only more effective in communities, but they offer lessons for alternatives to power, force and authority.

Hozhooji Naat'aanii, traditional Navajo peacemaking is proving to be successful in dealing with family violence, drunk driving and juvenile crime. It is a method of justice which empowers communities and involves community members so they can "own" their own problems. What challenges does traditional Indian justice face in light of modern social problems? How does peacemaking address the special issues of victims? This workshop will highlight how Indian traditional can be tapped to offer fresh approaches to social disruption and victimization.

The session will describe various methods of peacemaking/violence intervention and prevention methodologies. Included will be traditional peacemaking efforts and domestic violence in order to determine if there is an effective way to work with violent families. Discussion will center around victim safety, batterer accountability and community ownership and responsibility.

OBJECTIVES
This workshop will focus on:
1. Traditional v. Western intervention methods;
2. What is included in a successful program approach;
3. Exploring attitudes and beliefs about violent behavior;
4. Teaching the teachers.

BUILDING RELATIONS WITH TRIBAL LEADERS

Friday, January 24, 1997 — **2:00 p.m. - 3:15 p.m.**
REPEAT: Friday, January 24, 1997 — **3:30 p.m. - 5:00 p.m.**

Tracy King, ***Fort Belknap Tribes, Montana***

WORKSHOP SUMMARY

This workshop will discuss building better relationships and communication between tribal leaders and tribal members in order to get everyone involved with protecting Indian families and children. Sexual, child and spousal abuse and the other areas of domestic violence are not just "women issues" but concern the entire well-being of the tribe.

OBJECTIVES
This workshop will focus on:
1. Building better communication between the tribal leaders and tribal members;
2. Building good role models;
3. Maintain a mixture and balance within the community.

DEVELOPING INTERAGENCY PROTOCOLS TO ADDRESS CHILD ABUSE & DOMESTIC VIOLENCE

Thursday, January 23, 1997 — **2:00 p.m. - 3:15 p.m.**
REPEAT: Friday, January 24, 1997 — **3:30 p.m. - 5:00 p.m.**

Moderator: Cathy Sanders, ***Program Specialist, Office for Victims of Crime***
Adrienne Adkins, ***Human Division Director, Minnesota Chippewa Tribe***
Heidi Bodga, ***Children's Advocacy Specialist, Minnesota Chippewa Tribe***
Larry Echohawk, ***Professor of Law, Brigham Young University***

WORKSHOP SUMMARY

Many Indian nations and non-Indian communities have identified the need to develop protocols for the investigation and prosecution of child abuse and domestic violence cases, including federal ideas, statutes and reporting requirements. This workshop will examine the development of such protocols and their workability. Emphasized will be the probable elements for inclusion. Highlighted will be reporting procedures, jurisdiction, time frames, assigning priorities for investigation, roles, adjudication and alternatives to adjudication.

OBJECTIVES
This workshop will focus on:
1. Defining "protocol" and its development;
2. Identifying tribal values associated with intervening or seeking help;
3. Determining and fully understanding the need and use of inter-agency protocols;
4. Determining and defining elements that should be included in a protocol;
4. Determining who should write the protocol.

ESTABLISHING TRIBAL CODE PROVISIONS AND VICTIMS' BILLS OF RIGHTS TO RESPOND TO VICTIMS' ISSUES

Friday, January 24, 1997 **2:00 p.m. - 3:15 p.m.**

Paul Cassell, Professor of Law, *University of Utah*
Salt River Representative, *Victims' Bill of Rights*

WORKSHOP SUMMARY

This workshop will analyze the different processes tribal governments have in place to protect the rights of crime victims. Discussion will examine accessing existing tribal law, effective communications with Tribal Council and senior tribal staff, and drafting civil and criminal ordinances taking into account associated budgetary concerns, enforcement mechanisms and comparisons with other existing Bills of Rights.

OBJECTIVES
This workshop will focus on:
1. Drafting civil and criminal ordinances;
2. Presenting public hearings for tribal member input;
3. Implementing and enforcing newly enacted victim rights ordinances.

USING TRIBAL, STATE AND FEDERAL FORUMS TO EFFECTIVELY ADDRESS VICTIMS' ISSUES

Friday, January 24, 1997 **11:00 p.m. - 12:15 p.m.**

Elbridge Coochise, ***Northwest Intertribal Court***
William Johnson, ***Chief Judge, Umatilla Tribal Court***
William Thorne, ***Judge, Third Judicial District***
Ted Ruben, ***Consultant***

WORKSHOP SUMMARY

There is the need to bring together Federal, State and Tribal court jurisdictions. There are areas of mutual or shared interests to provide services for victims of crime. The key factor is to know and focus on areas where cooperation can be achieved. This workshop will explore new ways of working together and areas where mutual cooperation and trust can be developed. Issues concerning the Violence Against Women Act (VAWA) and its full faith and credit provisions, mutual recognition of domestic violence protective orders and assessment of child support and facilitation of collection efforts will be examined. The sharing of resources is a new method of working with the state. These and other areas of mutual concern will be examined in-depth.

OBJECTIVES
This workshop will focus on:
1. An overview of collaborative efforts in working with Federal, state and tribal courts for better victim services;
2. Sharing of treatment resources for criminal cases;
3. Sharing of training resources;
4. Recognition of parallel judgements.

METHODS TO HOLD NON-INDIAN OFFENDERS ACCOUNTABLE FOR CRIMES COMMITTED IN INDIAN COUNTRY

Friday, January 24, 1997 **2:00 p.m. - 3:15 p.m.**

Moderator: Joseph Myers, *Director, National Indian Justice Center*
Larry Echohawk, *Professor of Law, Brigham Young University*
William Johnson, *Chief Judge, Umatilla Tribal Court*
Lola Sohappy, *Chief Judge, Confederated Tribes of Warm Springs*

WORKSHOP SUMMARY

Confusion sometimes exits when a non-Indian commits a crime in Indian Country. In domestic abuse cases this is exemplified in the enforcement of temporary restraining orders, mandatory arrest, and coordination of prosecutorial efforts.

This workshop will show examples of this situation on the Umatilla Indian Reservation and Warm Springs Reservation in Oregon. The Warm Springs Tribal Court has held that a Non-Indian who commits offenses on the reservation is accountable through civil infraction complaints. These are punishable by exclusion from the reservation, fines up to $500.00, loss of confiscated property, and various bail requirements.

State and federal court involvement and coordination will also be discussed from the judicial perspective. Highlighted will be the federal magistrate project in operation on the Warm Springs Reservation in the Warm Springs Tribal Court.

This workshop should be useful to those in a Public Law 280 state who are developing tribal codes and enforcement procedures in their jurisdiction.

OBJECTIVES
This workshop will focus on:
1. Understanding tribal judicial system response to non-Indian offenders in light of Oliphant;
2. Jurisdictional issues involved with the non-Indian offender;
3. The need for coordinated law-enforcement prosecutorial efforts.

COMMUNITY CRISIS RESPONSE AND COMMUNITY CRISIS TEAMS

Friday, January 24, 1997 **2:00 - 3:15 p.m.**

Barbara Kendall, ***President NOVA***
Marlene Young, ***Executive Director, NOVA***

WORKSHOP SUMMARY

Entire communities can suffer trauma in the aftermath of disasters or horrific crimes. The caregivers in the community also may be significantly affected and have difficulty in organizing a plan of action. A Community Crisis Response Team may be of assistance in filling a gap and being of assistance as "consultants" to the leaders and caregivers of a community in severe distress. This session will provide an overview of community crisis response and the role of community crisis response teams.

O B J E C T I V E S
This workshop will focus on:
1. The nature of trauma caused by horrific crimes and disasters;
2. How community crisis response teams are organized;
3. How community crisis response teams operate.

FORENSIC INTERVIEWS

Thursday, January 23, 1997 **3:30 - 5:00 p.m.**
REPEAT: Friday, January 24, 1997 **2:00 - 3:15 p.m.**

Roe Bubar, *Attorney at Law*

WORKSHOP SUMMARY

This workshop will cover developmental and linguistic tips and pitfalls in interviewing young children. Discussion will highlight establishing trust and building a rapport with the child, competency and developmental assessment and a cognitive approach for child disclosure.

OBJECTIVES
This workshop will focus on:
1. An overview of forensic interview with children;
2. Using various interviewing aids;
3. Enhancing children's resistance to misleading questions;
4. Closing the interview and there after.

VICTIMIZATION 101

Thursday, January 23, 1997 **3:30 - 5:00 p.m.**

Barbara Kendall, ***President, NOVA***
Lorena SoHappy, ***Yakima***
Marlene Young, ***Executive Director, NOVA***

WORKSHOP SUMMARY

This workshop will provide an overview of Victimization and discussion of the interfacing factors that are unique to the American Indian experience. The specific areas will be the acculturation factor, the conflicts of behavior, identity, stress and the cultural resiliency factors for personal change.

OBJECTIVES
This workshop will focus on:
1. Historical issues of Victimization among Native people;
2. Personal change theory based on their own frame of reference;
3. The complexity of stress, behavior and cultural identity issues of victims;
4. Resiliency factors of individuals, families and communities.

DEVELOPING SERVICES FOR SEXUAL ASSAULT VICTIMS

Friday, January 24, 1997 **11:00 a.m. - 12:15 p.m.**

Maria Ramos, ***Professor, New College of California***

WORKSHOP SUMMARY

This session will analyze the various ways victim advocate programs can support a sexual assault victim going through the criminal justice system. Highlighted will be successful tribal services developed for sexual assault victims.

OBJECTIVES
This workshop will focus on:
1. An overview of what a sexual assault victim really goes through when dealing with the criminal justice system;
2. Understanding how to effectively advocate for a sexual assault victim;
3. Discussing sexual assault programs and services that have helped victims get through the justice system.

SPIRITUAL HEALING

Thursday, January 23, 1997 **3:30 - 5:00 p.m.**
REPEAT: Friday, January 24, 1997 **3:30 - 5:00 p.m.**

Steve Darden, ***Director, SAD Enterprises***

WORKSHOP SUMMARY

Discussion will focus on presenting traditional Native American teachings regarding spiritual healing. Balancing the physical, emotional, mental and spiritual aspects of life and the importance in doing this will be emphasized. Exercises to energize the essence of our being will be shared. Cosmography as a blueprint for wellness will be presented. The forces of life and honoring the same through respective ceremonial processes will be discussed. The metaphors of the oral tradition will be reviewed and its relevance to now will be explored.

OBJECTIVES
This workshop will focus on:
1. To learn about traditional healing practices;
2. To learn how to control the emotional state by changing the physical state;
3. To learn how to effect wellness for self and others;
4. To learn how to communicate our rules and redefine our destiny.

USING CPTS AND MDTS IN INDIAN COUNTRY

Friday, January 24, 1997 **3:30 - 5:00 p.m.**

Betty Castillo, *Social Worker, Salt River Maricopa Community*
Patty McGeshick, *Program Director, Fort Peck*

WORKSHOP SUMMARY

Child Protection Teams and the concept of Multi-disciplinary teams are not new to Indian country. We have practiced many forms of these concepts in our Communities for many hundreds of years. What made this concept work so many years ago was the fact that each participant was respected, honored and allowed to share concerns in an open form which was not critical or the participants felt free to share their concerns, without feelings of fear of retaliation. In many communities there are issues of turf, jurisdiction and just plain fear of dealing with the issue of sexual abuse of physical violence. There has to be a concerted effort on each part of the CPT and MDT team member to move forward with prosecution, and offer services to victims.

Discussion will focus on the investigation of all child sexual or physical abuse cases by law enforcement and a Child Protection Team (CPT) with input from a Multi-disciplinary team (MDT). Issues highlighted will be the interaction of these teams when there is an initial report of child sexual/physical abuse. Determinations for removals, follow-up services and assessment concerning protection of a child will be analyzed.

OBJECTIVES
This workshop will focus on:
1. Discussion concerning the roles and interaction of CPTs and MDT in Indian country; who moves the case along;
2. Factors MDT's must determine during an assessment for the protection of a child;
3. Developing and maintaining MDT's and CPT's;
4. Factors that must be determined for incarceration of the perpetrator.

DEVELOPING GUARDIAN AD LITEM AND CASA PROGRAMS IN INDIAN COUNTRY

Thursday, January 23, 1997 **2:00 - 3:15 p.m.**

Moderator: Marcella Benson-Quaziena, *National CASA Representative*

Debra DuMontier, *Tribal CASA Attorney, The Confederated Salish & Kootenai Tribes of the Flathead Nation*
JoAnne Miller, *Associate Judge, Grand Traverse Band of Ottawa/Chippewa Indians*

WORKSHOP SUMMARY

This workshop will present a general overview of CASA/GAL programs as proposed by the National CASA Association and two models of CASA/GAL programs in tribal courts. Specific information will cover how these programs created a Tribal CASA/GAL steering Committee; working within the Tribal court system to develop program policies and procedures; training of program directors and volunteers; and recruiting and screening CASA/GAL volunteers.

O B J E C T I V E S
This workshop will focus on:
1. An overview of a CASA program;
2. The role of a CASA volunteer and training available;
3. The role of a Court Appointed Special Advocate;
4. Funding Sources for CASA programs.

DUI / DWI

Thursday, January 23, 1997 — **2:00 - 3:15 p.m.**
REPEAT: Thursday, January 23, 1997 — **3:30 - 5:00 p.m.**

Janice Lord, ***MADD***
Betty Castillo, ***Social Worker Salt River Pima Maricopa Community***

WORKSHOP SUMMARY

This section of the DUI/DWI workshop will focus on the Victim Advocacy model developed by Mothers Against Drunk Driving. Specific advocacy programs will be described. Materials will be distributed during the session.

OBJECTIVES
This workshop will focus on:
1. Introducing participants to MADD's mission and Victim Assistance Program;
2. Distributing materials so similar programs may be offered in communities without MADD chapters;
3. Offering Victim Advocacy Training free of charge to those wishing to be identified as a MADD Victim Advocate.

GRIEVING VIOLENT DEATH: ASSISTANCE FOR FAMILY SURVIVORS IN INDIAN COUNTRY

Friday, January 24, 1997 **3:30 - 5:00 p.m.**

Monica Carrasco, *National American Indian/Alaska Native Prevention Center & Network*
Lemyra DeBruyn, *Division of Violence Prevention, Centers for Disease Control and Prevention*
Charlotte Herkshan, *Prevention Services, Warm Springs Reservation*

WORKSHOP SUMMARY

This session will discuss innovative breakthroughs occurring over the last few years to assist families in preventing suicide and grieving the loss of a family member due to suicide. The Warm Springs Reservation in Oregon has assisted in grieving the immediate loss of a family member to suicide through the Office of Victims of Crime Program on the reservation. The Jicarilla Apache Tribe is organizing and administering the new National American Indian-Alaska Native Community Suicide Prevention Center & Network, funded by the Center for Disease Control and Prevention and the Indian Health Service.

Workshop leaders will discuss these approaches to assisting families with the violent loss of family members due to suicide and the hoped for efforts of the Center which will be able to assist Indian communities throughout the country respond to suicide at home. The Center will offer crisis response, program development for suicide prevention, data format development to determine patters of suicide behavior locally, and program evaluation strategies for local communities to determine the effectiveness of their intervention and prevention programs.

OBJECTIVES
This workshop will focus on:
1. An overview of the breakthroughs in preventing suicide;
2 Understanding the grieving cycle;
3. An Overview of the services that will be offered by the National American Indian/Native Community Suicide Prevention Center & Network.

RESOURCE MANUAL

OFFICE FOR VICTIMS OF CRIME
Strengthening Indian Nations:
Justice for Victims of Crime
Sixth National Conference
January 23-25, 1997
San Diego, California

Funded By:
U.S. Department of Justice
Office of Justice Programs
Office for Victims of Crime
Federal Crime Victims Division
633 Indiana Avenue, N.W.
Washington, D.C. 20531
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NATIONAL INDIAN JUSTICE CENTER

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A non-profit corporation

Joseph A. Myers, Executive Director

THE RESOURCE MANUAL

The National Indian Justice Center is pleased to publish this **Strengthening Indian Nations: Justice for Victims of Crime, Sixth National Conference Reference Manual.** This OVC Resource Manual is a product of a grant to NIJC made by the Office for Victims of Crime (OVC) for coordinating and conducting the **STRENGTHENING INDIAN NATIONS: JUSTICE FOR VICTIMS OF CRIME, SIXTH NATIONAL CONFERENCE.**

The resource manual is a self-contained publication designed for using during and after the Conference. The resources follow the Conference brochure symbols and categories: Understanding Victimization and its Cycles; Administrative/Program Sessions; Improving Inter- and Intra-Agency Cooperation; Crisis Intervention and Service Providers Sessions. However, participation at the Conference is not necessary to benefit from the resources included in the manual.

The table of contents provides a thorough listing of resources and the corresponding workshop topic. The resources provide information about the workshops as well as information about the general issues of the various subject areas. The purpose of the manual is to provide a useful, practical resource for service providers and the others who work for crime victim in Indian country.

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"FOR ALL MY RELATIONS"
Respecting Families and Traditions
Office for Victims of Crime
Strengthening Indian Nations: Justice for Victims of Crime
SIXTH NATIONAL CONFERENCE REFERENCE MANUAL

RESOURCE MANUAL

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Navajo Nation Gang Formation and Intervention Initiatives

Marianne O. Nielsen
James W. Zion and
Julie A. Hailer

INTRODUCTION

The topic of Native American gangs is remarkable for its absence in the emerging gang literature[1] although it has recently caught the imagination of the mass media (e.g. Linthicum 1996; Mydans 1995; Dial 1995). This is not surprising, however, in light of the general neglect in the United States of Native American involvement in the criminal justice system. Because of the greater numbers of African-Americans and Hispanics in the criminal justice system, these latter have received more scholarly attention. Among the notable exceptions to this trend are recent works by Grobsmith (1994), Bachman (1992), Flowers (1988), Pommersheim (1995), French (1982, 1994), Beauvais (1992), LeResche (1993), Deloria and Lytle (1983), and Nielsen and Silverman (1996). A related issue is that most gang-related research and intervention initiatives focus on urban areas (Spergel, Curry and associates 1994), whereas Native American gangs are primarily rural, with some urban ties.

An understanding of the formation of gangs in the Navajo Nation must be placed within the historical and social context of the Navajo Nation itself and, given the limited research in this area, must draw heavily upon impressions and estimates arising from the criminal justice system. Both adult and juvenile Native Americans are greatly over-represented in the criminal justice system. The growing number of Native American young people adopting gang lifestyles has led to community and criminal justice system concerns that arrest and incarceration rates will be even higher for Native Americans in the future.

The Navajo Nation is a domestic dependent nation[2] that is situated primarily in Arizona but overlaps with the states of Utah and New Mexico. It covers 25,000 square miles and has a population of over

146,000 (Arizona Republic, 1993).[3] Over 51% of the Navajo population is age nineteen or under (Navajo Nation Department of Law Enforcement 1995), a population profile common in many Native American communities. Approximately 32% of the general Native American population is under the age of 15 (Kramer 1995) and about 47% of Native Americans living in non-metropolitan areas are under the age of 20 (Snipp 1991). In the state of Arizona, where the largest part of the Navajo Nation is located, about 9% of the juvenile population (age 0 -17) is Native American, and in New Mexico, which includes a small section of the Navajo Nation as well as several other Indian reservations, 12% of the juvenile population is Native American (Snyder and Sickmund 1995: 3). New Mexico has the second largest Native American juvenile population in the U.S.; Arizona has the fifth. While there are significant numbers of Navajo Nation members living in predominantly non-Native urban communities surrounding the Navajo Nation, we will focus on the population living in the Navajo Nation, which is, in comparison, 'rural'.[4]

Like Indian Nations throughout the U.S.,[5] the people of the Navajo Nation are disadvantaged in terms of education, health, and other social factors. In general, more Native Americans aged sixteen to nineteen withdraw from high school without graduating (18%) compared to the general U. S. population (10%) (Snyder and Sickmund 1995:16); the life expectancy rate for Native Americans (71.1 years) is lower than for Whites (74.4 years) (Snipp 1991); and the unemployment rate for Native Americans (13.3%) is higher compared to the U.S. population (6.5%) (Kramer 1995). About 28% of American Indians live below the poverty line compared to 12.5% of the total U.S. population (Kramer 1995).

Keeping these figures in mind, it is not surprising that Native Americans are over-represented as offenders in the criminal justice system. Native Americans are 0.8% of the American population, but they comprise 2.2% of all arrests (Reddy 1993).[6] Native American incarceration rates are at or above the rates for both African Americans and Hispanics in some states and for some offences. For example, in Alaska, Native Americans comprise 31% of the incarcerated population but only 15.6% of the state population; in South Dakota, they comprise 25% of the incarcerated population but 7.3% of the state population; and in Montana, they comprise 18% of the incarcerated population but only 6% of the general population (U.S. Department of Justice 1993: 613; Utter 1993: 18-19). According to Flowers (1988: 109), Native

Americans have the highest rate for alcohol-associated offences (3209.3 as compared to 1307.2 for African-Americans, 2474.3 for Hispanics, and 1261.1 for Whites). These include offences such as driving under the influence and drunkenness. They are also arrested most often per capita for vagrancy (Flowers 1988: 109). Flowers (1988: 105) states that, over all, Native Americans have the second highest arrest rate after African-Americans. Silverman (1996) using more recent data, suggests that Flowers' rates may be too high. He indicates that Native American arrest rates are higher than those for Whites (but not much higher) and a great deal lower than those for African-Americans.

Native American juveniles follow a similar pattern of criminal justice involvement. As a rough indicator, American Indians or Alaskan Natives under the age of eighteen comprised 2.7% of arrests in rural counties across the US. As with their adult counterparts, they were arrested more often than any other group (except Whites) for alcohol-associated offences; in this case driving under the influence, liquor laws, and drunkenness. They were also arrested more often than any other group (except Whites) for 'suspicion', being 12.1% of all arrests compared to 5.6% for Blacks and 82.3% for Whites[7] (U.S. Department of Justice 1993: 447).[8] Native American juveniles comprised 1% of all residents in custody in juvenile institutional facilities, and 3% of those in juvenile open facilities (Snyder and Sickmund 1995: 166).[9]

Native American over-involvement in the criminal justice, like that of Indigenous peoples world-wide, is rooted in the marginalisation that results from colonialism.[10] Native Americans have endured a century and more of government policies that ranged from genocidal to assimilative to supportive of limited sovereignty. The assimilative policies in general were, and still are (to the extent that they can still be found in American Indian law), important contributors to the development of social and economic conditions conducive to the development of Native American gangs.

Assimilative polices were aimed at resocialising, that is, 'civilising' Indians to adopt European-based values and lifestyles. Strategies used included removing Native American children from their families at a young age and either giving them in adoption to white families or sending them to boarding schools where they were forbidden to speak their language, wear Native clothes and hair-styles, or engage in Native American spiritual practices. In these schools, they were taught to devalue their cultural heritage as 'primitive' and, in the process, gained few parenting skills. Other assimilative actions included the efforts of

Christian and other religious missionaries; the exclusion of Native curricula from reservation schools; the prohibition and usurpation of Native leadership structures; the enforcement of a variety of laws forbidding Native social, ceremonial and economic activities on and off reservations; forced relocation to predominantly non-Native urban centres; and the suppression of social control practices such as mediation and peacemaking. These strategies, though actively resisted by Native American groups, made it difficult for Native communities to socialise and guide their young people. Factors such as disease epidemics, destruction of the communities' economy, genocide, racism, and the past and present socio-economic conditions mentioned earlier, only served to exacerbate the problem. In a similar vein, the thrust of federal efforts to create justice institutions for Indian Nations has been to impose European-based police and social work models (a form of institutional assimilation). These efforts have largely failed (Barsh and Henderson 1976). As a result of these processes social disorganisation occurred, as did increasing crime, suicide, and other forms of violence (Bachman 1992). Native American gangs are simply the most recent manifestation.

NAVAJO NATION YOUTH GANGS

Hailer (1996) found that while a few Native American gangs were known to tribal police forces as early as 1985, the number of gangs known surged between 1992 and 1993. Thirteen of 29 tribal police departments reported gangs on their reservations, including reservations in the states of : Washington, Nevada, Arizona, Wyoming, Nebraska, Minnesota, Michigan, Oregon, Idaho, New Mexico, Montana, Oklahoma, and Wisconsin. The number of gangs on these reservations ranged from a low of one per reservation, to a high of 33, with the average number per reservation being three to four. While the vast majority of gang members are male, female gangs and female members of male gangs are now seen as an increasing police problem (Hailer 1996).

According to law enforcement personnel and others working with Native American gangs, these gangs have a number of characteristics.[11] The gangs can be considered 'transitional', that is, the groups are attempting to build gang traditions but have not been around long enough to have set them. They are not ethnocentric gangs in that many have aligned themselves with Hispanic gangs. When examining factors of

Native American gang membership, the greatest concentration of gangs can be found within larger communities, pueblos, villages, or administrative and economic clusters of populations within Indian country.[12] Many of the gang members attend common schools, attend schools off the reservation which are experiencing gang problems, or are raised in gang neighbourhoods. Recruitment of Native American gang members begins as early as seven or eight years of age. Conditions in Native communities are not dissimilar to the conditions in inner-cities. There is a high level of substance abuse; a high poverty/low employment rate which forces residents to seek alternative means of getting money; and low self-esteem and loss of identity among residents. Native American youths feel that they are 'between cultures' due to their exposure to the 'traditionalists' on the reservations, and to the non-Native American youths at their off-reservation schools. Some Indian youths see the gang lifestyles as a solution to this identity crisis.

Native American youths in both urban and rural areas join gangs for many reasons. A number of explanations have been put forth by law enforcement agencies, including:

- For a sense of belonging and a sense of attachment
- To escape intolerable conditions at home
- As an attempt to escape poverty
- To obtain a perception of being rich and powerful (usually power through intimidation)
- To seek identity and recognition; 'to be somebody' which is something they cannot get at home, in school or through the community
- To experience adventure and excitement
- To get the protection of the gang and against other gangs
- Other reasons: to ease boredom, get access to drugs and other substances, and/or as a test of bravery.[13]

According to those working with Native American gangs, some gangs are divided by age, and are named after streets, housing projects, geographic locations, etc. Initiates undergo 'rites of passage' such as 'jumping in' (where the initiate sees how much of a beating he/she can take from other gang members), and participating in a criminal act to prove their loyalty to the gang and to earn their 'placa' (moniker).

Native American gangs are also comprised of 'hardcores' who play the role of tutor/teacher of the new or younger gang members. They teach the novices how to talk, walk, act, not show fear, and commit criminal acts. They also teach them the unwritten codes of the gang:

never cooperate with the police or persons in authority, take care of business yourself (that is, via the gang), never 'pull a rat' (snitch), and most important of all, let no insult (no matter how small) go unanswered. The adult gang members use the juvenile gang members to commit their crimes as they know that punishments for juveniles (if any) are not severe and 'nothing much is going to happen to them anyway'. Tribal police officers are seeing younger and younger gang members. They feel that this is due to the fact that the juveniles know of the general ineffectiveness of the juvenile system in handling them.

Native American gang members also tend to dress in a particular manner, resembling the clothing styles of Hispanic gangs. The clothing of choice currently on the reservations is some variation of khaki pants, dickeys (which are detachable or false shirt fronts), Pendleton shirts (which are brand-name woollen, plaid shirts), over-sized T-shirts and coloured tennis shoes. This clothing is intentionally worn too large as a means of intimidation, or to give the impression that the gang member is bigger than he/she really is, and/or to conceal weapons, and as a statement of style. The use of differing colours is a reflection of the difference in the individual gang's affiliations. Native American gangs will deliberately use certain colours to be different from their rival gangs (e.g. blue, red, black, or green).

Native American gang members also use graffiti to mark their territory (law enforcement personnel view gang graffiti as the 'newspaper of the streets'). They also put graffiti, sometimes quite extensive, in their own bedrooms and on their school books. Hand signs are also used by gang members. Flashing a hand sign is a form of solidarity or of insult, or a way of displaying a cryptic message, usually the initials of the gang. Some gang members now have business cards which they distribute.

Native American gangs have come to carry guns, and have become involved in firebombings and drive-by shootings (sometimes of the wrong house). One of the reasons that gang members are coming to the reservations is because they know that they can hide there, due to the abundance of space and low numbers of law enforcement officers available to detect their activities. Drugs are becoming more prevalent on the reservations partly because Native American families are being paid to house these drugs. Again, the expansiveness/isolation of the reservation and low number of police contribute to the problem. The drug runners have discovered that many larger cities have greater suppression capabilities by law enforcement while the reservations lack the resources for such efforts.

Native American juveniles are very open about their gang activities and membership. Law enforcement officials feel that this is the case because gang activity is still too new to them and they have yet to be involved with the juvenile system long enough to become hardened and uncommunicative with tribal police. The officers feel that this openness will cease as more Native American youth have increased contacts with the system and with other hardcore gang members.

Gangs on the reservations appear to be following the same evolutionary course that well-established gangs evolved through as they grew into forces to be dealt with by the community and the criminal justice system. An example of these progressive steps comes from a second reservation in the Southwest United States.

In the mid-late 1980s, tribal police officers began to see graffiti on the walls of the buildings in the community, with a resulting crossing out of the graffiti (which equates to challenges by members of budding rival gangs). Officers then began to see the reservation youths wearing red and black gang colours and established styles of non-Native American gang clothing. There was a progression to fist fights between two groups with an increase in calls to the police of 'shots fired' (at this time the shots were generally fired into the air as a show of force). The next step in this progression was drive-by shootings. This reservation also experienced an influx of narcotics trafficking, and drug houses were established. Neighbourhood parks were taken over and were established as 'outdoors drugstores'. On this particular reservation, the Tribal Council, as a result of educational efforts by the tribal police officers, allowed the officers to seek to suppress gang activities, and even allowed the surrounding municipal police agency *carte blanche* to come onto the reservation. This helped to strengthen law enforcement efforts to fight the growing gang and drug problems. As a result (and while fortunate for this reservation, but not for the neighbouring reservation), the incidents of gang activities were displaced to the neighbouring reservation where law enforcement resources were even more limited. In addition, the Tribal Council at the neighbouring reservation continued to prohibit the surrounding municipal police agency from entering their reservation to assist.

A second example of escalation in gang activities is provided by a different Southwest reservation, the Salt River Pima of Arizona (see Table 1).

TABLE 1: Police Count of Number of Gangs and Frequency of Specific Offences, by Year

Year	Number of Gangs	Offences	
		Drive-bys	Homicides
1991	1	1	0
1992	3	3	0
1993	5	8	0
1994	14	55	1
1995	22	69	2

Source: presentation by Sgt. Juan Arvizu, Salt River Pima Tribal Police, Scottsdale, Arizona at the Gangs on Indian Country seminar, 1996.[14]

Native American juvenile gangs are still in their infancy. If they follow the evolutionary pattern of other ethnic and racial gangs as they become more sophisticated, numerous changes are likely to occur. Law enforcement personnel believe that many Native American communities are still beset by denial, and are unwilling to acknowledge that their children are involved in gangs. Law enforcement officials predict that Native American communities will continue to see the growth of gangs and gang members. They also predict that: gangs will become more violent and more mobile; gang members will learn the benefits of being more structured; gang members will outnumber law enforcement resources; the number of gang members on probation and parole will increase; females will play a larger role within the gangs and more female gangs will form; gang members will become more confrontational; and lastly, more sophisticated weapons will be used.

Many Native American communities control their own criminal justice system, including the juvenile justice system. Section 16 of the *Indian Reorganisation Act* of 1934[15] recognised the 'existing powers' of Indian nations, including the authority to establish criminal justice and juvenile systems. Earlier forms of justice, including informal methods of social control continue to exist in one form or another (sometimes underground) despite the operation of courts and police steeped in Bureau of Indian Affairs (BIA) ideology and practices. These BIA-influenced structures were and still are limited in jurisdiction so that, for example, all serious felony offences (e.g. homicide, sexual assault) have to be dealt with by the Federal Bureau of Investigation (FBI) and tried

in federal courts. Tribal Courts are also limited in jurisdiction so that they can impose sanctions limited to six months in custody or a fine of $500. (This was the original limitation imposed on Indian Nations in the *Indian Civil Rights Act* of 1968. More recently, the Act was amended to provide for a maximum one year term of incarceration and/or a $1000 fine.) The Navajo Nation's jurisdiction over Navajo young people is similarly limited so that young people committing serious offences must be charged by the United States and prosecuted in federal court. Many Navajo gang-related offences, because of their relatively less serious nature, however, fall within Navajo jurisdiction, as do all crime prevention activities.

INSTITUTIONAL EVIDENCE OF GANGS

The Navajo Nation courts and police have both statistical and anecdotal evidence of the existence of gang activity. For example, some judges report the appearance of youths in court dressed in gang colours, accompanied by similarly-dressed supporters. Navajo Nation police say that the 'Vicious Cobras' of Fort Defiance (an administrative community near the capital of Window Rock) were introduced by two brothers, half Navajo and half Puerto Rican, from Chicago. Another example is provided by the 'tagging' with gang graffiti of the partially completed new chapter house in Fort Defiance. Workers reported that youths jumped the high chain link fence topped with razor wire, to paint graffiti (perhaps to mark their disapproval of the building?). Also recently, youths broke into the old chapter house and trashed it. The Chief Justice of the Navajo Nation and the court solicitor recognise this kind of activity and describe it as a *nayee* or 'monster' (Yazzie and Zion 1995). The term relates to Navajo creation narratives and means 'that which gets in the way of a successful life'.

The Navajo Nation Department of Law Enforcement (1995) reported the existence of 28 gangs in thirteen Navajo Nation communities (figures based on detachment estimates). The largest and most recently formed gang is the 'Vicious Cobras' with an estimated 200 members.[16] The second largest is the Westside City in Canoncito with an estimated 50 to 75 members, and the third is the Dragons of Window Rock-Fort Defiance, with about 50 members. The rest range in size from five to 40, with the average number being eighteen. Since recruitment is ongoing, these numbers are probably already out of date.

Several Navajo Nation communities with cluster housing sites are notorious for gang activities: a U.S. Department of Housing and Urban Development project in Fort Defiance, Rio Puerco estates, which is sometimes called 'Beirut' for its violence; the small community of Navajo (New Mexico), where youths burned down one Navajo Housing Authority rental house and attempted to burn another; and the Ojo Amarillo project of the Navajo Housing Authority, which was built to house workers of the Navajo Agricultural Products Industry (near Farmington, New Mexico).

The Navajo Nation police use the following (common tautological) definition to describe gangs: 'Criminal street gang means an ongoing formal or informal association of persons whose members or associates individually or collectively engage in the commission, attempted commission, facilitation or solicitation of any felony act or who has at least one individual who is a criminal street gang member'. The gangs are mainly comprised of young males between the ages of fifteen and 21. There are a few female members (no numbers exist on this). The groups have committed acts of vandalism against community business establishments and public property. Problems the schools are having with fights, vandalism, discipline and drugs have been related to gangs. Gang membership has also been associated with increased problems in the home as reported to the police.

A total of 621 offences or 58% of the total delinquency cases committed by youths under the age of eighteen, and handled by the Navajo Nation Family court from 1 April 1992 to 31 March 1993 (the latest figures available), are believed to be gang-related [17] (see Table 2).

TABLE 2: Gang—Related Offences Handled by Navajo Family Court, 1 April 1992—31 March 1993

Type of Offence	Frequency	Percentage
Assault and battery	140	22.5
Property damage	104	16.7
Disorderly Conduct	98	15.8
Theft	88	14.2
Burglary	44	7.1
Resisting Arrest	36	5.8
Trespassing	33	5.3
Weapon charges	32	5.2
Threatening	30	4.8
Criminal Nuisance	16	2.6
Total	621	100.0

Source: Navajo Department of Law Enforcement (1995).

The gangs' hangouts include the housing projects, business establishments that cater to youths, and abandoned buildings. The abandoned buildings are occasionally used for 'booze parties', as well. The Navajo Nation is a semi-arid area and one of the prominent geological features near most communities is a 'wash'. It is an eroded gully caused by the runoff from heavy thunderstorms. Youths gather in washes near schools and housing projects to drink and party. Many homes are crowded and there are few recreational areas, so youths will gather in washes or local convenience stores with video games to play and socialise.

The Navajo Department of Law Enforcement (1995) believes the origins of gang activities can be found in poor parenting skills, the ineffectiveness of arrest and detention as social control strategies, the publicity given by the media to gangs, and the lack of regulations that deter young people from, for example, staying out late (curfew laws were only recently passed) and being exposed to undesirable influences (such as video stores renting and selling violent and sexually explicit materials to young people under eighteen). The lack of parenting skills is characterised as a lack of communication between parents and children, alcoholism in the home, and single parent families. These, the

law Enforcement Department suggest, lead to lack of self-identity and belonging in the children, which in turn lead to low self-esteem, attention-getting behaviour, running away, and violent and destructive behaviour. Arrest and detention are termed ineffective deterrents because they are seen by the young people as a means of getting free food and lodging, and respect. Detention also assists to establish contacts with other gangs and in the establishment of a gang network. The media, such as films and music videos, encourage gang behaviour by projecting an image that it is 'cool to be in a gang'.

Members of the Judicial Branch of the Navajo Nation have a slightly different perspective on the origins of gang activity, focusing more on traditional approaches and the possibilities they offer. They view the problem to be one of Navajo youths who have lost their cultural bearings and as a result feel that the traditional approach of *k'e* (which is difficult to translate but has respect as a major component) may be used to reach out to gang members. One theory being advanced is that youths are using 'war way thinking', *hashkeeji naat'aah*, as befits their age and status, but without being fully aware of the traditional conceptualisation. War way thinking is using certain forms of aggression for the benefit of the community. It utilises secret planning, action which is aggressive, prompt and vigorous, and strong individual leadership. Historical examples would be recapturing Navajos from slavery, or raiding other groups to obtain horses. The essential problem, then, is to divert the activities which are the product of war way thinking to more positive ends. In Navajo thought, words produce actions, so it is important to inculcate positive thinking; *hashkeeji naat'aah* is not evil of itself. Gangs are much like warrior groupings of Navajo history, and if they can be integrated into their communities for positive group activities, that may provide an approach which is distinct from other gang control or 'suppression' efforts in the United States.

Applying these perceptions of the origins of gang delinquency development and operation, a number of remedial approaches have been initiated by the Navajo Nation.

REMEDIAL APPROACHES

Following a series of sensational events, including the vandalism of an office in Fort Defiance and drive-by shootings in Shiprock, the Navajo Nation Council summoned Navajo Nation police leaders, the

chief prosecutor and the Chief Justice of the Navajo Nation to a special Council meeting on gangs in October 1993. The representatives of all three organisations reported a lack of funding for suppression activities and a lack of federal support in addressing violent activity. The Navajo Nation Council gave a directive to justice officials to respond more efficiently. Their only option was, and still is, to develop strategic plans to deal with gangs, since there is little hope of increased federal support in a climate where the United States Government is withdrawing financial support from Indian Nations and still fails to commit federal law enforcement support to the problem effectively.

Attempts to deal with, and prevent, gang activity have been launched by the Navajo Nation Council and by the two branches of the Navajo Nation criminal justice system. Informal meetings have involved the most visible 'players' in the justice system who deal with gangs: police officers in gang units, Navajo Nation Behavioural Health workers who meet with both gang members and community organisations, Navajo Housing Authority officials, judges and court staffers. In the absence of financial support, their strategy is to make more efficient use of limited resources and personnel. These groups have also initiated research efforts to discover more about the gangs.

In 1995, the Navajo Nation Council adopted a new curfew law, which includes parental criminal liability for curfew violations and civil liability for personal injury or property damage. The Judicial Branch and Navajo Housing Authority applied for and received federal grants aimed at gang activity, closely coordinating activities with the Navajo Nation Police. The Navajo Housing Authority recognises the link between cluster housing and violent activity, and it has hired security guards for patrols, encouraged project organisations and entered into special agreements with the Navajo Nation Police to patrol projects with identified gang activity.

The Navajo Nation Police have officers in each district command area who devote their efforts to gang activity, and officers recently met with federal officials to discuss better coordination of federal and Navajo Nation policing and prosecution activities.

Police efforts have been modelled upon gang approaches in non-Native cities, although with a strong emphasis on community involvement and commitment. One detachment, the Fort Defiance District (of the Fort Defiance Agency), formed a gang unit which covers Window Rock, Fort Defiance, Navajo (New Mexico) and other identified communities with gang problems. The district commander lives in a

police command post in Navajo, New Mexico. He has assumed responsibility for the overall gang-related activities of the Navajo Nation Police. The Unit consists of three uniformed officers and has as its objectives to identify high activity areas, conduct investigations, and instill community awareness and support for deterrence initiatives. The Gang Unit is also involved with other law enforcement agencies such as the Arizona Department of Public Safety and the FBI in developing a gang task force, intelligence networking, and information sharing. They have also provided training to other tribal law enforcement agencies in dealing with gang activities. In addition to the activities of the Gang Unit, uniformed officers conduct gang awareness seminars and lectures in schools and to the public, and the department has increased patrols in high risk areas (Navajo Department of Law Enforcement 1995).

The police support a number of strategies for future implementation. These include incorporating existing programs or bringing in new programs to the gang initiative such as: summer programs and camps, youth boot camps, Scouts, Mountain Search and Rescue, and Big Brothers/Big Sisters; involving community groups such as schools, community leaders, churches and other interest groups in the initiative; committing juveniles to federal correctional facilities off the reservation for counselling and supervision; and implementing a 24 hour juvenile surveillance program, and a 24 hour hot-line to keep track of gang members and to handle complaints about gang activities. Serious obstacles to implementing some of these strategies are the lack of funding and personnel (Navajo Department of Law Enforcement 1995).

The Judicial Branch has also pledged to do what it can to deal with gangs in accordance with Navajo legal thinking. It has held meetings of the Navajo Nation Judicial Conference (i.e. an assembly of all judges) to discuss judicial options and has made gang initiatives a priority for grant applications. While recognising that serious criminal behaviour with resulting injury to persons and property should not be tolerated, the Judicial Branch points to the success of peacemaking for intervention in driving while intoxicated cases involving both adult and juvenile offenders. Based on the same principles, the Judicial Branch has developed a pilot program which addresses delinquency cases uses peacemaking. This pilot project, initiated in 1992, is called the Yaa da' ya ('upward moving way') and is based on the peacemaking principles used by the Navajo Nation Peacemaker Courts. The Peacemaker Courts, which were first established in 1982, are based in early Navajo dispute resolution practices. Navajo peacemaking is based on a traditional

Navajo concept of 'talking things out'. The term 'court' has been abandoned in favor of Navajo justice terms. They are *hozhooji naat'aah* or 'planning for good relations-peace-harmony', and *hozhooji naat'aanii*, which refers to the process of talking things out for a restoration of good relations, and to the traditional Navajo civil leader, a *naat'aanii*. The Yaa da' ya project is funded by the U.S. Justice Department's Office of Juvenile Justice and Delinquency Programs (OJJDP) on the premise that traditional methods of dealing with youthful offending are superior to mainstream juvenile delinquency efforts. Thus far the concept has proven to be successful.

The Yaa da' ya project is seen as a prototype for future mediation within and among gangs, and between gangs and the community. The project has shown that it is possible to deal with individual youthful offenders by bringing in their family members, community leaders and support agencies to deal with the problems which underlie offending. The Navajos who conduct the project recognise that in historical times, young people were brought into warrior society in various ways, and that there is war way thinking. In Navajo thought, nothing is 'good' or 'evil' of itself. Navajo thought is empirical, so the focus is upon evil effects rather than evil of itself. The concept to be applied to gangs is to tap the positive aspects of youthful energy (which would otherwise create a classic warrior) to channel it to behaviours which are not evil. The thinking is that if gang leaders are approached with an attitude of respect and negotiation, that will be easier than attempting to use limited law enforcement and judicial resources for suppression. Good thoughts produce good actions, and right relationships are the product of *k'e* or respect. Thus, reaching out to gang leaders with an open hand and respect is a central component of the Judicial Branch strategy. Recognising that such is a difficult process, the courts are also prepared to use their adjudication authority where necessary to deal with offenders who cannot be reached through these traditional processes.

RESEARCH

Because gang activities are such a recent phenomenon in the Navajo Nation, research is desperately needed to describe the parameters of the situation and to develop effective prevention and intervention strategies. Several research projects are currently underway. The President's Office has asked a member of the Navajo Nation Police to collect data on

gangs. As well, the Fort Defiance police commander oversees in-house initiatives in conjunction with other Navajo Nation justice officials, including police, prosecution, courts, probation officers and other interested agencies.

A San Jose State University-sponsored research project is investigating the extent of gang activity on American Indian reservations as well as the composition and characteristics of Native American gangs across the USA. The Navajo Nation is included as a case study. Data sources include surveys sent to law enforcement officials of the various tribal police departments and Bureau of Indian Affairs-Law Enforcement Services agencies across the country, and informal interviews with the Navajo Law Enforcement officers. The project is an exploration of which reservations are experiencing gang activity, the reasons behind the occurrence of gang activity on these reservations, the degree of violence of these activities and finally, an examination of what the law enforcement agencies of jurisdiction are doing in response to gang formation and activities on their particular reservation (Hailer 1996).

A third project is under the directorship of the Navajo Nation Judicial Branch and is funded by the Office of Juvenile Justice and Delinquency Prevention. It is designed to document the youth gang situation including its history, influences on the gangs, and the activities of the gangs; and to document current data bases. Its second goal is to devise promising strategies for prevention and intervention that incorporate Navajo *nayee* thinking. A *nayee* is a monster; it is that which gets in the way of a successful life. In the case of the gangs, they are only *nayee* if they lead their members down a wrong path that harms them and/or the community. The negative effects (such as drug use, violence and community disruption) must be stopped, not the gangs themselves. As a result, the research asks: How do you deal with a monster? The Navajo maxim is: 'Think carefully and proceed cautiously'. The first thing which must be done is to observe the monster from a place of relative safety. Watch it closely and carefully. Note its habits—how it moves and bears itself. Look for its weaknesses. Having observed the monster carefully, select weapons which can be used to kill or weaken it. The weapons selection process is both personal and objective. That is, while you can select weapons, you must also prepare yourself individually to gain strength. In ancient times, the Hero Twins, Monster-Slayer and Born-for-Water, went through intensive preparations and survived many challenges before they were worthy to receive weapons from their father, The Sun. (The Twins' mother, Changing

Woman, later pointed out that she, as a single-parent family head, taught the Twins their strength and ability to survive hardship.) Then, when the warrior is prepared and the weapons are in hand, it is time for prompt, aggressive and vigorous action. Navajo thinking combines the values of careful planning in discussions with others and, in the war way, vigorous action against a foe. Once careful preparations are made based on careful observation, it is time to dedicate to all-out action against a monster.

These approaches respond to Navajo culture and current thought on Indian programming, both of which outline the need to incorporate the grassroots from the beginning of the project and to build on Indigenous knowledge. The project will interview gang members, criminal justice system members, school teachers and administrators, and community leaders. The end result of this project will not only be the preparation of material on the development and activities of the Navajo gangs, but will be a plan based in Navajo narratives and law to intervene in the development and operation of the gangs.

The Judicial Branch gang study team met in early June 1996 to finalise approaches to the study and coordination plan. The team identified stakeholders in the process (interested government agencies and community organisations), discussed how to bring more active 'players' into the process, and developed questionnaires for gang members and stakeholders. In addition, the team discussed issues posed by classic research studies of Navajo culture: anomie, loss of culture as a variable, parenting, family composition, population mobility, and the impact of assimilationist Bureau of Indian Affairs programs, including boarding school and relocation to urban areas for employment. Navajo Nation Police have pointed out that Navajo Housing Authority cluster projects, which select occupants based on income level and a 'first-come, first-served' eligibility standard divorced from actual residence arrangements, are high crime areas. Some of these issues are prompts for more detailed research into issues such as spatial relations, urbanisation, housing project composition and other variables.

Such issues may point to the reasons Navajo gangs are unique and why they are emerging in Indian Country across America; and may suggest approaches which address Native American conditions. The preliminary assessment of the team as it began the actual operations of the project is that while urban models of research may be utilised to construct a research model for the Navajo Nation, there are many distinct problems which must be addressed in the context of Navajo

society. The literature on Navajos is large, and there is insufficient space to do a preliminary survey here, but it offers supplementary information to help frame strategies for a final report. Another unique aspect of the project is that its head, Philmer Bluehouse, is a former Navajo police officer with six years experience in peacemaking. He says that he has turned from the war way of the police, *hashkeeji naat'aah* to the peace way of Navajo peacemaking, *hozhooji naat'aah*. The Navajo Nation chief justice, Robert Yazzie, has a hands-on approach to the project, insisting that it use Navajo thinking in its approaches. The team is supplemented by a Navajo researcher who is a gang member. The Navajo component of the team will take the lead, assisted by four social scientists and a lawyer who is experienced with Navajo judicial planning. Thus, the effort is Navajo-driven in conjunction with individuals who are experienced with the literature on Navajos and field work.

This research approach attempts to integrate field research techniques, literature accounts of Navajo society, and the practical experience of Navajo actors who guide the process. Aside from the goals of the project to identify the nature and extent of gang activity in the Navajo Nation, it will be interesting to see the product of a joint effort of academics and justice system officials who will attempt to join the elements of Navajo tradition with justice planning processes.

CONCLUSION

Native American gangs are the newest entrants into the world of North American gang life and activities, and very little is as yet known about them. The existence of Native American gangs is not surprising given the impact of colonialism and resulting social conditions in many Native American communities. Native American young people have social and personal needs that are not being met by the existing social institutions in these communities. Instead, they have adopted an institution from outside Native communities—the youth gang—that fulfils some of these needs, though at the price of interpersonal violence and community disruption.

Native American gangs are still in the transitional stages, however, which means that the opportunities for intervention are still exceptionally timely. As well, Native American youth come from very different cultural traditions than those of other ethnic and racial juvenile gangs. Native American youth gangs are a distortion of *hashkeeji naat'aah* or

war way thinking.

Navajos are currently reviving modes of thought which are based in Navajo creation narratives, ceremonies, songs and other expressions of their culture. Many such ways of thinking are 'survivals' or unconscious attitudes brought forward from traditional culture. Navajos are looking to their traditions for a more conscious articulation of their base values to address contemporary social problems, including gang activity. In this ideological framework, the gangs should not be eliminated, but rather should be redirected. Youth gangs are a source of status, honour, self-esteem and fellowship. These are positive aspects of group life that are still needed by the youth living on today's reservations. The gangs themselves are not 'evil'; though some of their effects are. The challenge is to turn the gangs into forces that act for the good of the community and are part of the community. This can be done by going into the past for traditional values and practices, and bringing them into the present, for the good of everyone.

This is, however, not the only route that is being followed. Both the Navajo Judicial Branch and the Navajo Nation police are quite aware that the gangs were imported from outside the Navajo Nation, and that some 'outside' strategies are also needed to deal with them. Respect, negotiation and community-level social control mechanisms such as peacemaking, are vital parts of Navajo community life, but not necessarily vital parts (yet) of Navajo gang member life because of the imported values that many gang members have adopted. Law enforcement and adjudication, gang units, and courts, are also needed. Navajo Nation criminal justice personnel are very aware that such a balanced criminal justice approach is necessary. Navajo Nation gangs are unique because of their Native American origins; but they also share characteristics with other ethnic and racial minority gangs. Intervention, therefore, must be equally diverse and innovative in order to be effective. [18]

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NOTES

1. A search of the literature found no research on Native American gangs, although their existence was mentioned in a few places. Spergel (1995:59-60) for example, reports: 'American Indian gangs have been active in Minneapolis and in several southwestern states'.

2. 'Domestic dependent nation' is a legal term that means Indian nations have the right, within specific limits set by American federal law, to control their own internal affairs including the administration of justice. The Navajo Nation is a 'nation' by virtue of such recognition in its 1868 Treaty with the United States. The right of Indian Nations to establish justice institutions is part of retained Indian Nation sovereignty (Cohen 1982:334).

3. According to the 1990 Census, about 1,960,000 people or 0.8% of the total US population identified themselves as 'American Indian, Eskimo or Aleut' (Kramer 1995).

4. Snipp (1989: 315) estimates that slightly more than 50% of Native Americans live outside metropolitan areas, which makes them one of the least-urbanised groups in the United States.

5. Native Americans are not 'a people', although pan-Indian movements exist. Native Americans vary widely in terms of their cultures, languages, economies, histories, and community needs and priorities. There are 515 tribal groups in the United States, including 197 Alaskan Native villages (Hirschfelder and de Montano 1993). The term 'Native American' is an inclusive term that includes American Indians, Native Hawaiians, Alaska Natives (a term which also embraces Alaska Inuit, Aleuts, and Indians) and individuals of mixed descent who identify with their Native American heritage. Native American communities and individuals also differ widely in terms of their acculturation to dominant U.S. values and lifestyles.

6. See Silverman (1996) for a discussion of the reasons that arrest is not a good indicator of Native American involvement with the criminal justice system. Serious problems in census reporting of Native Americans is the main issue. Incarceration rates are more accurate, but are also farther removed from the criminal event.

7. Figures for Asians and Pacific Islanders were not given in this category by the Department of Justice.

8. Comprehensive incarceration statistics for Native American juveniles are not reported by the U.S. Department of Justice. While separate statistics are available for African-American, Hispanic and White juveniles, Native Americans juveniles are usually lumped into the 'other' category.

9. For a recent and comprehensive overview of Native American juvenile involvement in the criminal justice system see Armstong et al (1996). This is an edited version of a report prepared for the federal Office of Juvenile Justice and Delinquency Prevention in 1992.

10. The following overview of the processes and impacts of colonialism is, of necessity, short and generalised. For more comprehensive descriptions of the historical relations between Native Americans and colonial forces, see Hagan (1993), Jennings (1993), Jaimes (1992), Miller (1989), and Trigger (1985).

11. The following section is based primarily on information gathered from handouts and presentations at a training seminar on 'Gangs On Indian Country' held in Las Vegas, 23-25 January 1996 which was attended by one of the authors (Hailer).

12. 'Indian country' is both a legal and popular term to denote Indian areas, including 'reservations' of homelands by treaty, statute or presidential executive order; individual Indian land allotments; and 'dependent Indian communities', or areas which are predominantly Indian in population.

13. These explanations are very similar to the explanations given in scholarly studies as to why members of other minority groups become involved in gang activities (Cummings and Monti 1993; Knox 1993; Covey et al 1992; Cohen 1990).

14. It is important to note that Scottsdale is part of the metropolitan area of Phoenix, Arizona, a very large urban community with many gangs and gang problems.

15. This act was introduced as a response to the 1928 *Merriam Report*. This report was one of the first 'modern' government documents describing the social conditions of Indian peoples. It identified Indian self-government as a means of dealing with their political powerlessness.

16. Window Rock, the Navajo Nation capital, is a small community with small 'bedroom suburbs' of Tse Bonito, St Michaels, and Fort Defiance nearby. Most of the 'Vicious Cobras' appear to live in Fort Defiance, which is seven miles north of Window Rock.

17. It should be noted that there is a great deal of debate in the literature about the identification of so-called 'gang-related' offences and 'personal' offences committed by a gang member, as well as about what in general comprises a 'gang' (see, for example, Spergel 1995:21; Huff 1993:4-7).

18. The authors wish to express their gratitude to Jeff Ferrell, Dan Wall and Harmon Mason for their valuable comments on earlier drafts of this chapter.

Children have never been very good at listening to their elders, but they have never failed to imitate them.

- James Baldwin

JUVENILE JUSTICE ISSUES IN INDIAN COUNTRY

by James Bell

Indian people have for many centuries understood the power of the circle. The sacred order of all life forms which bring stability and harmony to our world. All over Indian country we hear the echoes of a breach in the circle caused by rapidly changing forces which seem to overwhelm the traditions and ways of the elders.

These changes are brought about by external forces which bring a panoply of new problems to the youth of Indian country and their families. There are circumstances unique to Indian country that contribute to the challenges facing tribal governments regarding Indian youth. Some reservations have 50% or more of their total population under the age of majority. Sociological conditions of unemployment substance abuse, low self-esteem and morale also contribute to social pathologies amongst youth in Indian country.

A young person graduating from high school today was probably born around 1980. The world off reservation and on reservation has changed mightily in their short lives. Availability of handguns, violence, crack cocaine, AIDS/HIV and unprecedented levels of media influences are rampant. Any one of these factors would have had a significant impact on any generation, but the cumulative impact of these forces in such a short time is more than any community can absorb.

As one looks at the amount of wealth and conspicuous consumption available in our nation and compare that with the sheer number of people in poverty and/or in need of social and mental health services, Charles Dickens comes to mind. It is the best of times and the worst of times.

From 1982 to 1989 the number of billionaires increased five times. The gap between the rich and poor widened so much that America's richest 1%, were left with almost as big a share of Americas total income after taxes as the bottom 40%. So for some, it was the best of times. But for children it seems, it is the worst of times. At the present time, 20% of all children in this country are poor. Additionally, during the last decade there was a substantial increase in the number of children living in deep poverty, so that by 1990 almost five million children lived in families that had incomes at less than half the federal poverty line, which is an annual income of about $5000.00 dollars for a family of three.

The results of this economic and social disparity are manifest. Every eight seconds of every school day, a child drops out of school. Every 26 seconds of every day, a child runs away from home. Every 67 seconds, a teenager has a baby. Every seven minutes a child is arrested for a drug offense. Every 24 hours, 105 infants die before their first birthday. Every day, 100,000 children are homeless. Every year, there are more than 300,000 children in foster care, 500,000 children held in juvenile detention facilities, more than half of which are overcrowded, and there are two and a half million reports of child abuse.

An evocative question is to what degree are we, as adults, responsible for the world in which Indian youth find themselves living. The overwhelming majority of Indian youth are positive members of their communities. They are trying desperately to make some sense of their lives. However, they are

wedged between a small group of destructive young people and the larger society that ignores their potential and has written them out of the future.

These young people are trapped between their unrealized hopes and a society that fears and quarantines them. Indian youth often live in a world where tribal councils care more about roads, gaming and politics than they do about realizing the potential of a full 1/3 of their tribal members. Thus two generations are turning inward and away from the elders in the community, the traditional ways and the community at large.

As adults, we need to use tribal ways to articulate a wholesale vision of what it is that we want our young people to become and how we in Indian country can help get them there. We need to make Indian youth believe that their lives count, that their lives have epic significance. We need to use tribal values as a form of resistance to provide a sense of possibility to activate human potential. Change is not a celebrity, top-down phenomena, but springs from the bottom up, from communities forming and moving together, expressing their collective voice.

There must be tribal members who act as advocates for youth. We cannot afford to waste any potential in Indian country. We must bring forth young men and women ready to take Indian people through the next millennium. Our children, like all children, have personal strengths and weaknesses. They can be difficult, disruptive, demanding and obnoxious, but they are also abused, ignored, uncared for, unempowered and often times in a great deal of pain. That notwithstanding, we must find the humanity in that young person who is confused and trying to articulate herself or himself.

In the new millennium we are going to have to widen our circle regarding those who serve youth. We must include physicians in our work. We must address issues of violence. Violence, especially from handguns, has become an epidemic. The firearm death rate among teenagers, 15-19 years old, increased 77%, its highest level ever. Since 1988 for all youths, ages 15-19, gunshot wounds are about to surpass traffic accidents as the leading cause of death. This number also passes all natural causes of death for this age group.

The Centers for Disease Control see violence from handguns as a health epidemic. Any policy decisions about troubled youth should not be made without input from this important segment of the community.

These young people are trapped between their unrealized hopes and a society that fears and quarantines them.

We need to involve educators in our public policy discussions. We know that the highest correlative to delinquency is not only substance abuse, but truancy. Educators and police chiefs should talk to us about the full impact of these correlatives on our youth.

For Bureau of Indian Affairs officials, tribal bureaucrats and uncaring tribal leaders that are not prepared for meaningful intervention in a young person's life, they trot out the usual suspects: too little money, too many forms, too little leadership at the top, too many regulations at the bottom; too few staff, too many cases, students, files and families to handle.

How do we get past this and talk about services for young people in the post-modern era in Indian Country. A start would be to examine five general areas: Attitudes, Family, Community, Tribal Courts and Responsibility

Attitudes

The tyranny of labels is the first thing that has to be reexamined. It is so limiting to define children based upon the way they "enter" the system. Delinquents, dependents and children with mental health problems should not be placed into narrow preordained modalities.

Family

Services provided by agencies and bureaucracies can no longer be separate from the traditional composition and significance of our families. Family must be found in our definition, which includes, anyone that loves this child. We must in conjunction with other service providers strengthen the positive elements of family dynamics. Be very clear that youth gangs have formulated their own meaning of family. Family for them means a reliance on peers to help resolve conflicts among themselves and with others, as well as to define their successes and failures. If gangs can do that, we are going to have to provide at least that, at a minimum, in order to reach youth in a real way.

Community

We need to see children as part of their community. Communities are not only geographic designations. Communities are shared interests and shared responses to objective conditions. We need to encourage the idea of community as one of belonging, language and identity. All communities should be valued and community values should be given great deference by anyone providing services. Therefore, we should encourage contacts with the community that are positive.

Tribal Courts

The first job of the courts is to educate the tribal councils about the importance of their functions in the lives of children, youth and families. Tribal courts need to develop information about the percentage of the tribal population that is under 18 years of age, and advocate for monies that can provide services commensurate with the needs of the population.

In order to qualitatively intervene, we must stop the mere processing of youth.

Office of the Attorney General
Washington, D.C.

All of you know how much needs to be done to take meaningful steps to end domestic violence and sexual assault. We need tough law enforcement, aggressive prosecutions, effective prevention programs and available shelters for families in distress. Most importantly, we need to insure that more people know and understand that domestic violence is not a private matter. It is a critical national problem that affects us all — in every community, in every work place and in every school.

Each of us can do more -- and this booklet shows us how.

President Clinton recognized the seriousness of the problem when he signed the Violence Against Women Act as part of the Violent Crime Control and Law Enforcement Act of 1994. In the past year, we have sought to combine tough federal penalties along with substantial resources to the states to begin dealing with the problem of domestic violence in a comprehensive, multi-faceted way. We have encouraged the states and local law enforcement agencies to begin programs that will enhance their ability to prevent domestic violence, to punish it and to stop the cycle of violence. The Act also established a National Domestic Violence Hotline, 1-800-799-SAFE.

Here at the Justice Department, Bonnie Campbell and the Violence Against Women Office have worked to get the message out and to provide guidance to law enforcement agencies throughout the country. HHS Secretary Donna E. Shalala and I have a very active Advisory Council which is proposing creative ideas on implementing the Violence Against Women Act. In addition, President Clinton has called on all the departments of the Federal government to develop employee awareness campaigns to help combat domestic violence.

I encourage you to share this booklet with anyone you know who might be at risk of domestic violence. By working together, exchanging ideas, and coordinating our work in this area, we can begin to end the terrible cycle of violence that destroys so many American lives.

Janet Reno

BREAKING THE SILENCE ON DOMESTIC VIOLENCE

.Bonnie J. Campbell
Director of the Violence Against Women Office

Tough new laws are one way to reduce domestic violence and sexual assaults. Nothing sends a clearer message to a wife-beater — and Department of Justice statistics confirm that women are battered far more than men — than prosecuting and jailing other wife-beaters. New laws, however, are not the only answer.

Too many people continue to believe that domestic violence is a private matter between a couple, rather than a criminal offense that merits a strong and swift response. Even today, the victim of a domestic assault runs the risk of being asked, "What did you do to make your husband angry?" This questions implies the victim is to blame for this abuse. People in our criminal justice system — police, prosecutors, judges, and jurors — need to be educated about the role they can play in curbing acts of domestic violence.

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Even when cases are brought, domestic crimes are difficult to prosecute. All too often victims are so terrorized that they fear for their lives if they call the police. Silence is the batterer's best friend. We have to end the silence and change our attitudes toward domestic crime.

Neighbors must contact the police when they hear violent fights in their neighborhoods. Don't turn up the television to block out the sounds of the drunken argument next door. Call the police.

Teachers should be alert to signs that students have witnessed violence at home. Children who grow up in violent homes are more likely to become violent themselves.

Medical professionals who see the victims of violence need to ask them about these crimes. Too often, doctors or emergency room personnel accept the statement of fearful victims that their bruises or cuts are the result of household accidents or falls. When a woman with a black eye says that she fell and hit the doorknob, doctors and nurses must ask: "Did someone hit you?"

Members of the clergy need to become more involved as well. We just can't tell a battered spouse to "go home and make it work," as was done in the past. Sending a woman back to a battering husband often places her life at risk. Of course, we can't tell a woman who lives in a violent relationship what to do, but we can make a greater effort to let her know that other options are available for her and her children. Early intervention is crucial.

These crimes are serious. Experience shows that levels of violence in these relationships tend to escalate, and many police departments cite domestic violence as their number one problem. Tough laws and effective prosecutions, combined with education and a cooperative approach among law enforcement and social service agencies, will take time to be effective. Until then, we all must take a greater role in reporting domestic abuse. Our efforts to break the silence can make a difference.

NATIONAL DOMESTIC VIOLENCE HOTLINE

1-800-799-SAFE
TDD 1-800-787-3224

Domestic Violence . . . What is it?

As domestic violence awareness has increased, it has become evident that abuse can occur within a number of relationships. The laws in many states cover incidents of violence occurring between married couples, as well as abuse of elders by family members, abuse between roommates, dating couples and those in lesbian and gay relationships.

In an abusive relationship, the abuser may use a number of tactics other than physical violence in order to maintain power and control over his or her partner:

Emotional and verbal abuse:

Survivors of domestic violence recount stories of put-downs, public humiliation, name-calling, mind games and manipulation by their partners. Many say that the emotional abuse they have suffered has left the deepest scars.

Isolation:

It is common for an abuser to be extremely jealous, and insist that the victim not see her friends or family members. The resulting feeling of isolation may then be increased for the victim if she loses her job as a result of absenteeism or decreased productivity (which are often associated with people who are experiencing domestic violence).

Threats and Intimidation:

Threats — including threats of violence, suicide, or of taking away the children — are a very common tactic employed by the batterer.

The existence of emotional and verbal abuse, attempts to isolate, and threats and intimidation within a relationship may be an indication that physical abuse is to follow. Even if they are not accompanied by physical abuse, the effect of these incidents must not be minimized. Many of the resources listed in this book have information available for people who are involved with an emotionally abusive intimate partner.

For additional information on the domestic violence definitions and laws in your state, please contact the state resource listed in the back of this book.

Who are the Victims?

- Women were attacked about six times more often by offenders with whom they had an intimate relationship than were male violence victims.
- Nearly 30 percent of all female homicide victims were known to have been killed by their husbands, former husbands or boyfriends.
- In contrast, just over 3 percent of male homicide victims were known to have been killed by their wives, former wives or girlfriends.
- Husbands, former husbands, boyfriends and ex-boyfriends committed more than one million violent acts against women.
- Family members or other people they knew committed more than 2.7 million violent crimes against women.
- Husbands, former husbands, boyfriends and ex-boyfriends committed 26 percent of rapes and sexual assaults.
- Forty-five percent of all violent attacks against female victims 12 years old and older by multiple offenders involve offenders they know.
- The rate of intimate-offender attacks on women separated from their husbands was about three times higher than that of divorced women and about 25 times higher than that of married women.
- Women of all races were equally vulnerable to attacks by intimates
- Female victims of violence were more likely to be injured when attacked by someone they knew than female victims of violence who were attacked by strangers.

Source: Bureau of Justice Statistics National Crime Victimization Survey, August 1995

MYTHS FEED DENIAL ABOUT FAMILY VIOLENCE

Myth: *Family violence is rare...*

Truth: Although statistics on family violence are not precise, it's clear that millions of children, women and even men are abused physically by family members and other intimates.

Myth: *Family violence is confined to the lower classes...*

Truth: Reports from police records, victim services, and academic studies show domestic violence exists equally in every socioeconomic group, regardless of race or culture.

Myth: *Alcohol and drug abuse are the real causes of violence in the home...*

Truth: Because many male batterers also abuse alcohol and other drugs, it's easy to conclude that these substances may cause domestic violence. They apparently do increase the lethality of the violence, but they also offer the batterer another excuse to evade responsibility for his behavior. The abusive man — and men are the abusers in the overwhelming majority of domestic violence incidents — typically controls his actions, even when drunk or high, by choosing a time and place for the assaults to take place in private and go undetected. In addition, successful completion of a drug treatment program does not guarantee an end to battering. Domestic violence and substance abuse are two different problems that should be treated separately.

Myth: *Battered wives like being hit, otherwise they would leave...*

Truth: The most common response to battering— "Why doesn't she just leave?"— ignores economic and social realities facing many women. Shelters are often full, and family, friends, and the workplace are frequently less than fully supportive. Faced with rent and utility deposits, day care, health insurance, and other basic expenses, the woman may feel that she cannot support herself and her children. Moreover, in some instances, the woman may be increasing the chance of physical harm or even death if she leaves an abusive spouse.

Adapted from:: "Preventing Violence Against Women, Not Just a Women's Issue," National Crime Prevention Council, 1995.

What Can You Say to a Victim?

- I'm afraid for your safety.
- I'm afraid for the safety of your children.
- It will only get worse.
- We're here for you when you are ready or when you are able to leave.
- You deserve better than this.
- Let's figure out a safety plan for you.

Adapted from: Sarah Buel, Esq., in "Courts and Communities: Confronting Violence in the Family," Conference Highlights, National Council of Juvenile and Family Court Judges, 1994.

What is a Safety Plan?

Every individual in an abusive relationship needs a safety plan. The District of Columbia Coalition Against Domestic Violence has published a wallet-sized card that gives names and phone numbers of shelters, legal services, and support groups, and lists basic elements of a safety plan. (The number is listed in the back.) Shelters and crisis counselors have been urging safety plans for years, and police departments, victim services, hospitals, and courts have adopted this strategy. Safety plans should be individualized — for example, taking account of age, marital status, whether children are involved, geographic location, and resources available — but still contain common elements.

When creating a safety plan:

- ***Think about all possible escape routes.*** Doors, first-floor windows, basement exits, elevators, stairwells. Rehearse if possible.
- ***Choose a place to go.*** To the home of a friend or relative who will offer unconditional support, or a motel or hotel, or a shelter – most importantly somewhere you will feel safe.
- ***Pack a survival kit.*** Money for cab fare, a change of clothes, extra house and car keys, birth certificates, passports, medications and copies of prescriptions, insurance information, checkbook, credit cards, legal documents such as separation agreements and protection orders, address books, and valuable jewelry, and papers that show jointly owned assets. Conceal it in the home or leave it with a trusted neighbor, friend, or relative. Important papers can also be left in a bank deposit box.
- ***Try to start an individual savings account.*** Have statements sent to a trusted relative or friend.
- ***Avoid arguments with the abuser in areas with potential weapons.*** Kitchen, garage, or in small spaces without access to an outside door.
- ***Know the telephone number of the domestic violence hotline.*** Contact it for information on resources and legal rights.
- ***Review the safety plan monthly.***

What Can Each of Us Do?

√ Call the police if you see or hear evidence of domestic violence.

√ Speak out publicly against domestic violence.

√ Take action personally against domestic violence when a neighbor, a co-worker, a friend, or a family member is involved or being abused.

√ Encourage your neighborhood watch or block association to become as concerned with watching out for domestic violence as with burglaries and other crimes.

√ Reach out to support someone whom you believe is a victim of domestic violence and/or talk with a person you believe is being abusive.

√ Help others become informed, by inviting speakers to your church, professional organization, civic group, or work-place.

√ Support domestic violence counseling programs and shelters.

Pages 9 and 10 adapted from: "Preventing Domestic Violence" by Laura Crites in Prevention Communique, March 1992, Crime Prevention Division, Department of the Attorney General, Hawaii.

What Can Communities Do To Prevent Domestic Violence?

- Expand **education and awareness** efforts to increase positive attitudes toward nonviolence and encourage individuals to report family violence.
- Form **coordinating councils** or **task forces** to assess the problem, develop an action plan, and monitor progress.
- Mandate **training** in domestic violence for all social services and criminal justice professionals.
- Advocate **laws** and **judicial procedures** at the state and local levels that support and protect battered women.
- Establish centers where visits between batterers and their children may be supervised, for the **children's safety**.
- Fund **shelters** adequately.
- Recruit and train **volunteers** to staff **hotlines**, accompany victims to court, and provide administrative support to shelters and victim services.
- Improve collection of **child support**.
- Establish **medical protocols** to help physicians and other health care personnel identify and help victims of domestic abuse.
- Provide **legal representation** for victims of domestic violence.
- Advocate for the **accessibility of services** for all population groups, especially undeserved populations which include immigrants and refugees, gays and lesbians, racial and ethnic minorities and the disabled.

Adapted from: "Preventing Violence Against Women: Not Just A Women's Issue," the National Crime Prevention Council, 1995.

DOMESTIC VIOLENCE AND THE WORKPLACE

As awareness about domestic violence has grown, so has the recognition that this crime has a major impact in the workplace. The abuse an employee receives at home can lead to lost productivity, higher stress, increased absenteeism and higher health care costs. A 1994 survey of senior corporate executives conducted by Roper Starch Worldwide on behalf of Liz Claiborne, Inc. found that:

- **Fifty-seven percent believe domestic violence is a major problem in society.**
- **One-third thought this problem had a negative impact on their bottom lines.**
- **Four out of ten executives surveyed were personally aware of employees and other individuals affected by domestic violence.**

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To ensure that the Federal government will be a leader in educating employees about the serious implications of domestic violence, President Clinton has directed the heads of every Federal department to conduct employee awareness campaigns on the issue. Similar programs are underway in corporate America, led by companies such as the Polaroid Corporation, Marshalls Inc., Liz Claiborne Inc., and Aetna.

WHERE CAN I GET HELP?

This resource book is another step in the Federal Employee Awareness Campaign on Domestic Violence, the goal of which is to educate and foster awareness about domestic violence for United States government employees worldwide.

Through this campaign, we hope to put people in touch with resources, such as Employee Assistance Programs (EAP) and publications which will be helpful in combatting the crime of domestic violence. On February 21, 1996, President Clinton announced a nationwide, 24-hour, toll-free domestic violence hotline. The number is **1-800-799-SAFE** and the TDD number for the hearing impaired is **1-800-787-3224.** Help is also available to callers in Spanish and to other non-English speakers.

The hotline provides immediate crisis intervention for those in need. Callers can receive counseling and be referred directly to help in their communities, including emergency services and shelters. Also, operators can offer information and referrals, counseling and assistance in reporting abuse to survivors of domestic violence, family members, neighbors, and the general public.

In many areas, there are local domestic violence agencies which can provide crisis services such as shelter, counseling, and legal assistance. These numbers can be obtained from state or regional coalitions, from the phone book, or by calling information.

Your department's Employee Assistance Program can also provide you with assistance and referrals, support groups, counseling and other services.

This booklet contains a list of state, regional, and national resources which can be of assistance.

State Domestic Violence Coalitions

ORGANIZATION	PHONE/FAX NUMBERS
Alaska Network on Domestic Violence and Sexual Assault 130 Seward Street, Room 501 Juneau, AK 99801	(907) 586-3650 (907) 463-4493 fax
Alabama Coalition Against Domestic Violence P.O. Box 4762 Montgomery, AL 36101	(334) 832-4842 (334) 832-4803 fax
Arkansas Coalition Against Domestic Violence 523 South Louisiana, Suite 230 Little Rock, AR 72201	(501) 399-9486 (501) 371-0450 fax
Arizona Coalition Against Domestic Violence 100 West Camelback Road, Suite 109 Phoenix, AZ 85013	(602) 279-2900 (602) 279-2980 fax
California Alliance Against Domestic Violence 619 13th Street, Suite I Modesto, CA 95354	(209) 524-1888 (209) 524-0616 fax
Colorado Domestic Violence Coalition	(303) 573-9018
Connecticut Coalition Against Domestic Violence 135 Broad Street Hartford, CT 06105	(860) 524-5890 (860) 249-1408 fax
D.C. Coalition Against Domestic Violence P.O. Box 76069 Washington, D.C. 20013	(202) 783-5332 (202) 387-5684 fax
Delaware Coalition Against Domestic Violence P.O. Box 847 Wilmington, DE 19899	(302) 658-2958 (302) 658-5049 fax

ORGANIZATION	PHONE/FAX NUMBERS
Florida Coalition Against Domestic Violence 1535 C-5 Killearn Center Boulevard Tallahassee, FL 32308 • HOTLINE: 1-800-500-1119	(904) 668-6862 (904) 668-0364 fax
Georgia Advocates For Battered Women and Children 250 Georgia Avenue, S.E., Suite 308 Atlanta, GA 30312 • HOTLINE: 1-800-643-1212	(404) 524-3847 (404) 524-5959 fax
Hawaii State Coalition Against Domestic Violence 98-939 Moanalua Road Aiea, HI 96701-5012	(808) 486-5072 (808) 486-5169 fax
Iowa Coalition Against Domestic Violence 1540 High Street, Suite 100 Des Moines, IA 50309-3123 • HOTLINE: 1-800-942-0333	(515) 244-8028 (515) 244-7417 fax
Idaho Coalition Against Sexual & Domestic Violence 200 North Fourth Street, Suite 10-K Boise, ID 83702	(208) 384-0419 (208) 331-0687 fax
Illinois Coalition Against Domestic Violence 730 East Vine Street, Sutie 109 Springfield, Illinois 62703	(217) 789-2830 (217) 789-1939 fax
Indiana Coalition Against Domestic Violence 2511 E. 46th Street, Suite N-3 Indianapolis, IN 46205 • HOTLINE: 1-800-332-7385	(317) 543-3908 (317) 568-4045 fax

ORGANIZATION	PHONE/FAX NUMBERS
Kansas Coalition Against Sexual and Domestic Violence 820 S.E. Quincy, Suite 416 Topeka, KS 66612	(913) 232-9784 (913) 232-9937 fax
Kentucky Domestic Violence Association P.O. Box 356 Frankfort, KY 40602	(502) 875-4132 (502) 875-4268 fax
Louisiana Coalition Against Domestic Violence P.O. Box 3053 Hammond, LA 70404-3053	(504) 542-4446 (504) 542-6561 fax
Massachusetts Coalition of Battered Women's Service Groups/Jan Doe Safety Fund 14 Beacon Street, Suite 507 Boston, MA 02108	(617) 248-0922 (617) 248-0902
Maryland Network Against Domestic Violence 11501 Georgia Avenue, Suite 403 Silver Spring, MD. 20902-1955 • HOTLINE: 1-800-MD-HELPS	(301) 942-0900 (301) 929-2589 fax
Maine Coalition For Family Crisis Services 128Main Street Bangor, ME 04401	(207) 941-1194 (207) 941-1194 fax
Michigan Coalition Against Domestic Violence P.O. Box 16009 Lansing, MI 48901	(517) 484-2924 (517) 372-0024 fax
Minnesota Coalition for Battered Women 450 North Syndicate Street, Suite 122 St. Paul, MN 55104 • HOTLINE: 1-800-646-0994 (in 612 area code)	(573) 646-6177 (573) 646-1527 fax

ORGANIZATION	PHONE/FAX NUMBERS
Missouri Coalition Against Domestic Violence 331 Madison Street Jefferson City, MO 65101	(314) 634-4161 (314) 636-3728 fax
Mississippi State Coalition Against Domestic Violence P.O. Box 4703 Jackson, MS 39296-4703 •HOTLINE: 1 (800) 898-3234	(601) 981-9196 (601) 982-7372 fax
Montana Coalition Against Domestic Violence PO Box 633 Helena, MT 59624	(406) 443-7794 (406) 449-8193 fax
Nebraska Domestic Violence Sexual Assault Coalition 315 South 9th - # 18 Lincoln, NE 68508-2253 • HOTLINE: 1-800-876-6238	(402) 476-6256
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New Jersey Coalition for Battered Women 2620 Whitehorse/Hamilton Square Road Trenton, NJ 08690 • HOTLINE: for Battered Lesbians: 1-800-224-0211 (in NJ only)	(609) 584-8107 (609) 584-9750 fax
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ORGANIZATION	PHONE/FAX NUMBERS
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North Carolina Coalition Against Domestic Violence P.O. Box 51875 Durham, NC 27717	(919) 956-9124 (919) 682-1449 fax
North Dakota Council on Abused Women's Services State Networking Office 418 East Rosser Avenue, Suite 320 Bismarck, ND 58501 • HOTLINE: 1-800-472-2911	(701) 255-6240 (701) 255-1904 fax
Ohio Domestic Violence Network 4041 North High Street, Suite 101 Columbus, OH 43214 • HOTLINE: 1-800-934-9840	(614) 784-0023 (614) 784-0033 fax
Oklahoma Coalition Against Domestic Violence and Sexual Assault 2200 N Classen Blvd. - Suite 610 Oklahoma City, OK 73106 • HOTLINE: 1-800-522-9054	(405) 557-1210 (405) 557-1296 fax
Oregon Coalition Against Domestic and Sexual Violence 520 N.W. Davis, Suite 310 Portland, OR 97209	(503) 223-7411 (503) 223-7490 fax

ORGANIZATION	PHONE/FAX NUMBERS
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Rhode Island Coalition Against Domestic Violence 422 Post Road, Suite 104 Warwick, RI 02888 • HOTLINE: 1-800-494-8100	(401) 467-9940 (401) 467-9943 fax
South Carolina Coalition Against Domestic Violence & Sexual Assault P.O. Box 7776 Columbia, SC 29202-7776 • HOTLINE: 1-800-260-9293	(803) 750-1222 (803) 750-1246 fax
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Tennessee Task Force Against Domestic Violence P.O. Box 120972 Nashville, TN 37212 • HOTLINE: 1-800-356-6767	(615) 386-9406 (615) 383-2967 fax
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Vermont Network Against Domestic Violence and Sexual Assault P.O. Box 405 Montpelier, VT 05601	(802) 223-1302 (802) 223-6943 fax
Washington State Coalition Against Domestic Violence 2101 4th Avenue, E - Suite 103 Olympia, WA 98506 • HOTLINE: 1-800-562-6025 (separate org. from above)	(360) 352-4029 (360) 352-4078 fax
Wisconsin Coalition Against Domestic Violence 1400 East Washington Avenue, Suite 232 Madison, WI 53703	(608) 255-0539 (608) 255-3560 fax
West Virginia Coalition Against Domestic Violence P.O. Box 85 181B Main Street Sutton, WVA 26601	(304) 765-2250 (304) 765-5071 fax
Wyoming Coalition Against Domestic Violence & Sexual Assault 341 East E. Street - Suite 135A Pinedale, WY 82601 • HOTLINE: 1-800-990-3877	(307) 367-4296 (307) 235-4796 fax

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Southern CA Coalition on Battered Women P.O. Box 5036 Santa Monica, CA 90405 • HOTLINE: 1-800-978-3600	(213) 655-6098 (213) 655-6098 fax
Delaware Domestic Violence Coordinating Council 900 King Street Wilmington, DE 19801	(302) 577-2684 (302) 577-6022 fax
Georgia Coalition on Family Violence, Inc. 1827 Powers Ferry Rd., Bldg. 3 - Suite 325 Atlanta, GA 30339	(770) 984-0085 (770) 984-0068 fax
Victim's Services Domestic Violence Program P.O. Box 157 McComb, IL 61455	(309) 837-6622 (309) 836-3640 fax
Maryland Alliance Against Family Violence University of Maryland 525 W. Redwood Street Baltimore, MD 21202	(410) 545-4545 (410) 706-6046 fax
Otter Tail County Intervention Project Box 815 Fergus Falls, MN 56538	(218) 739-0983
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Action Ohio Coalition for Battered Women P.O. Box 15673 Columbus, OH 43215	(614) 221-1255 (614) 221-6357 fax
Missouri Shores Domestic Violence Center PO Box 398 Pierre, SD 57501	(605) 224-7187 (crisis) (605) 244-0256 (bus.)
White Buffalo Calf Women's Shelter P.O. Box 227 Mission, SD 57555	(605) 856-2317 (605) 856-2994 fax
Women's Coalition of St. Croix Box 2734 Christiansted St. Croix, VI 00822	(809) 773-9272 (809) 773-9062 fax
Red Cliff Band of Lake Superior Chippewaw Homeless Shelter/Family Violence Programs P.O. Box 529 Bayfield, WI 54814	(715) 779-3707 (715) 779-3711 fax
Anti-Violence Project National Gay and Lesbian Task Force 2320 17th Street, N.W. Washington, D.C. 20009-2702	(202) 332-6483 (202) 332-0207 fax TTY: (202) 332-6219

NATIONAL DOMESTIC VIOLENCE ORGANIZATIONS

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Family Violence Prevention Fund 383 Rhode Island Street, Suite 304 San Francisco, CA 94103-5133	(415) 252-8900 (415) 252-8991 fax
National Coalition Against Domestic Violence Policy Office P.O. Box 34103 Washington, D.C. 20043-4103	(703) 765-0339 (202) 628-4899 fax
National Coalition Against Domestic Violence P.O. Box 18749 Denver, CO 80218	(303) 839-1852 (303) 831-9251 fax
National Battered Women's Law Project 275 7th Avenue, Suite 1206 New York, NY 10001	(212) 741-9480 (212) 741-6438 fax
National Resource Center on DV Pennsylvania Coalition Against Domestic Violence 6400 Flank Drive, Suite 1300 Harrisburg, PA 17112	(800) 537-2238 (717) 545-9546 fax
Health Resource Center on Domestic Violence Family Violence Prevention Fund 383 Rhode Island Street, Suite 304 San Francisco, CA 94103-5133	(800) 313-1310 (415) 252-8991 fax
Battered Women's Justice Project Minnesota Program Development, Inc. 4032 Chicago Avenue South Minneapolis, MN 55407 •HOTLINE 1 (800) 903-011 ext. 1	(612) 824-8768 (612) 824-8965 fax

ORGANIZATION	PHONE/FAX NUMBERS
Resource Center on Child Custody and Child Protection NCJFCJ P.O. Box 8970 Reno, NV 89507	(800) 527-3223 (702) 784-6160 fax
Battered Women's Justice Project c/o National Clearinghouse for the Defense of Battered Women 125 South 9th Street, Suite 302 Philadelphia, PA 19107 • HOTLINE 1(800) 903-0111 ext. 3	(215) 351-0010 (215) 351-0779 fax
National Clearinghouse on Marital and Date Rape 2325 Oak Street Berkeley, CA 94708	(510) 524-1582
Center for the Prevention of Sexual and Domestic Violence 936 North 34th Street, Suite 200 Seattle, WA 98103	(206) 634-1903 (206) 634-0115 fax
National Network to End Domestic Violence - Administrative Office c/o Texas Council on Family Violence 8701 North Mopac Expressway, Suite 450 Austin, TX 78759	(512) 794-1133 (512) 794-1199 fax
Battered Women's Justice Project c/o PCADV - Legal Office 524 McKnight Street Reading, PA 19601	(610) 373-5697 (610) 373-6403 fax
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Prisoners of Abuse

Domestic Violence and Welfare Receipt

A second report of
the Women, Welfare and Abuse Project

Jody Raphael
Director, Taylor Institute

April 1996

TAYLOR INSTITUTE
RESEARCH FOR REAL CHANGE

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I. INTRODUCTION

At age 20, Louise met a man, and enjoyed a normal romantic relationship with him, but when she got a job as a warehouse supervisor and "*made more money than he did, all my problems started. He worked days and I worked nights. He drank any time he was not working.*" The drinking led to thoughts of jealousy, verbal and mental abuse, and eventually physical abuse. The drinking also led to her partner's losing his job every six months or so.

"*It got to the point where he painted in our windows black and did not allow us to visit relatives. He constantly yelled that we were not to speak to anyone. I had to wear turtlenecks, because he choked me many times and left bruises. I knew not to speak to anyone about bruises, cuts, wounds, or black eyes. If I did, he would hurt the children.*" Louise's head was banged against walls, doors, the floor, and the refrigerator. She was smothered with a pillow while sleeping. If Louise spoke with anyone or tried to do something about it, the physical violence became worse, leading her to believe that it was better not to say anything.

After 13 years of employment, Louise's employer asked her to leave because it became more and more obvious that "*I wasn't quite altogether.*" Louise then went on AFDC to support her children. In 1995 Louise became suicidal. She spent a week at a mental institution and now goes to therapy on an outpatient basis. Several months later she enrolled in the JOBS NEW DIRECTION Program at Goodwill Community Services in Colorado Springs and earned her GED on January 24, 1996. With the help of that program she was able to separate safely from her abuser. Currently she is enrolled at Blair Junior College to become a paralegal. "*I want to help others like me, before they become obituaries.*"

But can Louise make it back in the world of work? She takes three psychotropic medications for her condition. The bruising and jarring of her brain along with eye injuries cause frequent and intolerable headaches. Louise needs to develop the organizational skills necessary for successful school completion. Due to her abuse, Louise was never able to plan her life, because "*Any minute or hour of any given day, I could be dead. I saw no importance to it. My life was fear, insecurity, confusion, uncertainty, worry, pain and many days of wishing I was dead, since death was the final escape. One might say I became the 'walking dead' with no direction. I was never safe.*"

Therapy was necessary for Louise to properly recover from the traumatic events which were a part of her life for over 20 years. On-going support will also be essential, as Louise continues to face major barriers to independent living.

"*I still encounter physical and mental barriers and I always will. In order to remain stable, I think these things to myself: "In a time long ago, in a land far, far away"- and "Tomorrow, and tomorrow, and tomorrow." They help me to remember and to survive. This is no fairy tale, although I wish it were. At least, then, I could close the book.*"

Betty, a high school drop-out with two children, met her abuser and the father of her children when she was 14 years of age. Although she intended to depend upon her

partner for support, she was forced to apply for AFDC because he was never able to earn enough on a consistent basis. Betty realizes now that she was escaping her own family. Betty's father, a violent abuser, put her 13-year old brother in a bucket, poured gasoline on him, and threw in a lit match. Although her mother was intimidated against testifying in court against her husband, Betty's aunt did. Afterwards he went home, shot Betty's mother seven times, and was shooting at Betty's sister as her mother crawled down to the first floor to alert the neighbors. The twins Betty's mother was carrying did not survive, although Betty's mother did emerge intact after eleven months in the hospital. She returned home, however, only to become a confirmed alcoholic.

Betty's partner, who never could keep a job more than eight months at a stretch, never let Betty complete her education or get a job. Any time she tried, the mental and physical abuse escalated, and she gave in to protect herself and her children from further harm.

When Betty enrolled in a year-long licensed practical nursing course, her partner seemed to go along with her employment goals, lulling Betty into thinking that everything was going to be all right. She now sees that *"He got more intimidated the closer I got to it."* For this reason, he instigated a major argument and inflicted severe physical abuse the night before a key examination in her course. Sleep-deprived and profoundly depressed by the renewed onset of the abuse, Betty failed the test and was not able to continue in the program. Betty gave up her dreams and stayed at home again. *"It paralyzed me. I said to myself, oh my God, he is still going to beat me up no matter what I do. I got put out of the program. I was so paralyzed that I just stuck at home with him. I gave up."*

But after her abuser put a loaded gun to her head and played Russian Roulette about six months later, Betty left him with the assistance of the Chicago Commons Employment Training Center, which helped her plan for escape into a battered women's shelter.

The stalking began after she left her abuser and got a part-time job. Her abuser stalked her, Betty says, *"out of jealousy. He did not want me to succeed. He did not want me to have anything. Everything I had he wanted to take away from me. I was going to the grocery store and I had two bags of groceries. He stalked me and he would knock my groceries out of my hand. He tried to strangle me in front of the office. He wasn't trying to kill me, he wanted my bosses to see it so that I would lose my job."*

He stalked her one morning as she waited to board the bus for work. Betty ran into a Seven-eleven store, where a helpful counter clerk directed her to the women's room, told her to lock herself in, and called the police. The police arrived in a timely fashion and handcuffed the stalker, who was now in the store creating a scene and pulling groceries from the shelves. Betty was driven to work on time by police escort. Her employer never knew, but the difficulty Betty faced with concentrating that morning is beyond imagining. Although lodging and prosecuting charges against her abuser for stalking put her and her children in increased danger, Betty persevered. *"I believed that he was willing to commit suicide and even murder because he was afraid to go on with his life. The fear was very real. But I thought I was going to be dead anyway, so what did it matter? After*

13 years, I wanted to be free, and if I couldn't be free, nothing mattered any more."

Betty now works on a full-time basis and is off welfare after eight years of AFDC receipt. The scars, however, remain. At work, Betty finds herself too passive when dealing with her supervisor, and often reacts inappropriately angrily to criticism on the job. Because of this problem she and her supervisor have been forced to attend special counseling sessions. Betty also continues to suffer from depression and difficulty with continuing on in life. *"It still doesn't seem real to me. Everyday that I go through my life it seems like one day I'm going to wake up and it is all going to be gone. I need to focus more on the present and future and less on the past, but there doesn't seem to be a separation between past, present and future, they all go together. I still cry at night, I still have nightmares, I still dream that I am with him and my dreams are more real than the life that I am actually living. It is really hard to go on."*

Many grass-roots welfare-to-work and job training providers have learned over the past few years that many women on welfare have a formidable obstacle on the road to work. Of the men who move in and out of the lives of women on AFDC, many do not want their partners to become independent. In fact, many women, and the welfare-to-work and job training programs which help them, report that these men sabotage their efforts to move from welfare to work, frequently resorting to violence to prevent women from completing employment training programs or from entering the work force.

Taylor Institute's January 1995 report, *Domestic Violence: Telling the Untold Welfare-to-Work Story,* presented data from twelve-grass roots programs, establishing the connection between current and past domestic violence and long-term welfare receipt. As a result of widespread national dissemination of that report, Taylor Institute has heard from additional social service providers and from women on welfare themselves. All have confirmed the existence of the domestic violence barrier to the transition from welfare to work.

The experiences of both women and social service providers have helped to shape this follow-up report. With the assistance of participants like Louise, Betty, and others who have been graciously willing to share the often painful details of their lives, we are now able to more fully document and understand the many different ways in which domestic violence prevents women from getting off welfare. From listening to the women we are also able to comprehend that even past violence creates permanent scars and psychological injuries that women must bravely overcome time and time again as they seek to create independent lives for themselves.

In Part I of this follow-up report, we will describe the many ways in which domestic violence prevents successful completion of job training programs and interferes with employment retention. In Part II we will present additional data documenting the extent of the problem in grass-roots programs' caseloads. Lastly, in Part III we will make some preliminary welfare reform policy recommendations which this data mandates.

II. THE STORIES OF MALE SABOTAGE

The stories which Taylor Institute has collected from all around the country include multiple cases of the following:

In-Home Sabotage

- One woman's partner surreptitiously turned off the alarm clock, set by her to make sure she would be on time for a job interview.

- One woman's partner cut off all her hair because he believed, correctly, that she would be too embarrassed to return to work with such short hair. Men will inflict other visible injuries like black eyes, hoping their partners will not return to the program out of embarrassment, and will be expelled from the programs for non-attendance or unexplained absences. "*My father would inflict black eyes, bruises all over my mother's body, and knock her teeth out. My mom couldn't go to work and was ashamed to be around any of her friends because of the way she looked,*" explains one AFDC participant. Abusers rightfully fear the influence of the workplace. Explains another participant: "*My mom was working and made some friends at work. My dad did not like it. So he would constantly harass my mom with threats of beatings. My mom got tired of the abuse and finally decided to leave him with the help of her friends from work. Before that she never had a way to leave, no help, and no money.*" Another participant states that she knows she can't hold a job because she is bruised up a lot, but can't leave her abuser because she doesn't have a job and can't support herself and her children on the welfare check alone.

- Women's partners hide or destroy books, or tear up completed homework assignments. Explains one who experienced this kind of sabotage, "*It was really hard, I was really depressed at that time. I felt like a chicken with its head cut off. If he walked into the house and I was doing my homework, he would start ranting and raving, and saying, why isn't the garbage thrown out? Why isn't dinner ready, or something, just to stop me from doing what I had to do. I was going home and trying to do everything so he would shut up, and coming here to the program and trying to do what I had to do here.*"

- Men hide or destroy women's clothing, including their winter coats, so that they are unable to leave the house to take the GED test or complete an important job interview.

- Men get into fights and inflict violence the night or morning before key events like the GED test or a second job interview. Writes Karen Brown, formerly with Bronx Community College's City Works Program (Bronx, New York), "*Often students will get into altercations with their partners before such crucial events, causing them either to miss the event altogether or arrive in such an agitated state that their performance is compromised. After this became a pattern I personally began to suspect that it was not a coincidence that these events were occurring right before the*

important job-related event that was important for the student."

- Another participant reports that when she found employment her partner hounded her on the job. When she got her first paycheck he threw her and her two boys out on the street and locked her out of the house. *"One hundred and twelve dollars and two boys and where could I find food and lodging?"* Another reported that *"I was working and really enjoyed my job but it caused too much turmoil in our relationship so he forced me to quit. When my abuser was at work, he had one of his friends watch me."*

- Participants living in domestic violence report difficulty in concentration and success at GED and job training programs. This problem is the result of coping with domestic violence, explains Betty. *"You live inside your own world and you can't deal with reality, people can't penetrate it, can't get through to it, because you're afraid that if you come to reality, it is going to hurt. It is like a cloud. It protects you from when he is coming at you, calling you names, or getting physically violent with you, it is like you can take yourself out of yourself."* This coping mechanism hampers the ability to learn and succeed at new tasks.

Child Care

- Women's partners promise to provide needed child care so that they can attend a special career event such as a job fair or interview, but fail to show up or arrive inebriated when needed.

- Some boyfriends who are the fathers of the children make the students feel guilty about being away from them during part-time or full-time employment schedules, especially if the children are young. *"It is critically important that women trying to make the transition from welfare to work have quality child care options (both family child care and center-based care) so they can reject their boyfriends' attempts to make them feel guilty. Instead, women need to feel comfortable and even 'good' about placing their child in a family child care or center-based care arrangement,"* explains Karen Brown of Bronx Community College's City Works Program.

- A participant in the California GAIN Program (Greater Avenues for Independence) in Riverside County described the harassment perpetrated by her ex-abuser at the babysitters. *"I ended up losing my job because he would go to the babysitter and say 'I'm here to pick up my kids.' I'd have to go and get them because he could call a police officer and take them, because they are his children. It was ugly, and I ended up losing my job because of it."*

- Boyfriends refuse to provide needed child care even when they are not working or are otherwise available. *"I would tell him, I want to go back to school and the minute I would say that he would say,'Well find a babysitter.' He was already putting an obstacle- I did not say,'You're going to watch the kids.' I did not even say that, so that is why I knew I couldn't share too much with him, because it was like he was going to put all the negatives that he has upon me."*

Stalking

- Participants report their abusers coming to the GED or job training program, intimidating staff, and attempting to drag them out of the program. Many programs report concerns about the safety of their employees and have had to take often expensive steps to strengthen security at the program to keep abusers off the premises. One participant reported that her stalker threatened numerous times to kill her case manager at the welfare-to-work program. Others report that their abusers come to the educational program to check out whether there are any men students; when they see for themselves that the participants are all women, they allow their partners to continue. These women understand, however, that the line will be drawn at workplace participation, where men will be present. *"He's desperately afraid that I will find somebody else,"* said one participant who has been on AFDC for 15 years.

- Participants often report seeing their abusers on the sidewalk watching and waiting for them at the end of the day. One participant described how her abuser, from whom she had separated, grabbed her by the hair, threw her into the car, and kidnapped her by force for a 48-hour period. *"I am determined to get my GED. The only way I won't get it is if he kidnaps me and takes me. He's done it before."*

- A former welfare participant reported that she had been unsuccessfully applying for jobs over a two-year period. Eventually she noticed she was being trailed by a particular van. When the license plate was checked she discovered that it was a surveillance company hired by her former boyfriend. She discovered he would then call the potential employer and say whatever it would take to make certain that she would not be hired. Only when she was able to halt this behavior was she able to land a job.

- Another participant reported that her abuser would trump up police charges against her, which required her to go to court repeatedly. She lost two jobs in the last six months as a result. Frequent court appearances for pursuing orders of protection, violations of orders, or for stalking also seriously interfere with the victim's ability to maintain a job.

- One participant's abuser came to the job to harass her so frequently that she had to be transferred to a job in another section.

- Another participant's stalker broke into her house and deliberately stole the gun that she needed for her job as a security guard.

- Welfare workers and grass-roots providers report that the women's partners come to appointments with them, often refusing to leave the women's side and have to be ordered to do so. One provider reports,*"We operate a three-week pre-employment module for AFDC women in our state who are mandated to attend. You can imagine our surprise when we saw most of the young women driven to the program in the morning by the guys, and the men, lined up, waiting in their cars, to pick them up at the end of the day."*

- The necessity to escape a stalker often makes work impossible. One woman, escaping a batterer whose assault put her in the hospital twice, explained: *"I tried to get away, but he just, you know, he found me everywhere I went. It came to the point where I was hiding out."*

- Stalking seriously interferes with the participants' ability to perform at job training or on the job. Explained one victim, who had left her abuser and moved in with a supportive uncle, *" I was constantly aggravated. I couldn't function. I couldn't sit, I couldn't think, I was always wondering, if I walk out of this building, is he going to be outside? I finally had enough courage to lock him up."*

Post-traumatic Stress Disorder

Some women who have left domestic violence behind find that their trauma is not over. One participant was attacked so brutally she ended up in the hospital for weeks. Eventually she left home with $23 and her children and is now employed. She states that she lies awake in bed, jumping at every creak. At no time does she feel safe; she walks down the streets constantly looking and searching. It is difficult to get rid of the terror. *"He told me that he'd find me. I believe him. One day, I will open my door and he will be out there. I don't care where I go... I can't forget. Every time I look in the mirror, I see the scars...Even if he was dead, I still wouldn't feel safe."*

Post-traumatic stress disorder, an accepted psychiatric diagnosis only since 1980, describes the effects which are often the results of rape, domestic battering, and incest. As graphically described by Louise and Betty in the Introduction to this report, symptoms include poor concentration, markedly diminished interest in significant activities, and a sense of foreshortened future. Other trauma victims report difficulty in dealing with control and supervision on the job. Recognition of the trauma is central to the recovery process, which often requires specialized treatment.

Death

Two recent murders involving domestic violence illustrate the single unifying thread in these women's stories. In each case, the woman had left the relationship and had also obtained employment or was close to employment. Most significantly, in each case, the abuser had no employment or success on the job.

In September 1995, Betty Clark, her three children, and her ex-husband Mark Clark were blown up and killed as a result of Mark's installing and detonating bombs in his car. Betty had agreed to meet Mark one last time to take the children for school clothes. Betty was at the tail end of a process she intended to make her independent and capable of supporting her family on her own. Mark Clark didn't seem able to keep a job, and had recently quit the job he had at Wal-Mart which Betty had hoped might be a career for him. Eventually Betty Clark left her husband, and earned her GED from a local welfare-to-work program in rural Maryland. Subsequently she moved to the Baltimore area where she was studying to become a medical secretary at the time of her death. One acquaintance told the Baltimore Sun, *"If he couldn't have her and watch those kids grow up, no one else could."*

On February 12, 1996, Benito Oliver walked into the Koeppel Volkswagen dealership in Woodside, Queens where

Galina Komar worked as finance manager and shot her once in the head with a .44-caliber revolver. Mr. Oliver then shot himself in the head. Both died instantly. Almost a year prior to that, after she came to work with stitches in her head and bruises on her face, Kolmar had quit her job at another auto dealership and moved with her daughter to California. Oliver tracked her down and brought her back. By then, her friends had convinced Galina to overcome her fears and press charges. When she did, he threatened to kill her. Komar had found a new job, but Oliver tracked her down there and was evicted from the premises when he showed up there to harass her. Several weeks later he returned, this time with a loaded gun.

Galina Komar's mother told the New York Daily News *"He said, 'I don't have a job. I have nothing to lose. I'm going to kill myself and everybody.'"*

III. BEYOND ANECDOTES: WHAT GRASS-ROOTS PROGRAMS SAY ABOUT THE EXTENT OF THE PROBLEM

To our knowledge there has been only one formal study of the entire AFDC caseload. The Washington State Institute for Public Policy's Family Income Study asked a representative sample of the entire AFDC population in the State of Washington in 1992 if they had been physically or sexually abused as adults. Sixty percent reported some type of abuse. Unfortunately the study did not differentiate between current and past abuse.

Until a comprehensive survey of a state's AFDC caseload is completed, it will be necessary to rely on data from programs working at the grass-roots with welfare participants in literacy, GED, job training, and job placement programs. Taylor Institute has been able to assemble the following new data:

The Chicago Commons West Humboldt Employment Training Center (ETC)

The Chicago Commons West Humboldt Employment Training Center (ETC) has been serving long-term welfare participants on Chicago's westside and tracking the incidence of domestic violence since 1991. ETC provides comprehensive welfare-to-work services, including case management, one-site literacy, GED, and English-As-A-Second Language, family literacy, child care, and health care. ETC's students are a mixture of voluntary and mandatory participants. *It is also important to note that ETC defines domestic violence as both verbal and physical abuse and coercion by men directed at adult women in intimate relationships, a definition intended to take in the full range of physical and non-physical means used by men to coercively control women. Other program data, to be discussed below, breaks abuse into physical and non-physical coercion.*

The following statistics describe the characteristics of the 91 women receiving AFDC who entered ETC between July I, 1994 and June 30, 1995. (Note: statistics for the group which entered between July I, 1993 and June 30, 1994 are virtually identical.)

- 56% were current victims of domestic violence when they entered ETC.
- 26% were past domestic violence victims.
- 23% were currently addicted to drugs or abusing alcohol.
- 15% were past or recovering drug or alcohol abusers.
- 12% were past victims of sexual assault or incest survivors.
- 38% of all households had at least one child suffering from a severe learning disability, behavior disorder, or mental illness or depression.

1994-5 ETC Statistics

ETC has attempted to establish a correlation between these factors and success or failure in the program. Participants who drop-out prior to meeting their educational or employment goal do experience current domestic violence and current drug and alcohol abuse in far greater percentages than those who succeed.

Of 31 participants who dropped out of the program within the year:

- 71% were current domestic violence victims;
- 19% were past domestic violence victims; and
- 50% of all the dropouts were currently addicted to drugs or abusing alcohol.

Of 60 participants who remained in the program:

- 50% were current domestic violence victims;
- 32% were past domestic violence victims; and
- 13% were currently addicted to drugs or abusing alcohol.

From these statistics, ETC reports that it is clear that current domestic violence and drug abuse can be overcome and do not serve as absolute barriers to success, but they often prevent participants from being able to follow-through with their plans. Drug and alcohol addiction appears to be the major cause of program drop-out.

Passaic County Board of Social Services

The Passaic County Board of Social Services provides an eight week Life Skills Program for 30 hours per week, a "job readiness" component of an overall program in which all non-exempt AFDC recipients in the county are required to participate. In 1995, approximately 845 women were enrolled in the program. The goal of the Life Skills module is to equip participants with personal and work skills so as to be able to take advantage of further opportunities for self-sufficiency, including basic education, vocational training, work experience, on-the-job training, and job placement. Because the program had observed domestic violence as a barrier but could only corroborate it anecdotally, it began to administer a uniform questionnaire to participants at the time during Life Skills when security and mutual support had been established and participants had already shared their life experiences with the class. By this method the program will sample 10 to 15% of the total non-exempt AFDC population in Passaic County, New Jersey in 1996.

From an initial sample of 105 participants, gathered in December 1995, the Passaic County Program reports:

- 67% are currently in a relationship with a man;
- 58% have been a victim of physical domestic abuse;
- 21% are currently a victim of physical domestic abuse;
- 66% have been a victim of verbal or emotional abuse;
- 36% are currently a victim of verbal or emotional abuse;
- 49% state that boyfriends do not encourage education or training efforts;
- 16% state that boyfriends prevent them from obtaining education or training;
- 24% state that boyfriends attempt to control their life;
- 25% have been victims of rape;
- 27% have been victims of sexual assault;
- 21% have been victims of childhood molestation;
- 13% have been victims of incest;
- 25% have been victims of sexual abuse;
- 14% have a problem with drugs or alcohol;
- 69% characterized themselves as having been severely depressed at some point;
- 96% of all those ever depressed have been severely depressed within the last 12 months; and
- 36% of all those ever depressed state they are currently severely depressed.

For those programs who wish to begin tracking this barrier, the Passaic County questionnaire can be found in Appendix 2 to this report.

One Southeastern State Welfare-to-Work Program

One welfare-to-work program in a southeastern state has asked to remain anonymous, but has provided data tracking physical abuse, based on a questionnaire administered in its Life Skills program to a sample of 216 mandatory participants in 1995:

JOBS NEW DIRECTION-Goodwill Industries Community Services of Colorado Springs

Goodwill Industries's New Directions Program provides welfare-to-work services to AFDC participants, including literacy and GED, work experience, and job placement assistance. The program states that approximately 50% of those who come through the program each year are current domestic violence victims.

- 55.1% have been physically abused by husbands, boyfriends or family members as adults;
- 9% are currently being physically abused by a man with whom they have a relationship; and
- 25.9% have been involved in a relationship in which they were physically abused within the last three years.

1995 statistics from a southeastern state

IV. RELATED RELEVANT DATA

University of Minnesota, Duluth

In a survey administered to a total of 123 women attending support groups for battered women in Minnesota, the Department of Social Work at the University of Minnesota Duluth attempted to measure the effect of battering on the employment status of women.

- 58% of the women were working at the time they were being abused.
- 55% reported that they had been absent from work as a result of being physically abused; 4% reported this occurred frequently.
- 62% reported they had been late to work as a result of being abused 13% reported this had occurred frequently.
- 24% of the women reported that they had lost a job partly because of being abused.
- 56% of the working women reported that they had been harassed by telephone or in person by their abuser at work; 21% of the women stated this had occurred frequently.

Women responding to the first survey were also asked whether their abusive partner attempted to prevent them from working or going to school.

- 33% percent reported that their partners had prohibited them from working.
- 50% believed that their partners had discouraged them from working.
- 50% believed their partners had discouraged them from going to school.
- 25% stated that their partner had prohibited them from going to school; and
- 21% reported that physical abuse had kept them from finding employment.

Data from University of Minnesota, Duluth

The U.S. Department of Housing and Urban Development Homeless Families Program (HFP)

Data from 1,670 families participating in the Homeless Families Program between April 1991 and April 1994 provides important insight from one of the largest multi-site populations of homeless families ever studied. HFP provides Section 8 certificates, case management, and access to a variety of services at nine sites throughout the country. The Vanderbilt Institute for Public Policy Studies reports:

- 34% of the women with a current partner reported some current violence; 13% reported severe violence, using a modified version of the Conflict Tactics Scale. (CTS.)
- 81% of all women reported some type of abuse by a former partner.
- 65% reported one or more severe acts of violence by a past partner.
- 15% of the sample had been hospitalized at least once for a mental health problem, and 3% in the year preceding the assessment. 28% reported a suicide attempt, with 57% of this group reporting multiple attempts. 43% of the suicide attempts resulted in hospitalization, accounting for the majority of the hospitalizations reported.
- 26% reported having a serious emotional or mental health problem.

1991-1994 data from the HFP

City of Chicago Department of Public Health

In 1994 the City of Chicago Department of Public Health, through a survey in nine of its clinics in December of 1994, attempted to gauge the prevalence of domestic violence among women using city clinic services. The vast majority of people attending these clinics are poor, with 87% having incomes below the poverty level and 39% on public aid. Unfortunately the questionnaire did not ask about welfare receipt. However, some useful data emerged from this sample of 1,404 women.

47% of all women were physically, sexually or verbally abused at least once in their lifetimes; 26% within the last year, and 10% within the last month.

21% of the women reported they had suffered some type of abuse while pregnant, with 76% of those reporting verbal, 59% physical, and 3% sexual abuse.

V. IMPLICATIONS FOR WELFARE REFORM: POLICY RECOMMENDATIONS

The domestic violence barrier has important implications for welfare reform policies.

Temporary Exemptions or Extensions of Time Limits

Time-limited welfare reform efforts may well exacerbate domestic violence where it already exists or cause it to arise. First, many women, for the first time, will be required to work under extremely tight deadlines. Anecdotal evidence from program providers suggests that many men, threatened by their partners' education and job training, will continue to prevent them from working, even at the risk of losing welfare benefits.

In addition, while ultimately time limits may encourage many women to end violent and abusive relationships in an effort to go to work, there is also the possibility that the welfare-to-work transition will result in serious injury, or even death. Unfortunately the process of safe removal often takes time; among other things, there may be no beds available in a battered women's shelter. Time limits restrict women's ability to make and implement safe choices for themselves and their families.

Another reason time limits are inappropriate is that, as we have seen, survivors of domestic violence may still be suffering from the effects of post-traumatic stress disorder and will need more time and specialized services than will be available under time-limited programs. Temporary exemptions from state or federally imposed time limits, or extensions of time, will thus be necessary for some women living with domestic violence to enable them to realistically and safely cope with their situation and its effects.

As an alternative, welfare departments should be encouraged, where possible, to more broadly define "work" to include "work-related activities" for domestic violence victims. This category could include necessary supportive services or therapeutic activities, including participation in domestic violence support groups and drug and alcohol treatment programs.

Assessment

In order for domestic violence victims to have the necessary time and support of AFDC while they obtain help, welfare departments must properly assess the presence of domestic violence or past domestic violence in the lives of AFDC participants. Policies will be needed, however, to protect AFDC participants reporting domestic violence to the welfare department from negative consequences. For example, unless confidentiality is established, the intervention of a state child protection agency and the eventual loss of children is a real possibility for women who report domestic violence. In addition to confidentiality concerns, advocates and policy makers must work with state child protection agencies to make certain that their policies and procedures are sensitive to domestic violence victims and provide women with the support they need to eliminate the violence from their homes.

Child Support Enforcement

Stepped up paternity determinations and child support enforcement are also problematic for AFDC participants who are

violence victims. Abuse is often exacerbated or reactivated when legal action is taken against the male for child support. Many abused women are afraid to seek child support because they fear that receipt will result in visitation rights, which would force disclosure of their new location. Although current federal law does provide "good cause" exemptions in five situations, including domestic violence, this option is used by less than 1% of AFDC applicants nationally. Concerns about confidentiality may limit use of this exemption as well.

Supportive Services

New service delivery strategies will be necessary at the community level to provide the supports needed by AFDC women who are domestic violence victims. Literacy, GED, job training, and job placement program staff will need training in domestic violence and its assessment, and must build the capacity to provide the specialized therapeutic and vocational rehabilitative services which victims need. A number of comprehensive welfare-to-work programs have successfully experimented with domestic violence support groups and Life Skills modules which help the recovery process.

Many past and current domestic violence victims do not make progress in educational programs because of their inability to concentrate and their dissociation from new information– common strategies developed to cope with violent situations. In order to be effective, it is likely that literacy providers will have to incorporate new and developing techniques which assist trauma survivors "learn to learn."

Lastly, a few welfare-to-work providers that have dealt with this issue head-on believe that it is essential to involve the men in these women's lives. City Works in the Bronx structures an open house for the families of accepted students. According to Karen Brown:

"One of our motives in the open house is to meet and get to know the male partners and find out how we can assist them with their employment or education issues. If we can help a boyfriend or husband get into a good GED, job training or placement program, we have gained ground in encouraging him to support his girlfriend/ wife in our program. Too often, I think, programs which serve predominately women forget about the men in their students' lives and that they may need targeted assistance as well. Our programs need to become more than job training programs; they need to become family support programs as well."

Appendix 1

Additional data from the January 1995 Taylor Institute Report, *Domestic Violence: Telling the Untold Welfare-to-Work Story:*

- *The Washington State Institute for Public Policy* undertook a five-year Family Income Study which interviewed a representative sample of the entire AFDC population in the State of Washington. (1318 respondents.) In the fifth year of the study, administered in 1992, women were asked if they had been physically or sexually abused as adults.

  60% reported some type of abuse, with 55% reporting being physically abused by a spouse or boyfriend. The study did not, unfortunately, differentiate between current and past abuse.

- In 1993, *Mid-Iowa Community Action (MICA)*, a comprehensive family development and self-sufficiency program in rural Marshalltown, Iowa conducted a survey of 91 heads of household participating in its family development program who had been on welfare for two years or longer.

  22% were current domestic violence victims;

  51% were past domestic violence victims;

  11% were current substance abusers; and

  31% were past substance abusers.

- In December 1991 *Manpower Demonstration Research Corporation (MDRC)* published the results of a study of 617 young women (age 16-22) participating in New Chance program sites throughout the country between August 1989 and September 1990. Case management staff were instructed to report various problems only if they interfered with program participation.

  16% of enrollees across all sites told program staff that they had been battered by their boyfriends or came to the program with a black eye or other visible signs of abuse; 6% reported being abused by someone other than their partner. In addition, 15% reported discouragement of program participation by their partner and 9% discouragement of program participation by their mother or other close relative. MDRC cautions that these statistics are probably low estimates and represent only the cases known by the staff.

- The problem has also surfaced in Jackson County, Missouri (Kansas City) in the **FUTURES** program, where the caseloads are 35-l. In March 1994 an evaluation of the program by the University of Missouri at Kansas City found that "Futures graduates less frequently report the presence of a significant other in the household than do dropouts and those currently in the program."

Appendix 2

William Curcio of the Passaic County Board of Social Services has developed a questionnaire to track the issue of domestic violence in his welfare-to-work program. To encourage other providers to better assess and track domestic violence, we are, with his permission, reproducing the questionnaire below. For further information, contact William Curcio, Passaic County Board of Social Services, 80 Hamilton Street, Paterson, New Jersey 07505, 201-881-3169; 201-881-3232 (fax).

CONFIDENTIAL QUESTIONNAIRE

The following questions are being asked for research purposes only. All your answers are **COMPLETELY CONFIDENTIAL** and will not be shared with anyone. You **DO NOT** have to sign your name to this survey.

The research we are conducting is very important and your participation will greatly assist us in identifying problems people may be experiencing.

We hope that the information obtained from this survey will help us design programs which will provide **BETTER SERVICES** to Welfare recipients.

Thank you for helping us in this project.

1. Are you currently involved in a relationship with a man? (Boyfriend/Husband)
   Yes___ No___

2. Have you every been the victim of physical domestic abuse? Yes___ No___

3. Are you now experiencing a problem with physical domestic abuse? Yes___ No___

4. Have you ever been subjected to verbal or emotional abuse? Yes___ No___

5. Are you now experiencing a problem with verbal or emotional abuse?
   Yes___ No___

6. Is you boyfriend/husband supportive of you in trying to better yourself and get off Welfare? Yes___ No___

7. Does your boyfriend/husband encourage you in your attempts to get education and training? Yes___ No___

8. Does your boyfriend/husband try to prevent you from getting more education and training? Yes___ No___

9. Do you feel that your boyfriend/husband tries to control your life? Yes____ No____

10. Does your boyfriend/husband "Put You Down" verbally? Yes____ No____

11. Does your boyfriend/husband help you financially to get along? Yes____ No____

12. If your boyfriend/husband helps you financially, does he use this to influence you or have you agree to his wishes? Yes____ No____

13. If you became an independent and self-sufficient person, would this cause a problem in you relationship with your boyfriend/husband? Yes____ No__

14. To your knowledge, has anyone in your **family** every been the victim of domestic abuse of any kind? Yes____ No____

The following questions are very personal, but will assist us greatly in helping people who may be suffering with these problems.

REMEMBER, YOU DO NOT HAVE TO SIGN YOUR NAME TO THIS SURVEY.

HAVE YOU EVER BEEN THE VICTIM OF:

15.	Rape	Yes____	No____	# of times____
16.	Sexual Assault	Yes____	No____	# of times____
17.	Childhood Molestation	Yes____	No____	# of times____
18.	Incest	Yes____	No____	# of times____
19.	Sexual abuse of any kind	Yes____	No____	# of times____

20. For the problems you answered **YES** to, have you every told anyone about these situations? Yes____ No____

21. For any of the problems you answered **YES** to, are you still suffering or in pain from any of these events? Yes____ No____

22. Have you ever had a problem with drugs or alcohol? Yes____ No____

23. Do you currently have a problem with drugs or alcohol? Yes____ No____

24. Have you ever been homeless? Yes____ No____

25. Are you currently homeless? Yes____ No____

Have you experienced any of the following losses?

26. Death of a **family** member? Yes____ No____

How many ____

27. Death of a **close friend**? Yes____ No____

How many ____

28. Incarceration of a **family** member? Yes____ No____
(Jail, prison, juvenile detention, boot camp, etc.)

How many ____

29. Incarceration of a **close friend**? Yes____ No____
(Jail, prison, juvenile detention, boot camp, etc.)

How many ____

30. Loss of a relationship with a close friend or family member?

(Foe example: Person moved away, you and that person had a fight, due to some circumstances you and that person don't see each other anymore, etc.)
Yes____ No____

How many ____

31. Break up of a serious relationship with a boyfriend/husband?
Yes____ No____

How many ____

32. Have you ever been separated from your children for any reason?
Yes____ No____

How many ____

33. Have you ever lost a pet? Yes____ No____
(died, ran away, taken by someone, etc.)

How many times ____

34. For the situations you answered **YES** to in **QUESTIONS 15 TO 33**, do you feel that the pain from any of these experiences slows you from making progress in your life? Yes___ No___

35. Do you feel that you have any serious personal problems to work out before you can get off Welfare and become self-sufficient? Yes___ No___

36. Does the current Welfare system help you with any of these personal problems? Yes___ No___

37. Have you ever been severely depressed? Yes___ No___

38. In the past year, **how many times** have you been severely depressed?_______
____

39. Are you severely depressed now? Yes___ No___

40. Race: BLACK:____ WHITE:____ HISPANIC:____ OTHER:____

41. AGE:___

42. How many children do you have?_______

43. How many years in total have you been on Welfare?______

44. How many years of regular school or college do you have? Circle the number of years of schooling completed:

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 +

45 How many years in total have you worked? _____

Thank you very much for your time and assistance in filling out this questionnaire. The information you have provided will be of great value in our research. Your participation in this survey will help us explore areas of better service provision. Thank you again.

DEVELOPED BY W. CURCIO, 11/1/95, NEW JERSEY.
USAGE OF THIS INSTRUMENT SHOULD BE REFERENCED
TO THE ABOVE.

Domestic Violence

when the abuser is a police officer

By Lieutenant John Feltgen, Commander, Civil Division,
Broward County Sheriff's Office, Fort Lauderdale, Florida

During the past several years, law enforcement personnel across the United States have been immersed in mandatory training regarding their responsibility in the application of laws associated with domestic violence. Laws on both the federal and state levels continue to evolve, with the intent of providing immediate and direct protection for the victim in cases of domestic violence.

Laws include the tasked responsibility of law enforcement personnel to make on-scene probable-cause arrests in those cases in which there is evidence of domestic abuse. Law enforcement personnel undoubtedly are considered the first line of defense for the victim, since they have the authority to remove the abuser from the situation and provide access to appropriate assistance.

But what happens when the abuser is a police officer? Will a police department be willing to objectively investigate a case of domestic violence when the abuser is one of its own?

A random survey of law enforcement agencies examined existing policies, or—more realistically—the lack of policies, governing the internal investigation of employee-involved domestic violence cases. In most jurisdictions, the issue had yet to be addressed. It was also learned that when officers were dispatched to suspected calls of domestic violence involving one of their co-workers, any policy or law regarding the enforcement of domestic violence procedures was quickly abandoned. Responding officers would often speak only briefly with the "off-duty officer" and, predictably, dismiss the call without any further investigation, written report or—most importantly—a check on the spouse's welfare and safety.

In case after case, victims of domestic violence at the hands of a police officer had made emergency requests for law enforcement intervention, only to have their calls fall on deaf ears. Recordings from 911 tapes in which victims are literally screaming for help—coupled with evidence of physical injury—clearly establish the minimum necessary criteria for the responding officer to effect an immediate arrest of the abuser. In the event the responding officer failed to take the appropriate action in such cases, severe disciplinary action against that responding officer should be inevitable. Unfortunately, once the responding officer is placed in the position of investigating a co-worker without clear policy guidelines, the call is typically coded out with no report or investigation.

Alarmingly, there are no repercussions to the responding officer for failing to take the action mandated by law. Abused spouses of police officers become even more traumatized by a system assumed to protect "all" victims of domestic violence as they become tragically lost in a system that fails even to record them as statistics.

Two operational issues quickly become apparent. First, police officers are required by law to effect an arrest in cases of domestic violence in which there is evidence to support the abuse. The law does not make exceptions for circumstances in which the abuser is a police officer. When a police officer fails to take any action on selected domestic violence cases, it casts serious doubt on the effectiveness and impact of current training in relation to the seriousness of domestic violence. Additionally, the public has every reason to question the ability of the police to effectively and objectively police themselves.

Second, if a police officer is in fact a domestic violence abuser within his own home, how effectively can he investigate other cases of domestic violence when he is the first responder?

When an agency elects to ignore the fact that employees within its own ranks may be suspect as abusers, and fails to provide protection or relief to the victims, it becomes negligent and potentially liable in court. As society grows increasingly less tolerant of domestic violence, law enforcement agencies need to develop pol-

icies addressing the investigation of domestic violence cases in which the abuser is a member of the department or another law enforcement agency.

Ironically, most agencies have in place policies and procedures that require the notification of Internal Affairs when an employee is the subject of a criminal investigation. Depending on the severity of the criminal violation, Internal Affairs may assume full responsibility for the investigation or parallel the investigation from an administrative perspective.

In cases of domestic violence, however, policy seems to be overlooked; the agency typically is sympathetic to—and sides with—the employee. Are these agencies just protecting their own, or have they failed to recognize the grim reality of domestic violence cases, including those that involve their own employees?

As victims of domestic violence continue to struggle for protection from their abusers, law enforcement agencies need to develop clear policy guidelines for the investigation of and intervention in cases of domestic violence when the abuser is a member of the law enforcement community. Additionally, Internal Affairs investigators should receive adequate training on all current laws and policies pertaining to domestic violence.

Policy Framework

A basic policy addressing employee-related domestic violence might contain the following elements:

I. Criminal Investigation

A. Responding officer will initiate a preliminary investigation consistent with state statute and agency policy governing domestic violence.

B. When it is learned that the abuser is a current employee with this agency, the proper chain of command will be notified and a supervisor will immediately respond to the scene.

C. Internal Affairs will be immediately notified and will respond to the scene.

D. Responding officer will secure the scene and provide emergency medical service to the victim.

E. If the employee (suspect abuser) is still on the scene, the employee will be secured by the responding supervisor pending the arrival of Internal Affairs.

F. Upon its arrival, Internal Affairs will assume investigative responsibility for the case. Internal Affairs will proceed with a "criminal investigation."

G. Internal Affairs will coordinate all formal statements from witnesses and the victim on the scene.

H. Internal Affairs will formally identify its investigative authority to the suspect employee and clearly inform the employee that a *criminal* investigation is being conducted. If the employee physically and knowingly waives his *Miranda* rights, Internal Affairs, if possible, will take a formal statement while on the scene or as soon thereafter as practical. *(Note: Investigating officers will quickly discover that, in most cases, the abuser—even though he is a police officer—will be willing to waive his rights and give a statement to the investigator on the scene. As in most domestic violence cases, the abuser will attempt to give an alibi story defending against the allegations of abuse. These defense statements will include denial, suggestions as to how the victim may have sustained injuries—even though these theories are inconsistent with physical evidence—self-defense, etc. The investigator must remember that he is objectively conducting a criminal investigation, and that part of that responsibility involves eliciting a confession or locking the individual into a statement.)*

I. Upon initial investigation, if probable cause exists to make an arrest in accordance with the mandates set forth by state statute, an arrest should be made.

J. The chief administrator of the agency or his designee will be immediately notified upon any decision to make an arrest.

K. The state attorney's office (district attorney's office) will be notified as soon as practical of the case, and will assist in coordinating the investigation with Internal Affairs. Criminal disposition of the case will be the decision of the state attorney's office.

L. Internal Affairs will ensure that all evidence, photographs and reports are completed and secured.

M. Internal Affairs will undertake a coordinated effort to ensure that the victim receives the appropriate medical attention, counseling and shelter referral if necessary.

II. Administrative Investigation

A. Employee(s) being the subject of an active criminal investigation of domestic violence abuse may be immediately placed on administrative suspension pending the final disposition of the criminal and/or administrative investigation.

B. If the employee is placed on administrative suspension, all departmental equipment will be secured by Internal Affairs during the period of suspension. The equipment to be secured includes, but is not limited to, all department-issued firearms, weapons, vehicles, badges and identification. Appropriate property receipts are to be completed.

C. An administrative investigation will be initiated once the criminal investigation has been completed and filed with the prosecutor's office.

D. Independent of the disposition of the criminal case filed with the prosecutor, an administrative investigation will proceed upon concurrence of the prosecutor.

E. If the final disposition of the administrative investigation results in a preponderance of evidence to support domestic abuse, appropriate action will be taken by the agency:

1. counseling
2. early assistance
3. psychological evaluation
4. suspension
5. demotion
6. termination

F. In some states, there are statutory obligations on the investigating agency to forward sustained cases of abuse for review of certification retention by the issuing authority.

In those cases in which the responding officer determines that the abuser is an employee/police officer from another jurisdiction, an authority representative of that agency should be notified as soon as practical. The Internal Affairs Division of that agency should immediately coordinate with the investigating jurisdiction, and at such time as an arrest is made or criminal investigation initiated, Internal Affairs should begin an internal administrative investigation as previously outlined. If the employing agency elects not to respond or become involved, the responding officer will proceed with the criminal investigation in accordance with state law and departmental policy and procedure governing domestic violence cases.

Service of Domestic Violence Injunctions on Police Officers

The sensationalism surrounding the O.J. Simpson trial has had the effect of casting a spotlight on the problem of domestic violence, and started a domino effect with regard to the number of reported incidents. Victims of domestic violence increasingly are seeking the courts' protection in the form of both temporary and permanent restraining orders/injunctions against their spouses in an attempt to stop the violence.

Law enforcement agencies are beginning to see a noticeable increase in the number of injunctions for protection from domestic violence filed against abusers who are employed as law enforcement officers. As noted above, an alarming number of police officers, including administrative personnel, seem to feel there is a need to protect their own in cases of domestic violence. It is not uncommon for the serving officer to face resistance and obstruction from the co-workers and supervisors of the officer to be served. Undoubtedly, potential liability escalates astronomically when such obstructions occur.

Law enforcement jurisdictions that are tasked with the statutory responsibility to

serve both the temporary and permanent injunctions are continuously on guard for the potential of retaliatory violence at time of service. It is not uncommon for the abuser, upon being served with the injunction, to verbally and physically lash out at the officer effecting the service.

These serving officers are being placed in a position where they are knowingly attempting service on an armed individual—another police officer, whether he is on or off duty. There is no point in pretending that a police officer would never attack or retaliate against a fellow officer. Receiving an injunction can be a very traumatic and an emotional experience. An individual who was once presumed to be rational can quickly lose control.

For the safety of both parties, a tactical advantage can easily be coordinated by having the employee report to Internal Affairs, where the injunction can be served in a controlled and non-hostile environment. This also permits the employee timely access to early assistance and/or counseling if needed. His attitudes and reactions can be observed by Internal Affairs to help determine whether he is able to resume his assigned duties. This may involve consultation and coordination with departmental psychological services.

From an administrative standpoint, an agency should consider the employee's fitness for duty. The officer's psychological well-being may have been compromised when he was served with an injunction alleging abuse. Administrative assignment, early assistance programs, intervention and counseling must all be considered by the agency until an internal investigation has been finalized. This includes both a criminal and administrative review.

With the injunction being served in the presence of Internal Affairs, the investigator can conduct a preliminary review of the affidavit. The affidavit sworn to and filed by the victim before a court of law may contain allegations of abuse that identify alleged criminal violations including, but not limited to, battery, child abuse, neglect, alcohol and/or drug abuse, etc. While there is no presumption that the officer is guilty of these allegations, the employing agency is responsible for monitoring and investigating any allegations of criminal violations against an employee when probable cause exists.

Remember that the spouse of a police officer often has little confidence in the department's willingness or ability to investigate one of its own, and that the affidavit filed with the courts may be the first—and only—formal report of the allegations of abuse.

As with the investigation of domestic violence cases involving police officers, internal policy should be developed and clearly communicated to all personnel regarding the service or receipt of a domestic violence injunction when the respondent is an employee of a law enforcement agency. A sample policy follows.

I. Service of Domestic Violence Injunctions when the Respondent is an Employee of the Serving Agency

A. Prior to service of the injunction, the officer intending to serve will notify Internal Affairs.

B. Internal Affairs will order the employee (respondent) to report to Internal

Affairs at a designated time and date for service of the injunction. At that time, a copy of the injunction to be served will be provided to Internal Affairs by the officer attempting to serve.

C. The Internal Affairs investigator will review the affidavit for injunction and determine if an immediate investigation and/or intervention is warranted. In addition, the Internal Affairs investigator will notify the employee's commander in a timely manner. The employee will then be served with the injunction by a certified officer in the presence of the Internal Affairs investigator in a safe and controlled environment.

E. In cases involving the service of a "Permanent Injunction" against an employee, Internal Affairs will assist in coordinating compliance with 18 U.S.C. 922 (g)(8) in relation to the employee's assigned duties within the agency if those duties involve the possession and/or transportation of firearms.

F. Once the employee is served with a temporary or permanent injunction, Internal Affairs will consult with Psychological Services when necessary to provide assistance for the employee, such as

1. fitness-for-duty evaluation
2. early assistance
3. counseling

G. It will be incumbent upon the employee, having been served with an injunction by any other means, to ensure immediate notification to Internal Affairs.

II. Service of an Emergency-Issued Injunction when the Respondent is an Employee of and/or Police Officer in Another Law Enforcement Agency

A. Prior to service of an employee with another law enforcement agency, the serving officer will notify the commander and/or designated representative of that agency's Internal Affairs division.

B. If possible, a coordinated effort will be established with the representing Internal Affairs division to designate a time and date for a safe and controlled environment for service of the injunction.

C. A copy of the injunction to be served will be provided to the Internal Affairs division representing the employee.

To effectively deal with the reality of domestic violence in the workplace, law enforcement administrators must be willing to thoroughly and objectively enforce all applicable laws when one of their own employees is a suspect of abuse and probable cause exists. The primary concern must be for the protection of the victim, regardless of the fact that the abuser is a police officer. Law enforcement agencies should develop and implement strict policies regarding the investigation of domestic violence complaints and the service of injunctions when the case involves "one of their own." ◆

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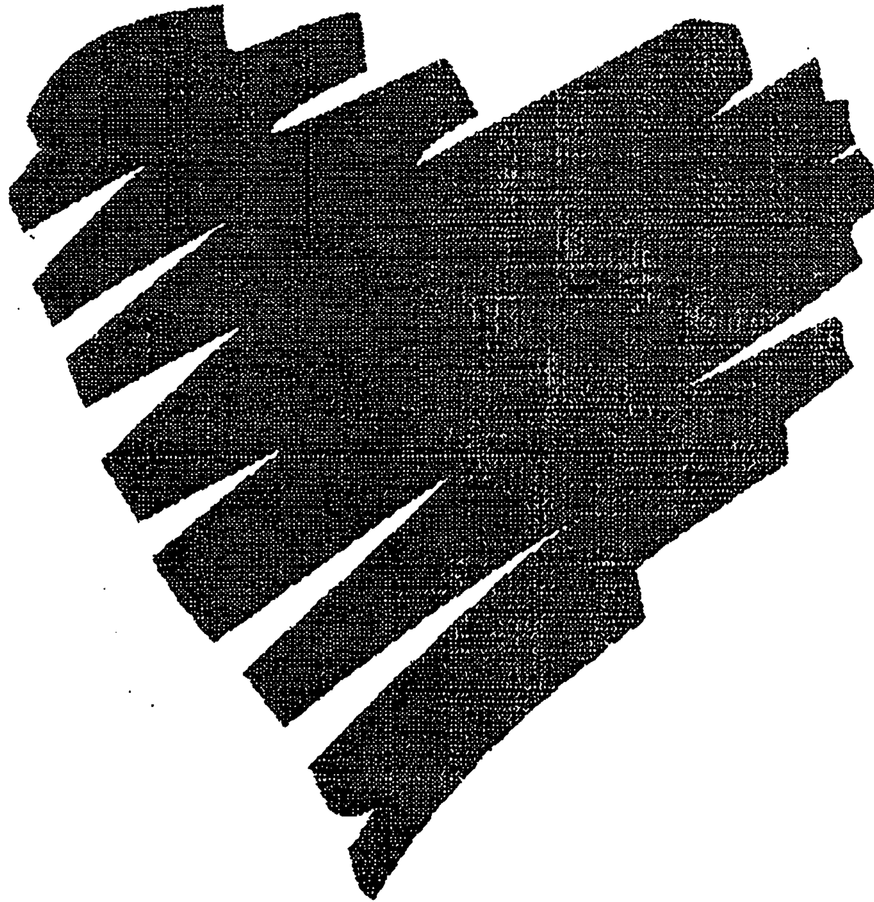
Change of Winds
A Better Understanding of Domestic Violence

by
Teri Scroggins, M. ED.



Since the beginning of time, domestic violence has existed. Many social attitudes have developed with little or no change. Patriarchal society had given rise to the view that husbands are responsible for their wives behavior or that women belong to men (Walker, 1990). This had made difficult the efforts to change societal thoughts about domestic violence. In the early 1970's, the first studies were made about domestic violence. These types of studies made the nation aware of a problem. A problem hidden behind closed doors and in the name of male control.

To begin to help those caught in the cycle of domestic violence, information and knowledge must be obtained about the domestically violent family. Domestic abuse does not discriminate against socioeconomical status, education, race, age, or demographic location (Walker, 1990). Substance abuse is reported in 80% of domestic calls (Chickasaw Agency Law Enforcement, 1996). These families live in isolation and constant fear. The fear is not only of the batter but of the shame of other knowing of "the family secret." The irony of this is that society already knows. It is revealed through the seclusion, the children, and the financial dilemma that most families reside. The violence is like a raging fire out of control.

Lets begin with fire starter. The male batter can be characterized by low self-esteem and the lack of responsibility (Gondolf, 1989). Alcohol is reported to have been used by 100% of all men interviewed (Norton and Manson, 1995). Other substances were reported of have been used by 81% of battering men(Norton and Manson, 1995). The alcohol and other substance are used as an excuse to batter the wife. This is just one way the batter has of removing responsibility from himself. They often have what is termed a Dr. Jekyll and Mr. Hyde personality (Walker, 1990). In public or the presence of others, he is charming, loving, caring, helpful, and devoted. In reality, he has a feeling of failure. This is seen and felt by the family in the privacy of the home. He uses alcohol or other drugs to make himself feel good. Then to show his control and power, he abuses his family, He is always sorry for his action. Many times he will by lavish gifts for the wife and/or the family. It is only a matter time before the cycle starts again.

When fighting a fire, a fire break is used. The battered woman will do what is necessary to protect her family. She will do or sacrifice anything, including her own life, to protect her children. It is very sad to know that many women become victims of homicide or suicide (Jaffe, Wolfe, and Wilson, 1990). The question of why do women

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stay with these men is often asked. The answer is quite simple. All they feel is fear. It leaves them with a sense of being helpless and hopeless. In reality, these things are not true. Because of the survival skills these women have developed, an answer to their prayers is inconceivable. Like a fire break, these women have strength found below the surface. When the fire rages at high intensity, the fire break will hold. At this point, the woman can gather a perspective of what is happening. She will have to decide to leave or stay. This is a difficult decision for her to make. She is very loyal and loves the battering male as well as her children. If the woman has received support from a family member or other individual, she is more likely to break the cycle of violence.

Fire always have bystanders. The children of these families innocently look or listen to the rage in their home. Fear, in some bazaar way, generally prevents children from interfering in the violence between parents. They become sad and depressed. Children will isolate themselves from other playmates. They internalize anger which can result in running away. The externalization of anger results in fighting, or other types of behavioral problems. As these children grow into youth and young adulthood, they began to take on the roles of their parents (Jaffe, Wolfe, and Wilson, 1990). Our future is then caught inside the ring of fire.

Whether it is a forest fire, prairie fire, house fire, or car fire doesn't matter, fire is fire. We don't have enough firefighters. Theories of letting the fire burn out on its own, lets set a back fire, or stomping it our are good for little fires. Domestic violence is a hot and constantly fueled fire, like a burning inferno. It never completely ends. How the fire is viewed will determine how we extinguish it. The social views of domestic violence is very important. Many times the woman is termed as being mentally ill, an unfit mother, weak minded, or unintelligent (Walker, 1990). The male is a drunk, a bum, or it is his house and he can do what he wants. No one wants to be around this family or get involved. The children are forgotten, over looked, or views as "Those poor little ones." We somehow need to change the direction of the wind. The change will come with change of society's attitudes about domestic violence.

We can see the wind change with the relatives of these families. The most frequently used resource with American Indian women is her family (Norton and Manson, 1995). The woman's family is used in 75% of the reviewed cases (Norton and Manson, 1995). Close relatives are the most influential on the lives of these women.

Some of these women are not allowed to communicate with their families or the family refused to communicate with the women. In either case, this type of isolation must be stopped. This is part of how the batter gains control over the family. He not only controls his wife but also her family. The woman many times resides to what is handed to her without voicing her opinion. This is part of the isolation process. The winds start to change when the family refuses to let the batter have control of communication and discontinues the isolation process. The family should be supportive and refrain from the " I told you so..." types of behavior. When the woman makes the decision to leave and does so, the family should encourage her to continue on with her life. Decisions should be supported even if it is he decision to go back to the batter. Once she realizes that she isn't alone, she will start to stand on her own. She will eventually do what is best for her family.

As the public eye widens, the issue of domestic violence takes on a new direction. When the public begins to understand and feel the true hurt of the domestically violent family, they will start to search for knowledge and answers to the problems. When the problem appears out of control, the public will start to cry out for understanding and support. This is evident with the gang related violence that occurs in many schools. All to often we hear of elementary aged children murdering one or both parents due to the violence they have felt. The public has a choice to speak out or bury their heads in the sand.

The school system is like a smoke detector. When domestic violence occurs in the home, it reveals itself in the classroom. The child may exhibit violent behavior depression, low grades, a lack of participation in school activities, a lack of parent participation school activities, and isolation from other students. Children will also react to loud noises and sudden moves. Quite often, the abuse "spills over" in the form of child abuse (Walker, 1990). This brings about a new set of problems that will not be discussed in this paper. Educators spend approximately 7200 hours per year with children. Teachers and other staff learn the habits and personalities of the children enrolled in their school. Teacher recognize the symptoms of children that come from domestically violent homes. The public school system is in the perfect situation of intervention and aid children that come from these types of families. Intervention can be as simple as the school counselor developing rapport with a student. The child may actually seek outside help for the family. This type of initiative

comes from support of the school system, other family members, law enforcement, and other people in the community.

While the fire burns, you can see the flames grow higher and get hotter. You can also hear the crackle and pop caused by the intense heat and pressure. You can see the effects of domestic violence on our children.

AGE	BEHAVIOR EXHIBITED
Birth to seven years	aggressive behavior, a lack of social skills, very impulsive, and various forms of learning problems
Birth to three years	moody, show signs of depression, cling to mother, and show signs of being insecure
age three to seven years	preoccupied with the safety of mother
age eight to eleven years	loneliness, isolation, runaway, gang activities
age twelve to adulthood	accept inappropriate behavior as acceptable, gang activity, runaway, dropping out of school, young parents, early marriage, take on the role of parents

Young children may try to help mother during time of violence. Some of these Children have tried to come to the aid of their mother only to be injured themselves (Jaffe, Wolfe, and Wilson, 1990). These children tend to be neglected from the perspective that time spent on violence between parents is taken from them. The episodes of violence could be from a few minutes to several hours. During this time, the children must tend to themselves. As a general rule, when the episode is over, the mother will focus on the care of the children. While the children are afraid, they know the mother loves them. Children learn so much during this time of their lives. Learning to solve life's problems with violence is not the answer. Children should be taught how to solve problems in a way that is appropriate. Intervention with counselors in conjunction with teachers is recommend. The counselor determines what intervention is appropriate for a child. The teacher in collaboration with the

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counselor re-enforces the intervention (example: social cues). The ideal situation would be to have the parent and the child interact with one another in the classroom. The parent would re-establish a relationship with the child and learn how to manage the child's behavior through modeling and practical use.

The fire begins to flicker with elementary age children. The fire does not have enough fuel to start burning. The intervention these children receive will determine if the fire continues or if it goes out. These children start to know the real meaning of loneliness. They confine themselves to their homes. They do not usually seek friends. They do not want anyone to know about the violence that is in their lives. If there is total chaos in the home where both parents are drinking, violence is daily habit, and the daily essentials are not being met, these children will runaway or turn to gangs as a form of security (Jaffe, Wolfe, Wilson, 1990). If the home has something to offer (example: motherly love), the child will not leave. This does not mean it will not occur in the future. It only means that running away will not occur at this time. Over a period of time, a burnt out field will grow grass and once again sustain life. These children, like the field, have the potential to over come the problem of domestic violence. It will take the efforts and support of close relatives, the community, teachers, and all people in contact with this family.

The fire starts to burn with our youth. Children age 12 to adulthood have established certain habits and consider certain types of behavior as acceptable. They are at high risk for substance abuse, gang activity, running away, and dropping out of school. Males tend to take the roles of their fathers, and females tend to take the roles of their mothers (Okeefe, 1994). they become caught in the ring of fire. The fire these youngsters creates has the potential to be more violent than the fire before them. They have lived in a hopeless and helpless situation for extensive periods of time. Self-esteem is non-existent and there is no future. It should also be understood that not all youth get caught in this cycle. Many of them, despite the violence they have endure vow to themselves to have a better life. Through all the turmoil in their lives, these youngsters have managed to maintain a sense of hope. They will generally grow to be non-violent productive families.

Unfortunately with Indian people, there appears to be a higher incidence of domestic violence. In one study 15.5 % of American Indian couples reported violence in their marital relationship. Of this percentage, 7.2 % reported severe violence. This

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is in contrast to 14.8% and 5.3%, respectively, for their white counter parts (Norton and Manson, 1995). Among American Indian families involved with Norton and Manson's study, 50% reported an income under $5000 and another 25% reported an income of less than $10,000. Overall 94% of the families reported an income less than $20,000. Substance abuse is evident in 100% of the families (Norton and Manson, 1995). A history of poverty, substance abuse , or domestic violence are the fuel for a continual and uncontrollable wild fire.

The best way to put out a fire is to cut off the energy source by removal or smothering the fire due to a lack of oxygen. The energy source can be removed by either of the following ways:

The family can decide to receive treatment as a whole.

The woman will ultimately decide to either stay or terminate the relationship. This is usually dependent on the batters willingness to get treatment and have the responsibility to maintain the treatment.

The woman can decide to terminate the relationship.

The woman will then seek help for herself and children through women's shelters, social services, law enforcement, and medical staff.

Most women like to try of keep the family together. The woman will leave on an average of 4 times before maintaining or terminating the relationship (Norton and Manson, 1995).

When a firebreak begins to work. It needs help from the firefighters to maintain strength. There are many women's shelters that offer various programs. Most shelters are located in large cities or in predominately non-Indian areas. In the state of Oklahoma, there are few shelters that serve Indian women, only. Most shelters are usually temporary, over burdened and offer little or no follow-up for families. There are several substance abuse programs across the state to aid this clientele. Other programs that offer aid to families are Even Start, Head Start, Family Literacy programs, and other educational programs. They promote education as a way out of poverty, while forming a network of support for the family.

Law enforcement has realized the need to reduce violence as a result of substance abuse and gangs. Programs such as DARE and GREAT are taught by police

officers. The officer is supervised by the classroom teacher. Both of these programs were initiated to reduce violence at the elementary and high school level. The sad part is neither program addresses Early Childhood. DARE does offer a program to young children by it is more related to safety issues. The ideal situation would be for the families of domestic violence, teachers, police officers, and a counselor to develop a curriculum that addresses the needs of families of domestic violence. It would be an innovative idea and a learning experience for everyone. This type of program would also enlighten the public awareness of domestic violence.

The school system, alone, cannot change attitudes of society. This change will occur with the attitudes given to the children about various issues. It simply goes back to does society change schools or do schools change society? The answer is both. You have two hands. They must work together to be effective.

Traditionally, the Indian community raised the children. In this day and time, I feel this is a policy being adopted by non-Indian society. Many Indian communities have managed through the oppression brought about by the removal in the 1800's. Some have over come the obstacles. Others still struggle to survive on a daily basis. Our children need to know that life doesn't have to be hard or near impossible. Violence produces fear. No child should live in fear and turmoil. Peace is a much harder task to achieve than violence.

With laws like the Indian Child Welfare Act, our children are not scattered and misplaced (Hogan, Siu, 1988). This act also protects battered women from the possibility of losing their children. The state justice systems have not been kind to battered women (Walker, 1990). Tribal courts show a considerable amount of understanding for these families and what they have experienced. The families are offered services through the tribes. Some tribes have adopted domestic violence policies. The more involved the community becomes the greater our chances of early intervention. The Indian community is aware of this type of intervention. The non-Indian community needs to have this same awareness. What the non-Indian community needs to understand is that regardless of race these families hurt the same.

The real barrier that must be overcome in the Indian community is "Well, Indians don't talk about wife abuse because they are quiet, keep to themselves, and

they like it that way," I have heard this statement and other like it from Indian people. Families keep quiet because of the shame, guilt, and fear. No one likes to be abused. Domestic violence maybe all the family knows, but they need to know life does not have to be violent. Tribal police, Judges, Attorneys, Social Services, Head Start, Indian Child Welfare, Tribal Health, and others are constantly producing information to change these attitudes. Sometimes it must touch the life of someone before attitudes will change.

Domestic Violence is an on going fire. The best that we can do is cool off the hot spots and use smoke detectors. An ounce of prevention is worth a pound of cure. "Help prevent forest fires," get involved with families in crisis.

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JURISDICTIONAL ISSUES IN INDIAN COUNTRY

One of the most complex issues facing those who work with child sexual abuse victims in Indian Country is the confusion regarding investigative and prosecutorial jurisdiction of these cases. A crime committed in Indian Country can be subject to investigation by local law enforcement, which may consist of tribal and/or Bureau of Indian Affairs (BIA) police, state law enforcement (county sheriff, city police, state troopers), and/or federal law enforcement (BIA, FBI). Once a case is investigated, the case may be subject to prosecution by one or more jurisdictions, including state, federal, and/or tribal courts.

For those who are used to working with one law enforcement agency and one judicial system, this morass of investigative and prosecutorial responsibilities can create much confusion. The lack of clear protocols among agencies which may have jurisdiction over crimes in Indian Country has led to confusion even among the professionals who have responsibility for law enforcement and criminal prosecution.

This monograph will set out some of the basic issues involved in understanding the role of tribal, state, and federal agencies in responding to the needs of victims of child sexual abuse in Indian Country. The need for coordination among all levels of government will also be highlighted.

The issue of jurisdiction is influenced by a number of factors, including where the crime takes place, the nature of the crime, the race of the victim and the perpetrator, and whether the federal government or the state has jurisdiction under the provision of Public Law 280. The law enforcement agency which receives the initial report of the crime assumes the responsibility for determining investigative jurisdiction.

Several factors will impact this decision. One set of factors involves the physical location(s) of the alleged offense(s). Offenses which take place within Indian country (as defined by the Major Crimes Act) are subject to investigation by the law enforcement agency serving that land. In many instances, both tribal and BIA law enforcement may provide services to an Indian community. Tribal law enforcement may be the first responders to a suspected crime scene, while BIA Criminal Investigators (CI) usually perform the actual investigation. However, some tribes have their own, tribal CIs who perform the same duties as BIA CIs.

A further complication is that investigative responsibility for violations of federal law may rest with the FBI. Through formal or informal arrangements, the FBI and local law enforcement may have an agreement clarifying which agency will investigate certain cases. Where such arrangements are codified into written protocols, confusion regarding jurisdiction can be minimized.

A second factor influencing jurisdiction involves the race of the alleged perpetrator and victim. Cases which involve a non-Indian perpetrator and a non-Indian victim always fall into the jurisdiction of the state. In these cases, tribal and federal law enforcement would not be involved. However, where either the perpetrator or the victim, or both, are Indian, there will be tribal jurisdiction. Depending upon the nature of the crime, there may also be federal jurisdiction.

A final complication involves Public Law (PL) 280. PL 280 returns federal jurisdiction for crimes and responsibilities for service to the state. Therefore, in states impacted by PL 280.

the state and the tribe have concurrent jurisdiction in both investigation and prosecution.

It is easy to see why tribal, state, and federal coordination is imperative. From the initial receipt of a report of alleged child sexual abuse, there are complex jurisdictional considerations. Many jurisdictions have responded to these considerations through the development of written procedures, or formalized protocols. Such written documents clearly confer responsibility for making initial jurisdictional decisions and outline the nature of the working relationships between and among the various tribal, state, and federal agencies.

Just as there are multiple jurisdictions involved in investigation of child sexual abuse cases, similar jurisdictional concerns exist regarding criminal and civil prosecution of child sexual abuse cases.

Tribal courts have concurrent criminal jurisdiction with the federal government or states over child sexual abuse cases in Indian country. Federal jurisdiction over child sexual abuse cases derives from 18 U.S.C., Section 1152 (the "General Crimes Act") or 18 U.S.C. Section 1153 (the "Major Crimes Act").

The Major Crimes Act provides for federal jurisdiction over certain specified crimes occurring in Indian country when the defendant is an Indian and the crime involved is either incest or any felony under "Chapter 109 A" (18 U.S.C. Sections 2241-2245). The U.S. Supreme Court has ruled that charging a defendant in both federal court and tribal court is **not** a violation of double jeopardy. In *United States v. Wheeler*, 435 U.S. 313 (1978), the U.S. Supreme Court held that if a person, subject to the jurisdiction of the tribe, is tried and convicted in tribal court for an offense, that same person may be tried by the federal government on a similar offense arising out of the same incident.

The *Wheeler* decision means that a person can be criminally charged in both federal and tribal court for child sexual abuse. This gives both tribal and federal courts greater flexibility to handle child sexual abuse cases. For instance, it allows the tribal prosecutor to proceed with a tribal court action immediately instead of being required to wait until after the federal prosecutor decides whether to accept or decline the case. Since the federal prosecution decision frequently takes several months or more, it is often necessary for the tribal prosecutor to take action more quickly so that the perpetrator and the community are given the clear message that child sexual abuse will not be tolerated.

Once again, the race of the perpetrator is a major factor in prosecution. According to the U.S. Supreme Court decision in *Oliphant v. Suquamish Indian Tribe*, 435 US 191 (1978), tribal courts **do not** have **criminal** jurisdiction over non-Indians. Criminal jurisdiction in these cases rests solely with the federal government or the state. However, tribal courts **do have civil jurisdiction over non-Indians.** There are a number of sanctions which tribal courts can apply to non-Indians through civil actions related to child sexual abuse allegations.

In cases where an Indian child is abused but the incident does not take place on Indian land, the tribal court would have no jurisdiction. The tribe does have an interest in the disposition of any civil, custody actions involving a child who is an enrolled member of the tribe, or is eligible for enrollment in the tribe through the Indian Child Welfare Act.

The possibility for multiple interviews of child victims is obvious, given the number of jurisdictions and agencies which have a legitimate interest in child sexual abuse cases in Indian country. The need for coordination in these cases is consequently higher as well. It is conceivable, for example, that an incest case could be responded to as follows: tribal law

enforcement receives an after hours report of alleged child sexual abuse. The line officer, a tribal police officer, responds to the crime scene and performs a preliminary investigation. The officer's initial investigation is reviewed by his/her superior and assigned to a BIA CI for further investigation. The case is also forwarded to the FBI.

The BIA CI and tribal Child Protective Services Worker jointly interview the child and prepare their reports. The CI's report goes forward through the criminal justice system and the CPS worker's report goes through the civil court system. In the process of the criminal justice system, the FBI Agent may feel that further investigation needs to be undertaken, including additional interviews of the victim. The Agent may feel it necessary to perform this interview themselves or may request that the CI perform the additional interview.

The case is presented to both the tribal Prosecutor and the US Attorney's office. One or both of these prosecutors may feel the necessity to personally interview the child. Or, the federal prosecutor may request additional information prior to making a prosecutorial decision. Some Prosecutors may wish to personally interview the child to assess their ability to testify in court.

At this point, it is possible that the child has been interviewed by six separate individuals in six or more separate interviews. Each individual has a legitimate interest in the case and the need to obtain specific information. While tremendous progress has been made toward coordinating interviews and reducing the number of interviewers and interviews that child victims must endure, the complexity of multiple jurisdictions in Indian country pose special challenges to reducing the number of interviews a child is subjected to. The Office for Victims of Crime (OVC) has addressed the challenge of reducing trauma to child victims through the Children's Justice Act (CJA) grant program for Native Americans for improving the investigation and proesecution of child sexual abuse cases in Indian country.

The development of multidisciplinary teams (MDTs) in Indian country is the most obvious vehicle for coordinating the investigation and prosecution of child sexual abuse cases. To be effective, MDTs must have the participation of all law enforcement and judicial agencies with jurisdiction for child sexual abuse cases. Either tribal representation is necessary on existing county or regional MDTs or state and federal law enforcement officers and prosecutors must participate in tribally-based MDTs. Such participation is mandated for federal agencies under the provisions of the Victims of Child Abuse Act of 1990 and the Family Violence and Child Abuse Prevention Act (PL 101-630).

MDTs offer the perfect opportunity for discussion of prosecutorial determinations. US Attorneys, or District Attorneys Offices, meet with tribal Prosecutors and determine the best venue for initial criminal prosecution. Feedback on the status of various investigations can take place on a regular basis. Lack of access to information regarding the status of cases has long been a sore point for tribal law enforcement and Prosecutors. The MDT offers an appropriate forum to share information and plan strategy.

In addition to OVC initiatives, the Department of Justice (DOJ) has undertaken a number of new projects to improve federal/tribal coordination. President Clinton's April 29, 1994 memorandum concerning "Government-to-Government Relations with Native American Tribal Governments" led to the implementation of several Justice Department programs, including the Tribal Courts Project to assist tribes in developing and strengthening their systems of justice; the Tribal Court-DOJ Partnership Projects to strengthen tribal justice systems and particularly

their abilities to respond to family violence and juvenile issues; the addition of 26 assistant U.S. attorneys to districts with high Indian populations; the re-design of training programs to ensure that federal prosecutors understand the jurisdictional framework of tribal lands; added seven criminal lawyers with expertise in child sexual abuse and Indian country to the Child Exploitation and Obscenity Section of the department's criminal division; awarded 14 grants to tribal domestic violence programs under the Violence Against Women Act grant program; and established an Office of Justice Programs (OJP) Indian Desk to monitor program support and technical assistance to the tribes and assist in the planning and developing of new OJP programs.

There are many other actions which state and federal agencies can undertake in order to facilitate cooperative relationships with tribal agencies. These activities include participation in the development of protocols, provision of training, participation in workshops and other tribally-sponsored training activities, inclusion of tribal representatives on state and federal committees, planning panels, review committees, etc., and informal interactions with tribal service providers.

Tribal, state, and federal coordination requires the active participation of all parties. State and federal representatives need to be willing to travel to reservations for meetings and not expect that tribal representatives will always do the traveling. Similarly, tribal representatives must be able to overcome any lingering resentment or suspicion regarding representatives of the federal or state government based on historical problems.

The past decade has seen a remarkable positive change in response to child sexual abuse cases occurring in Indian country. OVC initiatives have spurred the development of programs to improve the investigation and prosecution of child sexual abuse cases and the provision of on-reservation services to victims of crime. Tribal programs have provided non-Indian service providers with alternative methods of service delivery, innovative programs, and grassroots, community-based responses to child sexual abuse. Working together, tribal, state, and federal law enforcement, judiciary, and victim service providers, can help to ameliorate the trauma of child sexual abuse victims.

SIMILARITIES BETWEEN DOMESTIC VIOLENCE & CHILD ABUSE
by Maria D. Ramos, J.D.

1. POWER & CONTROL is used by the perpetrator in both. As such, the victim is threatened and/or shamed into not reporting the abuse to anyone.

2. Both crimes, therefore, can continue to occur for many years before a report is made.

3. When a victim **does** report, many times she is BLAMED for "allowing" the abuse. The blaming can be done by a friends, family members or anyone else who does not have an understanding of these crimes.

4. In both instances, the victims many times actually blame themselves and believe that it is their fault.

5. Both crimes may involve a great deal of DENIAL on the part of both the perpetrator and the victim's family members regarding the occurrence of the abuse.

6. Both crimes are cyclical - they generally continue from one generation to generation until the cycle is broken by someone who speaks out and who seeks help.

7. Both crimes result in severely devastating long term effects on the victim.

8. Both can go unrecognized by the medical profession, despite the fact that medical personnel are frequently the ones who treat the physical injuries resulting from child abuse and domestic violence.

9. Both involve a number of offender treatment programs with unknown results and varying degrees of success.

10. Many times the offender is the same person in both child abuse and domestic violence.

EFFECTS OF ABUSE ON CHILDREN

How child abuse/neglect or sexual molestation affects a child is different for many reasons. The age of the child, how the child interprets the behavior towards him/her, the child's survival instinct, whether there is a significant other person who might provide a positive model, the extent and consistency of the behavior; all these are factors which influence the child's eventual reactions to abuse and neglect, and may influence long-term effects.

Some of the "patterns" which have been observed in abused children include:

* Differential reactions to pain: Some battered children have learned to "disconnect" from pain and will exhibit no sign of pain. Others are "stuck" in their pain and overreact at the slightest hint of discomfort.

* Do not enjoy their bodies: Their bodies are a reminder of pain, and they do not feel "safe" in them.

* Lack of trust in others.

* Separation issues from natural parents: These are frequently hard to understand since outsiders might assume that children who are battered or neglected may not want to be with their parents or may not love their parents.

* High degree of fear: The child can be timid and shy or bold and aggressive in new situations due to a fear and mistrust of others.

* Susceptible to learning and speech disabilities: Depending on the seriousness of the abuse, some children have central nervous system disorders, neurological problems and mild to extreme emotional disorders.

* Slight perceptual or memory problems as well as restless or hyperactive behavior.

* Lack of normal, age-appropriate relationships.

* Can exhibit aggresive tendencies as well as tendencies towards withdrawal.

* "Caretaker" pattern: Children alert to others' needs and try to please, comfort to ward off abuse.

* "Hider" pattern: A child who withdraws at the slightest hint of argument.

* "Scapegoat" pattern: Children who take on others' blame.

* "Provocateur" pattern: Seem to "ask for it" by their behavior. May have learned that negative attention is better than none.

This information was taken in large part from a Foster Parent Training Curriculum developed at Michigan State University entitled "Fostering the Abused and Neglected Child".

SAN FRANCISCO CHILD ABUSE COUNCIL, INC.

WHAT ARE SOME POSSIBLE CHARACTERISTICS OF ABUSIVE OR NEGLECTFUL PARENTS OR CARE PROVIDERS?

- They are isolated from family supports such as friends, relatives, neighbors, and community groups; they consistently fail to keep appointments, discourage social contact, and never participate in school activities or events.
- They seem to trust no one.
- They themselves were abused or neglected as children.
- They are reluctant to give information about the child's injuries or condition. When questioned, they are unable to explain, or they offer far-fetched or contradictory explanations.
- They respond inappropirately to the seriousness of the child's condition: either by over-reacting, seeming hostile or antagonistic when questioned even casually; or by under-reacting, showing little concern or awareness and seeming more preoccupied with their own problems than those of the child.
- They refuse to consent to diagnostic studies.
- They fail, or delay, to take the child for medical care for routine checkups, for optometric or dental care, or for treatment of injury or illness. In taking an injured child for medical care, they may choose a different hospital or doctor each time.
- They are overcritical of the child and seldom if ever discuss the child in positive terms.
- They have unrealistic expectations of the child, expecting or demanding behavior that is beyond the child's years or ability.
- They believe in the necessity of harsh punishment for children.
- They seldom touch or look at the child; they ignore the child's crying or react with impatience.
- They keep the child confined, perhaps in a crib or playpen, for overlong periods of time.
- They seem to lack understanding of children's physical, emotional, and psychological needs.
- They cannot be located.
- They appear to lack control, or fear losing control.
- They appear intellectually capable of child-rearing, exhibit generally irrational behavior or seem excessively cruel and sadistic.

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TO HONOR CHILDREN

Dolores Subia BigFoot, PhD

PROJECT: MAKING MEDICINE
IHS-Training In Treatment of Child Physical And Sexual Abuse
Center on Child Abuse and Neglect
University of Oklahoma Health Sciences Center

The purpose of this section is to help parents understand the basis for a behavioral approach and how that can increase their confidence as caregivers and caretakers of their children. Children are the center of the circle for the family. Honoring the child has been a long tradition for many tribes, and Chief Dan George captures the feeling toward children with the words "touch a child--they are my people." Children need and desire the warmth, concern, and encouragement parents, grandparents, aunts, uncles, brothers, and sisters can give them. The nurturance and guidance by caregivers was the "planting of good seeds" within the child to direct the child's thoughts and actions in helpful ways. When an Indian woman discovered she was carrying a child within her, she would actively engage in song and conversation with the yet unborn child so she may touch the unborn spirit with words and intent. This was to ensure that the infant knew it was welcome and that a foundation was being laid for planting the seeds of respect and love. This new life was viewed as being eager to learn and a willing seeker of those traits that would help in knowing and in understanding self and others. One assumption that Indian people made about childhood was that each infant possessed the qualities to develop into a worthwhile individual.

The caregivers were many - they were all members of the clan, band, society, or guild that made up the extended family system. The caregiver's responsibility was to nurture and expand the positive nature of the child, to touch the child with honor and respect. Because a child was considered a gift from the Creator, the caretakers had the responsibility to return to the Creator an individual who respected self and others.

Within the family, children, parents, and grandparents were secure in their relationships with each other because adults would consistently tell children who they were and where they came from and who they belong to. Children respected their parents, but just as important was the parents' respect for the children. Children knew they were the center of existence for all family members. They were honored by celebrations and feasts given by relatives that left no doubt as to the children's worth and value. Today some children continue to be honored by first laugh or birthday celebrations, graduation dinners, first tribal dance, first sweat, school or athletic achievements, or for other kinds of accomplishments.

Children were valued because few survived infancy and fewer reached adulthood. Until recently, the American Indian infant mortality rate was one of the highest in the nation.

Children were not granted unlimited freedom and total permissiveness. Discipline was important and was used both directly and indirectly. Ignoring behavior or eventual removal of the infant from the family surroundings were practices the caregivers used to discourage undesirable behavior while attention and praise was given to encourage desirable behavior from the child. As the child grew into adolescence and adulthood, shunning became an extension of ignoring and removing behaviors; it was the negative reaction by the community to inappropriate behavior or violation of cultural practices. An extreme form of disapproval would be banishment from the tribe. As the child developed, additional boundaries were set by increased use of community pressure in the form of shaming, teasing, ridicule, disowning, throwing away, and

shunning. Teasing, shaming, ridiculing, and being laughed at were powerful deterrents to actions that were considered inappropriate, harmful, shameful, or of little value. Some tribes used other methods such as scratching or physical exercise, for instance, scratching long marks down the arms or being a runner between villages. Physical punishment was an extreme form of discipline but used if the situation seemed to call for it. Teaching was situational bound; thus, when a learning situation presented itself, the caregiver took advantage of it. Caregivers also used threats of the supernatural or other powerful mystical figures from the tribal legends to control behavior. Most tribes had tricksters, clowns, or whipper men who were used as threats to scare children. Boundaries and limitations would consistently be reinforced by all the members of the family. Clearly defined tribal norms and customs governed how the child was to act, in fact, governed how all members were to act. Expectations about what was appropriate behaviors were clear and practiced by everyone. Kinds and degrees of punishments were known for the various infractions that could occur. Retribution was known and expected.

Chastisement was the duty of aunts, uncles, or other adults, rather than the parent. This was to promote the parent/child bond and not to strain or create conflict in the relationship between the parent and the child. Discipline was structured toward increasing the child's understanding of what effect his/her behavior had on others and what was desirable or good behavior. Inappropriate actions on the part of the child was not interpreted as the child being a "bad" child. Instead, it was assumed that misbehavior was due to not knowing, or not understanding what was expected, or the child had not learned sufficiently, or the child was not taught correctly, or the child need to learn more wisdom. The message given to the child was that behavior could be beneficial and helpful or the behavior could be distrustful and harmful, therefore, what the child did affected those around him, either in a good way or a bad way.

Caregivers were more likely to follow the principle of non-interference in guiding the behavior of children. Children were told what behavior was expected using direct and indirect instruction and examples by tribal stories they listen to, by watching others, or by the teaching of the caregivers. Rather than restrict the child, he or she was allowed the freedom to be interested in things about them as long as custom was not violated nor danger imminent. Children were informed on acceptable custom and actions and why certain behavior was to be avoided. For example, if an infant just learning to crawl would approach a fireplace, he was removed again and again without reprimand. The caretaker would seek to distract the child from his initial focus. Interesting items would be placed in the opposite direction to draw the child's attention away from the fire. The caregiver would try to divert the child's attention to other sounds, colors, or objects. If the child continued to approach the fire, the caretaker would watchfully let the child experience the heat and use the opportunity to impress upon the child the gift from the fire with the need also to respect it. Though young in years, an explanation by the caregiver would be given to the child about the dangers associated with fire when it is not respected. If persistent, the child was allowed to experience the natural outcome of his/her behavior. This was considered being responsible for one's actions, but yet, the caregiver did not intervene. Children, as they grew, knew the behaviors they were supposed to engage in and those behaviors that would be signal disrespect. Disrespect was viewed as disregarding the fundamental principles that helped the whole tribe to exist. Each individual was responsible for the traditional teachings that benefited the entire community with those principles governing the social order to made it work. Patience would be exhibited by the caregiver for it was his or her duty to help the child comprehend his/her responsibilities. Lengthy explanations by the caregiver were expected to be given over and over again for the child to appreciate the teachings and the necessary behavior. It was understood that nothing was separated out - actions, thoughts, beliefs, practices, attitudes took time to be taught.

Indian parents knew they could encourage behavior by acknowledging those traits that would be helpful as the child grew into adulthood. Desirable traits, behaviors, and actions were described by various family members as they interacted with the child on a daily basis. Examples would be a parent saying the following to a child: "My son brings me pride because he helps me with the fire." Or, "My daughter is considerate of my old bones because when I move about, she watches and helps me as I rise." Comments were directed toward children to show how important their actions were. Even small efforts on the part of children were praised and acknowledged by the different family members. Words or "tending that good seed" that honored children and showed respect for their endeavors were constantly given. Verbal praise may not have been given directly to the child; rather the child's efforts and accomplishments were noted by a giveaway, dinner, or re-naming. A grandparent might offer to sponsor a giveaway for a child, with the unspoken assumption that other family members would be willing to assist and prepare for the event. The child would then observe the efforts by the family members to arrange the giveaway in his/her behalf. Highly valued items were assembled by the family members which would be given to non-related individuals who exemplified the traits developing in the child. All activity at the giveaway would center on the child. The songs, music, items, acknowledgments, honoring, and prayers expressed would be for the child's continued success into adulthood. The grandparent or other honored person would stand before the gathering and announce the reason for the giveaway and how it was to honor his grandchild, and in this way to praise the child for who the child was. Sometimes a giveaway was spontaneous with the caregiver removing their personal items of clothing, jewelry, or other possessions to acknowledge the occasion.

Many times small items would be given inconspicuously to a child by an adult with a comment such as, "I am giving this to you because you always listen to your parents; you always seem happy to obey them." Statements of appreciation, affirmations, songs, prayers, and gifts were ways of directing the behavior of children in a positive manner.

The use of praise to encourage positive actions is an old method of rearing children. Learning theory has advocated the use of praise as a means of increasing desired behavior. It also proves the terminology and system of implementation. However, the principle of honoring children has been done for untold generations of Indian families.

Today families maintain an "honoring" system that continues to use the honor dances, benefit dinners, celebrations, or feasts common in Indian communities. Encouragement and praise is given to the individual by the honor of the event itself. The system works at the general level, but can also be applied in the home environment to encourage the behaviors that are in harmony with family expectations and values.

Family members can be re-taught the principle of planting "good" seeds that uses praise and encouragement to motivate and increase desirable thoughts and actions. However, it is usually more typical of family members to recognize the negative behaviors than the positive ones. So, care must be taken to change the focus of interaction between parents and children if parents normally focused on the negative. Caregivers could learn to distinguish between different types of behaviors and actions and can learn to respond consistently in a way that would be beneficial to the development of their children.

This is the heritage that we bring to our Indian children - the planting of good seeds with the touching of children "for they are our people."

The original of this secton appeared in "A Parent Training Manual for American Indian Families," a dissertation published in 1989

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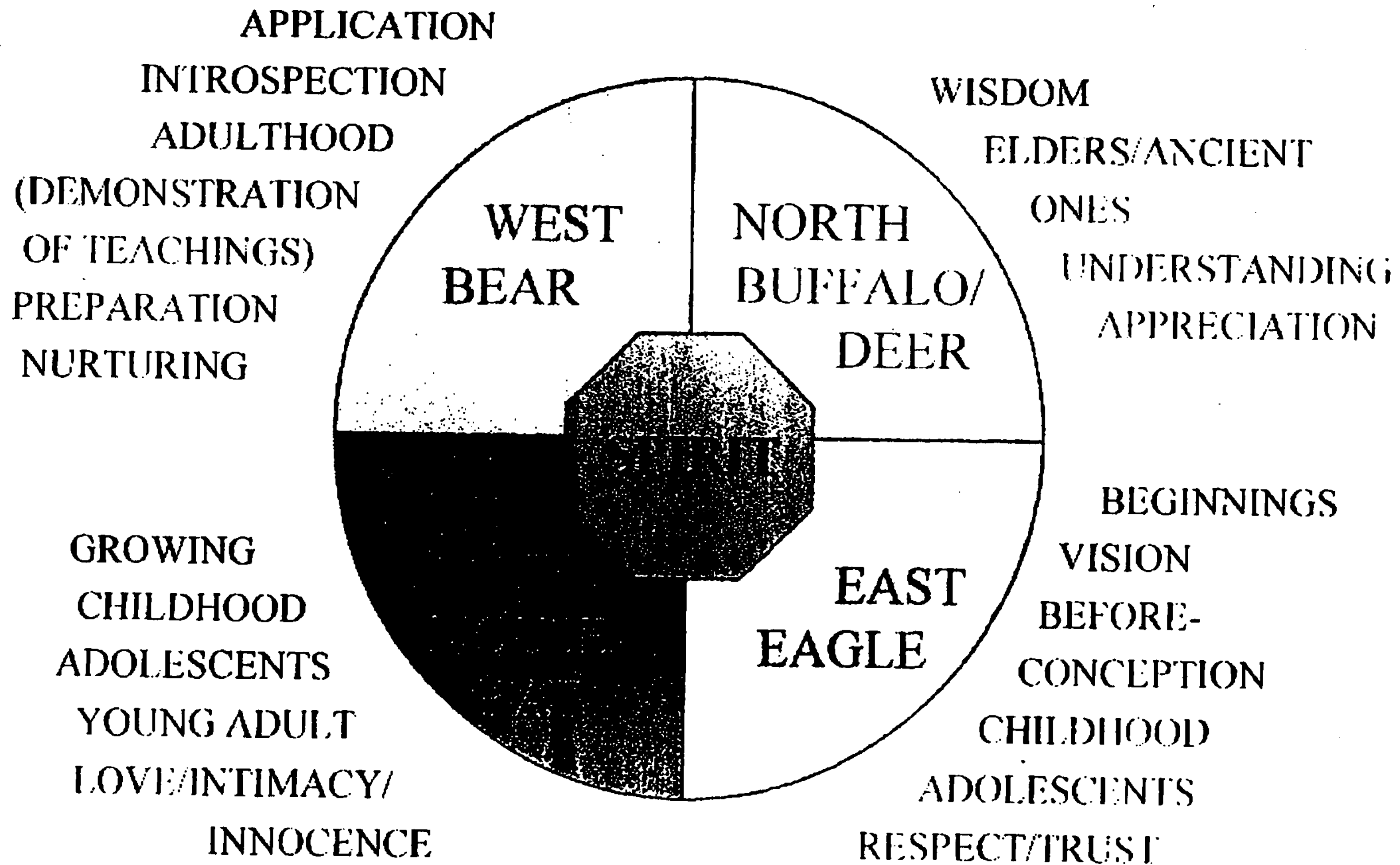
MEDICINE WHEEL



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1. **FAMILY GROUP CONFERENCES - THE PROCESS**
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3. **THE ILLINOIS FAMILY CONFERENCE MODE**

4. **FAMILY GROUP CONFERENCING COMES TO THE U.S.: A COMPARISON WITH VICTIM-OFFENDER MEDIATION**
   by Mark S. Umbreit, and Susan L. Stacey

FAMILY GROUP CONFERENCES - THE PROCESS

Denis Smith

A paper prepared for the 'Beyond The Bench VII" Conference
7 and 8 December 1995 Oakland California USA.

Adapted from a paper in:
'Family Decision Making Family Group Conference- Practitioners Views'
Wilcox et.al. Practitioners Pub Well. 1991

INTRODUCTION

This paper outlines the process for family decision making under the New Zealand Children Young Persons & Their Families Act 1989.(Hereafter referred to as the Act).

This Act uses the term Family Group Conference for the formal decision making meeting which includes the family and the professionals.

The Act provides for the appointment of Care & Protection Co-ordinators who are responsible for calling and running such family group conferences. The Co-ordinator is independent from the case worker.

When there are concerns that a child or young person is in need of care and protection the facts of the case are submitted to the Care & Protection Co-ordinator by a social worker from the N.Z. Children & Young Persons' Service, or from a worker with a community agency, such as a school, health services or a voluntary agency. The Co-ordinator decides if the case as outlined meets the terms of the Act

When the decision is made to convene a Family Group Conference the care & protection co-ordinator is required to:

Consult with the care & protection resource panel.

Consult with the family group regarding the date, time and venue of the conference, the people who should attend and the procedure to be used.

Advise all people entitled to attend the Family group conference.

Decide whether any family member is to be excluded and if there are people excluded obtain their views to present to the Conference.

Obtain the views of any family member unable to attend.

The co-ordinator can delegate some of these tasks to a social worker.

Those entitled to be full participants in the Family Group Conference include:-

The child or young person.

Their parents guardians & family group.

The care & protection co-ordinator.

A representative of the referring agency.

Any barrister or solicitor representing the child.

Any other people the family wish to be present.

Others who are entitled to attend but do not have any input into the formulation of decisions, recommendations and plans of the Family Group Conference include people providing information and advice to enable the Conference to carry out its functions.

The Family Group Conference can set its own procedures and meet as often as is required to reach an agreement. The co-ordinator is responsible for ensuring that the Conference carries out its functions under the Children Young Persons & Their Families Act.

The co-ordinator has the duty to ensure that all relevant information about the care & protection issues is made available to the family and that appropriate resources are given to the family to assist and support it in carrying out any decisions made.

At the actual Family Group Conference the co-ordinator ensures that when all the relevant information is given it is in a form clearly understood by the family and that all their questions are answered. The family is then given time to deliberate in private and following this deliberation they present their decisions to the representative of the referring agency and any other people involved in implementing the decision, if there is agreement between all parties a plan is formulated. The co-ordinator must record the plan on the appropriate form and make copies of it available to all entitled persons within five days. A copy of the plan is kept by the co-ordinator.

ACTION BEFORE A FAMILY GROUP CONFERENCE

The first consideration in the care & protection process is always the immediate safety of the child or young person.

In the past our practice has often been to remove the child from home and family in the belief that placement with approved strangers or in institutions run by the State or voluntary agencies guaranteed safety and ensured protection. These placements were made in `good faith'. We now know from research in New Zealand that placement `in care' is no guarantee of protection.

In light of this research and to be consistent with the principles of The Children Young Persons & Their Families Act 1989, we rely heavily, even at this early stage, on family members for places of safety for children. Removal outside the kinship group can add to the trauma the child has already suffered.

While the issues of immediate safety are being addressed the social worker has the duty to discuss the situation, at the earliest possible time, with the care & protection resource panel to get their thoughts and ideas on the individual case. When the investigation and assessment are completed the social worker must report the results back to this panel. On the results of the investigation and assessment a decision will be made as to whether the care & protection issues warrant the referral of the child or young person to the care and protection co-ordinator so that a family Group Conference can be called.

At this stage the social worker will be discussing with the family the possibility of a Family Group Conference being called and what this will mean for them.

SETTING UP A FAMILY GROUP CONFERENCE

First responses of a family to the prospect of family Group Conferences vary greatly. Practice over the past five years shows that most families do not object to attending a Family Group Conference and a growing number welcome the opportunity.

In the minority of cases where there is objection this can range from the very few who do not want a family group conference at all, to those who object about the attendance of certain people at the Family Group Conference. The objections about the attendance of certain people seem particularly strong where they concern another family member. Quite often the very family members that people try to exclude are the ones that hold the key to decision making for that family. Our experience is that

if these people are excluded the decisions of the Family Group Conference do not work.

One of the earliest tasks is to assist people, first the parents, then other family members and frequently other professionals, to broaden their understanding of the concept of family. Often this is seen in nuclear family terms, while there may be some understanding of wider family kinship networks there is a lack of understanding of the wider family responsibilities in terms of caring for children. Parents claim that there is no one in their family who would be willing to take responsibility for their children. Practice shows that this is just not true for almost all the families with whom we have worked.

Another claim made by parents is that what happens to their child is no business of their, mothers' ,fathers', aunts', uncles' cousins' or any other relative. When asked how much responsibility they have , or would want to have, if it was their: nephew, niece, grandchild or even second cousin, they usually see the matter in a different light.

Where parents still object to the involvement of wider family and where there are serious concerns for the safety and placement of the child, it is policy to seek the participation of wider family in spite of the parents objections. This is done on the basis that the children have the right of access to relatives whether parents like it or not, particularly when the parents may not be able to continue to care for them. We find that the parents biggest fear is the anger and disapproval of other family members because of what has happened in the past and what is happening to the child now.

When you bring the family together they come with all their baggage, both past and present. There will often be issues being addressed that have nothing to do with the issue of the child's safety or placement.

At this stage of the process it is important to note several factors, these are:-

The seriousness of the abuse, neglect, risk, to the child;

The depth of any expressed anger/upset feelings about the issue of who is to care for the child;

Any indication of past unresolved family issues unrelated to the present child care issue; and

Resistance to the involvement of either of the parent's families including cases where the parents are estranged.

These factors have implications for how the conference is prepared for, resourced and run. It is important that the social worker alerts the co-ordinator to all family factors that may influence the Conference.

Who a child's relatives are respects no geographical or bureaucratic boundaries. The relatives may all be in one area or they may be scattered far and wide both nationally and internationally. It is important in spite of their location to bring the family together wherever possible. In spite of distance, cost of travel and accommodation for families the benefits far outweigh the costs, in most cases. In a minority of cases there may be high initial costs but the successful placement of the child in their own kinship network means that these costs are recouped in the short to medium term. In the longer term there are savings in all cases where children do not come into care because this process is used. Where physical presence of family members is not possible because of distance teleconferencing has been successfully used. We would claim that the actual presence of people is preferable to the use of telephones.

Where family members are unable to attend a Family Group Conference, for whatever reason, the care & protection co-ordinator must obtain the views of the principle family members and will often do so from other family members as well. The views thus obtained by the co-ordinator are put before the family group conference for their consideration. The people unable to attend can hold vital pieces of information and with this information the quality of the decision making is enhanced.

PREPARATION TOWARDS THE FAMILY GROUP CONFERENCE

There needs to be an assessment in every case as to what level of organisation and catering is needed to facilitate a successful family Group Conference.

We have already mentioned above the factors which need to be identified so that the best decision can be made. Where the family is meeting for the first time after a long period of estrangement some celebration to mark the occasion helps to get over the initial discomfort.

If the child has serious injuries caused by a family member there will be high levels of anger and distress. These feelings need to be managed and we have found that the provision of food and drink is an aid in helping family members keep their anger within constructive bounds. It is one of the tools available to the family to ease the processing of the real feelings of anguish which are a painful but necessary part of the process. The anger and distress needs to be expressed before people can usefully move on together to look at the child's best interests.

We want to reinforce the importance of this hosting task. The drinks snacks and meals smooth the way and often make the difference between decision and disaster. It also cuts through the formality and is a shared activity for all participants thus bringing everyone together.

For many family group conferences a simple drink and biscuits is sufficient. To make the decision about the level of catering which is required for a particular family group conference we ask ourselves what we would want for our own family were they to be meeting under the circumstances of the particular case.

It is important to prepare everyone about the process of the family group conference, including other professionals. We have found from bitter experience that without preparation professionals will often argue over the process and the family issues get lost. If their role and the process have been clearly explained beforehand there seems to be little trouble.

Some family members may need transport arranged for the day of the conference. The venue needs to be prepared in terms of seating, heating and catering together with any other measure which will optimise comfort for all of the participants. It is these little things that can positively influence the outcome.

RUNNING THE CONFERENCE

It is important to make sure that everyone is introduced to start the proceedings off on the right foot. A further explanation and clarification of the process and why everyone is there is necessary to clear any mis-understandings and difficulties from the outset. This process allows for agreement by all present as to how the meeting will be run and the different roles people will play. It is at this point that the role of the Co-ordinator as: facilitator, recorder and distributor,(in writing),of decisions, is stated.

The Co-ordinator makes it clear that the role of the professionals: teachers, lawyers, counsellors, doctors, psychologists, social workers, etc. , is to give clear concise information to the family. This is to ensure that the family members at the meeting have all the relevant information on which to base their decisions.

The next stage is where the professionals share all of the information they have with the family. The communication task has been a difficult one for many professionals who are not used to the frank sharing of their assessments with family, particularly in a group setting. The language used is often technical, complicated and not fully understood by families. The co-ordinator has the task of ensuring that all of the family

members' questions are answered which again is difficult in that many people are in awe of professionals and do not feel able to, or confident enough to ask the necessary questions of clarification.

The role of the Co-ordinator is to empower families to ask questions and to challenge professionals who use too much jargon or legalese. Successfully facilitating this information sharing is crucial to good outcomes.

When all of the information has been given to the family and all of their questions fully answered then the: co-ordinator, professionals and all other non-family members withdraw to give the family the opportunity to deliberate in private and to make decisions about the care and protection of their child.

The role of the family is to pick up the responsibility for making decisions for their children. Allowing families to deliberate in private can cause a lot of anxiety and sometimes anger amongst the other professionals. They claim the right and/or duty to be part of the entire process. They can also claim that this particular family is not capable of coming to proper decisions without the professional's assistance.

Underlying the private discussion time for family members is the belief that: families have the right to discuss family business in private, there are always pieces of information which families are unwilling to discuss fully,(or at all),with outsiders present, the family secrets, so to speak. Intrusion of others into this process blocks open frank discussion and stops the declaration of complete family information.

The Children Young Persons & Their Families Act, 1989 gives authority for people who have cared for children for a significant time, to whom they are not kin, to be present at this family only part of the conference. It is our experience that their presence stops or modifies discussion among family members. Hidden issues are left undiscussed and unresolved, so in the end the decisions are, at best, incomplete and at worst, unworkable. We believe there are a whole raft of issues within families that they are capable of addressing and resolving if given a structured opportunity to do so. Experience has shown that many families considered by professionals to be `hopelessly estranged' or `dysfunctional' have managed to use this process effectively.

The result has often been good for the child being discussed as well as other adult and child members of the family.

The process of professionals and non-family members moving out of the family group conference to give the family time to

discuss the information and issues in private, is difficult for several reasons:

The family as a whole or individual family members can be fearful of being left alone. This is likely to be where there is a high level of dispute or conflict among them.

The family sometimes feels that it is discourteous for them to expect people to leave. Verbally asking someone to leave can be extremely difficult particularly for families of some cultures.

Individual members may want friends or professionals to stay to support and strengthen their stand in any negotiation. They may also want to control the family meeting in this way.

Often professionals do not know how to leave. Some find it difficult to understand that real empowerment of families means assisting them to act independently.

When there is only one parent and the child or two parents and the child at a family group conference there is a temptation to see the family's private time as unnecessary and a waste of time. Experience has shown that this private time is still very useful. It may be the first time that the parent/s and child have fully discussed the issues with all the relevant information before them.

Close family friends and ministers of religion can find it difficult to move out. They see this as abandonment of their support role. We explain the reason in terms of family dynamics and ask them to consider the matter as if it were their own family meeting. They can often see things more clearly by personalising it.

There are rare situations where there is a non-blood kin person who is considered by all of the family to be a part of the family (a non relative raised by a family member and thereby able to stay at this part of the meeting).

We would counsel against any non-blood kin being present at the private family part of the family group conference. We acknowledge the need for rare exceptions.

This level of respect for family privacy in deliberations about their child or indeed any deliberations is a new experience for many professionals.

The co-ordinator needs to ensure that there are enough rooms to accommodate the family and the non-family and this may entail the provision of two separate rooms for the family. In some

situations, specially where the parents of the child are estranged, the two branches of the family may wish to meet separately for part of their private deliberations.

The process does not require all of the professional information givers to remain except for a representative of the referring agency. In the beginning of this way of working many professionals did remain to hear the outcome even though they were not required to do so. As Professionals have gained experience of family group conferences, they have felt comfortable about leaving directly after they have given their information.They have learnt to trust the process.

Adult family issues, unrelated to the child care and protection issues, can arise and take over the private family deliberations. The co-ordinator's role is to try to identify when this is happening as early as possible and to keep challenging it with the family. It is possible to do this when:

> The family are being served with refreshments. This may happen several times when a family's deliberations are lengthy.
>
> A family member or members want to leave the conference before a decision has been made.
>
> There is shouting amongst the family that lasts for some time and is audible outside the room.

This problem of unrelated adult issues taking over from the care and protection issue at hand became clear early in our practice. We now discuss the danger of this with the family before they go into their own meeting in order to pre-empt the problem. We ask the family to concentrate on the care and protection of their child and to avoid unrelated adult issues.

The family sometimes ask one or other of the professionals (usually the lawyer),if they are still there, to come into the meeting to provide further information or clarification.

The co-ordinator then waits until the family decides they have had enough time. This can vary between 15 minutes to 3-4 hours or in exceptional cases all day.

The family, co-ordinator and representative of the referring agency then meet to discuss the decisions they have come to. If there are other professionals or friends still present they also come into this part of the meeting but have no speaking rights.

It is a requirement of the Children Young Persons & Their Families Act, 1989 that if the matter is before the Family Court the family group conference is not deemed to have reached

agreement unless the person who referred the matter agrees with the decisions. Should there be no agreement the matter is referred back to the Family Court with the family's decisions and a certificate from the co-ordinator that agreement was not reached.

Disagreement is unusual.

The family seek, through their decisions, the professional and financial supports they feel they need to make the decisions work.

Once agreement between the referrer and the family is reached the following process occurs:

> The decisions are recorded in writing by the co-ordinator and read back to the meeting to ensure absolute accuracy.
>
> While recording these decisions the co-ordinator will make sure that the meaning is clear and the decisions detailed.
>
> With each decision it is recorded as to who will carry them out and how they will be resourced. This is important if the decisions are to be effective.
>
> If the New Zealand Children & Young Persons Service takes on any responsibilities these are outlined in detail.
>
> The co-ordinator undertakes to let all participants have written copies of the decisions including those people who have been consulted but have been unable to attend.
>
> A date is set to reconvene the family group conference to review the decisions if this is felt to be necessary. This is often used where the family have some doubts about the decisions so wish to have an opportunity to check up.
>
> In some situation families give parents one last chance and use the review as a security.
>
> The family group conference ends with formal thanks.

Some professionals and family members will have second thoughts after they leave the meeting.They will question the decisions and try to undermine them. If people have genuine concerns which have been left unexpressed at the original meeting it is important that the forum in which they are readdressed is at a reconvened family group conference. It is interesting how often concerns disappear or become unimportant when it is suggested they be dealt with in this way.

Section 36(1) of the Children Young Persons & Their Families Act, 1989 gives the authority for people to seek a reconvened family group conference in the following way:

> *"Where any decision, recommendation or plan is formulated by a family group conference pursuant to this part of the Act, the Care and Protection Co-ordinator who convened that conference may from time to time, at the Co-ordinate's own motion or at the request of at least two members of that conference, reconvene that conference for the purpose of reviewing that decision, recommendation or plan."*

IMPLEMENTING THE DECISIONS

The statutory agency is often the one with the responsibility for carrying out decisions of a family group conference. It is important that the tasks be carried out promptly and in accordance with the agreements reached at the conference.

The issue of monetary support is a vexed one in any system. With the introduction of the Children Young Persons And Their Families Act, 1989 there came a commitment to finance the reasonable decisions of family group conferences. The most remarkable thing is that most families ask for nothing. In the cases where there is a need to fund decisions it is most often for the child's living costs for the family looking after them who do not have the financial resources to meet the costs themselves. There are a wide variety of other commitments made to resource family decisions. These are usually short term in nature and may include counselling, recreation expenses, clothing, and transport costs.

The most interesting feature about carrying out decisions is that you are implementing decisions that have been chosen by the family and have their full backing.

There are often criticisms of funding decisions arising from a family group conference. The critics claim that the family does not always know what is best for the child and that professionals should choose such things as counsellors. We continue to assert that the family group conference process is an open one which allows for reviews if decisions do not work.

RECONVENING THE FAMILY GROUP CONFERENCE

There are times when family members are aware that decisions of the first family group conference are not working and that the child is at risk. They will request that the family group conference be reconvened. It can be advantageous to further

widen the net to get a greater family representation than was present at the first conference.

The family group conference can be reconvened for review at a date set at the first conference. Even if things are working well for the family the review can be a time for fine tuning and some reinforcement of the positive steps already made.

When decisions of a family group conference do not work there is a temptation to blame the process. We have found in some situations the family group conference has to be re-convened on a number of occasions until a workable solution is found. This is much what workers have done in the past with foster care placements. When the first did not work they went on trying until a placement that did work was found.

The review process allows families to try out different solutions and be able to come back to confirm the decisions or to try other options. The review can also demonstrate to professionals that previously held doubts were or were not warranted and gives them another opportunity to discuss issues with the wider family.

GENERAL COMMENTS

State systems have long been willing to pay for strangers to care for children when the courts have removed them from their parents care. What they have not been willing to do is to financially support the child's kin for doing the same task. When the `best interests of the child' arguments are used then kin based care has more to recommend it than stranger care. Kin often have the will to care for their family's children but lack the financial resources. Unrelated foster carers often have the will to care for other families' children but do not have the financial resources. The state can choose to support kin based care if it has the will.

It is a rare situation where there is no one in the wider family willing to care for children unable to stay with their own parents.

Our practice experience has shown us what a remarkable resource the wider family is and the depth of commitment to their children they show when given real opportunity and encouragement to exercise it.

The practice in New Zealand varies widely and as with all bureaucratic systems all manner of rationalisations are made for differences in practice. A major issue is that of private family time. Many social workers and some co-ordinators just cannot imagine how families, particularly `dysfunctional'' families could possibly make valid decisions without them present.

Workers who hold this view often offer to stay with the family if they want them to? This offer is difficult for people who are in the client role to refuse. The workers would claim to have given the family a choice when in fact there was no choice at all.

Other workers are driven by a set of beliefs and values which they genuinely want others to share because they believe they offer solutions for others. Such workers disempower families by trying to impose their reality on them.

There are even examples where workers and co-ordinators do not follow their own Act and challenging such mistakes is not easy for families who may not even be aware that a mistake has been made.

The other area where a lot of professional power is exercised over the family to ensure a certain outcome is the way which information is shared with family members. The most effective way is for the professionals to use jargon and to assume that families are not capable of understanding complex professional concepts. Professionals also hand out complex written assessments when there is no time to read or digest these and some simply lack the skill to communicate their assessments and ideas in language understandable to the family

Another major issue is the abdication of responsibility by families to the `experts'. We have successfully oversold the value of experts to come up with answers for families and in so doing some families simply decide that they are not capable, because they are not experts. Such families will often sincerely believe that they are doing what is in the best interests of their children because they have been taken in by modern propaganda. One of your American authors, Howard Zehr puts the point very clearly in his book `Changing Lenses'.

> *"Part of the tragedy of modern society is our tendency to turn over our problems to experts. That is our tendency with regard to health, education, and child raising. .....In doing that we lose the power and ability to solve our own problems . Even worse, we give up opportunities to learn and grow from these situations."*

Family decision making whether through a formal family group conference or an informal family meeting is a way of working which empowers families, shares responsibilities with statutory workers and ensure a continuation of the maturation of both.

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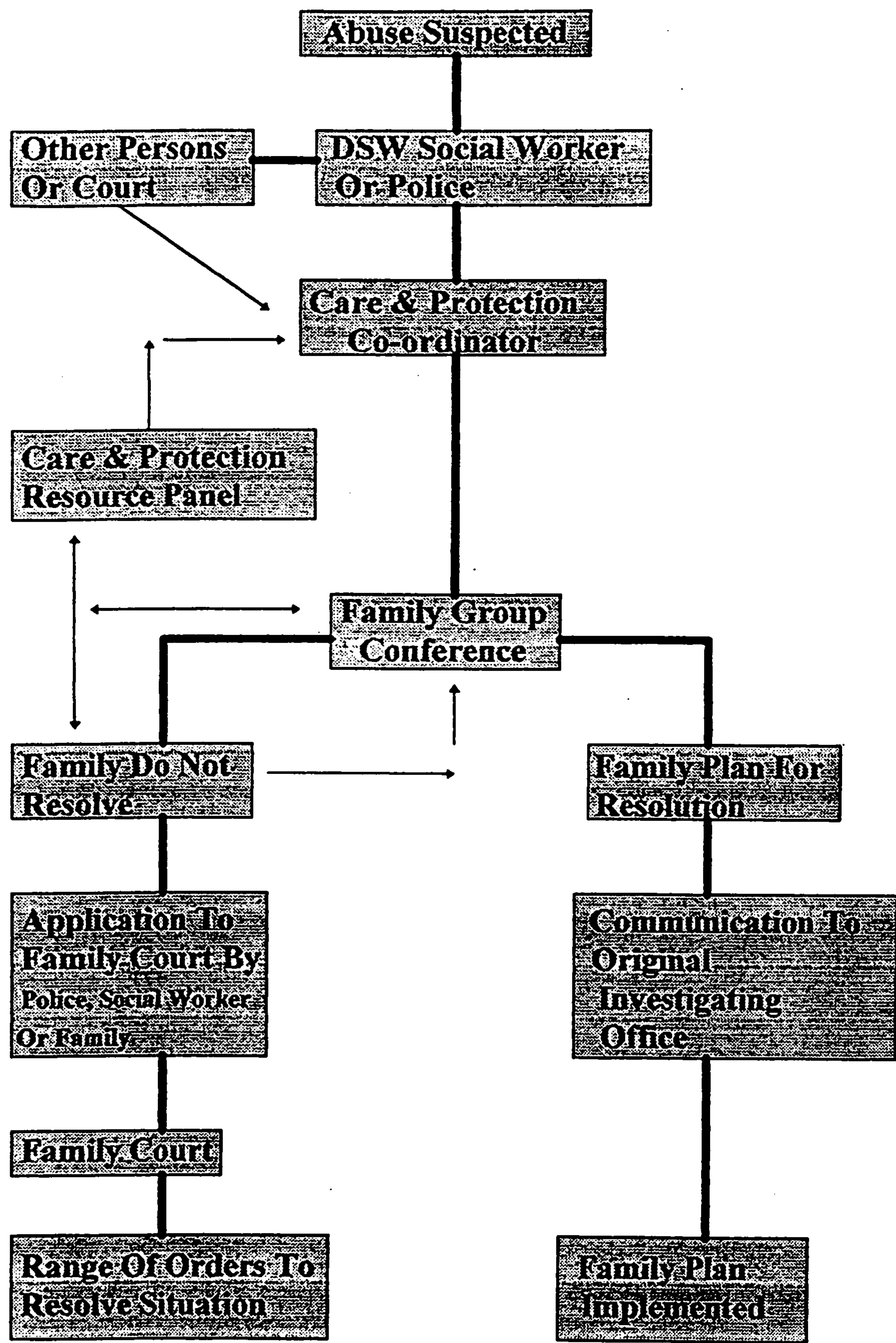
Abuse Suspected
Other Persons Or Court
DSW Social Worker Or Police
Care & Protection Co-ordinator
Care & Protection Resource Panel
Family Group Conference
Family Do Not Resolve
Family Plan For Resolution
Application To Family Court By Police, Social Worker Or Family
Communication To Original Investigating Office
Family Court
Range Of Orders To Resolve Situation
Family Plan Implemented

WHANAU, FAMILY DECISION MAKING

A LIBERATING SOCIAL WORK PRACTICE BASED ON TRUST.

Harry Walker

A paper prepared for the "Beyond The Bench VII" Conference
7 and 8 December 1995
Oakland, California, USA.

This paper will address the issue of trust that is a pre requisite for the success of the social work practice of whanau, family decision making. Whanau, family decision making was first implemented as a social work practice method in 1986. It was incorporated into legislation in 1989, and referred to as the Family Group Conference.

It has been shamelessly exported to Australia, Scotland and the United Kingdom, Canada, and the United States of America. We appreciate therefore the invitation to attend this Conference to again peddle our wares in the hope that more families and therefore the society will be empowered to care and protect their children. Children after all are the future of every nation.

The theme of the conference is "Beyond The Bench VII". What I intend discussing therefore is a social work practice that started without a need for "The Bench" but in my view has the potential for further creation from "The Bench". In referring to the "Bench" I am referring to the incorporation of the Family Decision Making process in to Law although my preference and my energy has always been to promote Family Decision Making as good social work practice.

The `Bench' is, as any crafts person or artisan will know, a place where creativity will blossom forth. It is a place where the raw material is positioned and where the artist with paint, mallet or chisel will expose the beauty awaiting discovery. What all professionals are capable of achieving is stimulating the creative endeavours and capabilities of families as they seek to realise their goal of competence as human beings in caring for each other. Maluccio [1981:19] suggests that an answer perhaps lies;

> *in the provision of diverse opportunities for action - opportunities that may facilitate rather than impede the person's selection of the type of activity most suited to his or her unique characteristics and particular adaptive processes. The diversity of opportunities for action may be instrumental in tapping the individual's potential to look at the world in divergent and novel ways, in stimulating his improvisation of alternative lines of action, and ultimately in his experiencing a sense of effective, with its attendant growth-producing sense of exhilaration.*

My paper is about a natural human process. A process where families since their very beginnings have made decisions resulting in the care, protection and healing of the children. Children, who have been abused in the first instance, and the healing of the adults within, whether perpetrator or victim. The circle of healing extends to the communities of which the families are a part and to which they have responsibilities.

The paper will address:

- Perceptions of families, professional education leading to pathologising and therefore mistrusting families.
- The scientific social constructions of indigenous peoples as groups who lack western intellect, sophistication, and morality, and who therefore cannot be trusted.
- Distrust of Professionals by Black, Indigenous First Nation and non Western families.
- The New Zealand experience of implementing Whanau, Family Decision Making and its eventual incorporation in to statute. The internal and external distrust.
- The Philosophical underpinnings.
- Some Practice Issues.

PERCEPTIONS & EDUCATION

The strongest feelings of paradoxes and ambivalence we bring to social work, counselling or therapy are those attached to the idea of "family". In New Zealand the notion of family has at various times attracted negative exposure in the media. Families are frequently held responsible for all that could possibly be labelled as dysfunctional in a community. Families in other parts of the world also regularly come under attack from many directions. To that extent the New Zealand situation is part of a global phenomenon. One should not be surprised by this as all families are part of the global family of humankind are they not?

The preponderance of psychodynamic theories in social work education, theory philosophy and practice influenced as they were by Freudian schools of thought, emphasised parental responsibility for families that had issues of concern. Such was the influence of Freud that humanistic therapists like Carl Rogers [1980:43] believed at one time that:

> *people were intrinsically evil; were best treated as objects; and that help was based on expertise; that the expert could advise, manipulate and mould people to produce the desired result.*

Later developments in existential psychiatry (anti psychiatry) and radical social work identified these same families as oppressive tools of a sick community. With these scenario families were identified as the loci for the abuse of powerless individuals by powerful others (usually male) within the family.

The irony was that both schools of thought had the same effect. They heaped the blame and responsibility on the family and more often than not the women (mothers) within families. Radical feminists on the other hand identified families as the havens of violence from which the patriarchy ventured forth. Given these situations it is little wonder professionals were able to confirm their professional distrust of families.

Many social work professionals despite their varying and at times diametrically opposed ideological and theoretical perspectives, shared in common a distrust of the family. How, they asked, could the family be a part of the solution when indeed it is part of the problem? On the other hand are all students undertaking social work courses being educated in to distrusting?

As a social worker my education focussed on spotting pathology and dysfunction. I was the original discoverer of problems. Mine was to discover the deficits, the phenomena that hindered people's ability to handle difficult situations. Like any highly skilled athlete, training camps (courses) were opportunities to test, hone and generally sharpen up my problem finding skills. In other ways I became a preacher, christening and renaming people and their families with labels. With these labels I recreated realities. I also was able to help these people and their families by telling them what to do. I gave them advice on how they could go about improving their lives. Workers have difficulty setting aside training. I was testimony to that.

I believed I acted ethically, the values I had I believed they shared, I believed I was sincere. I am reminded however [C.S.Lewis, God in the Dock] that:

> *...of all tyrannies, a tyranny sincerely exercised for the good of its victims may be the most oppressive. It may be better to live under robber barons than under omnipotent moral busybodies. The robber baron's cruelty sometimes sleep, he may at some point be satiated; but those who torment us for our own good will torment us without end for they do so with the approval of their own conscience...*

I now know why the people whose numerous `problems' I had discovered never showed me any gratitude.

Conventional thinking in the social work academic world is analytical and begins with "the problem is" [Graber, 1992:33] There is a general acceptance says Graber of this thinking that seldom gets challenged. Graber goes on to say that what is critical is to know the issues that concern people. What is also critical is to know the strengths and ability of the family, their relatives, friends and communities to resolve those concerns. The "dominant practice" or "starting by identifying the problem" has not worked well.

Do workers in assessing risk, have to the forefront the chance of failure or success? Are they concerned with what could possibly go wrong or with what could possibly go right?

Families are used as political footballs, often exploited by right wing economic theorists and practitioners as a cheap source of care for the more vulnerable in the society. Professionals are suspicious where a definition of family equals 'unsupported women carers at home'. At the same time we are having to come to terms with the fact that many people who have been incarcerated by professionals in institutions should never have been there in the first place.

Our New Zealand experience indicates that many people in State Care regardless of their status, whether classified as mentally ill, intellectually handicapped, delinquent or in need of care and protection, need not be there.

In terms of the care and protection of children it indeed is paradoxical that the place where most abuse occurs by members of families on each other, is the very place we are suggesting, the best protection and most effective healing can also be effected.

While the above is a scenario that can be applied to families given the ethos, philosophies and education of the early practitioners, additional elements apply to others. The concerns for first nations people, people whose origins are not anglo Saxon and people of colour include issues of colonisation, ethno centricity and racism

PERCEPTIONS & RECONSTRUCTIONS

As Tangatawhenua (Indigenous First Nation people) it is my thesis that the degree to which our families and communities are mistrusted, originates as a result of ethno centricity and colonisation. First nations people have been subjected to study by anthropologists such as Horton, Mead and Levi-Strauss. The ethno centric view of many of these social science researchers and social anthropologists determine a predestined outcome such is their perception of the society or group they are studying. They either consider the society to be simple and easy to understand, or primitive, or duplicitous. Mead [1942:11-12, 15-16] stated:

> *...in a simple society... with the aid of writing and an analytical point of view, it is possible for the investigator to master in a few months most of the tradition which it takes the native years to learn ... in six months... I learned the native language, the children's games, the intricacies of social organisation, economic custom and religious belief and practice.*

and Horton [1979:160] who wrote:

> *...traditional thought has tended to get on with the work of explanation, without pausing for reflection upon the nature of rules of this work.... We can readily see*

why these second order intellectual activities should be virtually absent from traditional cultures. Briefly the traditional thinker, because he is unable to imagine possible alternatives to his established theories and classifications, can never start to formulate generalised norms of reasoning and knowing. For only where there is choice can there be norms governing it.

or Levi-Strauss [1972:18] who described indigenous world views as deceptions and fallacies:

We know that among the most primitive peoples it is difficult to obtain a moral justification or a rational explanation for any custom or institution. When he is questioned, the native merely answers that things have always been this way, that such was the command of the gods or the teaching of the ancestors. Even when interpretations are offered, they always have the character of rationalisations or secondary elaborations, There is rarely any doubt that the unconscious reasons for practising a custom or sharing a belief are remote from the reasons given to justify them.

The above is indicative of the difference of world views that exist between Western and First Nation peoples perspectives. Implicit in the views are the notions of ethno centricity and racial superiority. European knowledge purports to be based on reality and science and First Nation knowledge on myths and traditions. For one group there are scientific empirically tested reconstructions while for the other there are merely legends.

For people of colour the judgements made of them on the basis of both ethnicity and colour are derived from the notions of intellectual and moral superiority. Lord Cromer who had been in charge of the British occupation of Egypt, in his book *Modern Egypt (1908)* said of Arabs:

The mind of the Oriental...like his picturesque streets, is eminently wanting in symmetry. His reasoning is of the most slipshod description...Endeavour to elicit a plain statement of facts from any ordinary Egyptian. His explanation will generally be lengthy, and wanting in lucidity. He will probably contradict himself half-a-dozen times before he has finished his story. Said,E.W. [1978:38]

Lord Cromer of course was merely identifying the standard English colonial perception of the citizens of Egypt.

On the other hand indigenous people Grace, J. Te Herekiekie [1959] in his book "Tuwharetoa" says:

The ancient Maori was a mystic. He was at home in the realms of abstract thought, of symbol and interpretation, of imaginative insight and of spiritual significance.

For people of colour the much maligned family is the refuge from racism even if there are issues of concern needing addressing within the context of the family. For many the difficulties within the family are preferable to the difficulties encountered by racist practises of the helping professions.

Common stereotypes of the black family according to Dominelli [1988:95] include the sexual prowess of black men; sexually active and promiscuous black women; the absence of a stable family history; the lack of bonds between family members; the power of strong, domineering matriarchs combined with weak black men incapable of maintaining stable relationships. Dominelli, [1988:9] suggests further that the institutionalised racism then pathologises people of colour for their lack of success within the system and then blames them for their predicament.

For Maori and Australian Aborigines racist practices have occurred in the removal of children, in the case of Aborigines, Edwards & Reid [1989:19] children were kidnapped from the homes of their parents and placed in Church or State institutions, later to be fostered in the homes of White strangers.

Like the United States where there existed a policy [Billingsley & Giovannini, 1972:24] where no Black child was to be better off than a White child and where no White child was to be worse off than a Black child;

In one sense it might be said that until 1865 slavery was the major child welfare institution for black children in this country, since that social institution had under its mantle the largest numbers of black children .... Slavery affected not only black children, but also white children, for the persistence of slavery as an institution even retarded reforms for white children. (In a sense slavery acted as a kind of social barometer - whatever abuses existed in the treatment for white children could be rationalised by the notion that they were treated better than black slaves.) Slavery was particularly effective in retarding improvement in the indenture system and weakening efforts at child labour reforms....

New Zealand has a history of differential payments on the basis of ethnicity. Children placed with Maori in the early 1920's were paid boarding allowances at a lower rate to those placed with White families. [Walker, 1990:84]. The determinant was the ethnicity of the care giver, not the ethnicity of the child. White children however did not appear to have been placed with Maori. The differences between the States and New Zealand were differences of degree and not of philosophy or perception of people of colour or indeed indigenous peoples.

Given this history of social work practice and professional perceptions of the families whether they be Afro American, Chicano, First Nation or Working Class what is apparent is the mistrust each group has for the other. The professionals however have the institutional power to define and enforce their realities on families.

THE INDIGENOUS RESPONSE

For our part as the indigenous people of New Zealand, we remain suspicious and are extremely sceptical of the claims of the irrefutable nature of Western knowledge and cultural superiority. We reject its claims to neutrality and objectivity. We believe that Western knowledge, Western scholarship and Western interests are inextricably tied, in that sense we believe the personal is indeed the political.

A composition [Tuini Ngawai, Ngati Porou composer:1950] from my tribe illustrates this concern:

Te matauranga a te Pakeha, He mea whakato hei tinanatanga
Mo wai ra? Mo Hatana?
Kia tupato I nga whakawai, Kia kaha ra, Kia kaha ra.

Te matauranga a te Pakeha, Ka tuari I te penihana oranga
Hei aha ra? Hei patu tikanga
Patu mahara, Mauri e, a mauri e.

Te matauranga a te Pakeha, Patipati, a ka muru whenua
Kia kaha ra e hoa ma, Ka mutu ano,
Te tanga manawa, Oranga, a oranga.

The knowledge of the Pakeha [White New Zealander] is propagated
For whose benefit? For Satan's?
Be wary of its temptations. Be strong and firm.

The knowledge of the Pakeha, Gives out Social Security Benefits
Why? To kill customs
To kill memories, to destroy our life essence.

The knowledge of the Pakeha. Seduces you then confiscates your land.
Be resolute my friends. Land is all we have
To rest a beating heart and from which we draw sustenance.

The irony of the composition is that what was being treated with suspicion was the introduction of a universal system of benefit payments. It was at the time hailed as innovative in the provision by the State of income maintenance for its citizens. We as a society are again contributing to the development of social policy and social work practice.

THE IMPLEMENTATION EXPERIENCE

Our contribution this time is to remind people that there are the old ways. Ways that can be put to use as we approach the next millennium, this era of post modernism, the internet and Windows 95. Ways, resulting in our ability: to reaffirm our humanness; to heal ourselves; to putting things right; to restoring balance; to accepting responsibility for our actions; to exercising compassion.

The social work origins of family decision making are found in the 1984 New Zealand Government initiative "Maatua Whangai" (Foster Parents). This arose as a result of Maori people desiring to have their children and young people taken from State institutions and returned to their families of origin. It was seen by the State as an opportunity to reduce government expenditure by closing institutions. It fitted nicely with the government economic philosophy of saving money by pronouncing that less government was needed in the lives of people.

It also coincided with indigenous people's claims for greater control in running their lives. What better way to return to them children previously taken from them. Also included were children and young people who were "wards of the State". Children removed from their natural families and placed in stranger care.

After an initial positive thrust which lead to the closing of some State institutions the programme of repatriating children back to family foundered. In 1986 following the publication of another government report "Puaoteatatu" where personal, cultural and institutional racism was identified as being endemic within the Department of Social Welfare, the impetus of de-institutionalisation again took hold. The Minister and Government of the day bravely adopted all recommendations. Departmental staff were instructed to implement the recommendations. The strength of the Report lay in its lack of prescription of a practice method [Wilcox et al., 1991:6].

Recommendation 7 of the Report was the license and the platform from which "family decision making was launched". Practitioners were unclear as to its implementation. The earliest attempts to translate principles and philosophy in to practice merely enhanced the depth and breadth of consultation with wider kin groups but the power remained with Practitioners. As with much practice, the direction the family wanted to go was consistent with a direction approved of by the worker. The first mistakes became apparent when the family and the worker disagreed. We over ruled the family.

The major practice decision was to relinquish the power of final decision to the family. What followed was a series of workshops initiated by staff committed to empowering families by using the method of family decision making. From 1986 until the passing of the Children, Young Persons and Their Families Act in 1989 a small, dedicated group of practitioners and their supporters spread the virtues of the practice.

While support was increasing from practitioners within the department and the voluntary agencies, internal and external opposition to the practice was mounting. Typical of the opposition was an emotive attack on the practice by a departmental senior internal social work auditor who claimed that the practice was dangerous and did not have legal sanction [Department of Social Welfare, Circular Memorandum 1989]

The Auditor saw the practice which had been in existence for three years before he discovered it, as lacking legislative backing or support. He stated further that:

> *Simple placement within the same family is a toothless and unenforceable action.*
>
> *The model outlined lacks legislative backing or support. The C&YP Act is action based and it describes and authorises actions and interventions. It also holds the people, both workers and care givers, accountable for their actions*
>
> *Personally I find the model politically, publicly and legally unacceptable. It flies in the face of parts of the recently issued Child Abuse Guidelines. It also leaves any alleged offender without legal protection or the right to have a Court provide an impartial examination of the facts. The social worker, in collusion with others, can become the accuser, judge and jury.*

Interestingly the Children and Young Persons Act 1974, Sections 3-4 - Objects of Act and the amendment of 1984 (Sec 4a) to which he was referring gave the legal mandate for family decision making as a practice. Such was the mounting internal opposition to family decision making however, that family decision making workshops planned for mid 1989 for the policy writers involved with the Bill were directed not to proceed.

Much of the professional opposition was based on the irrational fear of families being empowered or having too much power. Families whom they claimed they could prove were abusive.

Critics of the Family Group Conference [Tapp et al, 1992] claimed that `given the powerful influence of this body it is astounding to note that the concept was basically untried and untested prior to its statutory introduction'.

The critics were not all to know the practice had been introduced in 1986. They also seemed unaware that families over time had the ability despite the paradoxes referred to earlier, to care for and protect children. She stated further that:

> *The 1989 approach put new Zealand into the previously unchartered quadrant bounded by compassion and family autonomy and took it to an extreme by the particular emphasis of the legislation on family decision-making via the Family Group Conference.*

Tapp et al [1992:203] continued:

> *One relevant factor was the belief that the concept actually put in concrete form a policy and practice which implemented the findings of Puaoteatatu. It focused on the concept of 'whanau mana' {family autonomy} and sought to maintain it through such steps as those outlined by a Department of Social Welfare official, Harry Walker (Programme Director, Maori Unit, Department of Social Welfare Head Office) in his paper 'Whakapakari Whanau' {strengthening families}.*

1. *A shift in the power relationship where the whanau (family) makes the decision and not the Department.*
2. *A breaking down of the 'dependency' relationship - the feeling of 'us' doing it and not 'them' doing it for us or to us.*
3. *A practical way of an 'iwi' (tribe) being developed as a consequence of a WHANAU taking responsibility for decision making with the Department resourcing the process.*
4. *A practical demonstration by the Department to Iwi of its commitment to power sharing.*

> *This theoretical approach endeavoured to meet the philosophical aspirations of the Maori people and helped produce a model deemed applicable to all New Zealand families irrespective of their ethnic origins.*

Fears [Tapp,ibid 182] were expressed of, 'the scales being dangerously tipped in favour of family autonomy'. What is overlooked by the critics was the power of veto by professionals in section 30 of the Act. Our experience over the last six years indicates that the greatest fear for professionals arrives at the point of the 'private family time'. We have not got over our inability to trust that families can make decisions regarding safety and healing without us being present!

Critics have tended to feed from an irrational emotive trough. While they criticised the legislation as it passed through its stages of being a Bill they were never able to produce hard data to support their view, sufficient to influence the legislators to change their minds. Since its graduation to the status of an Act the criticism although somewhat muted has continued.

Their emphasis is always on the potential for the Act to fail, not on its potential to succeed.

To date the critics have not been able to conduct research that proves the basis for their mistrust of families to protect and care for children.

The critics will always drink from a glass that is half empty, supporters prefer to drink from a glass that is half full!

While families are still distrusted in some quarters, the principles of Family Decision Making embodied in the Family Group Conference and enacted in the Family and Youth Courts are being considered as an integral part of a restorative justice model. A model that is being mooted as appropriate for enactment in the adult court. The restorative justice model is being considered as a framework for criminal law in the adult courts.

The position we take is one of the advanced social work skill of seeking and finding strengths within families [Graber, L & Nice, J. 1992]. As workers our emphasis is to concentrate on the abilities of the family and use these as the foundation from care, protection, healing and reconciliation can grow. We appreciate that many practitioners will find this very different and confess that this too was our early social work experience. We had after all been trained in spotting pathology. The families and individuals we worked with played along with us. We looked for pathology, they supplied it. How many of us utter the word "problem" as one of the first in the rituals of engagement with the families with whom we work.

Our very narrow nuclear view of families which for New Zealand is mum, dad and 2.3 kids also makes it easy to rationalise our not being able to find strengths within families. The extended family is more often than not, unknown to the worker. Fathers who are working are frequently excluded in the discussion of family matters. In single parent households the family of the absent partner can and is often totally ignored.

We have successfully questioned the system of institutionalised state care and stranger foster care as appropriate first line alternate sources of child care. The act of removing abused children in to stranger care can we believe be considered as a further act of abuse.

PHILOSOPHICAL UNDERPINNINGS

We consider the family to be its own best expert. The philosophical position we have adopted is akin to that referred to by Anthony N. Maluccio ed. [1981] as:

> *competence-oriented social work which focuses on the strengths - sometimes hidden - that people have within themselves, and the resources in their environments they use to cope with their problems. Unlike medical models, which define the client's need in pathological terms, the competence approach views the social worker not as a therapist but as an enabling agent who assists the client in developing a repertoire of skills, knowledge and coping mechanisms. It is a perspective that builds on time honored social work methods and values as well as newer bodies of knowledge.*

From a New Zealand perspective the philosophy was certainly that relating to self determination of the indigenous people. This was extended to the general population pretty much at the same time. It was as earlier stated 'a model deemed applicable to all New Zealand families irrespective of their ethnic origins'.

We believe that empowering and strengthening families increases child safety and well-being. [Graber, 1990:9] Family members are the workers allies not the enemy. We recognise that all families have periods of stress and dysfunction. That, does not in our view make them dysfunctional. In that respect we consider ourselves to be more like the families we work with, than we are different to them. From the point of view of an indigenous worker this is certainly the case. In a New Zealand context the chances of us either working with our own Tribe or our own Race are high.

In adopting and using the strengths and competence oriented model of social work we are challenging the deficits model of social work. We continue to be surprised at the number of professionals who have difficulty in identifying family strengths. We question their skill.

While this is often a result of their education, it is also a result of viewing the family in a very narrow nuclear way. The mistrust is also as a result of the personal, family and class values and positions held by professionals in dealing with others they consider to be different. We recognise that all families have their own protocols for making decisions Doel & Shardlow [1993:153]. These change according to site, issue, context and membership.

The history of all peoples includes models of families (in their widest sense) accepting responsibility for their own children and indeed, exerting control over their members. They do this in a way which cannot be accessed by non-family members. [Wilcox et al. 1991]

In summary therefore the underpinning philosophy includes the following principles.

- Professionals have disempowered family/whanau by ignoring the strengths of the group and without whanau/family being actively involved as equals in decision making.

- All families regardless of their academic, intellectual or other capacities are capable of making decisions which keep children safe.

- The power and responsibility for decisions about care, protection and healing rests with the extended family.

- That families have the ability if given the opportunity to activate helping networks within communities to keep children safe.

- The preference is to keep children out of institutional and stranger care if at all possible.

PRACTICE ISSUES

1. Group size - workers often have difficulty in skilfully facilitating groups particularly where a group could exceed 40 people. Social workers are uncomfortable with having to facilitate large groups in the processes of conflict resolution and decision making.

2. Power - the ability and willingness of officials to relinquish the power and control over decision making. Whanau/family decision making is about families making decisions! [Rimene, 1994:86] *At a family meeting I tend to have a bottom line. This is what is acceptable to me as a representative of the department.... I need to explain that if we are involved then usually the case is serious, and the Department has bottom lines as to what is acceptable and what is not acceptable with regards to abuse of any sort. The family need to know what the Department's line is...* We are concerned that subtle and not so subtle official overtures are made to families at pre conference meetings and at Family Group Conferences, as to what an acceptable decision would be.

3. Power - families have their own decision making protocols and idiosyncratic ways of arriving at positions which address child safety. Professionals need to really examine how and who they would like to make decisions for members of their families in similar circumstances. Would they consider themselves to be the most competent and knowledgeable about their respective families?

4. Monitoring and enforcing the decision - our experience to date suggests difficulties arise if the information given to families is not clear, if there is inexperience and intransigence in negotiation by the workers and if the State does not accept its responsibilities to support as the intervener of last resort. [Rimene, ibid] *While objectivity by whanau members was trying to be maintained in the FGC, the information that was provided by the officials/practitioners was of a subjective and emotional nature, inhibiting the whanau decision making process.... We believe the officials in this FGC, distorted the FGC process, and that this had predetermined results".* Withdrawal of State support contrary to the principles of the Act can also lead to a breakdown in the process of family empowerment.

5. The ability to focus on the child and its needs - while fears by professionals still exist regarding the ability of families to protect children we believe, and it is our practice experience to date that it is an exception where the child is not the focus for care and protection. Critics have stated that the practice assumes that a family exists for all children. They add that not all children have a family. Such children do exist and they are often the creation of past State practices of adoption, stranger care and institutionalisation. The philosophy and practice of family decision making is however consistent with Article 3 of the United Nations Conventions on Rights of the Child which states:

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

6. Culture - is whanau/family decision making more suited to New Zealand or indigenous Maori constructs of family and kin. We would suggest that all cultures have families and all families have protocols of decision making. These vary depending on the issue, focus, site, number of participants present, or identity of those absent. Article 30 of the United Nations Convention on the Rights of the Child [Human Rights Commission, 1992:1] addresses indigenous rights and states that children who are indigenous:

   Shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess or practice his or her own religion or use his or her own language

7. Family Decision Making - Case Planning by another name? Our present and past experiences as practitioners indicate that they are different. Case conferences are traditionally seen as the place where formal decisions were made for care of children, this was a process where the professionals had total control. Families if they were invited were only present to listen and to agree to the experts making expert decisions about them. They were passive participants in a disempowering process. Family decision making means more proactive involvement by families.

8. Do the kids benefit? Our experience is that children do benefit and the benefits are maintained over a longer period especially when the families feel that the decisions really belong to them. We are acutely aware however that the success can only be achieved if we are for ever vigilant in monitoring professional behaviour to ensure it does not return to the days of children being removed from their homes by for questionable reasons. Time and professional release of the fear of not being in control over the lives of others will be only indicator of success of family decision making.

9. Values - we believe that the energy field for the philosophy and the practice of family decision making comes from the belief in the goodness of humans and a commitment to the maintenance or restoration of the humanness in all of us. If we do not believe in the goodness of families and we do not trust them can we trust ourselves? All of us here believe we are good do we not, we would also want the families we work with to trust us would we not? We after all, all belong to someone's family!

As the Paper is about a "Liberating Social Work Practice Based On Trust" I will end with these words from Paulo Freire [1972:36]

> ***They talk about the people, but they do not trust them; and trusting the people is the indispensable precondition for revolutionary change. A real humanist can be identified more by his trust in the people, which engages him in their struggle, than by a thousand actions in their favour without that trust.***

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The Illinois Family Conference Model

Definition

Illinois Family Conference is a community mediation program designed to deflect children from entering into the state's custody.

This family centered model involves extended **families** in the planning for the protection and the care of children whose parents face allegations of abuse or neglect. The Illinois project is an adaption of New Zealand's family conference model.

The model is based on the premise that families should be given and should take responsibility for creating a plan that will protect children and keep the family intact, with the state and community supporting and assisting the family in creating an appropriate plan. Family Conference uses the Task Centered Approach which promotes the inclusion of the family in defining and seeking solutions to remedy problems which pose a threat to the children affected. Families will be referred by the Department of Children and Family Services following an abuse or neglect investigation. Referred families must live in the project's local community.

The Illinois Family Conference model is divided into three phases.

Phase I *Pre-Family Conference: Orientation & Information Gathering*

The Family Coordinator contacts the immediate family members of the maternal and paternal extended families. The Family Coordinator schedules interviews with the family to;

- familiarize the family with the project.
- obtain consent forms for participation in the project.
- develop with the family an invitation list of participants in the process.
- assist in arranging an acceptable date and time for the first family conference meeting.

Phase II *Family Conference*

During the second phase the extended family participates in a series of meetings. These meetings are divided into two stages: information sharing and mediation.

Information Sharing
The Family Coordinator convenes the information sharing meetings with the immediate family, extended family, the State's Child Protective Investigator, and others considered important to the children or parents. The purpose of the initial meeting is to share information concerning the issue(s) which caused the call to the state's child abuse and neglect hotline. Services and service strategies which may be helpful to the family in

preparing a care plan for the children and the rehabilitation plan for the parents is also discussed. The information sharing stage may take 1 - 2 meetings.

Mediation

The family reconvenes for a confidential session with a mediator. The mediator is a neutral party whose goal is to assist the family in developing a plan which provides for safety and care of the children. Depending on the complexity of the issues and the number of children involved, mediation may take 1 - 3 sessions. The mediation session are private and confidential, attended only by the family members and the mediator. The family may also invite others important in the child/ren and parent(s') life. The family may also request the presence of the Family Coordinator for clarification or more information on issues and services.

The family's plan is sent to the protective service designate for review to ensure that it provides adequate protection and care of the child/ren. If the plan is not acceptable, the designate makes written comments on the plan's deficiencies. The family then comes back together with the mediator and revises the plan. The mediation process ends when a plan is accepted by the designate.

Phase III   Post-Family Conference: Follow Up

The family and the Family Coordinator meet to review the plan and to assist in getting services in place. The Family Coordinator can advocate on behalf of the family for services and/or resources. The Family Coordinator assigns a Family Case Assistant to the family to provide on-going support and monitoring of the care plan. Two or more family members can call for another mediation session if in the future the plan needs reworking, or if the family members feel another mediation session would be helpful. The Family Case Assistant will follow the progress the family is making in implementing the care plan for a six month period. After the initial 6 month follow up, the Family Case Assistant will re-contact the family on 3-6 month intervals.

ILLINOIS FAMILY CONFERENCE: MODEL STRENGTHS & EXPECTED OUTCOMES

o Critical Differences between Family Conference and Family First

The Family Conference Demonstration Project provides Illinois an alternative to the 1989-1992 Family First initiatives. Schuerman, Rzepnicki, and Little's (1994) Family First evaluation revealed that although the early Illinois Family First initiatives provided a multisystems training which emphasized the importance of involving families members in services, evaluation interviews suggested that workers were reluctant to involve extended family members in the development of initial service plans. Workers appeared to be in a quandary. They did not know who and how many family members to involve especially in light of time limited services. They believed that service planning with the primary caretaker was less complicated, clearer, and more straightforward. Individual counseling rather than a family focus was the main approach.

Generally the workers' beliefs and fears surrounding extended family members included thoughts that family members might be destructive and negative i.e. family members would be intrusive and judgmental necessitating the client's separation from these influences, involving family members would complicate the family dynamics, and that family members operated in collusion with clients by financially supporting clients who did drugs. They operated on a deficit model of family dynamics and believed that the clients preferred that family members not be contacted . Thus, the focus of intervention in the majority of cases was with the single mother and the parent-child dyad. This dyad approach may have had negative impact in the development of a extended family support system since outcomes in Family First improvements in the informal support systems were quite limited and disappeared over time.

The Family conference model will use a family-center approach where the single parent's and her child(ren)'s extended family are asked to work cooperatively to resolve issues of concern, using the collective family's strengths and resources. The extended family will be treated as a potent source for a prosocial support system for the family under report.

o Expected Outcomes to be Tested in the Demonstration Project

The family conference intervention is expected to enhance mother-child(ren)'s informal social support system (enriched versus social improvised family environment) and to maintain this system over time (6-12 months). The development of a reciprocal system of interactions is expected to ameliorate the tendency of the ecological resource "drain" associated with areas where there is low level of material and social resources(Collins & Pancoast 1976: Polansky 1976: Friedman 1976; Garbarino & Crouter 1978).

The Family Conference intervention is expected to develop an effective informal system of supportive, and protective behaviors monitoring the safety and care of the child(ren) victim of SCR reports.

The Family Conference intervention is expected to produce increased problem-solving skill including improvisational strategies and prosocial behaviors of the parent and the family members. In cases where there is a substance affected infant, the family focus and involvement of the extended family social support is expected to contribute to more successful outcome in the parent's engagement and consistency of involvement with drug services.

ILLINOIS FAMILY CONFERENCE BASED IN COMMUNITY ORGANIZATIONS

Shifting paradigms in social service delivery may be more about helping families gain control over their lives than about accessing professional services. [1] There is increasing evidence that community-based programs show the most promise in affecting child and family outcomes.[2]

The Family Conference (FC) Model's primary focus is to gather the extended family/community resources, and create an atmosphere that will allow the family to develop and initiate a plan for solving the problem that drew DCFS into their lives in the first place.

The Family Conference model in Illinois is one of the first to be housed in community-based organizations. By being housed and run by local community-based-organizations, FC is able to draw on the relationships that the organization has with service providers/institutions throughout the community. Thus community credibility and trust is incorporated into the FC model at conception. The philosophy of FC is one of incorporation, inclusion and empowerment. By being based in the community, FC is a place in the community, is relationships in the community, is community services and even involves community-based mediators (see section on community mediators).

After the family volunteers for FC and is oriented, they then identify key family/community members to become a part of the FC sessions. The FC information sessions may include key community members (i.e. teachers, ministers etc.). In addition the coordinator is well familiar with the array of programs/services that are readily available in the community, close to home, perhaps known, and perhaps less threatening to the families.

Actually, Family Conference is one way that the well known mantra of the 1990's "it takes a village to raise a child" can be accomplished. There's a problem, the family is contacted; the family is asked who they know, who they relate to, who is their family, and these persons are brought together. They then define the problem, to begin to know others in the 'village' and to begin to create a plan to solve the problem, piece by piece. The community then becomes a part of the family support system.

Family Conference is a way to keep the family independent of the child welfare system over the long haul, but connected to the family support systems in the local community. FC is designed to support the extended family in creation of a plan and in development of small steps to reaching the goals.

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[1]Bruner, Charles, "Toward Improved Outcomes for Children and Families", Occasional Paper #8: Issues in Developing Comprehensive Community-based Service Systems

[2]Ibid.,

ILLINOIS FAMILY CONFERENCE MEDIATORS

o Mediator's Role in Family Conference

Mediation is a private, confidential session with the extended family and a community mediator. The mediator's role is to assist the family in problem solving by exploring creative, realistic options for providing a safe and nurturing environment for the children.

o The Process of Becoming a Mediator

Requirements
Individuals seeking to serve as mediators must have good verbal and writing communication skills which are critical to conduct multi-party proceedings and to produce the written plan. Mediators should also have knowledge of the resources available in the community.

Mediators should reside in or near the community that the Family Conference program serves. Individuals serving as mediators will represent a cross-section of residents representing diverse professions and community involvement.

Application
Prospective trainees will be requested to complete an application and to provide a writing sample. Prospective trainees with strong applications will be interviewed by the Family Conference agency. Resource Alliance, Inc. will provide a model application and interview questions to screen the prospects. Prospective mediators who successfully complete the interview will be invited to join the mediation training.

Training
Mediators must *successfully* complete 40 hours of training provided by the Center for Conflict Resolution (CCR) in cooperation with RAI. The 40 hours of training includes intensive study and practice of communication tools and techniques, rigorous role plays, and a child welfare specific segment. CCR is providing the training free of charge requiring expenses only.

Trainees will be observed by experienced mediators who grade the trainees to determine if they meet criteria for being *safe and competent* (i.e., adherence to confidentiality and neutrality, not providing "therapy" during the session, not using coercion to extract agreement, appropriate use of communication techniques, etc.) necessary to be certified as a mediator. Trainees who successfully complete the training will be *certified* by CCR.

o Continued Training

Mentor Mediation
New mediators will start by co-mediating 2-3 sessions with an experienced "mentor" mediator. Mentor mediators will sit second chair to the new mediator, providing assistance to the new mediator if required. The mentor mediator provides feedback, advice, and support to help the new mediator feel comfortable with the process.

The mentor mediators will also provide feedback to RAI if the new mediator is having difficulty with the mediation process. Based on feedback from mentor mediators and evaluations completed by family members, *RAI may advise the Family Conference agency to pull a mediator from their pool* if the new mediator exhibits deficiencies in meeting basic criteria of being a safe and competent.

- **Stipends**

Community mediation is a *volunteer activity*. The community and mentor mediators will receive a flat-fee stipend to reimburse them for out of pocket expenses (transport, meals, childcare) incurred while performing this community service.

Family Group Conferencing Comes to the U.S.: A Comparison with Victim-Offender Mediation

By Mark S. Umbreit, Ph.D. and Susan L. Stacey, J.D.

A boy hesitantly appears in the doorway to a meeting room. A large man wearing a name tag greets him thoughtfully and points out where he should sit in the horseshoe of chairs in the room. The boy crosses the room, picks his name tag up off the chair, puts it on crookedly, and sits down. On his face apprehension alternates with bravado. As his mother and sister, done with hanging their coats, enter the room the boy begins to fidget quietly. The large man greets them and points out their places in the horseshoe of chairs; they find their name tags on their chairs and sit down on either side of the boy. Other people that the boy and his family are close to appear in the doorway, are greeted, and move to their seats farther down the arch of the horseshoe: his grandfather and cousin, his basketball coach, his school social worker, an elderly neighbor, and a member of his mother's church. Their faces, and those of his mother and sister, betray various emotions; grim calm, hopefulness, solemnity, foreboding, sadness, and quiet interest. When they are seated, the chairs on one side of the horseshoe arch are full. The investigating officer enters, and sits at the apex of the arch.

When they are all seated, the large man leaves the room and comes back with a group of people who have been waiting in a nearby room. The boy's victim enters the room first; she is a small, white-haired woman who shakes a little as she crosses the room and sits in a chair directly across the horseshoe from the boy. The boy glances quickly at her and then looks down and away to avoid her eyes. On her face, anxiety is swiftly replaced by surprise, relief, and then anger as she openly studies the boy across from her. Her daughter, a middle-aged woman, sits down on one side of her, and her teenaged grandson takes his place on the other side of the victim. The older woman's minister, two elderly women neighbors, and a middle-aged male friend find their name tags on chairs further down the horseshoe's arch. When they sit down they fill the last vacancies in the horseshoe of chairs. The large man who greeted them all takes his place on a chair at the open end of the horseshoe. He is the conference coordinator and the only one with whom every person present has spoken about this meeting. He smiles quietly, looks around the circle of faces, clears his throat, and begins the family group conference.

Dr. Umbreit is the Director of the Center for Restorative Justice & Mediation at the University of Minnesota and an associate professor in the School of Social Work. For the past 15 years, Dr. Umbreit has served as a program consultant and mediation trainer for the U.S. Department of Justice, working in more than 30 states. He is conducting the first cross-national study of mediation in criminal courts in Canada, England, and the U.S. Dr. Umbreit is the author of *Victim Meets Offender: The Impact of Restorative Justice & Mediation* (1994), numerous articles and monographs, and is a practicing mediator. His most recent book, *Mediating Interpersonal Conflicts: A Pathway to Peace*, was published last year.

Susan L. Stacey, J.D., is the Restorative Justice Associate Planner at the Minnesota Department of Corrections and a consultant with the Center for Restorative Justice in the School of Social Work at the University of Minnesota. She facilitates crime victim/offender dialogues and family group conferences for several Twin Cities agencies, including Minnesota Citizens Council on Crime and Justice and the Dakota County Community Corrections Victim-Offender Program, as well as mediating civil disputes. In her capacity with the Department of Corrections, Ms. Stacey uses experiential learning methods to train people in various models of face to face victim and offender meetings. She has been a trainee and a coach in REAL Justice family group conference trainings.

The concept of restorative justice has been receiving an increasing amount of attention from juvenile justice officials throughout the country. Restorative justice focuses upon elevating the role of crime victims in the justice process and holding offenders directly accountable to their victims and victimized community. It emphasizes the importance of victim offender dialogue whenever possible, restoration of victim losses, and the need for active community involvement in preventing crime, working with offenders, offering support to victims, and building safer communities. This new concept of restorative justice is beginning to help reshape policies and programs in a growing number of locations.

One of the newest interventions with great potential for extending the impact of restorative justice principles is being introduced to our nation by judges, probation and school staff and police from New Zealand and Australia. Family group conferencing is just beginning to be understood in the context of the American juvenile justice system. Conferencing is both quite similar, yet also clearly different, from a more well known restorative justice intervention with a lengthy history of practice in the U.S., that of victim-offender mediation. Confusion has already developed about how exactly conferencing is different or similar to mediation. In the years to come, we are likely to hear far more about this new restorative justice intervention and about the research that has already been initiated. The purpose of this article is to describe the Australian Family group conference model, to compare it to the victim-offender mediation process used in more than 150 communities throughout the U.S., and to identify the strengths and limitations of both models. While the conferencing model began in New Zealand and was implemented throughout that country in 1989 with the passage of the "Children, Young Persons, and Their Families Act," this article will focus upon the model developed in Australia in 1991 since this model is being actively promoted in the U.S. through nationwide training events and publications.

Family group conferencing ("FGC") was introduced to North America by Transformative Justice Australia -- a group of five Australian public servants -- and the REAL Justice organization in Pennsylvania through two intensive training sessions in Pennsylvania in the winter of 1995, with additional training sessions to be offered in other parts of the U.S. (McDonald, O'Connel and Thorsborne, 1995). It is a process which assists police, school officials, and probation officers in responding to juvenile crime and school misconduct (Wachtel, 1995). Based on a traditional ritual Maori (the native people of New Zealand) for resolving conflicts and quite similar to other native traditions in North America, family group conferencing allows some offenders who admit their guilt to participate in a conference that would include the offender's family and important friends, the victim, and the victim's family and friends. This conference would typically be coordinated by a police officer or school official and it would focus upon discussing the offense, its impact on all involved and development of a plan for the offender to repair the harm caused by the incident.

Rather than emphasizing punishment through "shaming and blaming," the FGC model stresses the importance of "reintegrative shaming" (Braithwaite, 1989) through a process which is healing to all affected by the crime. The criminal behavior is denounced while the individual offender is affirmed and welcomed back into the community to pursue a more productive and law abiding existence. Victims particularly are offered a ritual to gain a greater sense of closure through active participation in holding the offender directly accountable to them.

FGC seems to be a natural expansion of the dominant model of victim-offender mediation ("VOM") currently being used by most of the over 175 programs in North America and by an even larger number of programs in Europe. VOM facilitates a conversation between the parties (most often strangers). Victims are provided an opportunity to express the full impact of the crime upon their lives, to receive answers to any lingering questions about the incident, and to participate in holding the offender accountable for their actions. Offenders can tell their story of why the crime oc-

curred, how it has affected their lives, and can make things right with the victim through some form of compensation. While negotiation of a restitution agreement usually occurs, it is viewed by most VOM programs as secondary to the importance of first talking about what happened and how it has affected both victim and offender. This VOM model, which emphasizes a direct dialogue between the victim and offender and a non-directive style of mediation that encourages expression of feelings, is quite different from the more widely recognized and used civil court mediation model, which nearly always involves disputes among people who know each other and which is far more legalistic, directive and settlement driven.

Comparison with Victim-Offender Mediation

The Family group conferencing in Australia, while emphasizing work with juvenile offenders who had committed property crimes, has also been used with violent juvenile crime and adult offender cases as well. This use is consistent with the experience of victim offender mediation in North America over the past 20 years. The FGC process has several potential advantages over the current VOM process which make it not just a new technique to enhance the basic VOM model but a valuable entirely new process for those committed to restorative justice to learn from and use.

The power of FGC comes not just from the restorative justice values embodied in it but also from the characteristics which distinguish it from most VOM models. Family group conferencing:

- *Involves more people in the community* in the meeting called to discuss the offense, its effects, and how to remedy the harm,
- *Acknowledges a wider range of people as being victimized* by the offense, and explores the effects on those people: the primary[1] victim, people connected to the victim, the offender's family members, and others connected to the offender.
- *Gets a wider range of participants to express their emotions about the impact of the crime and to be potentially involved in assisting reintegration of the victim and the offender into the community,* and
- *Makes more deliberate distinctions in the meeting between condemning the offense versus condemning the offender.*

There are many similarities between the VOM process (particularly those programs based on the early VORP model) and the FGC process but there are also some distinct differences. Like VOM the focus in FGC is on the *specific offense*, the effects of the offense on people, and how the offender, the victim, and the community can figure out ways for the offender (with the community's assistance) to remedy the harm caused by the offense. Both processes typically take place only when the offender admits committing the offense. Both processes seek to help the participants move from their positions of anger, fear and shame, into the acquisition of new information and possible surprise at that information, to formulation of and even potential enjoyment of a constructive resolution of the destructive behavior. Both processes involve members of the community besides the victim(s) and offender(s) and seek to strengthen community bonds.

Case Preparation

As with VOM programs, a FGC coordinator prepares participants before their joint meeting by reviewing with them the process which will be followed, the conference goals and what will be expected of them at the conference. One difference in FGC and VOM pre-meeting contacts is the form of the contact: for FGC the contact may be by phone or in person depending on the program context (e.g., school or police) and the coordinator; for most VOM programs the contact sought by the mediator is a personal meeting with each offender (and parents) and victim (and supporters). The other difference in FGC and VOM pre-meeting contacts is the remainder of the contact's purpose.

Many FGC coordinators specifically choose not to hear the parties' stories because it might lessen the impact on the party telling the story at the conference, lessen the coordinator's objectivity, and cause the party to relate to the coordinator rather than the participants at the conference. Most VOM mediators, however, make hearing each party's story part of the premeeting contact for the purpose of becoming familiar with the situation, drawing out details which the party will need to speak about without prompting at the joint meeting, and to build rapport with the person without becoming their advocate. In VOM, this premeditation contact with the involved parties requires the following tasks of the mediator: active listening (to the person's story of what happened and how it affected them), program explanation, establishing rapport, and creating a sense of safety in terms of expectations. The ability of the mediator to be quite non-directive during the actual joint mediation session, which is the essence of genuine dialogue rather than a manipulated settlement driven process, is directly related to the premediation contact and preparation of the parties by the mediator.

Joint Session with the Participants

When the parties' joint meeting takes place the FGC coordinator, like the VOM mediator, strives to establish a calm, affirming atmosphere, however, in contrast to a VOM mediator, the FGC coordinator actually *appears* to be less rigidly in control of the process while *participating* more in the course of the exchanges. For instance, the VOM process may give a mediator the traditional mediation option of calling a time out for a private caucus in separate rooms with each of the involved parties in order to clarify information or work toward preventing an impasse (although in actual practice this is infrequently done). FGC coordinators, however, are urged to not interrupt the meeting, not split the participants away from each other, and not intervene in a way which makes the coordinator the focal point of the session. And while VOM mediators are usually taught to *avoid* prompting offenders or victims with questions to draw them out during their face to face meeting, a FGC coordinator follows a script which requires asking participants specific questions to draw them out during the conference meeting. Interestingly, those scripted questions are very similar to the questions many VOM mediators use during the premediation meetings to help each party formulate his/her story for the mediation. Both models apparently recognize the same information as important for the parties to hear from each other.

Recruitment of Participants

The FGC coordinator's goals in recruiting the participants for a conference are to find: the people whom the victim and offender want to have attend for support, other people (or representatives of the people) who have been harmed by the offense, the people whose opinions the offender cares about (who may well be non-relatives), and at least one person who will probably be willing to openly express their emotions at the meeting. It is important to have people whose opinion the offender values because it is often those people's comments in the conference which lead the offender to a deeper understanding of the harm s/he caused and to greater remorse. It is important for the conference to have someone who will express their emotions because it takes one person expressing emotion to trigger, justify, and provide permission for the others to express their emotions. "Emotionality" -- expression of the participants' emotions in the conference -- is said to be critical to the process's short-term and longer-term successes.

Getting the participants to talk about their feelings lets them fully explore the harms caused by the offense (thus validating the victims' feelings, and acknowledging the victimization of secondary and tertiary victims not otherwise acknowledged by the community). It is important as a way of reaching a recalcitrant offender by identifying the broader range of effects her or his actions had upon other people. Others' expressions of emotion encourage the offender to express remorse more fully rather than acting tough or uncaring. Open expression of feelings is also important as a way of "clearing the air" -- letting the victim and other partici-

pants let out and release feelings they may not have been able to even name before coming to the meeting -- so they may move on from the incident and start healing. It lets participants see each other in a different light (beyond the labels "offender's mother" and "victim's wife", etc.), and find common ground and identification with each other because of the greater understanding thus brought, and it creates bonds between the participants in the very course of the meeting which can be lasting (and so strengthens the community). In contrast, VOM often encourages only expression of feelings by the victim and the offender (any support people present may be asked not to speak at all until the end), and only under the constraints of general mediation rules -- no disrespecting, no interrupting, and speaking only at appointed times -- which make sense in a mediation setting but could have the effect of implying greater restraint of expression than is necessary.

Distinction Between Criminal Act and Offender

One of the tenets of FGC is to make a clear and repeated distinction during the conference between the destructive act and the offender who acted. To have that distinction made, the FGC coordinator must bring participants to the conference who believe in the offender as a person and agree the offense was inappropriate and the coordinator must elicit statements to that effect during the conference. This is part of what the Australian FGC coordinators call "maximizing positive affects (expression of emotions) and minimizing negative affects while still allowing emotionality" in the conference. They feel it is the key to a successful conference. Having the participants express disapproval of the offense while also having at least some participants affirm the inherent worth of the offender can be important for the victims' understanding, resolution of their feelings, and assuasion of their fears of future revictimization by the offender. It is equally important for the offender and the offender's generally shamed and angry family members to hear other participants' messages that the offender is worthy of redemption as a reminder that all has not been lost for the offender *or* for the family just because of the offense -- i.e., to reassure them that the offense has not permanently set them outside the community. While the VOM process acknowledges the distinction between act and actor the process does not take special steps to emphasize that distinction in the meeting.

Community Involvement

Another difference between the typical VOM model and FGC is the form which the community's involvement in the process takes. Most VOM programs provide community involvement in the form of volunteer mediators and assistabce in placing offenders in paying work and volunteer work positions they can use to make restitution. In FGC the community's involvement is in the form of individual people other than the primary victim and offender, who participate in the meeting to help resolve the offense. Those people come to the meeting because they are part of a community of care for the victim or the offender, because they are or represent additional (secondary) victims, or because they are willing to become a new resource for the victim or offender. Once there they can offer reactions to the crime, restitution ideas, and opportunities for implementation. According to the experienced Australian FGC coordinators they also frequently stay involved with the victim and/or offender afterwards, contributing support and monitoring of the restitution agreement.

Coordinator's Role and FGC Process

When a family group conference actually gets started the coordinator's role is to establish a calm, supportive atmosphere and to ask unobtrusive, brief questions of the participants to elicit the offender's and victim's stories and thoughts about the offense, the other participants' reactions when they heard about the offense, and everyone's views of the consequences of the offense. Just as many VOM mediators are taught, the coordinator's role also involves honoring silences which partici-

pants place in and between their statements; the coordinator does that by not jumping in to take over or move the process along (which many traditional and more directive civil court mediators would do).

The speaking order in a conference is to begin with the offender(s) speaking first, move to the victim(s), then to the victim(s)' supporters, and then to the offender(s)' community of care members. In many VOM programs this order of speaking would be different. The victim would frequently be given the opportunity to speak first, to show added deference to their status as a victim (since they receive so little attention by the criminal justice system and are often revictimized by its process) and to maximize the impact of the victim's story upon the offender. In FGC, when all people except the investigating officer have spoken, the participants generally move of their own accord into talking about restitution. The coordinator facilitates this by making sure the victim(s) are asked first what they want, then the offender is asked to respond, and then there is plenty of general discussion time which may include brainstorming additional options. When an agreement is reached the investigating officer is asked to comment on the restitution plan. The participants break for refreshments while one of the coordinators writes up the agreement. The agreement is signed by either the offender, the offender's parent and the victim, or else everyone in the room.

From observed role plays and comments from FGC trainers in the first training in the U.S., conference participants' emotions tend to change during the meeting in the same way VOM participants' emotions do -- e.g., some of the victim's anger and powerlessness transforms into greater understanding, comfort and power -- but FGC coordinators caution that much of the final transformations occur during the communal refreshment period and in the days following the conference.

Potential Dangers in FGC Replication in U.S.

While the Family group conference model from Australia clearly has a great deal of potential in furthering the goals of the restorative justice movement in North America and Europe, a number of potential dangers are also present. Based upon the nearly twenty-year experience with many thousands of cases in victim-offender mediation programs in North America it would be naive to ignore these possible dangers and unanticipated outcomes, particularly since similar concerns have been raised by some in Australia (Alder and Wundersitz, 1994) and the first actual attempt in the U.S. to do the FGC model by a police department in Minnesota reflected some of these concerns. At least four potential dangers could dramatically impact the integrity and substance, rather than the appearance, of the Family group conference model. These potential dangers also reflect likely cultural differences in adapting the Australia model into North American, and specifically U.S., culture.

The presence of so many adults, including a police officer in uniform, may be so intimidating to young offenders that they do not feel safe enough or comfortable enough to open up and share their feelings and thoughts. This is precisely why many victim-offender mediation sessions usually have no parents present, even though parents were informed of the VOM process and their permission for their son or daughter's involvement was granted. It has long been recognized in the VOM movement that the presence of parents, not to mention additional adults, can interfere with the process of the juvenile offender's truly "owning up" to his or her criminal behavior and feeling comfortable enough to talk about it in a genuine way. This has not appeared to be a problem with the FGC model in Australia. However, as the model is adapted for use in the United States, it will be important to ensure that the process truly creates an environment in which the young person feels safe enough to actively participate and express their feelings instead of the conference being dominated by adults talking at or about the offender.

While the FGC model emphasizes the importance of serving victims, unfortunately, by routinely beginning with the offender's story and by limiting choices presented to victims (such as where they would feel the safest or

Table 1
Comparison of Family Group Conferencing & Victim-Offender Mediation

	Family Group Conferencing	Victim-Offender Mediation
Goals	- Offender accountability - Victim involvement and healing - Restoration of victim losses - Active participation by all victims, offenders, support people, and families - Condemnation of the criminal behavior, not the individual - Reintegration of victim and offender in community	- Offender accountability - Victim involvement and healing - Restoration of victim losses - Active participation by all victims and offenders in a direct face-to-face dialogue with each other, with the mediator in a nondirective role - Conflict resolution
Offender participation	Required, if victim is willing	Voluntary choice
Victim participation	Voluntary choice.	Voluntary choice
Primary Referral Src.	Police officers or school officials	Judges, probation staff, or prosecutors
Contact with Parties Before Joint Session	The FGC coordinator contacts all participants by phone and may occasionally meet with each side separately. Phone contact only with participants other than victim/offender	The mediator contacts the parties (victim and offender) by phone and usually meets separately with each party.
Primary Objective of Prior Contact	To explain the process; to find out from the victim and offender who else should participate in the process; and to secure their willingness to participate in the process.	To explain the process; to hear the person's account of the offense, feelings, and repercussions; to build rapport and trust; and to secure their willingness to participate in the process.
Typical Place for Joint Session	A meeting room in a police department, social welfare office, school, or community building.	A neutral setting such as a meeting room in a library, community center, or church. Occasionally in the victim's home if requested/approved by parties.
People Present for Joint Session	Victim(s), support people for victim(s), offender(s), support people for offender(s) (i.e. parents or other adults), FGC coordinator.	Usually the victim, offender and mediator. Some programs also have the offender's parents present and support people for the victim.
Primary Role of Coordinator or Mediator	To encourage and recruit participants; to set up the conference meeting; to maintain a meeting atmosphere which tolerates silence, pauses and powerful displays of emotion; to facilitate the participants' condemnation of the offense and affirmation of the victim(s) and offender(s); and to record the parties' agreement.	To educate the parties so they can make a voluntary informed decision about participating; to help prepare the parties for their participation in the joint meeting; to provide a safe and respectful atmosphere in the mediation session which tolerates silence and pauses; to facilitate a dialogue in which emotions can be expressed, information shared, and a restitution agreement negotiated.
Typical Agenda for Joint Session	Introductions, ground rules, process explanation by coordinator; offender tells his or her story and others respond to it; parties discuss event and express concerns; restitution discussion.	Introductions, ground rules, process explanation by mediator; the victim and offender tell their story, often with victim going first; parties discuss event and express concerns; restitution discussion.
Typical Length of Joint Session	45 - 75 minutes	45 - 75 minutes

most comfortable to meet or whether they would prefer to begin the conference with their story), the model may inadvertently mirror the traditional criminal justice system and its totally offender driven nature. If the FGC model becomes experienced as or even perceived as not being sensitive to the victim's emotional, informational and participation needs, it will defeat one of its main purposes and be likely to trigger resistance from the larger victims' movement.

Because the FGC model is so closely linked to early intervention by police or school officials it could easily fall prey to the frequent and well documented American pattern of new and alternative juvenile justice programs taking the easy cases, many of which would have dropped out of the system in the first place. The Australian FGC model, particularly the program in Waga Waga, does not appear to experience this problem. In Waga Waga, cases referred to the FGC included felony level offenses such as robbery, burglary and even arson. However, this concern of probable "net widening" -- identifying and labeling very minor cases that would have largely self-corrected on their own with little intervention by the justice system -- is particularly on point within the United States which has a long history of net-widening in new early intervention juvenile justice programs.

Police officers and school officials play a critical role in the FGC model, particularly as coordinators of the actual sessions (a role that is actually quite similar to facilitation or even mediation). Precisely because of this it is extremely important that these public officials be trained to consistently suspend or put aside their normal highly authoritarian role as a police officer or school official. Once again, this has not appeared to be a major problem in Australia. Given the different police culture in the United States (when compared to English and Australian tradition), however, the ability of police and school officials to serve in a more neutral and facilitative role could be a problem and needs to be closely monitored as FGC programs begin developing in more communities. If conference coordinators fall into more authoritarian leadership and communication patterns the process could actually lead the offender to experience the conference as "shaming and blaming," or even as a process of "breaking down the kid and then trying to build them up" rather than as "reintegrative shaming" in which the criminal behavior is denounced but the offender is treated with respect and feels safe enough in the presence of so many adults to open up and express him- or herself.

Conclusion

Advantages in the family group conferencing process over victim offender mediation arise from the FGC format which involves a wider range of persons affected by the incident, its emotions-on-the-table atmosphere, and its deliberate effort to maximize the positive messages in the meeting to distinguish between the offense and the offender. By bringing a larger number of involved parties together, the FGC model creates a potentially more powerful experience at the meeting, acknowledges more of the harm caused by the offense, provides more people who can affirm the victim and offender, creates bonds between more community members, and creates a broader network for reintegrating the victim and offender into the community. The reintegration ritual at the end of each conference, during which an informal time of refreshments and conversation is scheduled, is a particularly nice feature that is rarely made available in VOM programs.

On the other hand, victim-offender mediation has a demonstrated and well documented twenty-year history in North America. The experience of a mediated dialogue between the victim and offender in a less public setting, has consistently been shown to result in: very high levels of participant satisfaction and perceptions of fairness; reduction of fear in victims; far greater likelihood of victim restitution actually being completed by the offender; less likelihood of further criminal behavior by the offender; and a willingness to recommend the process to others (Coates & Gehm, 1989; Galaway, 1988; Galaway & Hudson, 1989; Gehm, 1990; Marshall & Merry, 1990; Nugent & Paddock, 1995; Schneider, 1986; Umbreit &

Coates, 1992,1993; Umbreit, 1985, 1986, 1988, 1989a, 1989b, 1991a, 1991b, 1993a, 1993b, 1994a, 1994b, 1995a, 1995b, 1995c; Wright & Galaway, 1989; Zehr, 1990). As the family group conferencing model receives more attention in the U.S., the focus should be less upon distancing it from the lengthy and rich experience of victim-offender mediation in more than 150 communities throughout North America (and an even larger number of programs in Europe) and more upon how the two interventions can complement each other and learn from each other's strengths and limitations. FGC and VOM can be enriched by recognizing how each intervention compensates for some of the weaknesses in the other model. Perhaps advocates of each model can even begin exploring the possibility of a two phase process in some cases which integrates the major strengths of both. Such a collaborative effort could develop an intervention that first involves a typical VOM session, to emphasize and maximize the impact upon the individual victim and offender, followed by a FGC session which emphasizes and maximizes the broader family and community context of the crime and its impact upon all the involved parties. Together, family group conferencing and victim-offender mediation represent two of the most powerful interventions to breathe life into the theory and practice of restorative justice.

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Notes

[1]Our designations of "primary," "secondary" and "tertiary" victims, where they appear, are purely our construct and not any designation used by Transformative Justice Australia or REAL Justice.

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ELDER ABUSE/ADULT PROTECTIVE SERVICES

By Jo Hill

Administration on Aging--Contract No. 105-86-1001

Child abuse and wife beating are common knowledge in today's society. Since the late 1970s, a third form of family violence has gained public attention: elder abuse. In its most shocking form it consists of actual physical abuse of an elderly person. In a less dramatic but more common form, it includes exploitation, neglect, and psychological mistreatment. National research concludes that the majority of cases are neglect, incompetent caregiving, or a caretaker's physical or mental inability to provide the level of care required. Culturally, these findings may vary somewhat.

In 1981, the First National Conference on Abuse of Elder Persons was held. Since that time many states have adopted an elder protective services system. Today, many American Indian tribes are currently following these steps as they identify with the need to help their elders.

Research states that the victims range in age from the low sixties to the high eighties with most cases clustered at the upper end of the curve between ages 75 and 85. In all studies and reports there are more female than male victims, with ratios running as high as 4 to 1 (probably because women greatly outnumber men in that age range). Most victims are frail or suffering from a debilitating chronic illness or gross physical or mental impairment. Most victims are in the lower socioeconomic strata, but a significant number are in the middle and affluent social classes.

In most cases, the person committing or otherwise responsible for the neglect or abuse is a member of the immediate family: daughter, son, husband, or wife. Daughters-in-law and sons-in-law are also implicated in significant numbers, and there is a scattering, among the offenders, of grandchildren and nephews. In a large proportion of cases the victim and the offender live in the same household.

Searching for explanations of why some people neglect and abuse their aged relatives, it is, in many cases not necessary to look beyond the difficulties and stresses the caretakers themselves are experiencing.

They themselves may be advanced in years and enduring some of the problems attendant on old age. They may be suffering from debilitating illness, problems of vision and hearing, physical handicap. Because of failing mobility and energy they too, may be incapable of performing the physical tasks involved in homemaking and housekeeping, especially if the aged dependent person is

senile and incontinent or bedbound. The caretaker may have had to stop working because of age or illness, with consequent severe reduction in financial resources.

They make lack the ability - financial, emotional, or physical ability to take adequate care of themselves, and then they are entirely overwhelmed by the additional burden of a helpless aged relative. Because of social isolation or language barriers or ignorance, they may be unaware of community services available to them and to the aged relative without any cost; or, knowing about them, may lack the initiative or know-how to enlist these services.

The image of the extended family household of the past as a place where the aged were dutifully and lovingly cared for has been questioned by many as to its reality. However, in many American cultures, including the American Indian, the extended family household was a reality and exists today with obvious changes taking place. Social and economic changes of the past decades have weakened such ties.

Some of the responsibility for taking care of the elderly has fallen on government resources and services. Social Security, Medicare, senior centers, and other voluntary and government programs for the aged have certainly influenced attitudes in caregiving for elderly family members. Neglect and abuse are among the consequences.

ESTABLISHING AN ELDER ABUSE PROGRAM

As mentioned above, many tribes are enacting elder abuse laws into their tribal codes and establishing elder abuse programs to assist their elderly. The laws encourage older persons in abusive situations to turn to community resources to relieve abuse. It also requires that efforts be made to provide help to victims in their homes. It is based on the assumption that most older adults are able to make their own decisions about how to solve their problems. It encourages them to take action without fear of their decision.

When a report of suspected abuse to an elderly person is reported to the tribal elder abuse program, an investigation will be made by staff. Every situation should be handled professionally and responded to in such a manner to ensure the elder person's safety and welfare. The program should provide overall coordination with other tribal agencies in the community to provide services during the investigation. All findings, reports, and work should be kept strictly confidential to protect the privacy of the elder.

When planning an elder abuse program there are several factors to be given consideration. These may include the following:

What may determine elder abuse?

*Physical violence
*Financial exploitation
*Neglect
*Emotional/Mental abuse
*Violation of an elderly person's rights
*Sexual abuse
*Harassment

Who are "at risk" victims?

*Age 55 or older
*Dependent on someone else for basic needs
*Suffering from a physical or mental illness
*Living alone

Suggested community resources to coordinate with

*Department of Social Services
Office of Adult Services and Aging
*Mental Health Centers
*Public Health Service
*Indian Health Service/Hospitals & Emergency Rooms
*Elderly Nutrition Programs
*Housing Authority/Assistance
*BIA Law Enforcement

It is important that planners and advocates of protective services for the elderly work closely with national and state policies which recognize that the family and the government are complimentary partners in providing care to needy elders. This may be, in the long run, an essential step to avoid placing increasing numbers of elders in jeopardy of abuse and abandonment and to avoid the assumption of even greater costs for total care by the government. It should be kept in mind that communities and states differ in many ways, including financial means and existing service delivery patterns. There is not yet sufficient experience for delineating one "preferred model", however, there are several existing tribal programs that can be used as possible models and for guidelines.

Determination of the services needed and formulation of a program can be made by an assessment team that, ideally, includes a physician with geriatric experience (or a nurse clinician under the direct supervision of a doctor), a trained human services professional with experience in working with the elderly, a tribal lawyer, and possibly a psychiatric social worker. If none of the above are tribal members or workers, a person directly associated

with the elderly may be included, i.e., Title VI directors.

Persons involved with these programs are being encouraged to report suspicious happenings and should be aware of the signs of possible elder abuse. These signs include: abrupt negative changes in physical appearance; inappropriate behavior such as extreme fear, asking to die, or extreme anger; bad attitude on the part of the caregiver along with deteriorated or isolated living quarters.

Relative to any protection program is "prevention". Basic to any prevention strategy for elder abuse is recognition, awareness, and education. It is essential that the elders and their families be aware of the possible problems, services, and assistance available and contacts for help. Since the bulk of in-house services to the aged is provided by family members it should be clear that if the caretaking demands exceed the family's resources and tolerance for stress, a call for "help" can provide assistance which enhances the caretaking role.

Another consideration when planning a protective program is to include the elders themselves in the planning process. They should be encouraged to participate for it is their experiences, their wisdom, their suggestions, and their guidance that will help make these programs a success.

ELDERLY & ADULT PROTECTION CODE

HANDBOOK

What is the purpose of the Elderly & Adult Protection Code? The purpose of the code is for the protection of the elderly and incapacitated adults against abuse and exploitation.

What is an elderly person? A person who is 55 years of age or older.

What is an incapacitated adult? An adult who has a physical and/or mental impairment or illness; is a chronic user of drugs or alcohol; or from other cause's is unable to make responsible decisions concerning his/her person or property.

What is abuse? Abuse is the intentional infliction of physical harm; injury caused by negligent acts or omissions; unreasonable confinement; sexual abuse or sexual assault.

What is exploitation? Exploitation is the illegal or improper use of a person's resources for another's profit or advantage.

What is a Protective Services Worker? Protective Services Worker is a person who has been selected and trained by the Social Services Department to provide protective assistance to the elderly and incapacitated adults.

How does a Protective services worker provide protective assistance? First the Protective Services Worker receives reports and information regarding adults and elderly in need of protective services. After receiving a report, the Protective Services Workers makes an evaluation to determine if protective services are needed and what services are needed. If protective services are needed, they are offered to the elderly or incapacitated adult, or guardian if applicable. The Protective Services Worker may also file a petition for the appointment of a guardian or conservator if it is determined to be in the best interest of an elderly person or incapacitated adult.

2. Can the Protective Services Worker be appointed guardian or conservator for an elderly person or incapacitated adult? No, the Protective Services Worker can only file the petition for the appointment but may not be the appointed guardian or conservator.

Who reports abuse or exploitation of the elderly and incapacitated adults? Anyone having knowledge of such abuse or exploitation may make a report to the Protective Services Worker or any peace officer. However, the following are required to make such reports: a physician, hospital intern, or resident, surgeon, dentist, psychologist, social worker, peace officer, anyone who is responsible for the care of an elderly person or incapacitated adult, an attorney, accountant, trustee, guardian, conservator or tax preparer.

Who does a guardian or conservator report to? The guardian or conservator of an incapacitated adult or elderly shall immediately make reports of abuse or exploitation to the Tribal Court.

Is a person making a report or complaint immune from civil and criminal liability? Yes, persons making a complaint, furnishing a report, information or records, persons participating in the program or judicial or administrative proceeding or investigation resulting from reports is immune from civil and criminal liability unless the person has acted with malice or is charged or suspected of incapacitating, abusing, exploiting or neglecting the elderly person or incapacitated adult in question.

Is there a penalty for failure to make a report of abuse and exploitation? Yes, anyone required to make a report and fails to do so is subject to imprisonment not to exceed 365 days or a $5,000.00 fine or both.

How are reports made? Reports can be made to a Protective Services Worker or peace officer in person or by telephone immediately upon belief that an elderly person or incapacitated adult is being abused or exploited. All reports must be followed up with a written report within 48 hours or the next working day if the 48 hours expires on a weekend.

What should written reports contain? Written reports must contain: the name and address of the abused or exploited person and the name of the person charged with their custody or control; the victim's age and nature and extent of incapacity; a statement regarding injuries, physical neglect or exploitation of the incapacitated adult or elderly person; and any other information which may be helpful regarding the cause of injuries, neglect or exploitation.

3. **Can anyone take photographs, request medical examinations or audits?** Yes, a peace officer, Protective Services worker, or the Court may take or cause to be taken photographs of the abused person and the vicinity involved; they may request medical examinations, including X-ray and may also request accounts, inventories or audits of the victim's property.

Are psychiatric records available? Psychiatric records may be made available, however, personal information about individuals other than the patient and information which the psychiatrist certifies in writing that would be detrimental to the patient's health or treatment may be excised from the records. Upon application by a peace officer or protective service worker, the tribal court may order that the entire psychiatric record or parts of the record containing information relevant to the case be made available to the peace officer or protective service worker investigating the case.

Is any information privileged in civil or criminal litigation? With the exception of the attorney-client privilege, no information shall be considered privileged communication in any civil or criminal litigation involving an incapacitated adult or elderly exploitation abuse or neglect.

Can a clergyman be examined as a witness? A clergyman or a priest may not be examined as a witness without his consent.

Can the Court order restitution? Yes, the Tribal Court may order a person found to be responsible for the abuse, neglect or exploitation of an elderly person or incapacitated adult to make restitution.

Is there a legal responsibility to care for the elderly and incapacitated adults? Yes, any person responsible for the care of an elderly person or incapacitated adult, whether by employment, assumed legal duty or court appointment, who causes or permits the life of the person to be endangered, his/her health to be injured, or to be imperiled by neglect is guilty of a criminal offense.

What is the penalty for permitting life or health of an elderly person or incapacitate adult to be imperiled by neglect? The criminal offense for permitting the life or health of an elderly person or incapacitated adult to be imperiled by neglect is punishable by imprisonment not to exceed 365 days or a fine not to exceed $5,000.00 or both.

4. Who can file an action against someone who fails to care for an incapacitate adult or elderly person? An elderly incapacitated adult whose life or health is being or has been endangered, injured or imperiled by neglect, abuse or exploitation may file an action in tribal court against any person or enterprise responsible for his care for having caused or permitted such conduct; or, the tribe may file an action on behalf of those persons endangered, injured or imperiled to prevent, restrain or remedy the abusive conduct.

If civil proceedings are filed against a person charged with abuse or exploitation, can criminal proceedings also be filed against the person? Yes, civil proceedings are remedial and not punitive, other civil remedy or criminal action is not limited by civil proceedings. Further, a person convicted in a criminal proceeding is precluded from denying the acts for which he was convicted in civil proceedings.

What court has jurisdiction over this code? The tribal court has jurisdiction to enter orders to prevent restrain and remedy the abusive conduct, after making provisions for the rights of innocent persons affected by such conduct and after hearing or trial, as appropriate.

What orders can the court make prior to a determination of liability? Orders prior to determination of liability which the court deems proper may include, but are not limited to: restraining orders or temporary injunctions and other actions including acceptance of satisfactory performance bands, the creation of receiverships and appointment of receivers, and the enforcement of constructive trusts.

What orders can the court make after a determination of liability? Orders of the court after the determination of liability may include, but are not limited to ordering: payment of damages, costs of suit and reasonable attorney's fees to the injured person; and payment of all costs and expenses of prosecution and investigation incurred by the tribe.

Is a record kept of the names of persons against whom civil or criminal complaints have been filed pursuant to this code? Yes, the Tribal Prosecutor must maintain a registry containing the names of person or enterprises against whom civil or criminal complaints have been filed pursuant to this code.

5. What other information is kept in the Tribal Prosecutor Registry? Along with the names of the person whom the complaint is filed against, the dates of conduct set forth in the complaint, the general nature of the complaint and the disposition of the complaint is also contained in the Tribal Prosecutor Registry.

Can a person against whom a complaint is filed present a written statement to the Tribal Prosecutor? Yes, a person or enterprise

whom a complaint has been filed against may present a written statement in his own behalf to the custodian of the registry. The statement becomes part of the record.

Is the Tribal Prosecutor Registry public information? Yes, the information in the registry is available to the public upon written request.

Does the codes provide any immunity for a person providing information to the Tribal Prosecutor Registry? Yes, a person or agency that distributes information in the registry in good faith is immune from civil liability or criminal penalty based on the release of the information.

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URBAN AMERICAN INDIAN IDENTITY AND PSYCHOLOGICAL WELLNESS

A dissertation submitted in partial satisfaction of the requirements for the degree Doctor of Philosophy in Social Welfare

by

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* The following are excerpts from **URBAN AMERICAN INDIAN IDENTITY AND PSYCHOLOGICAL WELLNESS**

CHAPTER ONE: STATEMENT OF THE PROBLEM

Introduction

In the last three decades, American Indians have experienced striking changes in their sense of self and community as a result of their dramatic exodus from reservations into urban environments. Currently, more than 55% of American Indians from federally recognized tribes live in cities. Of the 1.9 million American Indians and Alaskan natives listed in the 1990 U.S. census, California has the second largest population of any state (242,000) and has experienced an Indian population increase of 19% since 1980. Los Angeles leads the urban Indian population explosion, experiencing a population increase of 800% since 1955. Today, more urban Indians reside in Los Angeles county than any other county in the United States (43,899; Bureau of the Census, 1990).

Concomitant with relocation to urban cities has been an increase in mental health-related problems among urban Indians. Like many other oppressed populations, American Indians' adjustment to urban living is compounded by pressures of city life, an oppressed group status, coercive assimilation, acculturative stress, and complex negotiations between two culturally different worlds. As a result, American Indians in urban environments are at increased risk for high rates of mental disorders, alcoholism, suicide, and other disorders that are associated with high rates of social stress (Berlin, 1987; Cornell, 1988; Hammerschlag, 1985; Kraus & Buffler, 1979; Moncher, Holden, & Trimble, 1990; Schinke, Orlandi, Botvin, Gilchrest, 1988; Sue, 1992). The lack of

social support, family, kin, and clan networks in cities leads to alienation, anomie, and spiritual disempowerment (Ahern, 1976; Berreman, 1964; Mcshane, 1987).

A related stress that urban Indian communities encounter is the lack of funding for urban Indian mental health programs. The majority of federal funding has been funneled to reservation areas. The result is that urban Indians are ineligible for federal programs that serve reservation communities, leaving urban Indian populations at increased risk for mental health related problems (Borunda, 1973). Additionally, lack of services contributes to severe emotional disorders when access to traditional medical or mental health services is restricted (Shore, Kinzie, Pettison, & Hampson, 1973). Thus, both individual and community stressors associated with urbanization have had considerable impact on Indian wellness in urban environments, which is reflected in the high rates of poor mental health indicators.

American Indians have the highest rates of adverse mental health indicators of any group in the United States (Ryan, 1980). For example, on average, they have the highest unemployment, greatest poverty rate (three times that of non-Indian families), highest suicide rate (four times that of the national population), lowest educational attainment, lowest per capita income, and poorest housing (Bureau of the Census, 1990). Additionally, over half of Indian deaths are alcohol related (i.e. suicide, homicide, liver disease, auto accidents). Furthermore, problems in alienation, general low self-esteem, high school drop out rates, social withdrawal and identity problems plague Indian young adults (Ryan, 1980).

Identity in particular has been identified in Indian communities as being a critical factor in Indian wellness. Identity in urban environments has been disrupted by deculturative factors such as language loss, loss of cultural knowledge, attacks on Indian ways, and destructive social conditions making urban Indian identity an important mental health concern (Swinomish Tribal Council, 1991).

Identity is a critical variable in positive mental health functioning (DuBois, 1983; Jones, 1992; Phinney, 1990; Sue, 1992). How urban Indians cope with external stressors and negotiate their identities has direct effects on their mental health functioning (Jarvenpa, 1985; Kemnitzer, 1978). Urban environments place Indians at increased risk for assaults on positive identity formation. A negative Indian identity is considered by Indian mental health professionals to be a mental health problem or disorder. The Swinomish Tribal Council (1991) and mental health professionals point out that

> ... an Indian person is unable to maintain psychological well-being without a sense of cultural vitality and meaningfulness of Indian ways ... lack of a strong and positive cultural identity can put Indian people at risk for any of a variety of mental health problems (p. 47).

Understanding the process of urban Indian identity development is critical to formulating mental health preventive interventions with urban Indians. The dynamic interplay of psychological, sociological, and biological forces demands a multilevel understanding of urban American Indian identity development and mental health

outcomes (Jones, 1992; Sue, 1992). Understanding the multilevel process of urban Indian identity development assists researchers in predicting other behaviors such as counselor preference, psychosocial adaptation, self-esteem development, reference group orientation, and mental health service utilization (Atkinson, Morten, & Sue, 1990; LaFromboise, 1988; Mcshane, 1988; Sue & Sue, 1990; Sue, 1992).

Little data has been gathered about factors affecting urban Indian mental health. As a result, the relationship between urban Indian identity and mental health functioning needs to be addressed in multicultural research (Cornell, 1988; Jaimes, 1992; Mucha, 1984). The current study is a preliminary investigation of the relationship between Indian identity and psychological outcomes.

Rationale for Pursuing the Problem

First, urban American Indian populations are at higher risk for mental health related problems; however, it is unclear what type of mental health problems urban Indians are experiencing and what their needs are. To date, only three studies focusing on urban American Indians living in Los Angeles have been conducted (Price, 1972; Price, 1974; Weibel & Snyder, 1977). These studies, however, did not focus on Indian mental health patterns or identity processes.

Second, there is a need for better understanding of how Indian identity varies with mental health status in urban communities. Given that Los Angeles has the largest urban Indian population of any county in the United States, the mental health

needs (among other needs) of this population must be addressed for policy and clinical practice development (U.S Bureau of the Census, 1990).

Third, there is a need for theory development within the social sciences for understanding the role of identity, particularly among urban Indians. Such a model would better inform academic disciplines and would provide practitioners and policy makers with a tool for understanding identity and particularly how it relates to Indian mental health and other social problems.

Furthermore, the results of the study would provide Indian communities with information for both clinical practice and policy development. This information could inform Indian community mental health practitioners for outlining future prevention and intervention efforts.

Finally, this study is needed because it will assist in the development of appropriate psychometric measures to be used for future Indian mental health studies. In light of the limited research on urban Indian mental health and to further the knowledge base to create appropriate diagnostic tools and culturally relevant assessment in clinical practice, urban Indian mental health patterns and needs warrant further research.

Given the limited empirical knowledge regarding urban American Indian identity and psychological wellness, the overall goal of this research is to explore and describe how Indian identity attitudes affect psychological well-being. The

methodology is a structured survey to 332 American Indians living in Los Angeles County.

The three major research objectives are:

1. To develop a valid and reliable Urban American Indian identity scale (UAIIS) based on the Urban American Indian Identity (UAII) model for understanding psychological wellness.

2. To determine how urban Indian identity is related to psychological well-being (i.e., self-esteem, depression, hostility, anxiety, interpersonal-sensitivity, and paranoid-ideation), with respect to various demographic characteristics.

3. To assess how identity and acculturation are related to depression and self-esteem.

Definition of Terms

American Indian vs. Native American. Selecting the appropriate term to use for the indigenous peoples of the United States is a political issue. The majority of terms used in reference to Native peoples have been pejorative and developed by non-Natives. Historically, the term "Indians" has most often been associated with colonialist attitudes. Interestingly, Utter (1994) points out that up until the mid-18th century, the terms "Indians" and "Americans" were equivalent. Until the mid 19th century, the term "Americans" was not applied to people of European heritage inhabiting North America (Vaughn, 1982). The more acceptable terms that have been used more recently for Native peoples living in the lower 48 states include "Indians," "American Indians," and "Native Americans."

CHAPTER TWO: REVIEW OF THE LITERATURE

The Socio-Historical Context

The indigenous peoples of the United States consist of more than 500 federally recognized tribes, approximately 200 non-federally recognized tribes, and more than 200 different languages and dialects are spoken (LaFromboise, 1988). The American Indian population is very young. The median age of American Indians is 20.4 years old and is significantly younger than the median age of 30.3 years in the general U.S. population (Manson, Walker, Kivlahan, 1987). Additionally, the average Indian family in America continue to be economically impoverished where the mean family income continues to be half that of white Americans. Furthermore, unemployment is high ranging from 20 percent in some better off communities to 90 percent in other communities. Closely related to poverty and job standing, the average number of formal years of education received by Indians is 9.6 years, which is the lowest of any major ethnic group in the U. S. (Manson, Walker, Kivlahan, 1987). The pressures to acculturate and survive in an urban environment have negative effects in stress-coping processes for urban American Indians.

Identity theorists agree that the socio-historical context of minorities in the United States plays a critical role in minority identity development (Jones, 1992; Lewin, 1948; Sue, 1992). The ways in which Indians experience minority group status and oppression in the U.S. is unique among the racial/ethnic groups. As a result, utilizing only a racial definition of minority group status is inadequate in assessing the

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development of urban Indian identity. However, utilizing "race" as a definitive criteri of cultural membership is not a new phenomena in the United States (Jaimes, 1992; Jones, 1992).

Racialist definitions have been imposed upon the different cultural groups throughout the history of the United States. For American Indians, the introduction of the concept of race as the definitive dimension of group membership came with European contact (Jaimes, 1992). Before European colonization, a racialist definition of cultural membership did not exist among Indian peoples. Indigenous peoples lived more or less as politically autonomous nations or bands, and intertribal marriages produced children that were considered "mixed-blooded" (Cornell, 1988; Stiffarm & Lane, 1992). Thus, being a mixed-blood then was based on political/tribal definitions (Stiffarm & Lane, 1992). With European contact, a new imposed definition of cultur membership began to breakdown traditional Indian identities (Stiffarm & Lane, 1992).

In identity research, social scientists disagree as to what constitutes "race" (Jones, 1992). However, what is of interest is the social significance that the domin society has attached to various phenotypical and cultural traits (Jones, 1992; Vander Zanden, 1986). Hence, "...race is a biological concept whose significance is social. has become the basis for differential experiences of members of this society and hen merged with cultural influences to create substantial nonshared environments..." (Jon 1992: 41). Omi and Winant (1986:60) also detail how race is a socio-historical concept. They state that,

racial categories and the meanings of race are given concrete expressions by the specific social relations and historical context in which they are embedded. Racial meanings have varied tremendously over time and between societies.

Historically, skin color has become a marker of social status and social control in the United States, and as a result, has become one of the salient forms of social categorization (Jones, 1992).

For American Indians, racialist definitions of group membership produces complex problems for Indian identity (Snipp, 1986; Stanley & Thomas, 1978). For example, the majority of urban Indians are biracial or mixed-blooded and as a result, their phenotypical features vary considerably. Using solely racialist definitions for Indian identity becomes problematic since there is heterogeneity of phenotypical characteristics and tribal histories (Cornell, 1988).

Using a racialist definition for American Indians also ignores the unique political relationship with the United States government, which is unlike any other ethnic minority group in the United States (Deloria, 1988). Federal obligations and responsibilities to Indians based on treaties for Indian lands, highlights the political nature of Indian-U.S. relations. As American Indians struggle to define themselves and fight for their rights to be recognized as political nations, the United States government has historically undermined such efforts. The combination of racialist definitions of cultural membership, imposed minority group status, and federal policies

aimed at controlling how Indians are to define themselves, has had a profound impact on Indian identity, mental health, and Indian survival (Jaimes, 1992).

One must consider federal policies that have attempted to control how Indians are to define their identities to understand urban Indian identity development. First, on the macro level, Indians have had to deal with policies of undercounting their numbers, thereby creating a form of statistical extermination and invisibility. Second, they have had to deal with a blood quantum standard of federal identification that has had the effect of creating internal conflict within the Indian communities over identification issues. Third, the relocation policy served as an added way to disperse and disempower Indians, decrease visibility, and accessibility of Indian people to one another.

Statistical Control Over Indian Identity

The number of American Indians inhabiting North America has always been a controversial and political issue in the United States (Stiffarm & Lane, 1992). Throughout Indian-U.S. relations, undercounting American Indians has been done to decrease governmental accountability and to disempower Indian nations by way of invisibility (Stiffarm & Lane, 1992). Jaimes (1992:129) states

> Today, the function of the Indian identity question ... goes to the matter of keeping the aggregate number of Indians at less than 1 percent of the overall U.S. population and thus devoid of any electoral power. Second, ... it goes to the classic 'divide and conquer' strategy of keeping Indians at odds with one another, even within their own communities.

Estimates of how many Indians inhabited North America range from 1 to 10 million (Robbins, 1992). In the last decade there is a steady population growth among Indian populations. In 1960, the number of federally recognized American Indians and Alaska Natives were 523,591; by 1970, it had reached 792,730; by 1980 it was approximately 1.4 million, and by 1990, the total exceeds 1.9 million federally recognized American Indians and Alaska Natives (Meister, 1986; Passel & Berman, 1986; Stiffarm & Lane, 1992). This population growth represents a growth rate of 38% from 1980 to 1990 (Sue, 1992). However, this growth rate can be misleading. There are disproportionate increases among some tribes and disproportionate decreases in other tribes in population growth (Stiffarm & Lane, 1992). As Stiffarm and Lane (1992:44) point out

> while some tribes such as the Navajo [Dine] who were estimated to be about 8,000 in 1680, are now estimated to be at a population of 158,633 ... whereas the Eastern Shawnee once numbered 50,000, by 1980 there were ... just 335.

Another reason that the population growth statistic is misleading is that the figures are based on census data of federally recognized tribes. The problems in utilizing census data are that they are imprecise and underestimate the number of Indians because the "racial" categories are often confusing and inappropriate (McKenna, 1981; Meister, 1986; Passel & Berman, 1986; Simmons, 1977). For example, Forbes (1992:44) points out that,

> since at least 1969, the Bureau of the Census ... has made a mess of understanding the 'racial' character of the U.S. population and, as part of that process, has 'lost' some six to eight million persons of Native American ancestry ... with a scientifically useless 'Hispanic/Spanish' category ... [as many as 7 million] persons of mixed African and Native American ancestry remain uncounted as such because of the way census questions were asked and answers tallied.

Furthermore, utilizing only federally recognized tribes as a population count is very misleading. There are at least 200 indigenous peoples who still exist but are not federally recognized by the U.S. government (Stiffarm & Lane, 1992). Undercounting serves the purpose of what Jaimes (1992) calls "statistical extermination." Jaimes (1992) points out that the effect of statistically underrepresenting Indian people is that it not only diminishes the power of Indians as a group, it also decreases the visibility of Indian people to one another. In this way, undercounting has a distinct effect on identity development. Another way that identity has been affected is through federally imposed blood quantum standards.

Federally Imposed Blood Quantum Requirements

The General Allotment Act of 1887, also known as the Dawes Act, had a profound affect on Indians in institutionalizing the "blood quantum" or "degree of Indian blood" requirement (Deloria, 1988; Jaimes, 1992). One of the purposes of the Act was to expedite the assimilation (i.e. "civilization") of Indians by dissolving their nationally held land holdings and establishing a federal standard definition of "Indian." Indians who were documentable as one-half or more of Indian blood, were entitled to

receive a parcel of land (Jaimes, 1992). All others were disenfranchised and designated as "non-Indian" (Jaimes, 1992). Furthermore, the full-bloods were restricted to less desirous land and were rendered "incompetents" (Stiffarm & Lane, 1992). Because full-bloods were denied control over their lands for at least 25 years (Stiffarm & Lane, 1992), the declared "surplus" Indian lands were released for non-Indians to claim (Jaimes, 1992). The Indian land base was reduced from 138 million acres to approximately 48 million acres (Jaimes, 1992). In addition to the reduction in land base, the policy served as an impetus to diminish alliances and foster deep divisions among Indian communities (Stiffarm & Lane, 1992). The result of the blood quantum standards "... wrought havoc with the American Indian sense of nationhood (and often the individual sense of self) over the past century." (Jaimes, 1992:124).

Currently, one-quarter blood or more is the federal guideline that determines federal recognition that someone is Indian (Stiffarm & Lane, 1992). Similar to undercounting, blood quantum requirement also diminishes federal responsibilities to American Indians. As Limerick (1987:132) points out

> Set the blood quantum at one-quarter, hold to it as a rigid definition of Indians, let intermarriage proceed as it had for centuries, and eventually, Indians will be defined out of existence. When that happens, the federal government will be freed of its persistent "Indian problem."

An example of the statistical extermination of Indians can be seen in the cases of the "mission Indians" of California. Jaimes (1992) states that in the 1970's, the

Juaneno Indian tribal rolls were ordered closed and were declared "extinct" by the Bureau of Indian Affairs although Juaneno women were pregnant at the time (Jaimes, 1992). Children born after the termination of the tribe were told to declare themselves as "Hispanic" or "Mexican" (Jaimes, 1992). They were told this so they could receive some federal services since the BIA considered them to be non-existent (Jaimes, 1992). Thus, statistical extermination not only serves to diminish federal responsibility, it also serves as a way to make Indian people invisible to one another and to the non-Indian society.

Statistical control has also been used to identify who is "more Indian than others" (Stiffarm & Lane, 1992), thus increasing tension within Indian communities creating a racialist "full-blood v. mixed-blood" dichotomy. This dichotomy has the effect of undermining Indian identity as well (Cornell, 1988; Stiffarm & Lane, 1992). These within group effects among urban Indians are exemplified as a "...ridiculous game of one upmanship in Indian country: 'I'm more Indian than you' and 'You aren't Indian enough to say (or do, or think) that' have become common assertions during the second half of the 20th Century" (Jaimes, 1992:136). Thus, since the limitation of federal resources and responsibilities have dichotomized Indian peoples, Indians themselves have begun to internalize and enforce the race codes. The result of this has been the exclusion of the "genetically marginalized" from their own cultural/national designation and their consequent entitlements (Jaimes, 1992). Stiffarm and Lane (1992) point out that racialist definitions may be workable within

some tribes that have been well insulated such as the Havasupai who continue to have more than 60% of their population classified as full-blood. However, this small tribe is the exception. To make genetics be the only defining criterion of Indian identity is problematic. For larger tribes who have had much earlier European contact, such as the Chippewas, where the full-blood population is below 5%, it would be "suicidal" to define identity solely in terms of blood quantum (Stiffarm & Lane, 1992). Furthermore, it would ignore more traditional Indian definitions of identity (Stiffarm & Lane, 1992). The consequences of the external social influences combined with internal processes all play an interactive role in urban Indian identity development. Stiffarm and Lane state that the key issue for the future of American Indian identity development will be whether Indians

> ... will continue to allow themselves to be defined mainly by their colonizers, in exclusively racial/familial terms ... or whether they will [re]assume responsibility for advancing the more general ... political definition of themselves they once held, as nations defining membership/citizenship in terms of culture, socialization, and commitment to the good of the group (pg. 45).

Issues such as racialist definitions, statistical control, and blood quantumming of Indian identity raises concern about traditional native cultures, "...given the substantial influx of persons-including the genetic deculturated [Indians] in urban environments" (Stiffarm & Lane, 1992: 45).

Federal Relocation Policy

Between 1890 and 1900, the Census Bureau reported that more than 99.6% of the Indian population did not reside in any cities (Stiffarm & Lane, 1992). By the 1960's the percentage jumped to 28%, and by the 1970's the number had risen to 44.5% (Stiffarm & Lane, 1992). By the 1990's the number of urban Indian dwellers had risen to more than 55%, which is approximately 880,000 out of the 1.9 million reported by the Census (Robbins, 1992; Stiffarm & Lane, 1992). Since 1980, the largest urban Indian population in the United States has resided in Los Angeles County with Census counts ranging from approximately 44,000 to estimates of 200,000 (Stiffarm & Lane, 1992). The urbanization of Indians has led to drastic changes in Indian identities. Some of the noticeable changes has been the increase in intermarriage and the decrease in language fluency.

The increases in intermarriage of Indians to non-Indians is disproportionately higher than among other groups (Sandefur, 1986). For example, by 1980, more than 50% of all federally recognized Indians above the age of sixteen were married to non-Indians compared to 1% of Whites and 2% of African-Americans (Sandefur, 1986; Stiffarm & Lane, 1992). Given the increase of Indians moving to urban environments and the increase in intermarriage and birth between Indian and non-Indians, Indians may be quantummed away in the next century. As Stiffarm and Lane (1992:41) point out that,

> Given the present increases of intermarriage ... the proportion of the currently recognized Indian population with 1/4 or less 'degree of Indian blood' may by expected to rise from 4% in 1980 to 59% in 2080.

Concomitant with intermarriage increase, there was a drastic decrease in fluency in Native languages. By 1970, only 32% of all American Indians could claim some fluency in their Native tongues. Such changes were the result of relocation policies that started in the 1950's (Stiffarm & Lane, 1992).

In 1952, the United States Congress deliberated a policy submitted to them by the Bureau of Indian Affairs (BIA). The BIA submitted a list of specific American Indian Nations that they felt were ready to be terminated from all federal services and trust responsibilities. This policy was known as "termination policy" and was the forerunner to the Relocation Act. Between 1953 and 1958, 109 Indian nations were dissolved with many declared "extinct" (Robbins, 1992). Termination policy (P.L. 280) transferred unterminated reservations from federal jurisdiction to state jurisdictional authority. The policy decreased federal funds and federal obligations for reservation Indians, and unemployment spiraled on the reservations as educational and health services dropped. There was a significant decline in income among Indians, already the lowest in the United States (Robbins, 1992).

Concomitant with termination policy was Public Law 959, also known as the Relocation Act. The Relocation Act induced Indians living on reservations or in Indian country, to move to urban environments. Public Law 959 provided minimal

assistance for moving expenses, establishing new residences, and job training for those who would "voluntarily" relocate to federally approved urban cities (Robbins, 1992). There was a "mass exodus" of Indians from their reserved territories, with approximately 35,000 being relocated to urban environments between 1957 and 1959 (Robbins, 1992). There were early warning signs of the ineffectiveness of such a policy due to the circular migration of urban Indians between their reservations and the cities, as well as the exacerbation in alcohol and drug rates (Schinke, Botvin, Trimble, Orlandi, Gilchrest, & Locklear, 1988). Nevertheless, the policy had stayed in effect from 1956 until the 1980's (Jaimes, 1992).

Many Indian researchers feel that similar to the process of undercounting and blood quantum standards, urbanization of Indian peoples is also a systematic process of diminishing Indian identity. Simultaneous with urbanization is the disengagement of federal trust responsibilities (Jaimes, 1992; Jaimes & Halsey, 1992; Noriega, 1992; Siffarm & Lane, 1992; Welsh, 1986). Jaimes (1992: 136) notes that the impact of the urban experience, combined with the other federally imposed policies regarding Indian identification has

> . . . played a prominent role in bringing about their [Indians] generalized psychic disempowerment; if one is not allowed even to determine for one's peer group, the answer to the all-important question 'Who am I,' what possible personal power can one feel s/he possess? The negative impact, both physically and psychologically, of this process upon succeeding generations of Native Americans in the United States is simply incalculable.

Urban Indians have had to deal with many obstacles to cultural survival and identity continuity in their adaptation to urban life. Mucha (1984) reports that Indians relocated to urban environments have difficulty integrating the Indian and non-Indian elements of their worlds.

The socio-historical context is the macro level in the multidimensional process of American Indian identity. In analyzing group behavior and how one's group affects identity development, the historical context in which these smaller scale interactions are taking place must be kept in mind (Osborne, 1989). These levels interact to form urban Indian self and group identity attitudes. Now that the socio-historical issues have been outlined, the impact of the dominant society on Indian individual's attitudes toward their own group are delineated below.

Effects of Dominant Group Processes on Indian Identity

Majority-minority group relations affect Indian individuals' attitudes toward group identification and other Indian peoples. The first section focuses on how minority group status, reference group orientation, and acculturative stress impact Indian group identity attitudes. The section following group identity will focus on the impact of the dominant group on self identity (i.e. self perception and self concept).

Minority Group Status

The social environment does not take a neutral view toward Indian people. The environment is often controlling and denies access to culture and Indian identity. As Goodnow (1990:275) points out,

> ... it seemed far more likely that an individual's concepts were being shaped by an environment that was often active and controlling rather than neutral ... in the course of socialization we encounter information that is already tagged in a variety of ways ...

In addition to the environment not being neutral, the status of the group to which one belongs in the U.S. society also affects personality formation and identity development (Sue, 1992). Minority group status and environmental impingements such as discrimination, have affected identity development (Sue, 1992). The impact of the negative dominant group attitudes and institutional structures on positive identity development has been well documented (Jones, 1992). Jones (1992:28) states that "There is solid evidence that suggests negative or ambivalent racial attitudes [by

Whites] have significant implications..." on identity development. Hence, to understand urban Indian identity development, minority group status need to be examined (Sue, 1992). A status is a means by which people locate one another in the social structure (Vander Zanden, 1986). One's status is socially constructed and has societally imposed limitations as a result (Vander Zanden, 1992). For example, being American Indian is an ascribed status, whereby people are identified as a member (at birth) of a particular group (Vander Zanden, 1992). American Indians hold a minority group status. Minority group status is defined as the product of majority and minority group relations in which the minority groups have experienced discrimination based on various phenotypical or cultural traits (Sue, 1992). For example, Sue (1992:56) states that "...alcohol abuse among American Indians cannot be fully understood by references to cultural differences. Patterns of exploitation have also accompanied their history...to understand...minority group status must be analyzed."

Reference Group Orientation

Minority group status can effect one's reference group orientation. Reference groups provide both a normative and comparative function (Vander Zanden, 1986). Vander Zanden points out that Indians, like other groups, take on group norms, values, and political attitudes. Usually, people take on the standards of one's own reference group (usually the one that one is a member of) to appraise oneself in terms of values, behaviors, and attitudes (Vander Zanden, 1986). However, the reference group is not always one's own membership group. With the acculturative pressures that urban

Indians face, frequently, the dominant society insists on Indians using "Anglo" standards as the reference group. The dominant culture imposes its standards of "appropriate" behavior and holds disparaging views regarding Indian people (i.e., "The only good Indian is a dead Indian"). The result is that urban Indians are at high risk for developing negative attitudes, thoughts and behaviors regarding being Indian. Thus, if the dominant group standard is the reference group that urban Indian people use as their source of psychological identification, then urban Indian mental health and identity development will be negatively affected (Baron, 1985; Lewin, 1948; Parham & Helms, 1985; Sue, 1992). If this occurs, then a process affecting one's attitudes toward one's own group will be negative and the individual may experience relative deprivation (Vander Zanden, 1986). Relative deprivation is the discontent that is associated with the gap between what one has, feels, or wants (the circumstances of urban Indian peoples), and what one believes that he or she should have, feel, or want (the circumstances of the dominant group) (Vander Zanden, 1986). Studies have documented that the effects of relative deprivation contribute to urban Indians' feelings of social isolation, social alienation, and anomie (Kemnitzer, 1978).

Acculturative Stress

Acculturative stress also hurts Indians' attitudes toward identifying with other Indians. If, for example, there is an assimilationist ideology institutionalized from the dominant society than there will be greater mental health problems among those experiencing coercive assimilation (Berry & Kim, 1987; Cornell, 1988; Kraus &

Buffler, 1979). Earlier empirical researchers assumed that acculturation was a linear process whereby ethnic group members lose their ethnic identity and take on dominant cultural values and norms as they become more acculturated. Recently, acculturative studies have been expanded to include a multi-dimensional process whereby acculturation and identity consist of two independent processes that occur simultaneously. Several empirical studies are now beginning to suggest that one could be highly acculturated while simultaneously being highly ethnically identified and vice-versa (Hutnik, 1986; Der-Karabetian, 1980; Kemnitzer, 1978; Parham & Helms, 1985; Zak, 1973).

Among American Indian researchers, Little-Soldier (1985) stated that acculturation of Indians exists on a continuum ranging from "traditional orientation" to "assimilated," with a span in the middle subsuming individuals who are "acculturated". Zitzow and Estes (1981) designed an acculturative model to assess the level of Indian assimilation. They recognize the importance of assessing individual differences in Indians, but they felt that it was important to develop a typology to conceptualize the acculturative process. They proposed a two-point continuum. The first is the Heritage Consistent Native American whose predominant orientation reflects traditionally Indian culture (Sue & Sue, 1990). The second is the Heritage Inconsistent Native American whose predominant orientation reflects White identified values and attitudes. They acknowledge that the process is not linear and may overlap at times. There does not seem to exist empirical studies validating their model.

The majority of the research that looks at how acculturation affects Indian group identity utilize a deficit model of group adaptation. For example, Sorkin (1978:135) examined the impact of acculturation on urban Indians with a focus on the adaptation capabilities of urban Indians. Sorkin attributed mental health problems and "pathological" behaviors among Indians as problems in adaptation.

> There seems to be some growth in Pan-Indian feelings or in tribal communities that is resulting in the creation of institutional means of preserving Indian ways. This may seriously retard the assimilation process ... The emphasis on Indian culture in various heritage programs ... may also hinder, if not reverse, the assimilation process ... If assimilation is one of the major goals of relocation, then programs can be developed to make assimilation as painless as possible.

Many non-Indian researchers utilizing this deficit model assumed that attempts by Indians to acculturate and appear similar to the Anglo culture was considered as evidence of motivation to participate in U.S. society and be "successful" (Broom & Kituse, 1955; Gundlach & Roberts, 1978; Hicks, 1973; Hurt, 1962; Margon, 1977; Parker & Kleiner, 1970). Hence, social science interventions were aimed at providing opportunities to facilitate acculturation.

Conversely, other researchers (mostly Indian researchers), attempted to depathologize Indian culture, reframe "mental health," "ethnic identity," and "acculturation" from Indian viewpoints. Hammerschlag (1985) attributed physical and mental health problems among Indians to coercive acculturation and Indian disenfranchisement. Among American Indians, Schinke et al., (1988) state that the

acculturative process to Anglo-American norms and values is stressful for American Indians. They point out that some of the ways in which the stress is exhibited can be in part attributed to American Indian alcohol and substance abuse problems. Schinke et al., (1988) based this conclusion on the results of 137 American Indians subjects divided into control and experimental groups where the experimental group received bicultural competence training and the control did not. Results indicated that the American indians who received bicultural competence training had decreased alcohol, tobacco, and substance use and abuse (Schinke,et al, 1988). Moreover, acculturation is associated with a proportional increase in accident rates. In a study by Stull (1972), traditional and acculturated Indians in urban environments had greater accident rates which paralleled alcohol use. Rates for "modern" and "traditional" Indians were twice as high as traditionals and moderns in non-city like environments (Stull,1972). Thus, there is an interactional effect of living in urban settings which increases levels of stress, which then impacts mental health functioning and leads to accidental injuries.

Hammerschlag (1985) emphasized that Indians are survivors of the conscious dehumanizing attempts to acculturate them. Hammerschlag (1985) demonstrates how the acculturation process affects Indians' attitudes toward their own group. He viewed the different acculturative responses as the result of identifying with the aggressor (i.e. dominant society).

> ... (Indians) exhibit anger at the aggressor, but they also identify with him. Eventually the anger becomes directed at the self and at one's ancestry

> for having allowed this travesty ... can lead to renunciation of those things Indian.

Hammerschlag (1985) states that for Indians to remain psychologically intact, Indian identity must be firmly planted with a connected sense of positive self beginning when one is young.

LaFromboise (1988) and Moncher, Holden and Trimble (1990) advocate development of a "bicultural competence repertoire" to assist Indian youth in developing adaptive coping responses to the interaction between his or her tribal culture and that of the majority culture. LaFromboise (1982:12) states that bicultural competence helps Indian youth to "...blend the adaptive values and roles of both the culture in which they were raised and the culture by which they are surrounded." The failure to conceptualize properly the hypothesized role of acculturation and identity (i.e. culture) in modifying key theoretical associations will limit the usefulness of results and facilitate a better degree of control in exploring empirical relationships (Vega, 1992).

<u>Effects on Self Identity</u>

In addition to the effects on attitudes toward group identity, dominant group pressures have effected self identity processes as well. The studies focusing on self identity explore issues such as the quality of involvement with one's own culture, responses and coping with disparaging views of one's ethnic group, and the impact of discrimination on one's self-concept, self-perception, and psychological well-being

(Beuf, 1977; Jarvenpa, 1985; Lewin, 1948; Phinney & Allipuria, 1990; Phinney, 1990; Rosenthal, 1974; Tajfel, 1978; Tzuriel & Klein, 1977; Ullah, 1985).

Self-fulfilling Prophecies

One example of how negative dominant group attitudes can effect self identity is found in the self-fulfilling prophecy studies in social psychology. Word, Zanna, & Cooper (1974) tested the role that self-fulfilling prophecy plays as a mediator of interracial interaction. They found that "...attitudes and actions of one person may influence the behavior of the other in a dyadic interaction such that the other's behavior confirms the unstated expectation of the first person...[Thus] subjects treated in subtly negative ways actually behaved in objectively verifiable ways that confirmed their inadequacy" (Jones, 1992:28). The implication for American Indians is that negative expectations (as well as institutional arrangements) held by Whites may induce negative behavior and attitudes in Indians that confirms that expectation (Jones, 1992).

Effects on Self-Perception and Self-Identification

Another example of the effects of dominant society on self identity is found in self perception studies (Schuster, 1978). Until 1977, only one study looked at Indian childrens' self perceptions about race (Rosenthal, 1974). Rosenthal studied racial preference and self-identification among Chippewa children using line drawings of white and dark brown children. His findings paralleled Black childrens' findings (Clark & Clark, 1947) in that Indian children suffer from pervasive imagery of white

superiority and show a preference for white images. The importance of Rosenthal's study is that the internalization of white superiority and discrimination (that need not be personally experienced) still facilitates a negative racial self-image and low self-esteem (Beuf, 1977). In 1977, Beuf expanded self-perception study to include self-identification of American Indian children. The intertribal study looked at reservation preschool children's attitudes and self-identification as Indians. Using a control group of Anglo preschoolers, Beuf introduced Anglo dolls and Indian dolls to the children in structured interviews. Like other researchers, Beuf (1977) found that the majority of Indian children preferred the Anglo dolls. They misidentified themselves with the Anglo dolls significantly more than the control group of Anglo preschoolers (Beuf, 1977). Similar to other "racial" groups studied, Indian self-identification and self-perception studies found that dominant group attitudes negatively impacted self identity. They showed that the likelihood for low self-regard resulted from identification with an ethnic group that is disparaged in U.S. society (Banks, 1976; Ullah, 1985).

Oetting and Beauvais (1991) developed the Orthogonal Cultural Identification Theory. Their theory posits that cultural identification is an orthogonal process that cannot be captured by a linear process. They state that identification with one culture does not necessarily mean a lesser identification with another culture. For example, they state (1991, p. 662) that the process consists of independent identifications where "Instead of two cultures being placed at opposite ends of a single dimension or single

line, cultural identification dimensions are at right angles to each other." Moreover, individuals can have a unicultural, bicultural, or multicultural identification simultaneously. The theory has been adapted for use in American Indian identity research (i.e., Moran and colleagues, 1994). The problem with this model is that their scale measures identification from a behavioral perspective, thus making it indistinguishable from acculturation measures (e.g., "Do you live by or follow the American Indian way of life").

Effects on Self-Concept

In addition to problems in self-identification and self-perception, Indians also have been found to have varying levels of negative self concepts (Albers & James, 1986; Cornell, 1988; Rotenberg & Cranwell, 1989). McShane (1988) outlined the findings of Indian studies on self-concept and stated that several studies found lower group identification and lower self-concept in American Indians compared with Anglos (Cornell, 1988; Corenblum & Annis, 1987; Mason, 1969). Other researchers have shown no significant differences between having a more positive self-concept compared with other groups (Martig & DeBlassie, 1973; Trimble, 1981). One explanation for the discrepant findings is there has not been a developmental stage model developed for American Indians that would reflect different levels of self concept at different points in time for Indian individuals (Parham & Helms, 1985). Lefley (1982:60) reflects the problems of Indian self-concept studies in that

> Construct and criterion validities, particularly those exemplifying appropriate conceptual and behavioral correlates of positive self-concept in a given culture, have been rarely considered ... if American Indian subjects show lower self-concept than comparison groups, and this finding is attributed to acculturation, minority status, or tribal disintegration ... we still have insufficient knowledge of precisely how these global sociological phenomena mediate individual behavior.

Resistance Among American Indians: Cultural Survival Strategies

The previous section thus far has explored how the dominant society in its interactions with American Indians affects Indians' attitudes toward their own group as well as toward oneself. How Indians themselves effect self and group identity attitudes is examined.

One trend in identity research is to focus on within-group variability in identity development and consider different within-group reactions (e.g., rebellion, acquiescence) to cultural, societal, and historical influences (e.g. institutional discrimination) (Sue, 1992). The different within-group responses (such as resistance) are due in part to specific survival strategies such as the process of resistance among ethnic minorities in the United States.

In the United States, traditional research in ethnic identity development has placed an emphasis on assimilation and the orderly adaptation of an ethnic group to Anglo-Western norms (Feagin, 1986). Several researchers have criticized identity research because too often they ignore the resistance that racial group members exert in dealing with imposed oppressive policies. Baron (1989:138) indicated that

resistance is manifested through ethnic individual's contesting proscribed roles, "often, this conflict in roles became a basic conflict in one's individual personality--sometimes taking its toll, and sometimes creating amazing strength...amidst...ordeals of suppression..." Goodnow (1990:280) points out that

> too little place for the individuals who resist the information, ... or the worldview held out to them ... I seek an account of socialization that goes beyond saying that the individual must be regarded as agent or actor or that the influences are bidirectional.

Goodnow, states that although there are negative images and institutional arrangements that urban Indians have to deal with, there are forms of resistance to such negative attitudes and structures. American Indians and other ethnic minorities may resist dominant group acculturative pressures on identity development in several ways (Goodnow, 1990). For example, they may actively resist acquiring the accent of the dominant group, or the resistance is revealed in within group humor. However it is manifested, under certain conditions, urban Indians, like other ethnic groups will resist. Goodnow (1990:280) states

> I like to believe that even if much of one's life is spent in puppet fashion-there remain at least the occasional times when one notices the strings and decides to cut them. To the notion of the individual as agent or actor, I would like to add more information about what one resists, the source of resistance, and the occasions that prompt one to look up and cut.

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Thus, internalization of dominant attitudes in identity formation cannot be understood without acknowledging the resistance to these attitudes and vice versa. Identity studies usually do not take this dialectic into account (Feagin, 1986; Goodnow, 1990). Nor has there been any theoretical development of the relationship between resistance and internalization of dominant attitudes (Sue, 1992). The tension between these two processes is what Indians face in negotiating self identity attitudes and group identity attitudes. Thus, environmental impingements such as racist policies may impact the self and identity development negatively. To demonstrate this point, research has shown that Indian children raised in all white environments have more difficulty consolidating their Indian identity (Corenblum & Annis, 1987; Lefley, 1976). Thus, Indians deprived of learning valuable survival skills from their ethnic group (via acculturation or internalized negative dominant group attitudes) are more likely to internalize negative self and group identities. However, those that have learned survival strategies that do not emphasize negative dominant group attitudes, but rather positive resistance strategies (i.e. humor or social activism) will be more resilient and be less likely to have a negative self and group identity. The amount of ethnic group contact (cultural environment), survival skills indoctrination, and positive Indian role models can counter internalization of negative self and group identities. This is not to undermine the survival strategies that many have had to do in making psychological adjustments to "survive" at that particular point in time. In other words, many Indians may see acculturation as desirable and necessary for cultural survival, though it may

jeopardize long-term cultural survival. An example is when some members of the Dawes commission told Oklahoma Indians that if they wrote down on the tribal rolls that they were less than one-half Indian (whether they were or not did not matter) then the government would leave them alone. For many Indians in that situation, it was better to go along with that policy to have some semblance of self-determination.

In sum, the issue of resistance and strategies for maintaining a positive self and group identity have not been researched among American Indians. Too often the oppressed group is seen as a passive recipient of negative images and attitudes from the dominant society. The dialectic between how urban Indians resist as well as succumb to the dominant society's proscribed roles is an important process to recognize since it is integral to understanding urban Indian identity development.

Mental Health Issues

This section discusses mental health research findings among American Indians. First, the findings of epidemiological studies are examined along with methodological problems associated with Indian mental health research. Following the this discussion of methodological issues is a focus on depression studies and alcoholism studies since these two mental health issues have received the most attention in Indian mental health research and have been identified as the main psychological problems facing Indians today.

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Prevalence Studies

Only three epidemiological studies have been conducted with respect to Indian mental health. The three studies yield discrepant results in part due to the problems in the lack of standardized measurements and problems with cultural validity (Roy, Chaudri, & Irvine, 1970; Sampath, 1974; Shore, Kinzie, & Hampson, 1978). These studies involved sampling a Pacific Northwest coast village, ten reservations, and a southern island settlement. Thus, research on mental health patterns of urban Indian populations has yet to be clearly examined.

Nevertheless, all three studies yielded more or less some similar findings. The studies revealed that younger men suffered more from various psychiatric disturbances than did Indian women. Additionally, men were more likely to have alcohol related problems that increased their likelihood of being identified by authorities--i.e. alcohol use and assault are strongly associated with psychiatric admission or incarceration. For example, Termansen and Ryan (1970) pointed out that the behavioral profiles of many incarcerated Indians matched those that were psychiatrically hospitalized suggesting that the course of identification received different definitions by different authorities. Shore et al. (1973), showed that prevalence of mental disorder was inversely related to age. Indian men in their 20's to 30's had significantly higher impairment ratings and Indian women in their 20's to 40's had the highest morbidity.

Impact of Cultural Worldviews on Conceptualization of Psychopathology

Cultural worldviews, values, and diverse tribal experiences have all contributed to various ways in which Indian people conceptualize and express psychological dysfunction, thus, current measurements, assessment tools, and mental status exams may not be appropriate. This contributes to the problems in identifying adequate sampling strategies and determining criteria to use in measuring psychopathology among Indian populations. For example, in studies of the MMPI, there was a similarity of MMPI profiles of Indian individuals belonging to the same tribe. Significant differences were found in *degree* of pathology between groups, not the *pattern* of pathology, thus tribal affiliation was important in examining prevalence rates.

There is a critical problem of valid measurement in Indian mental health studies. Standardized measures create potential problems in the Indian community. The items, response formats, and concepts subsumed in the standardized instrument may not be comprehensible or relevant to Indian respondents. For example, the social support question, "About how often have you visited with friends at their homes during the past month? (Do not count relatives)" may seem relevant at first; however, it created a problem in response sets for one study on Indian community since a "friend" connotes an outsider who is not a relative (Arviso, 1992). Furthermore, kinship relationships between blood and non-blood "relatives" are often referred to by

familial terms such as uncle or cousin. Thus, the appropriateness of standardized instruments need to be closely monitored since the results may lead to erroneous conclusions, and over/under reporting of psychopathology.

A second issue in using standardized instruments with Indian samples is the need to monitor for cross-cultural congruence of concepts of mental health and mental illness (Piasecki, Manson, O'Nell, & Beals, 1992). Evidence suggests that the nosology represented by DSM III-R is generally applicable across cultures though the meaning and consequences of the phenomena varies across regions and tribal affiliations (Piasecki, Manson, O'Nell, & Beals, 1992). For example, "loneliness" is a dominant symptom of depression in some Indian cultures rather than "sadness or feeling down" symptom thought to dominate non-Indian populations (Piasecki, Manson, O'Nell, & Beals, 1992). Thus, researchers cannot rely only on the normative adjustment of current instruments, but must integrate items that are firmly based in Indian cultural knowledge.

In cross-cultural research, internal consistency reliability is often substituted for validity studies (Vega, 1992). Even with acceptable levels of reliability, there can still be problems with factor invariance, content validity, and measurement equivalence (Vega, 1989). Researchers generally strive to make their research reproducible and parsimonious. In the process of doing so, internal validity can be compromised. For example, using one theoretical model with the same indications for diverse respondents limits the range of explanations. Vega (1992) suggests that an optimal etic-emic

fusion is to compare the explanatory value of theories across cultural groups and to test models that are group specific. The ultimate goal being fusion that provides a more accurate and comprehensive interpretation of critical processes that are moderated by culture. A meaningful cultural category, then, can include intragroup variation by region, labor sector, gender, sexual orientation, educational level, language preference, tribe, quantum blood status, acculturation, and ethnic identity (Vega, 1992).

Depression Studies

Among many Indian mental health professionals and researchers, depression has been deemed as one of the prominent mental health problems among adult Indian populations. Approximately 54 to 63% of the subjects in the epidemiological studies were found to have mental health problems, with depression accounting for 30-40% of all the mental health troubles (Mcshane, 1987). In particular, depression, post-traumatic stress disorder and adjustment disorders appear to be the most common mental health problems (Manson, Walker, & Kivlahan, 1987). Indian researchers and mental health professionals have been consistently finding that depression among Indian populations is highly correlated with suicidality, substance and alcohol abuse, violence, and mental health service utilization (Kinzie, Shore, & Pattison, 1972; Kraus & Buffler, 1979; Shore & Manson, 1981).

The main instrument used to assess depression among American Indians has been the CES-D, Health Opinion Survey, Cornell Medical Index, and MMPI. The results of using these instruments among various Indian populations has been met with

mixed results. With the exception of the CES-D, few have adequately or reliably reflected Indian belief systems and expression of "depressive" symptomatology. Additionally, most of the studies that do exist focus on reservation or rural populations. O'Nell (1989) points out that the problem in Manson et al's (1985) study on Hopi depression is the assumption of a one to one relationship between the category of depression and its symptoms ignoring social, political, and contextual factors. These factors are central to the understanding of the expression of psychopathology and need to be examined as well.

Little is known about the context and etiology of depression in urban Indian populations. The frequency of depression as a mental health problem among Indians in general warrants further investigation in urban settings.

Alcoholism Studies

The prevalence of alcohol and substance abuse varies from tribe to tribe. Nevertheless, it is still a serious problem and constitutes over half of the leading causes of death in Indian country (Manson, Walker, & Kivlahan, 1987). Indian Health Services have reported that alcohol related diseases and trauma have been cited as major reasons for health care, disability, and mental health related problems among many tribes (Manson, Walker, & Kivlahan, 1987). Adult Indian males consistently have been found to have largely alcohol-related disorders, whereas Indian women tend to be diagnosed more often with somatic and anxiety related problems (McShane,1987).

Littman's (1970) study on urban Indian drinking patterns hypothesized four factors that related to urban drinking. The four factors were drinking to 1) release anxiety, 2) release repressed aggression, 3) relieve acculturative stress, and 4) promote group solidarity. Kuttner and Lorinz (1967) stated that urban Indian alcoholism should not be considered as Indian fatalism, but rather the resignation to acculturative pressures and the lack of traditional attainable patterns of life. Studies regarding utilization of services found that there was a correlation between service utilization and despondency as well as alcohol abuse (Shore & Manson, 1981).

In summary, how the researcher conceptualizes and defines pathology greatly effects how research is conducted, what is studied, and ultimately how programs are used to intervene. To circumvent problems in the interpretation of the findings, the next section discusses in-depth the underlying epistemological base of the study and the underlying theoretical development of the urban American Indian identity model.

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<u>Implications for Community Based Agency Practice</u>

Providing adequate mental health service delivery to American Indian populations requires both Indian and non-Indian agencies to incorporate ethnic-sensitive practice. The previous section focused on individual practitioner change efforts and application of the UAII model. However, the efficacy of the model in practice will be lost if the agency in which the practitioner is operating does not incorporate values and practices that reflect ethnic-sensitive practice with American Indian clients. As Iglehart and Becerra (1995:231) point out

> First, ethnic sensitive practice is not a worker-client phenomenon. Ethn sensitivity takes place in the context of an agency with agency features that actually work to protect and maintain that practice. Workers who enter the agency are then socialized into that practice, whether they believe it or not ... Second, to protect ethnic-sensitive practice, agencies should institutionalize it so that it becomes a permanent agency feature.

Although agencies may incorporate their versions of ethnic-sensitive practice, too oft this implies some sort of generic appreciation of "other" cultures or addressing issue pertinent to certain specific ethnic groups. Unfortunately, American Indians usually unrecognized as part of the client population and are frequently ignored in in-service trainings. Moreover, given that there are so few American Indian agencies, and very few Indian mental health agencies (e.g., there is only one Indian mental health program for Los Angeles county), it is imperative that other mental health agencies heed the call to incorporate American Indian issues into their ethnic-sensitive practic Iglehart and Becerra (1995) point out that there are divergent perceptions of what

constitutes ethnic-sensitive practice. However, given the findings in this study, understanding the level of identity attitudes is imperative to providing adequate assessment, treatment plans, and identifying points of intervention. To incorporate the UAII into practice, the agency (whether Indian or non-Indian) needs to "break barriers" by making potential changes in the following three areas: agency ideology, technology, and community participation (Iglehart & Becerra, 1995).

Ideology

Iglehart and Becerra (1995) point out that agency ideologies are resistant to change. Ideological change can incorporate Indian issues in two ways. First, depending upon the level of ethnic-sensitive practice that the agency already employs, the agency would benefit from the UAII model in terms of the parallel process that other oppressed groups have to negotiate in their identity development. Identifying how the UAII model parallels other oppressed populations assists the agency in making a paradigm shift. By incorporating the Indian model and simultaneously applying it to other oppressed groups expands notions of agency-based ethnic-sensitive practice. Second, the UAII model can be used specifically to address American Indian clients at the agency level. Thus, utilization of the model would satisfy the ethnic-sensitive needs of the agency from both universalist and cultural relativist perspectives.

Other strategies at changing agency ideology include hiring of new individuals who support incorporation of Indian issues into the agency practice, change may slowly occur. Old ideas and modes of practice tend to stay ingrained until a leader or

many individuals make a commitment to stimulate the change process. The costs and benefits of the agency incorporating Indian issues into ethnic-sensitive practice need to be assessed as well. More often than not, the cost to the agency is in terms of time and not in direct monetary resources.

Technology

The refinement and development of the UAII model would provide agencies with technology that is easy to administer and use. Use of the scale in practice would assist agencies with tracking client improvement and assessing efficacy of cultural-specific treatment plans. Moreover, it would provide agencies a way of establishing one measure of ethnic-sensitive practice. Iglehart and Becerra (1995) state that if the primary mode of technology change is through staff training, then the ethnic-specific skills need to be (a) integrated into the agency; (b) validated by rewarding the implementation of the skills; and (c) supported administratively.

Community Participation

Given that the urban Indian community is considered by many to be an "invisible" population, it is critical that agency boards incorporate and actively solicit Indian community participation. Indian community participation would enable the agency to have some accountability for their ethnic-sensitive practice and also would identify mutual interests and needs. Establishment of Indian mental health advisory boards at the agency and community levels can be particularly effective. More

specifically, community ties enable the agency to access other forms of treatment and interventions that may be culturally-specific (e.g., Indian spiritual leader).

Social Policy Implications

Urban Indians contend with many social ills that are the result of coercive acculturation and assimilationist policies of the United States. Lack of cultural sensitivity and ethnocentric biases have led many government policies and service delivery systems to systematically deny Native Americans their right to cultural identity and a positive sense of self/community (LaFromboise, 1988).

On a broader social policy level, the applicability of utilizing identity models for social interventions via educational systems, social systems, and social service agencies could be generalized across various oppressed groups. On a more restricted social policy level, an understanding of urban Indian identity is imperative to generating and implementing effective social welfare policy. Utilization and verification of an urban Indian identity model would benefit policy implementation in areas such as the Indian Child Welfare Act (ICWA). In 1978, Congress passed the Indian Child Welfare Act in part, as a response to the high rates of suicide attempts of Indian children and youth adopted into non-Indian homes. Although the heart of the policy involved issues around tribal jurisdiction and placement of Indian children into Indian homes, the policy implied that cultural identity is integral to Indian families staying intact.

In terms of this study findings, the ICWA policy implications are that agencies could more effectively measure changes in identity development and mental health functioning of their Indian families and children. In light of the upcoming review of

ICWA in Congress, efficient measurement of mental health functioning and identity development could play a role in developing more monetary resources for program development as well as ICWA's continuance (Kessel & Robbins, 1984). Furthermore, more funding could be channeled into ICWA programs that directly deal with identity issues as a form of prevention services.

Implications for Social Work Training and Education

Of all the ethnic groups in the United States, American Indians have been the most neglected in mental health research and, in particular, in clinical practice research (Manson, 1982; Trimble & LaFromboise, 1985). Social welfare practitioners and researchers have consistently ignored the needs of this underrepresented population. In the behavioral and social sciences, it is estimated there are eighty Indians with doctoral degrees (Trimble & La Fromboise, 1985). Moreover, in the social work profession, only a handful are working where their efforts have a direct impact on Indian mental health concerns (Trimble & La Fromboise, 1985). Because of the scarcity of Indian mental health professionals, many Indian mental health programs have had to rely on Indian para-professional counselors, even though Indian programs prefer Indian social workers and psychologists (Trimble & Fleming, 1989; Trimble & LaFromboise, 1985; Trimble, Manson, Dinges, & Medicine, 1984). Thus, there is severe underrepresentation of Indian advocates for Indian mental health concerns and research in social welfare. This benign neglect is unconscionable and ethically irresponsible for a field that advocates for disenfranchised populations.

Underutilization of mental health services by Indians (like members of other ethnically oppressed groups) has been a considerable problem for social service agencies and may be a symptom of the neglect (Sue, 1992). The first step in retention of Indians in mental health programs is the development of culturally relevant services and service providers. Since this underrepresentation is the current reality, it is the responsibility of the social work educational system to educate non-Indian social workers about urban Indian mental health issues and culturally relevant clinical practice. Culturally relevant practice needs to incorporate the following elements as identified by the Swinomish Tribal Mental Health Council: (a) assessment of each client must include an evaluation of his or her Indian identity attitudes; (b) the client cannot be helped to change without first understanding and identifying his or her cultural values; (c) the treatment approach should be congruent with the client's cultural values and identifications; (d) the cultural nuances of the therapist-client relationship should be discussed and considered throughout treatment; and (e) a positive integrated Indian identity should be a treatment goal whenever ambivalence, confusion, or devaluation of the self or cultural group exists. The Swinomish Tribal Mental Health Council further states that Indian identity is of particular importance for Indian people's psychological, emotional, spiritual, and physical functioning precisely because it has been "disrupted by loss of cultural knowledge, attacks on Indian ways and destructive social conditions" (1991, p.106). The findings strongly supported what has always been accepted as fact to Indian people. The Swinomish council reflects the belief

within Indian country that identity is critical to wellness, and a negative or confused identity is "in itself a mental health problem, often leading to unhappiness, low self-esteem, indecisiveness and self-destructive behavior."

Closing Remarks

This study was the preliminary attempt to empirically establish the relationship between identity and psychological well-being among urban American Indians. Given the vulnerability of urban Indian populations, especially the second and third generation of urban Indians since they are more likely to be removed from their reservation communities and languages, identity becomes even more critical to Indian survival and continuance. As much as Indian identity has been attacked by assimilationist and genocidal policies, it is the key to centuries of Indian survival and resistance. It is also through Indian identity that the healing journey continues and The People endure.

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THE DAVIS-BACON ACT UNDER PROPOSED INDIAN HOUSING LEGISLATION

*By David J. Stephenson, Jr. and James F. Wagenlander**

House of Representatives Bill 2406 [also known as and hereinafter referred to as "the Lazio Bill," after Representative Rick Lazio (R-NY), who drafted the original portion of this legislation pertaining to Native Americans], passed on May 9, 1996, as a comprehensive amendment to Senate Bill 1260, would significantly transform Indian housing programs.[1] One controversial provision requires Davis-Bacon[2] wage rates on contracts for development or rehabilitation of twelve or more units, but authorizes the Secretary of Housing and Urban Development (the Secretary) to waive this requirement.[3]

The Davis-Bacon Act (the Act) requires that laborers on federal government construction projects get paid, at a minimum, the wages prevailing on similar local projects.[4] The purpose of the Davis-Bacon Act is to protect the hiring of local labor rather than cheap labor from distant sources.[5] The Act is liberally construed by the courts to reflect this legislative purpose. Thus, generally, the Act and its regulations apply to a project that federal agencies and the builder anticipate will receive federal funding, even though federal funds have been neither formally applied for nor authorized at the time of bid opening.[6]

The Secretary supports this laudable purpose of the Act and consistently opposes either a complete or piecemeal repeal.[7] Thus, with respect to the Lazio Bill, the Secretary recently testified:

> The Administration therefore strongly opposed the provisions in H.R. 2406 that would allow the waiver of the Davis-Bacon Act protections for Native American projects, which would constitute such a piecemeal repeal. The Administration believes that projects for Native Americans warrant the same protections applicable to other projects under Davis-Bacon and related acts.

In stark contrast to the Secretary's fear that the Lazio Bill's selective waiver of the Act is tantamount to an undesirable piecemeal repeal of the Act, many Tribal representatives have vigorously opposed any imposition of Davis-Bacon wages in Indian Country, especially this watered-down version. For example, Ron Allen, President of the National Congress of American Indians, testifying recently before the same Congressional committees as the Secretary, observed that Davis-Bacon's guarantees of a certain standard wage increases the cost of housing in Indian Country.[9]

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[1] Cong. Rec. H4837 (daily ed. May 10, 1996).

[2] 40 U.S.C. §§ 276a-276a-5.

[3] S. 1260, Sec. 714(b)(1), House engrossed version, May 9, 1996.

[4] 40 U.S.C. § 276a.

[5] *United States v. Binghampton,*, 347 U.S. 171, 176-77, 74 S.Ct. 438, 441, 98 L.Ed. 594 (1954); S.Rep. No. 963, 88th Cong., 2d Sess. ——, *reprinted in* [1964] U.S. Code Cong & Admin. News, pp. 2339, 2340-41.

[6] *North Carolina v. Goldschmidt*, 621 F.2d 697, 53 ALR Fed (5th Cir. 1980).

[7] Testimony of HUD Secretary Henry G. Cisneros regarding H.R. 2406 before the Senate Banking, Housing and Urban Affairs Committee and the Senate Indian Affairs Committee on June 20, 1996 (1996 WL 338270).

[8] Id.

[9] Native American News, July 1, 1996, p. 72.

President Allen's testimony echoes a plea that dates back several years by tribal leaders and sympathizers for repeal of the Davis-Bacon Act in Indian Country.[10] In 1979, the Committee on Banking, Finance and Urban Affairs only narrowly, by a 20 to 18 margin, rejected an amendment to exempt low-income Indian housing and Section 8 rehabilitation by non-profit neighborhood based organizations from Davis-Bacon requirements.[11] The minority report noted:

> It is both ironic and unjust that an amendment, which would accomplish the twin goals of providing better housing for Indian families and assisting non-profit groups to rehabilitate their neighborhoods at reduced costs, was rejected by a Committee which professes to be concerned about the rising costs of housing.[12]

A contemporaneous (1979) report issued by the Senate Select Committee on Indian Affairs strongly argued that the requirement for payment of prevailing wage rates was inappropriate for HUD-assisted Indian housing. The report stated that payment of these wages on such HUD-assisted construction had "been identified by many different Indian authorities as a major source of inflation and delay," which unfortunately has the net result of significantly fewer housing units in Indian Country than otherwise would be possible.[13]

Republican Senator John McCain (Arizona), Chairman of the Senate Indian Affairs Committee, good naturedly chided HUD Secretary Cisneros at the recent hearings for refusing to support the repeal of federal control of wage standards in Indian Country while at the same time his administration advocates tribal self-determination and local control on other Indian housing issues.

The watered-down version offered earlier this year, allowing for a selective waiver of Davis-Bacon, is potentially more unfair than a blanket imposition of the Act if it results in hiring local Indian laborers at rates below those paid non-Indians. Consequently, many tribal leaders have recently lobbied Congress either individually or under the auspices of The Campaign to Save Indian Programs, or other lobbying groups sympathetic to Native American housing, to remove the Davis-Bacon requirements completely from the Lazio Bill or, as an alternative, to exempt projects for the construction of twelve units or less.

Whether Congress will respond to these most recent pleas from Indian Country remains to be seen. Eliminating current Davis-Bacon requirements for Indian housing is opposed by labor organizations partially in fear that it will establish a precedent for elimination in other federally-funded programs. This makes it a difficult political, as well as philosophical, issue for many Democratic and some Republican members of Congress and the Administration. Most tribal leaders support replacing Davis-Bacon wage requirements with a requirement that local employment wages established by the Tribal Employment Rights Offices (TEROs) be used. These TERO wages, which would be approved by the tribes and, in some instances, by both the Bureau of Indian Affairs and the Department of Labor, would adequately protect local Indian laborers from exploitation or job loss caused by importing cheaper labor from outside the reservations. If so, then the goals of both the Secretary and Indian leaders would be met.

Resolution of the Davis-Bacon issue for both Indian and publicly-assisted housing is one of the final problems that must be solved in order for new housing legislation to be passed and signed. Whatever the outcome, this issue will have a significant impact on both housing costs and who (the federal government or tribes) will determine wage rates on most Indian housing construction projects.

[10] [1979] U.S. Code Cong & Admin. News, pp. 2394-5, 2401.

[11] [1979] U.S. Code Cong & Admin. News, p. 2394.

[12] Id.

[13] Id.

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1. VIOLENCE AGAINST WOMEN ACT

The Violence Against Women Act (VAWA) is part of the Violent Crime Control and Law Enforcement Act of 1994 which provides federal tools for the purpose of prosecuting domestic violence, in situations involving firearms or interstate travel or activity.

VAWA allocated funds to the Department of Justice (DOJ) with the intent that such funds be distributed to various communities and used to address issues involving domestic violence in each respective community.

2. CRIMINAL PROVISIONS OF THE VIOLENCE AGAINST WOMEN ACT

A. 922 (d)(8) and (g)(8)

Prohibits disposal of firearms to, or receipt or possession of firearms by, persons who are subject to domestic violence protection orders.

922(d)(8) Prohibits the knowing transfer of a firearm to a person who is subject to a court order that restrains the person from harassing, stalking, or threatening an intimate partner or child of such intimate partner.

922(g)(8) Prohibits the receipt or possession of a firearm or ammunition by such person.

Violation of 922(d) or (g) carries maximum 10 year penalty.

1. EVIDENTIARY ISSUES:

Violation of 922(d)(8) must be knowing. Knowledge may be difficult to establish as there is no central registry for protective orders.

"Intimate partner" 18 U.S.C. 921(a)(32) includes spouse or former spouse, but does not include girl/boyfriend with whom defendant has not resided. Includes girl/boyfriend if past or present cohabitation. Also includes parent of a child of the person.

Evidentiary hearing required, in which defendant had notice and an opportunity to appear. Order must include a specific finding that the defendant represents a credible threat to the physical safety of the victim.

Constitutional challenges?

B. Title 18 U.S.C. 2261(a)(1): Crossing a state line

Prohibits travel across state lines, or leaving or entering Indian country, with the intent to injure, harass or intimidate one's spouse or intimate partner where, in the course or as a result of such travel, the defendant intentionally commits a violent crime and thereby causes bodily injury.

1. EVIDENTIARY ISSUES:

Requires specific intent at the time of crossing the state line. Difficult to prove that criminal activity was contemplated at the time the state line was crossed.

Requirement of "intimate partner"

Bodily injury for prosecution under this statute. Ie. Kidnaping with no resulting physical injuries would not fall under this statute.

C. Title 18 U.S.C. 2261(a)(2): Causing the Crossing of a State Line

Prohibits causing a spouse or intimate partner to cross state lines, or leave or enter Indian country, by force, coercion, duress or fraud, during which or as a result of which, there is bodily injury to the victim.

1. EVIDENTIARY ISSUES:

No specific intent requirement. Requires force, coercion, duress or fraud and therefore consent will be a common defense.

The crime of violence must be committed during the course of, or as a result of the travel

"Intimate partner"

Bodily injury

D. Title 18 U.S.C. 2262: Interstate violation of a protective order

Prohibits interstate travel with intent to violate a valid protective order that protects against credible threats of violence, repeated harassment, or bodily injury

1. EVIDENTIARY ISSUES:

2262(a)(1) Specific intent at the time of crossing the state line must be proved.

2262(a)(2) Specific intent not required. Sufficient to prove a defendant caused the crossing of the state line and intended to injure the victim in violation of a valid protective order.

Mutual restraining orders may not conform to the statutory requirements.

Full faith and credit, 18 U.S.C. 2265 provides that protective orders issued by state or tribal officials shall be accorded full faith and credit by the courts of other states and tribes. (Arguably also applies to the federal courts according full faith and credit to other states and tribes)

Police may be unable to quickly determine if a valid order in fact exists. No national data centers for such information. Police may arrest for any underlying crimes and then determine if valid order exists. However, most problematic if there is no underlying crime and time is needed to determine if valid order exists.

E. Related Civil Provisions

1. TITLE 18 U.S.C. 2265 FULL FAITH AND CREDIT

Provides that a civil or criminal domestic protective order issued by the courts of one state or Indian tribe, which is consistent with protective orders as described in the statute, shall be accorded full faith and credit by the courts of another state or tribe, and are to be enforced as if it were the order of the court of the second state or tribe.

Law applies to permanent, temporary and ex parte protective orders, as defined in 18 U.S.C. 2262.

2. EVIDENTIARY ISSUES

Law requires issuing court to have had personal and subject matter jurisdiction over the dispute.

Issuing court must have provided the respondent reasonable notice and opportunity to be heard, consistent w/due process. In the case of ex parte orders, such notice and an opportunity to be heard must have been provided within reasonable time sufficient to protect the respondent's due process rights.

THE COURT, having considered the relevant facts, finds

_____ The Defendant received actual notice of this hearing, and had an opportunity to participate in such hearing.

_____ The Defendant is a credible threat to the physical safety of the Plaintiff.

IT IS HEREBY ORDERED

_____ That Defendant shall not harass, stalk, threaten or cause bodily injury to Plaintiff.

_____ That Defendant shall not engage in conduct that would place Plaintiff in reasonable fear of bodily injury.

_____ That Defendant shall not use, attempt to use or threaten to use physical force against the Plaintiff that would reasonably be expected to cause bodily injury.

THE COURT FURTHER ORDERS

_____ That Defendant must not possess or receive any firearm or ammunition.

_____ The Defendant has been advised that, because s/he is a subject of this court's order, it is a violation of Federal Law, Title 18 U.S.C. § 922(g) for him or her to ship, transport in interstate commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped in interstate or foreign commerce. The maximum term of imprisonment for a violation of Title 18 U.S.C, § 922(g) is 10 years.

National Association of Crime Victim Compensation Boards

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Mississippi Crime Victim Compensation Program

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CRIME VICTIM COMPENSATION

A FACT SHEET

1. What is crime victim compensation?

Crime victim compensation programs can pay for the otherwise-unreimbursed expenses victims of violent crime incur as a direct result of their personal injuries. These programs, which operate through state and local governments, pay for medical expenses, mental health counseling, lost wages, and funeral expenses, and for loss of support for a victim's dependents. Property loss (damaged or stolen property) is usually not covered, with the exception of eyeglasses, hearing aids, and other medical devices. **Compensation is awarded only when other sources of payment, such as medical or auto insurance, other public benefits, or restitution, are not readily available to the victim.** Maximum benefits generally range between $10,000 and $25,000, though a few states have higher or lower maximums. (Nationally, the average amount paid to each victim applying for compensation is about $2,000.) About $250 million is being paid to more than 150,000 victims nationwide each year.

2. Why is it so important?

While no amount of money can erase the trauma and grief suffered by crime victims, financial assistance can be crucial in helping many people through the recovery process. For some victims, these funds can help preserve the stability and dignity of their lives.

3. How many states have crime victim compensation? How many countries?

All 50 states, the District of Columbia, and the Virgin Islands have active victim compensation programs. There is no federal compensation program, but federal funds supplement the states' funds, and victims of federal crimes are fully eligible in the states where the crimes occur. Each state conducts its program according to its own law, but most of the programs are similar in scope and operation. A number of other countries operate compensation programs, including Britain, Germany, Canada, and Australia.

4. What are the eligibility requirements for victims and their families?

In general, the victim must be innocent of criminal activity and "contributory misconduct," report the crime promptly to police, cooperate with the criminal justice system, and submit a timely application. A conviction of the offender is <u>not</u> required. Victims are eligible regardless of whether the crime is under federal, state, or military jurisdiction. The victim is eligible in the state where the crime took place, regardless of whether the victim is a resident of that state. **Indian crime victims are fully eligible, whether the crime is adjudicated in tribal, federal or state court.**

5. How does the application process work?

Typically, a victim may receive a compensation application from a prosecutor's office or police department, or by contacting the compensation program itself. **The help of victim assistants and advocates in providing applications and assistance in filing is vital to the process, since most compensation programs operate with very small staffs.** Once completed, the application is submitted to the compensation program in the state where the crime occurred. The program staff verifies the information, obtains police reports to confirm the circumstances of the crime, and notifies the victim concerning the victim's eligibility and what expenses can be paid. The victim may appeal the decision.

6. Where does the money come from to pay the claims?

In two-thirds of the states, no tax dollars are involved. All the money for compensation to victims comes from fines, penalties, court costs, or other assessments against convicted criminals. For example, a state might require each convicted felon to pay $25 into the compensation fund, or might assess a $3 surcharge on all moving traffic violations. About a third of the states use general appropriations to fund their program, or some combination of appropriations and criminal fees. In addition, the federal Crime Victims Fund--financed entirely from federal criminal fines and fees--provides supplemental funds to each state.

7. What about victims injured in crimes in foreign countries?

Some states will cover their own residents when injured outside the United States, but many cannot, since their laws limit their coverage only to crimes occurring within their own borders. While a number of foreign countries operate compensation programs, benefits may be limited and difficult to access.

8. Where can I get more information?

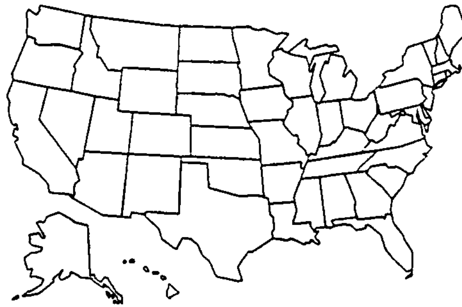
Contact the program in your state or call the National Association of Crime Victim Compensation Boards at (703) 370-2996.

CRIME VICTIM COMPENSATION
AN OVERVIEW

Crime victim compensation programs across the country offer crucial financial assistance to victims of violence. This overview provides information on how the programs operate and what victims can do to seek help.

Victims of criminal violence may suffer physical injury, emotional and mental trauma, and financial loss. For these victims and their families, the aftermath of crime can be a painful, difficult time, compounded by worry over whether hospitals and doctors can be paid, or whether income lost due to disability will affect the victim's capacity to pay for other essential living expenses.

Crime victim compensation programs exist to provide financial assistance to crime victims. These programs, now operating in all 50 states, the District of Columbia, Guam and the Virgin Islands, can pay for medical care, mental health counseling, lost wages and, in cases of homicide, funerals and lost support.



While no amount of money can erase the trauma and grief victims suffer, this financial aid can be crucial in the recovery process, and can help victims preserve their stability and dignity.

Nearly every type of violent crime can result in a financial loss for which compensation programs can pay. Victims of rape, assault, robbery, sex abuse, drunk driving, and domestic violence, as well as the families of homicide victims, are examples of those who are eligible to apply for financial help.

With very few exceptions, compensation programs pay only for expenses related to personal injury, and do not cover property that is stolen, lost or damaged. As an example, if a robber assaults an individual and steals something from him or her, all programs can pay for the medical costs related to any resulting personal injury, but only a couple can pay for the replacement of the stolen property. (Eyeglasses, hearing aids, and medical prostheses damaged or stolen are an exception to this general exclusion.) It's important to check with the specific state to determine exactly what it can cover.

In addition, it's important to remember that compensation programs are "payors of last resort," meaning that they cannot offer benefits for expenses covered by "collateral resources," such as medical and automobile insurance, employee benefits, other public assistance programs, and restitution. With limited funds, programs must conserve scarce resources as much as possible.

Many programs have experienced a remarkable increase in applications in recent years. Extensive outreach efforts, along with the growth in other victim services and new laws mandating that services and information be provided to victims, have resulted in more and more victims applying for help. While compensation programs are striving to meet this rising demand, stresses on program resources and administration are inevitable, particularly as many state government budgets have declined, and specific sources of revenue for compensation programs have failed to keep pace. For many programs, concern is escalating about whether there will be enough money to pay claims, and enough staff to process them, in the near future. Still, compensation programs everywhere are working hard to process claims promptly, while at the same time seeking necessary legislative changes to boost revenue and control costs. Programs also are working harder to recover from offenders the payments that the programs make to victims, by aggressively enforcing restitution and subrogation rights.

The growth in claims shows that more victims are receiving the financial help they need. The nation's compensation programs are committed to serving victims, and will continue to be a crucial factor in helping victims recover from the trauma and economic burden of criminal victimization.

Program Development, Size and Structure

California established the nation's first compensation program in 1965, and five other states created programs in the next three years. By 1980, 28 states were providing victim compensation, and most of the rest of the states authorized programs during the next decade. In 1996, all 50 states, plus the District of Columbia and the Virgin Islands, are operating compensation programs, paying out nearly $250 million annually to more than 100,000 victims nationwide.

California is the largest program in the country by far, paying out about a third of the total benefits paid by all programs combined. (California awards between $75-80 million annually, while the next largest program, Texas, pays out between $20-30 million each year.) The median annual payout per state is just under $2 million (half the states pay a total less than that, and half pay more), but the range is considerable, with 12 states paying less than $500,000 annually and about the same number paying more than $3 million.

Staff sizes tend to be quite small, with 12 states operating with 3 or less people, and 34 states employing less than 10. Only 7 states operate with more than 20 employees, California again being the largest, with over 250 employees.

The programs function within a variety of state and local government settings. Nearly a third are affiliated with criminal-justice-related executive branch agencies, and a fifth function as divisions of Offices of Attorneys General. Eight are independent agencies; workers' compensation bureaus house five of the victim compensation programs, and other affiliations include corrections departments, social services agencies, and finance and management departments. Four states operate their programs within courts or claims courts.

Colorado and Arizona are unique in operating compensation programs through local prosecutor's offices. Twenty-two compensation boards in Colorado (one for each district) and 15 boards in Arizona (one in each county) adjudicate claims under state law and coordination.

Funding

Programs obtain their funding from a number of different sources, but the states can be divided into two basic categories: those that receive the bulk of their funding from fees or charges that offenders pay, and those that depend on general-revenue appropriations from legislatures. More than four-fifths of the states are in the first category, gaining most of their income from offenders; in fact, in a large majority of states, no tax dollars are involved at all in either the administration of the program or in the awards given to victims.

The types and level of offender assessments vary markedly from state to state. Many states require that offenders pay a set penalty or fee, such as $25 per felony and $15 per misdemeanor, into a crime victim compensation fund. Other states will take a certain percentage of the offender's fine, or place a surcharge upon that fine, and use it for compensation funding.

Fund Recovery. Because offenders and others liable for injury to victims should pay for the consequences of crime, and because programs need to make the most of the scarce resources available for compensation, "fund recovery" has become an important concern for many programs. Some are aggressively seeking restitution from offenders by working with prosecutors and judges to ensure restitution orders are sought and issued, and by monitoring payment through appropriate channels.

While for most programs, fund recovery is a minor source of total income, a few programs are beginning to recover more than 10% of their awards.

VOCA. Federal funds provide about 20% of the monies available to states for making awards to victims. Under the Victims of Crime Act of 1984 (VOCA), each eligible program can receive a grant equaling 40% of the state dollars awarded to victims. In other words, for every 100 state dollars spent, the program will receive 40 federal dollars through a process that will make the funds available a little over a year after the end of the fiscal year upon which the calculation is based. This theoretically results in a 72%/28% state-to-federal mix of money (out of every $140 dollars available, $100 will be state, and $40 will be federal), but since most programs are paying more and more in awards each year, the federal funds will be proportionately less of the total by the time they are available in the grant process. State funds also must pay for nearly all administrative costs, since only 5% of VOCA funds can be used for administration.

To be eligible for a federal grant, certain conditions must be met. Programs must cover medical expenses, mental health counseling, and lost wages, as well as funeral expenses and lost support for families of homicide victims. They must also consider drunk driving and domestic violence as compensable crimes, and must not categorically exclude domestic violence victims on the basis of their being related to or living with the offender.

(Programs may deny claims when an award to the victim would unjustly enrich the offender.) Programs also must comply with statistical reporting requirements. All states currently meet the standards except Nevada, which does not cover nonresidents criminally injured within its borders.

The VOCA grant program is administered by the Office for Victims of Crime in the U.S. Justice Department, which also provides valuable technical assistance to the state compensation programs.

The Application Process

Application procedures vary from state to state, but in a typical state, a victim will be referred to a compensation program by police, prosecutors, victim-witness programs or service providers, or through a poster or written material developed by the compensation program itself. Applications are usually available through law enforcement or victim assistance and service programs, or through direct contact with the compensation program.

The victim is responsible for completing the application form and providing all requested documentation. The victim must return the form to the compensation program or some designated intermediary.

Most programs process claims through a staff centralized in one office in the state capital, but a few states have branch or regional offices, and a few (other than Colorado and Arizona) make use of locally based individuals in other entities or agencies to perform preliminary work on applications (document gathering and verification) prior to final decision making in the central office.

Decision-making authority varies from state to state, with about half the states using part-time boards or commissions to determine eligibility and awards, and about half authorizing full-time administrative staff (usually program directors) to make determinations. In the court-based programs, judges or court-appointed officials decide claims.

While each state operates under its own law, rules, policies and procedures, all of the programs share broadly similar eligibility requirements and cover substantially the same types of expenses. The information provided in the sections that follow is intended to focus on the characteristics common to nearly all programs, but victims should be sure to check with the programs to which they apply to learn exactly how the program operates and what benefits may be available. The program itself, of course, is the only source for official and fully accurate information.

Eligibility Requirements

While eligibility requirements vary somewhat from state to state, all programs have the same basic criteria. The victim must:

o Report the crime promptly to law enforcement (72 hours is the general standard, though a few programs have shorter or longer periods, and nearly all have "good cause" exceptions applied liberally to children and incapacitated victims and in other special circumstances);

o Cooperate with police and prosecutors in the investigation and prosecution of the case;

o Submit a timely application to the compensation program (generally 1 year from the date of the crime, though a few states have shorter or longer time frames, and most can waive these requirements in exceptional circumstances) and provide other information as requested by the program;

o Be innocent of criminal activity or significant misconduct that caused or contributed to the victim's injury or death.

Apprehension and/or conviction of a perpetrator is <u>not</u> a prerequisite to receiving compensation.

The eligibility of a victim's dependents or other secondary victims generally depends on the eligibility of the "direct" victim (the one who suffered the injury or death). For example, if a homicide victim was engaged in criminal activity, the family generally would be ineligible for any benefits.

Payment of benefits also depends on whether the expenses for which reimbursement is sought have not been or cannot be paid from some other collateral source (medical insurance, other public assistance programs, etc.).

Where to File

The victim should file an application for compensation in the state where the crime takes place. All of the states, with the exception of Nevada, will accept applications from nonresidents who are injured within their borders (a very few states restrict eligibility to U.S. citizens).

If the crime occurs in Nevada to a nonresident, or if the crime took place in a state with a new program and before the date that the program began accepting applications, the victim should apply in the victim's state of residency. All of the states (but Nevada) will honor such applications as if the crime had taken place within their own borders.

A few states extend coverage to their residents who are injured in other states with compensation programs, as well as other countries, but awards are usually conditioned upon the victim first applying in that other state or country (if it has a program; a number of major developed countries, including Canada, Great Britain, Germany, and Australia, do).

Federal Victims

Victims of crimes falling under federal jurisdiction (crimes on Indian reservations, for example) should apply for compensation in the state in which the crime occurred. While there is no federal crime victim compensation program, each state treats federal crime victims as fully eligible for all the benefits available for victims of state and local crimes. Compensation programs depend on the help of federal victim\witness coordinators to inform federal victims of their opportunity to apply for benefits.

Collateral Resources

All compensation programs are "payors of last resort." This means that any other "collateral" sources of payment to the victim, such as restitution from the offender, medical or auto insurance, employee benefit programs, Social Security, and Medicaid/Medicare, must be accessed first before the programs will consider payment. (Since restitution, if paid at all, is often received over a long period of time, compensation programs will pay in advance rather than force the victim to wait to receive restitution.)

In addition, if the victim recovers any money from the offender or any other party liable for the victim's expenses, the compensation program must be paid back for that portion of the expenses for which the program has paid. (Generally, if the victim's losses are greater than the amount paid for by the compensation program, the program will expect repayment only after those other losses are fully reimbursed. In other words, if the victim's total losses are $100,000, and the compensation program awards $10,000, the amounts recovered otherwise by the victim from other sources can go to pay for the remaining $90,000 in losses before the compensation program needs to be repaid.)

Compensable Costs

All compensation programs cover the same major types of expenses, though their specific limits may vary. The primary compensable costs covered by all states are the following:

o Medical expenses;

o Mental health counseling;

o Lost wages for victims unable to work because of crime-related injury;

o Lost support for dependents of homicide victims; and

o Funeral expenses.

Nearly all of each state's total awards to victims go toward paying the above expenses, with medical fees comprising well over half of amounts awarded to victims. Lost wage and support payments are the next largest payment category for most states, though awards for counseling are growing rapidly (a few programs are now paying from 20% to 40% of their awards for counseling).

In addition, a number of other expenses are paid for by some, but not all, programs, including:

o Moving or relocation expenses, often limited only to instances where the victim is in imminent physical danger, or if medically necessary (severe emotional trauma from sex assault, for example);

o Transportation to medical providers, usually limited to occasions when the provider is located in a place distant from the victim's residence, or when other special circumstances exist;

o Replacement services for work the victim is unable to perform because of crime-related injury (child care, housekeeping), usually limited to payments to non-family members;

o Essential personal property lost or damaged during the crime (all states will cover medically necessary equipment, such as eyeglasses or hearing aids, but only a few can cover anything else);

o Crime-scene cleanup, or the cost of securing a home or restoring it to its pre-crime condition;

o Rehabilitation, which may include physical therapy and/or job therapy; ramps, wheelchairs, and modification of homes or vehicles for paralyzed victims; and driving lessons.

Maximums and Limits

Maximum benefits available to victims from the state programs generally range between $10,000 and $25,000, though a few states have higher or lower maximums. (Nationally, the average amount paid to each victim applying for compensation is about $2,000.) In addition, many states have lower limits on specific compensable expenses, like funerals and mental health counseling.

Contact your state compensation program for more details on benefits and procedures.

U.S. Crime Victim Compensation Programs: Phone and Fax #'s

ALABAMA
(334) 242-4007
(334) 240-3328 (fax)
ALASKA
(800) 764-3040/(907) 465-3040
(907) 465-2379 (fax)
ARIZONA
(programs in each county)
(602) 542-1928 [state coordinator]
(602) 542-4852 (fax)
ARKANSAS
(501) 682-1323
(501) 682-5313 (fax)
CALIFORNIA
(916) 323-6251
(916) 327-2933 (fax)
COLORADO
(programs in each district)
(303) 239-4402 [state coordinator]
(303) 239-4491 (fax)
CONNECTICUT
(860) 529-3089
(860) 721-0593 (fax)
DELAWARE
(302) 995-8383
(302) 995-8387 (fax)
DISTRICT OF COLUMBIA
(202) 727-3361
(202) 727-3783 (fax)
FLORIDA
(904) 488-0848
(904) 487-1595 (fax)
GEORGIA
(404) 559-4949
(404) 559-4960 (fax)
HAWAII
(808) 587-1143
(808) 587-1146 (fax)
IDAHO
(208) 334-6070
(208) 334-2321 (fax)
ILLINOIS
(312) 814-2581 [A.G.'s office]
(312) 814-5079 (fax)
(217) 782-0703 [Court of Claims]
(217) 785-1856 (fax)
INDIANA
(317) 232-7103
(317) 233-4979 (fax)
IOWA
(515) 281-5044
(515) 281-8199 (fax)
KANSAS
(913) 296-2359
(913) 296-0652 (fax)
KENTUCKY
(502) 564-2290
(502) 564-4817 (fax)
LOUISIANA
(504) 925-4437
(504) 925-1998 (fax)

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(207) 626-8828 (fax)
MARYLAND
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(410) 764-4039 (fax)
MASSACHUSETTS
(617) 727-2200, ext. 2557
(617) 367-3906 (fax)
MICHIGAN
(517) 373-7373
(517) 335-2355 (fax)
MINNESOTA
(612) 282-6256
(612) 282-6269 (fax)
MISSISSIPPI
(601) 359-6766
(601) 359-2470 (fax)
MISSOURI
(573) 526-6006
(573) 526-4940 (fax)
MONTANA
(406) 444-3653
(406) 444-4722 (fax)
NEBRASKA
(402) 471-2828
(402) 471-2837 (fax)
NEVADA
(702) 486-2740 (Las Vegas)
(702) 486-2555 (fax)
(702) 688-2900 (Reno)
NEW HAMPSHIRE
(603) 271-1284
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Arizona's Crime Victim's Compensation Programs

Due to the rising crime in our state, Arizona Crime Victims Compensation Program was established in the early 1980s to assist innocent victims of crime with funds to cover certain expenses incurred by victims.

Each county in the State of Arizona is given funds to provide financial assistance to victims of crime. Every month each county receives an amount which is based on a formula that includes population, etc. In addition, each county program receives an annual lump sum distribution from the VOCA Fund (Victim of Crime Act); this amount is also based on a formula. The funds for these programs derive strictly from assessments on all felony convictions in the state of Arizona.

A program director along with appointed Board members are assigned to administer these funds. Each county Crime Victims Compensation administrations, with the exception of Coconino County, are prosecutor base programs.

Eligibility requirements for this program include the following:

a. the crime must be reported to law enforcement authorities within seventy-two hours after its discovery (with exceptions);

b. the application is submitted within one year of the discovery of the crime;

c. the victim/claimant must fully cooperate with law enforcement officials in investigation and prosecution;

d. the incurred expenses have not and will not be paid by collateral sources; and

e. there was no negligence on the part of the victim.

Some of the expenses covered by this program include medical, wage loss, funeral, mental health counseling, dental, travel, and traditional healing. However, recovery for damages to real and personal property is excluded from this program.

The Apache County Attorney's Crime Victims Compensation Program can financially assist victims with up to $2500 for funeral expenses, a year of counseling, work loss (loss wages) of up to $180 a week and medical expense up to $10,000. However, due to the increase of crime and the availability of funds, Arizona has left the discretion on each expense up to each County Compensation Board.

For victims of crime to apply for these funds, they first need to contact the office of the County Attorney to obtain an application (State of Arizona Crime Victim Compensation Program), complete this application, obtain a police report (Request for Information Form - used on Navajo Reservation), and return these documents to the appropriate County Attorney's Office.

This financial assistance is not limited to the people residing in the county or in the state of Arizona; the victim could be from another state.

The Crime Victims Compensation Fund was created to financially assist all victims of crime. It is recommended that Navajo Nation social workers, law enforcement officials, and anyone who is in contact with crime victims, inform the victims of the existence of this program.

With the economic conditions, unemployment, etc., on Indian reservations, the Crime Victims Compensation Program can be very beneficial to those who are victimized in Indian country.

If you have any questions regarding any of this information, please contact Henry R. Thompson, Program Coordinator, at Apache County Attorney's Crime Victims Compensation Office (ph. 520-337-4364).

VICTIMS OF CRIME: ISSUES IN INDIAN COUNTRY

by

Cathy Sanders

Since 1987, the Office for of Victims Crime (OVC) has focused discretionary Victims of Crime Act (VOCA) funds on improving services for federal victims of crime in Indian Country. Efforts include building a network of victim assistance programs in Native American communities, providing training, and developing informational materials that assist Native American crime victims to understand tribal and federal criminal justice systems, their rights, and available services.

Historical Overview

A new idea surfaced in the early 1980's about crime victims and how they were being victimized twice--once by the criminal, and then again by the criminal justice system. The system invested more in attending to the rights of offenders than in assisting the victims of their crimes, and seemed to blame victims, sending a message that victimization was the result of their own negligence.

To address this inequity, a task force was established to examine victims' issues and develop a blueprint for how the criminal justice system and others should improve the response to crime victims. It was the first major effort undertaken by the federal government to address victims' rights. The outcome of the research and recommendations of the task force was the passage of the Victims of Crime Act (VOCA) of 1984,[1] which furnished a mechanism to generate monetary resources for victim assistance services.

Establishment of OVC

VOCA established the Office for Victims of Crime (OVC) which was given the responsibility for administering the Crime Victims Fund. Each year, millions of dollars are deposited into this Fund from criminal fines, forfeited bail bonds, penalty fees, and special assessments collected by the U.S. Attorney's Offices, the U.S. Courts, and the Bureau of Prisons. These dollars come from offenders convicted of federal crimes--not from taxpayers. The goal in administering the Crime Victims Fund is to assist the states to develop a comprehensive network of services to meet the needs of victims of violent crimes.

1. Pub. L. No. 98-473, 98 Stat. 2170 (1984).

Crime Victims Fund Deposits

The first $6.2 million deposited into the Fund in each of the fiscal years 1992 through 1995, and the first $3 million thereafter, are disbursed to the Administrative Office of the U.S. Courts to establish a centralized, automated National Fine Center. The Fine Center was established to receive all fines and assessments, compute interest and penalties, send monthly statements to debtors, prepare and mail delinquency and default notices for the Department of Justice (DOJ), and provide statistical information on the deposits received in the Fund.

The next $10 million is used to improve the investigation and prosecution of child abuse cases. The $10 million is split between the U.S. Department of Health and Human Services ($8.5 million) and OVC ($1.5 million). *The portion administered by OVC is used exclusively to help Indian tribes improve the investigation and prosecution of child abuse cases, particularly child sexual abuse cases.*

The remaining Fund deposits are distributed to State compensation programs (48.5%); State victim assistance programs (48.5%); and training and other assistance (3%) to expand and improve the delivery of services to crime victims, including victims of federal crimes.

Victim Compensation

What is crime victim compensation? Crime victim compensation is a direct payment to, or on behalf of, a crime victim for crime-related expenses such as unpaid medical bills, mental health counseling, funeral costs, and lost wages. Other compensable costs may include such expenses as eyeglasses or other corrective lenses, dental services and devices, prosthetic devices, and crime scene cleanup. Every state administers a crime victim compensation program. These programs provide assistance to victims of both federal and state crimes, including victims on Indian and military reservations. Although each state compensation program is administered independently, most programs have similar eligibility requirements and offer a comparable range of benefits. Maximum awards generally range between $10,000 and $25,000.

The typical state compensation program requires victims to report crimes to police within three days and to file claims within a fixed period of time. If other collateral sources of help are available, such as private insurance, compensation is paid only to the extent that the collateral resource does not cover the loss.

Examples of how these funds might be used: (1) A thirteen year old Navajo girl was sexually assaulted by a relative. In addition to the medical services provided by the Indian Health Service, the state compensation program reimbursed the family for the traditional healing ceremonies performed by a medicine man. (2) A four-year-old North Dakota girl was injured when her father tied her up and sexually molested her. He told her he would hurt her if she told. Charges were brought against the father. The state compensation paid for the child's physical examination and psychological counseling. (3) A father of a 7-month-old infant, who was beaten to death by the babysitter, was awarded $1,500 for burial

expenses.

Currently, all 50 states, the District of Columbia, the U.S. Virgin Islands, and Guam have established victim compensation programs.

Victim Assistance

What is victim assistance? Victim assistance includes services such as crisis intervention, counseling, emergency transportation to court, temporary housing, and criminal justice support and advocacy. Throughout the nation, there are more than 8,000 organizations that provide these and other services to crime victims. Nearly 3,000 of those organizations receive some VOCA funds. All states, the District of Columbia, the Virgin Islands, Puerto Rico, Guam, American Samoa, and Palau are eligible to receive a VOCA victim assistance grant. Each state/territory, except Palau, currently receives a base amount of $200,000. (Note: The recently enacted Anti-Terrorism and Effective Death Penalty Act of 1996 increases the base amount to $500,000 for each state and $200,000 for each territory beginning in Fiscal year 1997). The remainder of the Fund that is available for VOCA assistance grants is then distributed according to population data. Upon receiving the VOCA grant, each state awards these funds to public and nonprofit organizations to provide services to victims of crime.

Each state has discretion to determine which organizations will receive funding based upon the VOCA victim assistance guidelines and the needs of crime victims within the state. However, VOCA assistance funds can be used only for direct services to crime victims. Services such as offender rehabilitation, criminal justice improvements, and crime prevention activities cannot be supported with VOCA assistance funds.

Examples of how these funds may be used: (1) In Montana, a program that received VOCA funds operates a sexual abuse project which offers therapeutic treatment to preschool victims of sexual assault. Services include: initial intake, 12-week therapy, and consultation with local child welfare and District Attorney representatives. Also, the agency offers education and support groups to parents to assist them in responding appropriately to their sexually abused children. (2) A Florida woman's husband hit her in the face, breaking her nose in front of their three children. With no resources of her own, she knew leaving him would not be easy. She called her local domestic violence shelter, which provided housing and counseling for her and the children and helped her obtain a restraining order. (3) On a rural pueblo Indian community in New Mexico, victim assistance and advocacy services are provided by a police-based victim witness program.

Establishment of the Children's Justice Act Grant Program for Native Americans

As the seriousness of child abuse and its consequences was coming to the forefront of our nation's awareness, reports of child sexual abuse and disclosures of multiple-victim child molestation cases on Indian reservations also escalated at an alarming rate. We were brutally brought to the reality that child sexual abuse exists--not just in homes where parents are over stressed, indigent, or themselves abused, but across all income levels and in schools, day

care centers, and boy scout troops--those institutions we most trusted with our children's health and happiness.

The handling of child abuse cases in Indian country was exacerbated by geographic isolation and a general lack of victim services. The absence of trained medical and mental health professionals who understood the impact of child sexual abuse often resulted in child victims and their families being left on their own to deal with the emotional consequences of abuse. Procedures for sensitive and thorough pediatric forensic examinations, as well as follow-through with mental health counseling, which is critical to a child's recovery, were frequently nonexistent. Community education was also necessary to ensure that responsibility for the crime was placed on the abuser and not on the child victim or the victim's family.

The revelations of sexual abuse of Indian children on reservations and the problems Indian tribes faced in trying to deal with the abuse became evident. In order to respond more effectively to this situation, OVC proposed that Children Justice Act[2] funds be made available to Indian tribes to establish the same types of multi disciplinary programs that were being provided at the state level. In 1988, the Anti-Drug Abuse Act[3] was signed into law. This legislation amended VOCA and authorized $675,000 of the funds available to the Department of Health and Human Services for state CJA programs be used by OVC to make grants directly to Indian tribes to improve the handling of child abuse cases, particularly child's sexual abuse cases. VOCA has been further amended to increase the annual amount to $1,500,000. OVC established the Children's Justice Act Grant Program for Native Americans (CJA) and made its first awards directly to tribes in 1989. Since 1989, approximately $5,000,000 has been awarded to 40 tribes and tribal organizations through the CJA program.

The CJA program is the only source of federal funding for tribes that focuses on improving the investigation, prosecution, and handling of child abuse cases. Grants are made directly to Indian tribes to address a range of systemic improvements that are directed to increasing the support for Indian child victims and lessening the trauma associated with the investigation and handling of these complex cases. The CJA projects have supported: (1) establishment, expansion, and training for multi disciplinary teams; (2) revisions of tribal codes and procedures to address child sexual abuse; (3) development of protocols for reporting, investigating and prosecuting child sexual abuse cases; (4) specialized training for prosecutors, judges, investigators and other professionals who handle child sexual abuse cases; (5) development of procedures for establishing and managing child-centered interview rooms; and (6) establishment of special prosecution units.

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2. Pub. L. No. 99-401, 100 Stat. 903 (1986).
3. Pub. L. No. 100-690, 102 Stat. 4312-4387 (1988).

DIRECT VICTIM ASSISTANCE SERVICES

Victim Assistance in Indian Country Program (VAIC)

The VAIC grant program provides funding to states to establish "on-reservation" victim assistance programs in areas of Indian Country where there are no or only limited services for victims. There are 35 programs operating through funding from OVC in the states of Arizona, Colorado, Idaho, Iowa, Kansas, Michigan, Minnesota, Mississippi, Montana, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, Wisconsin and Wyoming. Services provided through VAIC include: crisis intervention; emergency shelter; mental health counseling; and court advocacy. There is a strong, cooperative working relationship between the federal victim-witness coordinators in U.S. Attorneys' offices and the tribal victim assistance coordinators in Native American communities. Tribal staffs often accompany victims to federal court proceedings and federal victim-witness coordinators regularly provide information on case events to the tribal coordinators. This cooperative relationship allows victims who are isolated and have few means of communication access to current information about their cases.

To date, approximately $5,438,640 has been expended on this program. In FY 1995, nineteen states received approximately $765,245 to make awards directly to Indian tribes to establish victim assistance programs in Native American communities.

Federal Crime Victims Assistance Fund

OVC has established this fund to meet the needs of federal victims of crime when assistance services are otherwise unavailable. Victim Witness Coordinators in the 93 U.S. Attorneys' Office can request access to the fund from OVC to meet the needs when local service resources are unavailable.

TRAINING AND TECHNICAL ASSISTANCE EFFORTS

Indian Nations Conference

Since 1988, OVC has funded five Indian Nations Conferences. Each conference has brought together victim service providers, law enforcement officials, prosecutors, and health and mental health professions to address issues of victimization in Indian country. The National Indian Justice Center, Inc. (NIJC) will organize and host the sixth conference, which is scheduled to be held in San Diego, California on January 23-25, 1997. The purpose of the conference is to address the needs of tribal communities in providing assistance to innocent victims of crime and handling cases of child physical and sexual abuse.

District Specific Training

In order to respond to federal districts' diverse training needs, OVC has designated funds to support victim assistance training programs for federal and tribal law enforcement officers, prosecutors and victim-witness coordinators. The purpose of this effort is to provide multi

disciplinary training that improves the response to crime victims in the participating districts.

Each of the conferences has resulted in improved federal and tribal communication and case handling. For example, the Northern and Eastern Districts of Oklahoma signed Memoranda of Understanding with 23 tribal leaders that define federal, tribal, and state responsibility for investigating reports of child abuse, prosecuting cases and protecting children.

Trainers Bureau

Through the Trainers Bureau, OVC has identified funding to support victim assistance consultants and speakers to travel to federal districts and eligible tribes. OVC is building and maintaining a list of available trainers and consultants with expertise in fields such as crisis intervention, mental health needs of victims, development of tribal codes that address family violence and interviewing child victims. OVC will approve requests for a special trainer or assist eligible tribes to locate expert trainers to address identified needs.

Training and Technical Assistance for CJA and VAIC Grantees

These projects provide comprehensive, skills-building training and technical assistance to Indian tribes and organizations that receive grants through the CJA and VAIC programs. The CJA training efforts focus on a multi disciplinary approach to investigating and prosecuting child sexual abuse cases in a manner that limits the trauma suffered by child victims and to treating and advocating for child sexual abuse victims. The VAIC training efforts provide program materials and technical assistance that are uniquely tailored to the needs of Indian communities. The training is designed to enhance, expand and improve direct services such as crisis intervention, emergency shelters, mental health counseling, and court advocacy.

VICTIM ASSISTANCE INFORMATIONAL MATERIALS

Bitter Earth-Child Sexual Abuse in Indian Country -- A Video

This film is intended for tribal leaders and tribal personnel who work on a daily basis to prevent, investigate, or otherwise handle child sexual abuse at the tribal level. The film defines and gives an overview of child sexual abuse, the harm it causes, the approaches the community can take for handling it, the available resources, and presents a call-to-action for communities to address this devastating crime. A discussion guide is distributed with the video to appropriate tribal, federal, state and local agencies across Indian country.

B.J. Learns About Federal and Tribal Court -- A Video

This culturally sensitive film is designed to meet the special needs of Native American child victims who are required to testify in either tribal or federal court. It answers questions frequently asked about the courtroom, courtroom procedures and the people who participate in court proceedings. Approximately 1,500 films and instructors' guides have been distributed to appropriate tribal, federal, state and local agencies across the country.

Financial Assistance for Crime Victims -- A Video

Through funding supplied by OVC, the National Association of Crime Victim Compensation Boards produced a 16-minute video that explains crime victim compensation programs and provides guidance to tribal communities on accessing compensation resources.

Resource Packages for Children Required to Testify in Federal Court

Through funding from OVC, the Medical University of South Carolina's National Crime Victims Research and Treatment Center will produce material that will assist child victims and witnesses of federal crimes. The project will develop and print four separate camera-ready booklets as part of a child victim assistance resource package for distribution to federal criminal justice personnel. The package will be used to help alleviate the trauma commonly experienced by children required to testify in federal court and to improve the response of federal and tribal criminal justice personnel to the rights and needs of such children. The four camera-ready products will be distributed to each United States Attorney's Office for use by the federal victim-witness coordinator.

Conclusion

OVC continues to expand its efforts to offer practical solutions for judges, law enforcement, social services, medical and health professionals, victim advocates and others in working with crime victims. In fiscal year 1995, OVC convened a focus group to discuss crime victims' issues relevant to Native American communities. In response to concerns expressed at the focus group meeting, OVC initiated several new approaches to enhance victim assistance services in Indian Country, including:

increasing the number of CJA-funded projects;

increasing the total dollar amount allocated to the VAIC program;

initiating a program to develop topic-specific articles on issues relevant to child abuse and neglect, family violence, and child victimization in Indian Country;

developing a tribal judges project in which intensive training and program manuals on "the adjudication of child sexual abuse cases occurring in Indian country" will be provided to regional tribal and federal judges;

developing scholarship funding for tribal judges and other court personnel to attend training in child abuse and family violence issues;

supporting training and technical assistance for the establishment of children's advocacy centers in Indian Country; supporting the development of Court Appointed Special Advocates in Indian country; and

increasing funding for the Indian Nations Conference to allow more scholarships for attendance by those who otherwise could not attend.

OVC's experience over the past seven years has shown that a strong tribal approach to the handling of child victimization cases is crucial to providing victims with an opportunity to heal. Coordination with federal and state systems is also critical in providing a meaningful response to the needs of victims. OVC will continue to support tribal communities in their efforts to ensure healing for those who have been exposed to violence, and we challenge Indian communities to coordinate and implement responses that best meet the needs of their children and families.

U.S. Department of Justice
Office of Justice Programs
Office for Victims of Crime

Office for Victims of Crime

OVC Fact Sheet

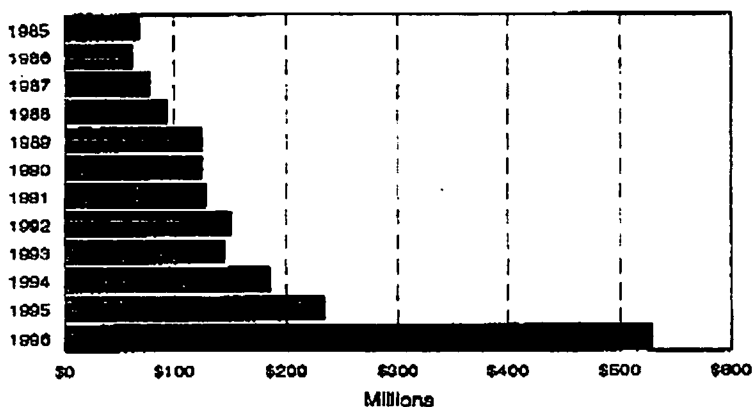
Advocating for the Fair Treatment of Crime Victims

Victims of Crime Act
Crime Victims Fund

The Crime Victims Fund was established by the Victims of Crime Act of 1984 (VOCA) and serves as a major funding source for victim services throughout the country. Each year, millions of dollars are deposited into this Fund from criminal fines, forfeited bail bonds, penalty fees, and special assessments collected by U.S. Attorneys' Offices, U.S. Courts, and the Bureau of Prisons. These dollars come from offenders convicted of Federal crimes -- not from taxpayers.

Deposits into the Fund fluctuate from year to year. The following chart depicts deposits into the Fund from 1985 through 1996.

Crime Victims Fund Deposits
Available for Victims' Programs



1996 deposits total more than $528 million dollars, by far the highest amount in the history of the Fund. These funds will be available for crime victims' programs during FY 1997.

How are Fund deposits disbursed?

The first $10 million is used to improve the investigation and prosecution of child abuse cases. The $10 million is divided between the U.S. Department of Health and Human Services ($8.5 million) and OVC ($1.5 million). The portion administered by OVC is used exclusively to help Native Americans improve the investigation and prosecution of child abuse cases, particularly child sexual abuse.

The remaining Fund deposits are distributed in the following ways:

- 48.5 percent to state compensation programs;
- 48.5 percent to state assistance programs; and
- 3 percent for discretionary funds to provide training and other assistance to expand and improve the delivery of services to crime victims.

VICTIM COMPENSATION

What is crime victim compensation?

Crime victim compensation is a direct reimbursement to, or on behalf of, a crime victim for crime-related expenses such as:

- medical costs;
- mental health counseling;
- funeral and burial costs; and
- lost wages or loss of support.

Other compensable expenses may include eyeglasses or other corrective lenses, dental services and devices, prosthetic devices, and crime scene clean-up.

What is a crime victim compensation program?

Every state administers a crime victim compensation program. These programs provide financial assistance to victims of both Federal and state crimes. Although each state compensation program is administered independently, most programs have similar eligibility requirements and offer a comparable range of benefits. Maximum awards generally range from $10,000 to $25,000.

The typical state compensation program requires victims to report crimes within 3 days and to file claims within a fixed period of time, usually two years. Most states can extend these time limits for good cause. If other financial resources are available, such as private insurance, compensation is paid only to the extent that the collateral resource does not cover the loss.

Which states receive VOCA compensation grants?

49 states, the District of Columbia, and the U.S. Virgin Islands receive VOCA compensation grants.

A state is eligible to receive a VOCA compensation grant if it meets the criteria set forth in VOCA and OVC's Program Guidelines. Examples of such criteria include providing services for Federal crime victims and assisting victims who are victimized within the state when the victim resides in another state. Under the 1996 Antiterrorism Act, states must also provide compensation to residents who are victims of terrorist acts within or outside the United States.

The formula for VOCA compensation grants to states is based on a percentage of state payments to crime victims in a previous year.

VICTIM ASSISTANCE

What is victim assistance?

Victim assistance includes services such as:

- crisis intervention;
- counseling;
- emergency shelter;
- criminal justice advocacy; and
- emergency transportation.

Throughout the nation, there are approximately 10,000 organizations that provide these and other services to crime victims. Nearly 2,300 of those organizations receive some VOCA funds.

Which states receive VOCA victim assistance grants?

All states and territories receive an annual VOCA victim assistance grant. Each state, the District of Columbia, the U.S. Virgin Islands, and Puerto Rico receive a base amount of $500,000. The territories of the Northern Mariana Islands, Guam, and American Samoa each receive a base amount of $200,000. Additional funds are distributed based on population.

States award VOCA funds to local community-based organizations to provide services directly to victims of crime.

How do states determine which organizations will receive VOCA grants?

Each state has discretion to determine which organizations will receive funding based upon the VOCA victim assistance guidelines and the needs of crime victims within the state. Most states make awards on a competitive basis.

VOCA assistance funds may be used only for direct services to crime victims. Services such as offender rehabilitation, criminal justice improvements, and crime prevention activities cannot be supported with VOCA assistance funds.

DISCRETIONARY FUNDS

What are discretionary funds?

The purpose of the discretionary grant program is to improve and enhance the availability of victim services. Each year, the OVC Director develops a *Program Plan* which identifies the training and technical assistance initiatives to be funded on a competitive basis in the coming year.

How are the discretionary funds used?

At least half of all discretionary grant funds are dedicated to improving the response to Federal crime victims. Initiatives include:

- training Federal criminal justice system personnel on victims issues;
- developing materials that help Federal victims understand their rights and available services; and
- supporting programs that establish and expand existing services for Federal crime victims.

The remaining discretionary funds support a variety of nationwide initiatives such as

- developing training curricula;
- training victim services and criminal justice professionals;
- working to raise the awareness of victims' rights and needs throughout the country; and
- identifying and disseminating promising practices in victim services.

OVC also supports a national Resource Center on victim-related issues. The Center can be reached at: (800) 627-6872.

For additional information on any of the activities described above, please contact the Office for Victims of Crime, 633 Indiana Avenue NW, Washington, DC 20531, phone (202) 307-5983, fax (202) 514-6383.

The OVC homepage is located at: http://www.ncjrs.org/ovchome.htm.

November 1996

U.S. Department of Justice
Office of Justice Programs
Office for Victims of Crime

Office for Victims of Crime

OVC Fact Sheet

Advocating for the Fair Treatment of Crime Victims

State Crime Victim Compensation and Assistance Grant Programs

The Office for Victims of Crime (OVC) in the U.S. Department of Justice administers two major formula grant programs: *Victim Compensation* and *Victim Assistance*. Funding for the two programs comes from the Crime Victims Fund (Fund), which was established by the 1984 Victims of Crime Act (VOCA). The money in the Fund is derived from fines, penalty assessments, and bond forfeitures from convicted Federal offenders -- not taxpayers. OVC distributes over 90 percent of Fund deposits to support state victim compensation and assistance services for victims and survivors of domestic violence, sexual assault, child abuse, drunk driving, homicide, and other crimes. During the past decade, these two formula grant programs have greatly improved the accessibility of services to Federal and state crime victims nationwide. They make a significant difference in the lives of more than two million people victimized by crime each year.

Victim Compensation Program

All 50 states, the District of Columbia, and the Virgin Islands have established victim compensation programs. Each of these programs reimburses victims for crime-related expenses such as:

- medical costs;
- mental health counseling;
- funeral and burial costs; and
- lost wages or loss of support.

Under the 1996 Antiterrorism Act, states must also provide compensation to residents who are victims of terrorist acts within or outside the United States.

Although each state compensation program is administered independently, most programs have similar eligibility requirements and offer a comparable range of benefits. Maximum awards generally range from $10,000 to $25,000. Compensation is paid only when other financial resources, such as private insurance or offender restitution, do not cover the loss. Certain expenses such as theft, damage, and property loss are not covered by most compensation programs.
To receive compensation, victims must comply with state rules, which generally require that they cooperate with the reasonable requests of law enforcement and submit a timely application to the compensation program.

VOCA funds supplement state efforts to compensate crime victims. The formula for VOCA compensation grants to states is based on a percentage of state payments to crime victims in a previous year. From FY 1986 through FY 1997, OVC will have distributed more than $637 million in VOCA compensation grant funds.

Victim Assistance Program

Throughout the United States, approximately 10,000 organizations provide services to crime victims. These organizations include domestic violence shelters, rape crisis centers, child abuse programs, and victim services in law enforcement agencies, prosecutors' offices, hospitals, and social service agencies. The services provided include, but are not limited to:

- crisis intervention;
- counseling;
- emergency shelter;
- criminal justice advocacy; and
- emergency transportation.

VOCA funds awarded to states each year support more than 2,300 community-based organizations that serve crime victims.

States and territories are required to give priority to programs serving victims of domestic violence, sexual assault, and child abuse. Additional funds must be set aside for underserved victims, such as survivors of homicide victims and victims of intoxicated drivers.

All states and territories receive an annual VOCA victim assistance grant. Each state, the District of Columbia, the U.S. Virgin Islands, and Puerto Rico receive a base amount of $500,000. The territories of the Northern Mariana Islands, Guam, and American Samoa each receive a base amount of $200,000. Additional funds are distributed based on population. From FY 1986 through FY 1996, states and territories received more than $688 million in VOCA victim assistance grant funds. In FY 1997, OVC will distribute nearly $400 million in VOCA victim assistance funds -- the highest award to states in the history of the program.

State Compensation and Assistance Programs in the United States and U.S. Territories*

ALABAMA
Victim Assistance
334-242-5891

Victim Compensation
334-242-4007

ALASKA
Victim Assistance
907-465-4356

Victim Compensation
907-465-3040

AMERICAN SAMOA
Victim Assistance
011-684-633-5221

ARIZONA
Victim Assistance
602-223-2480

Victim Compensation
602-542-1928

ARKANSAS
Victim Assistance
501-682-3671

Victim Compensation
501-682-1323

CALIFORNIA
Victim Assistance
916-324-9140

Victim Compensation
916-323-3432

COLORADO
Victim Assistance
303-239-4442

Victim Compensation
303-239-4442

CONNECTICUT
Victim Assistance
806-529-3089

Victim Compensation
806-529-3089

DELAWARE
Victim Assistance
302-577-3697

Victim Compensation
302-995-8383

DISTRICT OF COLUMBIA
Victim Assistance
202-842-8467

Victim Compensation
202-842-8467

FLORIDA
Victim Assistance
904-922-0728

Victim Compensation
904-488-0848

GEORGIA
Victim Assistance
404-559-4949

Victim Compensation
404-559-4949

GUAM
Victim Assistance
011-671-475-3406

Victim Compensation
011-671-475-3406

HAWAII
Victim Assistance
808-586-1282

Victim Compensation
808-587-1143

IDAHO
Victim Assistance
208-334-5580

Victim Compensation
208-334-6000

ILLINOIS
Victim Assistance
312-793-8550

Victim Compensation
217-782-7101

INDIANA
Victim Assistance
317-232-2560

Victim Compensation
317-232-2560

IOWA
Victim Assistance
515-281-5044

Victim Compensation
515-281-5044

KANSAS
Victim Assistance
913-296-2215

Victim Compensation
913-296-2359

KENTUCKY
Victim Assistance
502-564-7554

Victim Compensation
502-564-7986

LOUISIANA
Victim Assistance
504-925-1997

Victim Compensation
504-925-1997

MAINE
Victim Assistance
207-289-5060

Victim Compensation
207-626-8800

MARYLAND
Victim Assistance
410-767-7477

Victim Compensation
410-764-4214

MASSACHUSETTS
Victim Assistance
617-727-5200

Victim Compensation
617-727-2200 Ext 2251

MICHIGAN
Victim Assistance
517-373-1826

Victim Compensation
517-373-0979

MINNESOTA
Victim Assistance
612-643-3444

Victim Compensation
612-282-6267

MISSISSIPPI
Victim Assistance
601-359-7880

Victim Compensation
601-359-6766

MISSOURI
Victim Assistance
573-751-4905

Victim Compensation
573-751-7646

MONTANA
Victim Assistance
406-444-3604

Victim Compensation
406-444-3653

NEBRASKA
Victim Assistance
402-471-2194

Victim Compensation
402-471-2194

NEVADA
Victim Assistance
702-688-1628

Victim Compensation
702-687-4065

NEW HAMPSHIRE
Victim Assistance
603-271-1297

Victim Compensation
603-271-1284

NEW JERSEY
Victim Assistance
609-984-7347

Victim Compensation
201-648-2107

NEW MEXICO
Victim Assistance
505-841-9432

Victim Compensation
505-841-9432

NEW YORK
Victim Assistance
518-457-1779

Victim Compensation
518-457-8063

NORTH CAROLINA
Victim Assistance
919-571-4736

Victim Compensation
919-733-7974

NORTH DAKOTA
Victim Assistance
701-328-6195

Victim Compensation
701-328-6195

NORTHERN MARIANA ISLANDS
Victim Assistance
011-670-664-4550

OHIO
Victim Assistance
614-644-5610

Victim Compensation
614-466-8439

OKLAHOMA
Victim Assistance
405-557-6700

Victim Compensation
405-557-6700

OREGON
Victim Assistance
503-378-5348

Victim Compensation
503-378-5348

PALAU
Victim Assistance
011-680-488-2813 or
011-680-488-2553

PENNSYLVANIA
Victim Assistance
717-787-2040

Victim Compensation
717-787-2040

PUERTO RICO
Victim Assistance
809-723-4949

RHODE ISLAND
Victim Assistance
401-277-2620

Victim Compensation
401-277-2500 Ext 33

SOUTH CAROLINA
Victim Assistance
803-896-7896

Victim Compensation
803-734-1930

SOUTH DAKOTA
Victim Assistance
605-773-4330

Victim Compensation
605-773-6317

TENNESSEE
Victim Assistance
615-313-4700

Victim Compensation
615-741-2734

TEXAS
Victim Assistance
512-463-1919

Victim Compensation
512-936-1200

UTAH
Victim Assistance
801-533-4000

Victim Compensation
801-533-4000

VERMONT
Victim Assistance
802-828-3378

Victim Compensation
802-828-3374

VIRGINIA
Victim Assistance
804-786-4000

Victim Compensation
804-367-8686

VIRGIN ISLANDS
Victim Assistance
809-774-6400

Victim Compensation
809-774-1166

WASHINGTON
Victim Assistance
360-586-0253

Victim Compensation
360-902-5340

WEST VIRGINIA
Victim Assistance
304-558-8814

Victim Compensation
304-347-4850

WISCONSIN
Victim Assistance
608-267-2251

Victim Compensation
608-266-6470

WYOMING
Victim Assistance
307-635-4050

Victim Compensation
307-635-4050

* These programs are located within different agencies, depending on the state.

For additional information, please contact the Office for Victims of Crime, State Compensation and Assistance Division, 633 Indiana Avenue NW, Washington, D.C. 20531, phone (202) 307-5983, fax (202) 514-6383. The OVC homepage is located at: http://www.ncjrs.org/ovchome.htm.

October 1996

Children's Justice Act Grant Program for Native Americans

The Children's Justice and Assistance Act (CJA) was signed into law in 1986, providing funding to states for the purpose of improving the criminal justice system's response to cases of child physical and sexual abuse. The law amended the Victims of Crime Act (VOCA) of 1984, which established a Crime Victims Fund made up of federal criminal fines, penalties and bond forfeitures. The VOCA mandated that a majority of deposits into the Crime Victims Fund be used to support state victim assistance and compensation programs, while a small portion would be allocated to training initiatives and improving services to federal crime victims.

The original CJA authorized $10 million of the Crime Victims Fund to be distributed to states for use principally in devising and implementing strategies for improving the criminal justice response to child abuse. Subsequent to the passage of the CJA, a number of multiple victim child sexual abuse cases surfaced in Indian country. These cases, which involved hundreds of victims, revealed the difficulties tribal communities faced in serving sexually exploited children and in legally disposing of matters that involved them. In working to administer to the needs of the victims, mental health professionals and tribal service providers found that local services were often inadequate to the complex dynamics of sexual abuse. Further, they discovered that tribal criminal justice systems, like state systems, were often ill-equipped to accommodate this fragile population. As in cases that were entering the state courts, child victims were being subjected to unnecessary trauma in the form of multiple interviews, case processing delays and insufficient legal sanctions.

In response, Congress amended the CJA by allocating a portion of those state funds to Indian tribes. Initially, $675,000 was made available to support tribal programs in improving their handling of child physical and sexual abuse cases, particularly in the investigation and prosecution arenas. The Office for Victims of Crime (OVC) made its first grants under the Children's Justice Act Discretionary Grant Program for Native Americans in 1989. In 1994, the amount designated for tribal use was increased to $1.5 million. Since the program was established, the OVC has provided multi-year funding to 40 tribal programs.

Among the activities that CJA funding has gone to support are: training for multidisciplinary teams; revision of tribal codes; child advocacy services for children involved in tribal court proceedings; development of protocols for reporting, investigating and prosecuting child sexual abuse cases; treatment services; and specialized training for prosecutors and investigators.

Given the limited reach of funding authorized under the CJA, the OVC has made an effort to support programs that may serve to a degree as models. The OVC acknowledges the diversity of tribal communities and of their approaches to criminal justice and so recognizes the

difficulty in applying the term "model." Rather than expecting a CJA program to address the full range of criminal justice and victim service issues--an unrealistic expectation anyway given the restricted funding--the OVC seeks to fund a variety of programs dealing with the handling of child abuse cases. Nor does the OVC intend to suggest that "model programs" may be implemented only in large tribal communities or in communities where the resources necessary to a comprehensive child abuse strategy are already in place. Rather, the OVC encourages applicants who demonstrate a decided commitment to bringing about systemic change and who seek to implement innovative ideas for which they lack the necessary financial resources, regardless of size.

CJA grants range in amount from $60,000 to $100,000 per year and are generally awarded to an individual tribal program for three consecutive years, depending upon the grantee's performance during each of the project years. Although the OVC seeks to ensure that CJA grantees are continually moving toward the achievement of their objectives and of the goals of the CJA program, it makes a special effort to work with grantees who encounter obstacles in program implementation. Through grant extensions, budget modifications and timeline revisions, the OVC attempts to provide grantees with the greatest amount of flexibility possible in the administration of their projects. In addition, by making available its training and technical assistance resources, the OVC endeavors to support tribes in effecting change.

In its role as a grant-making entity, the OVC supports tribes through funding and through the myriad training and technical assistance resources and materials it offers. The OVC defers to the needs and priorities of tribal communities, relying on tribes to identify the best allocation of resources. Decisions on hiring, types of training, case disposition philosophies, and treatment practices, to the extent they do not conflict with statutory provisions and regulatory requirements, are left to the tribes.

The OVC announces the availability of CJA funding through its program plan, published annually in the *Federal Register*, and through its application kit, which is mailed each year to all federally recognized Indian tribes. The OVC develops a separate application kit for prospective CJA applicants, which they may receive by contacting the OVC once the program plan has been published. The OVC also automatically sends continuation application kits to grantees in their first and second years of funding.

To ensure that you are placed on the mailing list to receive the OVC application kit, contact the OVC at 202/307-5983.

Victim Assistance in Indian Country Grant Program

After the first $10 million of deposits into the Crime Victims Fund is taken out for the CJA program, the vast majority of the remainder of VOCA funds (97%) is set aside for use by the states and territories in supporting victim assistance and compensation programs. Half of that amount (or 48.5%) is awarded to states and subgranted to local public and non-profit organizations that serve crime victims. Among the services that these organizations provide are crisis counseling, temporary shelter, criminal justice advocacy, group treatment, and referrals. The remaining half goes to states to support their victim compensation programs, which provide financial assistance to defray costs incurred as a direct result of crime. These costs include mental health counseling fees, medical bills, lost wages, and funeral expenses.

The remaining three percent of VOCA funds is divided between training and technical assistance and improving services to federal crime victims. It is from this last amount that the OVC makes awards under the Victim Assistance in Indian Country (VAIC) Grant Program. The OVC began administering VAIC funds in 1988 to help meet the needs of victims in remote areas of Indian country where services were limited or non-existent. The OVC patterned the VAIC program after the VOCA state victim assistance program, awarding funds to states to be subgranted to tribal programs.

The nineteen states to have thus far received VAIC funds are Arizona, Colorado, Idaho, Iowa, Kansas, Michigan, Minnesota, Mississippi, Montana, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, Wisconsin and Wyoming. These states have used VAIC funds to support 52 "on-reservation" victim assistance programs. The VAIC program is, by far, the largest discretionary grant program administered by the OVC, totaling almost $6 million in eight years. In fiscal year 1996, the OVC awarded $730,000 to support 32 programs in 18 states.

Among the activities that VAIC funds have gone to support are: hiring of advocates to assist victims through the court system; bilingual counseling; volunteer recruiting programs; 24-hour crisis intervention; emergency transportation; and sheltering of domestic violence victims.

Because the provision of VOCA that grants the OVC the authority to administer the VAIC program also mandates that funds be used to benefit federal crime victims, only tribes over which there is some federal criminal jurisdiction are eligible to receive funding. This restriction contrasts with the CJA program, for which all federally recognized tribes are eligible.

As with the CJA program, the OVC makes its training and material resources available to tribal programs that receive VAIC funds. The OVC also encourages VAIC recipients to take

advantage of resources that the states make available to VOCA victim assistance subgrantees. Finally, the OVC asks United States Attorneys' Offices to take an active role in coordinating services to ensure that all appropriate federal resources are deployed to assist victims.

The VAIC program is part of the OVC's overall goal of ensuring the availability of services for victims of crime throughout the country, recognizing the great diversity of needs and sanctioning culturally distinct approaches to providing those services. It is, like the CJA program, a way of allowing tribes to identify their own best practices and encouraging creativity in the employment of those strategies.

Victim Assistance: Frontiers and Fundamentals

MODEL VICTIM ASSISTANCE PROGRAM

A "Program Brief"
prepared for the

Bureau of Justice Assistance
and the
Office for Victims of Crime
of the
Office of Justice Programs,
United States Department of Justice

by

Marlene A. Young, Executive Director, and
John H. Stein, Deputy Director

National Organization for Victim Assistance
Washington D.C.

For more information on the MODEL VICTIM ASSISTANCE PROGRAM, contact the National Organization for Victim Assistance (NOVA); (202) 232-6682

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THE NATIONAL INDIAN JUSTICE CENTER: AN OVERVIEW OF GRANT WRITING

You don't have to be a professional fundraiser or expert writer to develop an effective grant proposal. If you are in tune with the needs of your organization, have a good idea of prospective corporate or foundation resources for grants, and are able to communicate your needs effectively, you possess the basic skills needed to write a good grant proposal.

NIJC recommends that at least two people collaborate on writing a grant proposal. One person should be knowledgeable about the history of the tribe, the services you provide and the programs which need funding. The other person should be a good writer and editor - someone who is able to convey your message in a concise, professional manner.

There are five basic steps to grant proposal writing:

1. Determine your funding needs.
2. Determine the best individual, corporation or foundation to "sell" your grant proposal to.
3. Develop a strong grant proposal.
4. Make a strong personal presentation for your grant proposal.
5. Make sure that your funding source benefits from its contribution and is appropriately credited.

Determine Your Funding Needs

Many grass roots organizations make the mistake of submitting grant proposals to cover their operating expenses. Unless you have a special "guardian angel" - an individual, corporation or foundation willing to commit monies to keep your organization afloat - you are much better off asking for "restricted funds" for special programs or projects.

Funding entities prefer to contribute to high-visibility programs. If their name and reputation is going to be associated with a program, they want to make sure it:

Is a legitimate program that will fill a void in services to victims of violent crime

Is not controversial in any way

Has an evaluation system which monitors the program's admini-

Provides positive publicity for their sponsorship or contribution

Many of your existing programs are probably "marketable" to corporations and foundations. Your newsletter, counseling services or National Victims' Rights Week activities can be attractively packaged in grant proposals.

The leaders of your department or organization should make a list of existing programs that might be funded through grants. Prioritize these programs in order of their importance to your organization and clients, then in order of their "marketability" to funding sources.

Then, make a "wish list" of new programs or special projects that can't be met with existing staff and resources aside from money.

When you merge these two lists together, it's likely that you will have several excellent programs for which you can write grant proposals.

Determine the Best Potential Donors

Who would be interested in funding your special program? It's imperative that you research potential funding sources prior to submitting grant proposals to them. You need to know:

- If they have contributed to non-profit causes in the past?
- If they have, what types of organizations or programs received money?
- How much money does their "typical" grant provide?
- What are the policies and procedures established for grant proposals?
- Which department and/or individual is responsible for processing grant proposals?
- Are there specific application forms you must complete and requirements you must meet?
- Are there specific timelines or deadlines involved in their grant application process?

You can obtain this information by "asking around," although it's better to just contact the individual, corporation or foundation and request this information.

Some important final advice: try to match your specific proposal to a funding source which has a vested interest in the prospective program or project. For example, baby food or diaper companies would share your concern about child abuse. Or a foundation dedicated to women's issues might be interested in a domestic violence or sexual assault services.

Develop a Strong Grant Proposal

Once you determine the individual, corporation or foundation to which you will submit your grant proposal, make sure you follow all requirements set forth by that entity. You'll find that although grant application processes vary, most grant managers require similar information for grant proposals.

The eight basic components of good grantsmanship include:

Cover Letter
Cover Page and Table of Contents
Introduction
Needs Assessment
Goal(s) and Objectives
Program Description
Evaluation
Budget

Cover Letter

Your cover letter, while not inclusive in your actual grant proposal, is a critical component of your entire grant package. A good cover letter is the first thing a grant manager reads. It should provide a concise synopsis of the program for which you are seeking funds, a statement regarding why you are asking that particular entity for funding, and the exact amount of money you are requesting.

Your cover letter should not exceed one page. Never address it to "the grants department;" take the time to find out the name and exact title of the grant manager.

An effective way to develop your cover letter is to document your thoughts on a tape recorder. Explain the purpose of your grant proposal in one-to-two minutes. Then, type a transcript of your remarks. Ask a colleague to join you in editing those remarks into a one-page letter.

Your cover letter should be professional and concise. Eliminate unnecessary words. Remember, keep it general - the specifics of your request should be more than adequately addressed in your actual proposal.

Cover Page and Table of Contents

The cover page and table of contents should be aesthetically pleasing. A proper cover page should include the following information:

A

PROPOSAL

SUBMITTED TO THE

XYZ CORPORATION

FOR

(OFFICIAL TITLE OF PROGRAM)

SPONSORED BY

THE

ABC VICTIM ADVOCACY ORGANIZATION

(DATE)

The page immediately following your cover page should look like this:

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Introduction	1
Needs Assessment	3
Goals and Objectives	5
Program Description	8
Evaluation	9
Budget	11
Appendices	13

Introduction

The introduction to a grant proposal provides you with the opportunity to present your organization in a positive light - to convince the granting agency that you are worthy of its consideration. Your introduction should clearly establish your credibility.

The most important components to include in your introduction are:

Brief history of your tribal organization

Clientele you serve

Outstanding accomplishments

Support you have received in the past (from your community, other organizations, etc.)

Any honors or public recognition received by your group

Needs Assessment

You must clearly state the need for your proposed program in your needs assessment. Base your needs assessment on hard data, whenever possible. Use surveys, questionnaires, polls, statistics or materials which specifically identify the need for your program. While national or state-level needs assessment

data is useful, try to base your assessment upon your community's needs and those people who will actually be served by the program. If the need for your program developed as a result of specific cases, briefly highlight those incidents. If the outcome of a specific case would have been changed (for the better) by your program, tell how your service could have made a difference. You know why your proposed program is needed. However, you must convey that need - in no uncertain terms - to the granting agency. If they don't agree with the need for your program, they will probably not read beyond this important section!

Goal(s) and Objectives

Your program's goal(s) specifically states what you hope to accomplish with your program. Your objectives tell the strategies and techniques you will utilize to accomplish your goal(s). Your goal(s) should be based strictly upon the need(s) stated in the previous section. A well-defined program should have between one and three concise goals.

Your objectives should include the following considerations:

What will be done
Who will do it
Who will be served by these actions

Never state goals or objectives that you cannot meet.

Program Description

Think of your "goals and objectives" as your basic program outline. Then, "fill in the blanks" with your program description.

Talk about methods you will utilize to insure the success and effectiveness of your program. Highlight resources - including personnel and program materials - which will help you reach your goal(s). Include a timeline of all program activities. Show how you plan to meet your goals and objectives.

Evaluation

Evaluation techniques are important components of any program. Your evaluation will help you better understand the step-by-step process of program development and implementation. It can indicate your program's strengths and weaknesses and insure that you meet important deadlines. Perhaps most important, your evaluation can help you identify potential problems in your program, and make appropriate changes to meet your goal(s) and objectives.

The description of your evaluation process lets the granting agency know that the effectiveness of your program can, indeed, be measured. Your program's evaluation component will keep the granting agency informed about the progress of your overall goal(s) and objectives.

Your evaluation component should include the following information:

Timeline for collecting evaluation data
What type of information will be collected?
Who will collect it?
Who will analyze it (someone within your agency or an external evaluator)?
How will the evaluation information be used to improve or change your program?

Budget

Some of the most common budget items for grant proposals include:

Salaries and benefits
Office space
Office equipment and supplies
Travel
Program materials
Telephone costs
Postage costs
Publicity expenses
Any consulting fees

Other Considerations for Grant Writing

Some grant writing experts suggest that you include appendices which present your organization as a professional, businesslike corporation. The following appendices will lend credibility to your operations and to your grant proposal itself:

Evidence of your 501(c)(3) non-profit status
A list of the members of your Tribal Council
A copy of your most recent annual report (when applicable)
Two or three strong letters of endorsement
Two or three favorable news articles about your program
A copy of your program's general information brochure
A copy of your most recent newsletter

Your grant should be type-written, double-spaced with one-and-a-half inch margins throughout. Number all your pages. Don't staple your proposal - use a paper clip instead.

Presenting Your Grant Proposal

If a potential funding source expresses interest in your grant proposal, the next important step is scheduling a meeting to present your proposal in detail.

This meeting can be as important as the proposal itself. It's imperative that the representatives of your organization make a strong, lasting impression upon the people who make funding decisions.

The following guidelines will help you make a great grant proposal presentation:

Have the two best, most knowledgeable people in your program make the presentation

Be prompt

Dress professionally and conservatively

Bring copies of all materials submitted to the funding source and additional information, as requested

Be prepared to answer questions in detail

Clearly state how the funding source would benefit from sponsoring your program

Focus on the positive and down play the negative

Be honest in all your statements and answers

Relax!

Recognizing The Funding Source

Believe it or not, a large number of entities which contribute to nonprofit organizations are never thanked! You should never forget to acknowledge those who support your efforts!

There are a number of ways to privately and publicly thank your major donors and program sponsors, including:

Send thank you letters from your Tribal Leader

Have victims or others who benefit from the funded program also send a thank you note or letter
Mail a thoughtful letter-to-the -editor to your local newspapers publicly thanking your donor

Publish an article in your newsletter recognizing the contribution

Make sure all materials, brochures, etc. related to the program prominently bear the name and/or logo of the donor

If you publish an annual report, note the donation

If you sponsor an annual awards dinner, present your donor with a nice award

Even if you don't sponsor an annual awards dinner, present your donor with a nice award

Remember, "thank you's" **never** go out of style! Your public appreciation and recognition of major donations will strengthen your relationship with your funding source, and possibly open other doors for future fundraising efforts.

THE CRIMINAL JUSTICE ISSUES OF INDIAN COUNTRY

by Joseph Myers

The array of problems that plague Indian law enforcement agencies are grounded in the historical policies of the federal government concerning law and order in Indian country. This article can only state these problems briefly. To achieve a competent understanding of these issues the reader necessarily must examine the laws and cases noted in the article. For those of you who are familiar with these issues and want to resolve them, this paper may give you a new perspective.

In the early history of the United States, the federal government confined Indian people to a so-called "reservation system" for the purpose of removing them from the path of the emerging "American society." They were in the way. Indian tribes ceded their homelands and were removed to vast tracts of land set aside in isolated regions of the country for "Indian purposes." In most instances, the reservation system undermined tribal life styles and created a chronic dependence by Indian people upon the federal government.

Indian tribes were led to believe that such cessions of land were in their best interests. However, many tribal members perished in the agonizing treks from homelands to reservations. And, in the administration of Indian reservations cultural integrity was often assailed, Indian values attacked, their religions criticized and stifled, and their children placed in schools away from their families and cultural ties.

Indian reservations were prisoner of war camps. Tribal people were forced to exist in environments unfamiliar and often hostile to them. Law and order was grounded in a system of confinement, perpetuated by the United States military, federal Indian agents and the Indian police. Initially, Indians were guarded militarily and not permitted to travel off the reservation. Criminals were punished at the hands of Indian agents. Of course, much has changed over the years. In recent times the character of reservation law and order has changed dramatically as tribal governments have assumed a more active role in local administration of services. This institutional shift is promising but far from complete.

Although the people of Indian country are not immune from the rampant violence of today's American society, tribal government officials now bear the responsibility of creating effective policies that provide for the safety of the people who live, work and/or visit in Indian country. They must take the offer of the government-to-government relationship to a new level that includes an abandonment of a chronic dependence on the Bureau of Indian Affairs (BIA). The exercise of tribal sovereignty is well within reach of today's tribal leadership.

The Indian Law Enforcement Reform Act of 1990 is congressional legislation that seeks to clarify and strengthen the authority of the Secretary of the Interior to provide law enforcement services, activities, and officers in Indian country.[1] In general, the Act provides statutory authority for the BIA police functions which were previously recognized, but not specifically authorized by federal law.

Specifically, the Act: (1) makes the Secretary of the Interior responsible for providing law enforcement services in Indian country, (2) establishes the Division of Law Enforcement Services and the Branch of Criminal Investigations within the BIA, (3) grants the Secretary investigative jurisdiction over federal criminal offenses committed[2] in Indian

[1] *25 U.S.C.A. §2801 et. seq., Pub. L. No. 101-379 (1990).*

[2] *5 BIAM Supplement 1, and 10 BIAM Bulletin 14.*

country, and (4) authorizes the U.S. Attorney and FBI officials to provide reports to governmental and law enforcement officials of an Indian tribe regarding declined prosecutions and terminated investigations.

Although the Indian Law Enforcement Reform Act was signed into law on August 18, 1990, after intense hearings in which testimony was given by tribal leaders and various federal agents, the full impact of the law has yet to be realized because of special interests within the BIA that tend to impede the professionalism of police services in Indian country. A controversial mission of the Act is the provision requiring all BIA criminal investigators to be supervised by other criminal investigators, and ultimately by the Chief, Division of Law Enforcement. Ostensibly, this is a reasonable approach to developing an effective crime investigation program. Unfortunately, this proposal of line authority has been short circuited by agency superintendents and area directors who do not want to relinquish power over BIA criminal investigators in their jurisdictions. One superintendent went so far as to change a law enforcement job classification to keep it under his control.

On December 23, 1992, the Deputy Commissioner of Indian Affairs signed a document which established line supervision of all BIA criminal investigators by the Chief, Division of Law Enforcement. This action did not automatically establish line authority. Unless those agency superintendents and area directors who are at odds with the congressional policy abandon their position in favor of genuine cooperation, this line authority will continue to be short circuited.

There are chronic problems which surround the administration of justice in Indian country. These problems have been studied and studied but remain virtually unresolved. A lingering issue is the inadequacy of funding for law enforcement in Indian country. Most tribes depend substantially upon the BIA for the funding of police services, whether directly or through a 638 contract.[3]

There is a tendency to fund hardware before investing in substantive training, infrastructure, and facilities. There is no doubt that patrol cars and weapons are necessary and important. However, policies and procedures, effective laws and safe facilities must also be in place in order to effectively administer a criminal justice system. Tribal governments must be innovative in fundraising for police services. Gaming tribes should invest in this fundamental responsibility of government.

Another important issue is the training of police officers, basic and in-service training. Historically, critics have labelled the training inadequate.

There are chronic problems which surround the administration of justice in Indian country.

For years the BIA ran a police academy in Utah. It was then moved to Arizona; and, it is now located in the southern desert of New Mexico. Tribal administrators often complain about the isolated location of the BIA police academy.

Despite the various moves and isolated venues, the police training programs of the BIA have improved dramatically over the years. Unfortunately, uniform training standards may be difficult to meet given the numerous tribal jurisdictions and the protective nature of tribal governments about their sovereignty and their chronic suspicion of the BIA.

Police training programs work when the individuals being trained have the potential to digest the information and utilize it in the field. This is a problem in Indian country. Low salaries, inadequate criteria for hiring and limited access to training make it difficult to depend on the current training environment for the improvement of criminal justice in Indian country. The training of law enforcement officials does not belong under the stewardship of the BIA. This responsibility belongs in the U.S. Department of Justice if in fact it needs to be a federal responsibility. It could very well be that a national consortium of tribes could launch and operate a training facility that meets the law enforcement needs of Indian country. It could very well be a state of the art, pace setting operation that imparts the skills and technological information that brings reality to law and order in Indian country. The present training environment is being heavily attacked by federal funding cutbacks. Intertribal strategies should be created to assure effective law enforcement training programs in the future.

As previously noted, tribal police officers are paid low salaries. This poses several problems, one of which is extremely crucial. Usually, you cannot hire good, competent people by offering them inferior salaries. Most people want to be paid what they are worth. If deputy Smith of county A makes more but is worthless, commitment and motivation of the tribal police officer will be difficult to harness.

What may be even more frustrating for some tribal police officers, is the current attention paid to security personnel of Indian casinos concerning training and wages. In some instances former non-Indian police officers occupy casino security positions and earn more money with much less responsibility to tribal law and order. This issue can only be resolved at the local level by the particular tribal government involved. The safety and welfare of Indian communities should be worth more than casino security.

The most troubling issue to all law enforcement personnel in Indian country is jurisdiction. Who exercises jurisdiction over a particular crime? Is it the FBI, DEA, ATF, Tribal police, BIA police, county sheriff, city police, none of the above or all of the above? Depending on the crime committed, the state in which the crime is committed, the race of the defendant, or the priority of the prosecutor involved, any one of these particular police agencies or any combination of them or all of them could be

[3] *Indian Self-Determination and Education Assistance Act. 25 U.S.C. §450 et seq.*

involved in the criminal investigation of a particular crime. The term has been extremely overworked but there is a "maze of criminal jurisdiction conflicts in Indian country."

A cornerstone of Indian affairs policies of the federal government has been "Indian people as separate and apart from the American society." Crimes involving an Indian perpetrator and victim were resolved under tribal law until federal officials intervened in a case because they did not agree with the action of the tribal tribunal.[4] The United States Supreme Court rejected the federal intervention and acknowledged the sovereignty of Indian tribes. Unsatisfied with the opinion of the Court the Congress (pursuant to its plenary power in Indian affairs) passed into law the Major Crimes Act[5] which authorized federal court jurisdiction over seven major crimes.[6] Congress did not by law eliminate tribal jurisdiction over these crimes. It merely opened the door of concurrent jurisdiction between the tribes and the federal system. However, a historical dependence (already in existence) was perpetuated by the Act and the dependence remains intact today.

A fundamental principle of federal Indian law is that the states cannot exercise jurisdiction (impose their laws) in Indian territories without the consent of Congress.[7] Historically, Congress has acted sparingly concerning the exercise of state jurisdiction in Indian country. However, in 1953, it enacted Public law 280[8] which allowed five states (later Alaska as a state) mandatory criminal jurisdiction over crimes committed on Indian reservations within their boarders.[9] Public Law 280 was the "facilitating legislation" for a new era in federal policy in Indian affairs called "termination." The policy failed miserably and was subsequently abandoned but Public Law 280 remains as a law which breeds contempt between the tribes and states involved. Simply stated the promoters of Public Law 280 assured the Indian leaders involved that police services from the states would be forthcoming. The states were granted criminal jurisdiction but no funding to implement the law and meet the expectations of Indian people. Promises were made and never kept.

Public Law 280 remains today as a symbol of confusion to state and county police officials. In particular instances it is used as an excuse to do nothing and at the other end of the spectrum it is used to harass and intimidate. Public Law 280 does provides state and county law enforcement officials criminal jurisdiction on Indian reservations involved; however, the law does not extinguish tribal criminal jurisdictions. The law created false expectations (promoted by BIA officials) that state law enforcement services would be forthcoming to tribes. Consequently, the tribes in Public Law 280 states did not build criminal justice infrastructure in their communities nor did the BIA encourage such infrastructure.

The most troubling issue to all law enforcement personnel in Indian country is jurisdiction.

In 1978 the United States Supreme Court ruled that tribal courts had no inherent criminal jurisdiction over non-Indians.[10] On many reservations this translated into a notion that the tribal or the BIA police could not arrest non-Indians. However, the ruling attacked the sovereignty of tribal governments by limiting the criminal jurisdiction of tribal courts. It did not and does not prevent tribal police officers from detaining non-Indians to keep the peace and provide for the safety and welfare of Indian communities. They just cannot be prosecuted for crimes against the tribal criminal statutes. In 1990, the Supreme Court went one step further by ruling that non-member Indians should also be exempt from tribal court criminal jurisdiction.[11] The Courts opinion was overturned by Congressional action[12] which amended the Indian Civil Rights Act of 1968 to acknowledge the criminal jurisdiction of tribal courts over all Indians. If Congress were bold enough to have recognized the criminal jurisdiction of tribal courts over all persons, Indian people could be confident about the policy of the government-to-government relationship. Unfortunately, suspicions persist.

What is most alarming in Indian country today has nothing to do with the funding for police services, the training of police or the impediments of criminal jurisdiction. Violence is rampant throughout this country and Indian communities are not immune from this American problem. Tribal leaders need to acknowledge that child abuse, domestic violence, and gang violence are factors that need to be effectively addressed. These are community issues that require families and service providers to work together.

Much has been made of the Indian commitment to live in harmony with the earth and the creations of nature. Traditional Indian religions often espouse the doctrine of living in balance with nature. Let us move these teachings to another level which solicits harmony and balance with one another in our own communities. Mutual respect and the well being of families and children should not be issues to be resolved but should be viewed as experiences to enrich the lives of the people of Indian country.

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[4] *Ex Parte Crow Dog, 109 U.S. 556, 27 L. Ed. 1030, 3 S. Ct. 396 (1883).*

[5] *Major Crimes Act, 18 U.S.C. §1153.*

[6] *Currently, this act covers 16 major crimes.*

[7] *Worcester v. Georgia, 31 U.S. (6 Pet.) 515, 8 L. Ed. 483 (1832).*

[8] *Act of August 15, 1953, ch. 505, 67 Stat. 588-90, codified as amended at 18 U.S.C. §1162, 28 U.S.C. §1360, 25 U.S.C. §§1321-1326, 28 U.S.C. §1360.*

[9] *Exempted Warm Springs Reservation in Oregon, Red Lake Reservation in Minnesota, and Metlakatla Reservation in Alaska.*

[10] *Oliphant v. Suquamish, 435 U.S. 191, 55 L. Ed. 209, 98 S. Ct. 1011 (1978).*

[11] *Duro v. Reina, 495 U.S. 676, 109 L. Ed. 2d 693, 110 S. Ct. 2053 (1990).*

[12] *See the Indian Civil Rights Act of 1968, 25 U.S.C. 1301-1303 at 1301(2).*

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Sixth National Conference on Strengthening Indian Nations

Justice for Victims of Crime in Indian Country

January 23, 1997

WORKSHOP: Improving Federal & Tribal Response to Crimes in Indian Country

TITLE: "Overview of the U.S.Attorney's Role In Tribal Courts"

BY: Kristine Olson, United States Attorney, District of Oregon
Tim Simmons, Assistant United States Attorney, District of Oregon

To completely address criminal and civil legal issues within the United States, there must be "full faith and credit" recognized between the courts of its three jurisdictions: federal, state, and tribal. Historically, federal and state jurisdictions have attempted to coordinate resources and work together to address issues. Unfortunately, tribal governments and courts have not always been included in this coordinated effort. The U. S. Department of Justice (DOJ) is presently taking steps to change this trend and include tribal courts in coordinated efforts to address criminal justice issues.

This article will describe the recent projects the Department of Justice, and specifically, the United States Attorney's Office (USAO) for the District of Oregon, has incorporated to establish cooperative relationships between tribal and federal courts. Although these projects only represent the initial steps to establish and strengthen cooperative partnerships, we hope that these partnerships will establish a strong foundation to develop long term solutions to criminal justice issues in Indian Country.

In 1994, President Clinton directed federal agencies to deal with Indian tribes on a government-to-government basis when tribal government or treaty rights are at issue.[1] Last year, Attorney General Janet Reno issued a DOJ policy on Indian sovereignty and government-to-government relations with Indian tribes. The United States Attorney's Office in the District of Oregon has made the fulfillment of the trust responsibility and the overall strengthening of the relationship between tribal governments in the State of Oregon and the USAO as one of its top priorities. One of the most important parts of self-government is the power to create and administer an independent justice system. The USAO is firmly committed to increasing self-determination for tribal governments in the District of Oregon by strengthening tribal court systems.

The jurisdictional scheme associated with Indian Country is at times complicated and confusing. Determination of whether an incident is tribal, state, or federal jurisdiction will depend upon the location of the crime, the type of crime committed and whether the victim and the defendant are Indian or Non-Indian.[2] While the federal government typically has a significant responsibility for law enforcement in Indian Country, tribal courts are ultimately the most appropriate justice systems for establishing and enforcing order in tribal communities. Tribal courts are local institutions which are closest to the people they serve and best understand the needs of the community. Fulfilling the federal government's trust responsibility to tribal governments means not only adequate federal law enforcement in Indian Country[3], but enhancement of tribal courts as well.

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[1]See Memorandum for the heads of executive departments and agencies on the subject of government-to-government relations and Native American tribal governments. Public papers of the President of the United States. William J. Clinton. 1944, Book I at 800-803.

[2]The Indian Major Crimes Act, 18 USC § 1153, created federal jurisdiction over serious felonies committed by Indians. The General Crimes Act, 18 USC § 1152, created federal jurisdiction over crimes between Indians and non-Indians.

[3]In 1953, Congress granted to certain states, including Oregon, jurisdiction over crimes occurring in all or specified parts of "Indian Country" in those states, pursuant to Public Law 280, since codified at 18 U.S.C. § 1162, 28 USC § 1360, and 25 USC § 1321-1326.

Five tribal governments have established tribal courts in the District, varying in size and scope of jurisdiction. The USAO supports the operation of these tribal courts and the establishment of future courts to address criminal justice issues in Indian Country. This office has recently been involved with three significant events which will have a direct impact on creating cooperative partnerships to address issues in Indian Country.

1. Tribal Liaison

The Department has encouraged United States Attorneys to appoint special assistants for tribal relations in order to develop better working relations with tribal governments and to provide a point of contact for Indian crime victims. In recognition of the importance of this task, 26 additional Assistant United States Attorney positions have been provided to those districts containing significant amounts of Indian Country. To assure that the District of Oregon fulfills its trust responsibility, the United States Attorney has recently hired an Assistant U.S. Attorney dedicated to serving Indian Country and tribal governments within the State of Oregon.

The goals of the tribal liaison position are to: (1) communicate with tribal representatives about issues of concern to tribes; (2) ensure that DOJ policies and positions are clearly communicated to tribes; (3) promote internal sensitivity and uniformity in the USAO's policies and litigating positions relating to Indian Country; and (4) maintain an official liaison with the federally recognized tribal governments.

2. Federal Magistrate Court Project

The ability of tribal governments and tribal courts to deal with crime in Indian Country is complex and limited due to a web of criminal jurisdiction which includes the federal, state and tribal governments. Under present federal law, tribal courts are prohibited from prosecuting non-Indians. Oliphant v. Suquamish Indian Tribe, 435 U.S. 191 (1975) As a result of a Jefferson County District Court opinion, State of Oregon v. Francisco Sanchez, Jefferson County District Court Case Nos. CR3-0614-34 and CR3-0680-34, non-Indians who commit misdemeanor crimes on the reservation against Indians are exempt from criminal prosecution in Oregon state courts.

The consequences of the Sanchez opinion and the limited jurisdiction of tribal courts have been to vest sole and exclusive misdemeanor criminal jurisdiction over non-Indians who commit crimes against Indians to the United States District Court. In the past, the United States has limited its

prosecutions of cases arising on the reservation to major crimes, thus providing no forum readily available to try misdemeanor cases when the offender is a non-Indian, the victim is an Indian, and the offense occurred in Indian Country.

To close this jurisdictional gap on Indian reservations, the U. S. Department of Justice has begun the Tribal Courts Project. One of the purposes of the Tribal Courts Project is to fight crime in Indian Country by encouraging the convening of federal court, using a magistrate judge, on or near reservations to prosecute crimes committed on Indian reservations. The establishment of these courts involves no expansion of federal jurisdiction, only a full exercise of existing federal court jurisdiction. The intent of the Tribal Courts Project is not to encroach on tribal sovereignty, but only to fill the described jurisdictional gap.

The United States Attorney for the District of Oregon, in coordination with the tribal government of the Confederated Tribes of the Warm Springs Reservation, the judges of the Warm Springs Tribal Court, and the United States District Court of Oregon, has established the first U.S. Magistrate Court on the Warm Springs Reservation in Oregon. This Magistrate Court first convened on June 9, 1995, and is scheduled to conduct a monthly session to adjudicate only the non-Indian misdemeanor cases that are beyond the tribal court's criminal jurisdiction.

Under this initiative, the U. S. District Court of Oregon provides a part-time magistrate judge and court clerk, the U.S. Attorney provides a prosecutor, and the Warm Springs Tribal Council allows the federal court to use the tribal courtroom. The immediate availability of the federal court will allow tribal police to increase drug enforcement and to work with the Immigration and Naturalization Service to arrest illegal aliens on the reservation engaged in criminal activities.

The project is not only a means for improved law and order on the reservation, but it is also an innovative vehicle for channeling technical assistance and training to tribal courts. In return for the use of the tribal courtroom, the Oregon federal court clerk will provide training and technical assistance to the tribal court clerk in areas such as case management and automated record keeping. The U.S. Attorney's Office will provide training, technical assistance, and oversight to the tribal prosecutor when acting on behalf of the federal government.

3. Partnership Project

The overall goal of this DOJ project is to encourage the creation of innovative training and technical assistance for trial courts' personnel, improve dialogue regarding jurisdictional issues surrounding tribal courts and create partnerships with state and federal judiciaries in the administration of justice.

Last year, DOJ designated 45 tribal governments nationwide as Tribal Court-DOJ Partnership Projects. The primary criterion for designation was a demonstrated commitment by the tribal government to support and strengthen the tribal justice system. The Department's goal is to strengthen tribal justice systems, particularly their abilities to deal with family violence and juvenile issues. The Tribal Courts Project will work with the designated Partnership Projects to assess their court systems and will create technical assistance and training opportunities, primarily through the local offices of U.S. Attorneys.

As part of the Partnership Project, DOJ is institutionalizing a means to certify questions of tribal law to the appropriate tribal courts. The Violence Against Women Act also grants "full faith and credit" to tribal courts' restraining orders. Through means such as these, this Administration is paying more than lip service to the concept of tribal sovereignty.

OFFICE OF THE ATTORNEY GENERAL

Washington, D.C. 202530

September 15, 1994

MEMORANDUM FROM THE ATTORNEY GENERAL

SUBJECT: The Violent Crime Control and Law Enforcement Act of 1994

On Tuesday, President Clinton signed into law the Violent Crime Control and Law Enforcement Act of 1994. This historic legislation represents the bipartisan product of six years of hard work. It is the largest crime bill in the history of the country and will provide $8.8 billion in funding for 100,000 new police officers, $7.9 billion in funding for prisons, $1 billion in funding for Violence Against Women programs, $1 billion in funding for drug courts, and $4.1 billion in funding for prevention programs which were designed with significant input from experienced police officers. The Crime Bill also provides $3.0 billion in funding to help state and federal authorities deal with problems caused by criminal and illegal aliens. Finally, the Crime Bill provides $2.6 billion in additional funding for the FBI, DEA, INS, United States Attorneys, and the Treasury Department, as well as the Federal courts, to enforce new laws to ensure the swift and certain punishment of violent criminals.

Implementation of the Violent Crime Control Act is among the highest priorities of the Department of Justice. To ensure that this happens quickly and effectively, I have asked Associate Attorney General John R. Schmidt to personally oversee its implementation. As the third-ranking official in the Department, John Schmidt will make sure that accountability for this initiative remains at the highest levels.

I know you and your constituents are eager for information about the implementation of the Violent Crime Control Act. To help you, I am enclosing a summary of the some of the most significant provisions of the Act. During the coming days and weeks, the Department will send you additional information on this subject. In addition, the Department has established a Violent Crime Control Act Response Center to answer any questions you or your constituents may have. The phone number for the Response Center is 202-307-1480 or 1-800-421-6770. Finally, Sheila Anthony, the Assistant Attorney General of the Office of Legislative Affairs, is available to provide assistance to you and your offices.

Thank you.

VIOLENT CRIME CONTROL AND LAW ENFORCEMENT ACT OF 1994

The Violent Crime Control and Law Enforcement Act of 1994 represents the bi-partisan product of six years of hard work. It is the largest crime bill in the history of the country and will provide for 100,000 new police officers. $9.7 billion in funding for prisons and $6.1 billion in funding for prevention programs which were designed with significant input from experienced police officers. The Act also significantly expands the government's ability to deal with problems caused by criminal aliens. The Crime Bill provides $2.6 billion in additional funding for the FBI, DEA, INS, United States Attorneys, Treasury Department and other Justice Department components, as well as the Federal courts. Some of the most significant provisions of the bill are summarized below.

I. Substantive Criminal Provisions

- Assault Weapons
  Bans the manufacture of 19 military style assault

weapons, assault weapons with specific combat features, "copy-cat' models, and certain high-capacity ammunition magazines of more than ten rounds.

- Death Penalty
  Expands the Federal death penalty to cover about 60 offenses, including terrorist homicides, murder of a Federal law enforcement officer, large-scale drug trafficking, drive-by-shootings resulting in death and carjackings resulting in death.

- Domestic Abusers and Firearms
  Prohibits firearms sales to and possession by persons subject to family violence restraining orders.

- Firearms Licensing
  Strengthens Federal licensing standards for firearms dealers.

- Fraud
  Creates new insurance and telemarketing fraud categories. Expands Federal jurisdiction to cases that do not involve the use of the mail or telephone wire to commit a fraud. Provides special sentencing enhancements for fraud crimes committed against the elderly.

- Gang Crimes
  Provides new and stiffer penalties for violent and drug trafficking crimes committed by gang members.

- Immigration
  Provides for enhanced penalties for alien smuggling, illegal reentry after deportation and other immigration-related crimes. (See Part II).

- Juveniles
  Authorizes adult prosecution of those 13 and older charged with certain serious violent crimes. Prohibits the sale or transfer of a firearm to or possession of certain firearms by juveniles. Triples the maximum penalties for using children to distribute drugs in or near a protected zone, i.e., schools, playgrounds, video arcades and youth centers.

- Registration of Sexually Violent Offenders
  Requires states to enact statutes or regulations which require those determined to be sexually violent predators or who are convicted of sexually violent offenses to register with appropriate state law enforcement agencies for ten years after release from prison. Requires state prison officials to notify appropriate agencies of the release of such individuals. Requires states to criminally punish those who fail to register. States which fail to establish registration systems may have Federal grant money reduced.

- Repeat Sex Offenders
  Doubles the maximum term of imprisonment for repeat sex offenders convicted of Federal sex crimes.

- Three Strikes
  Mandatory life imprisonment without possibility of parole for Federal offenders with three or more convictions for serious violent felonies or drug trafficking crimes.

- Victims of Crime
  Allows victims of Federal violent and sex crimes to speak at the sentencing of their assailants. Strengthens requirements

for sex offenders and child molesters to pay restitution to their victims. Improves the Federal Crime victims" Fund and the victim-related programs it supports.

- Other
  Creates new crimes or enhances penalties for: drive-by-shootings, use of semi-automatic weapons, sex offenses, cries against the elderly, interstate firearms trafficking, firearms theft and smuggling, arson, hate crimes and interstate domestic violence.

II. Immigration Initiatives

The Crime Bill contains specialized enforcement provisions respecting immigration and criminal aliens. Those programs are highlighted here:

- $1.2 billion for border control, criminal alien deportations, asylum reform and a criminal alien tracking center.

- $1.8 billion to reimburse states for incarceration of illegal criminal aliens. (See State Criminal Alien Assistance Program (SCAAP) Grants in Section III).

- Enhanced penalties for failure to depart the United States after a deportation order or reentry after deportation.

- Expedited deportation for aliens who are not lawful permanent residents and who are convicted of aggravated felonies.

- Statutory authority for abused spouses and spouses with abused children to petition for permanent residency or suspension of deportation.

III. Grant Programs for 1995

Most of these programs are authorized for six years beginning October 1, 1994. Some are formula grants, awarded to states or localities based on population, crime rate or some other combination of factors. Many are competitive grants. All grants will require an application process and are administered by the Department of Justice unless otherwise noted. As always, all funds for the years 1996-2000 are subject to appropriation by the Congress.

- Brady Implementation
  Competitive grant program for states to upgrade criminal history records keeping so as to permit compliance with the Brady Act. $100 million available in 1995. $100 million authorized in 1996-2000.

- Byrne Grants
  Formula grant program for states for use in more than 20 law enforcement purposes, including state and local drug task force efforts. $450 million available for the formula grant program in 1995. $550 million authorized in 1996-2000.

- Community Policing
  Competitive grant program (COPS Program) to pub 100,000 police officers on the streets in community policing programs. $1.3 billion available in 1995. $7.5 billion authorized in 1996-2000.

- Community Schools
  Formula grant program administered by the Department of Health and Human Services for supervised after-school, weekend, and summer programs for at-risk youth. Funds expected to be available in 1995. $567 million authorized in 1995-2000.

- Correctional Facilities/Boot Camps
  Formula and competitive grant program for state corrections

agencies to build and operate correctional facilities, including boot camps and other alternatives to incarceration, to insure that additional space will be available to put- and keep- violent offenders incarcerated. Fifty percent of money to be set aside for those states which adopt truth-in-sentencing laws (violent offenders must serve at least 85% of their sentence) or which meet other conditions. $24.5 million in competitive funds available for boot camps in 1995. $7.9 billion authorized in 1996-2000.

- Drug Courts
  Competitive grant program to support state and local drug courts which provide supervision and specialized services to offenders with rehabilitation potential. $29 million available in 1995. $971 million authorized in 1996-2000.

- Hotline
  Competitive grant program administered by the Department of Health and Human Services to establish a National Domestic Violence Hotline. $1 million authorized in 1995. An additional $2 million authorized in 1996-2000.

- Prevention Council
  Provides funding for the President's Prevention Council to coordinate new and existing crime prevention programs. $1.5 million available in 1995. $88.5 million authorized for competitive grants in 1996-2000.

- SCAAP Grants
  Formula grant program to reimburse states for the cost of incarcerating criminal aliens. $130 million available in 1995. $1.67 billion authorized in 1996-2000.

- Violence Against Women
  Formula grant program to support police and prosecutor efforts and victims services in cases involving sexual violence or domestic abuse, and for other programs which strengthen enforcement and provide services to victims in such cases. $26 million available in 1995. $774 million for formula grants and over $200 million for related competitive grants authorized in 1996-2000.

IV. Grant Program For 1996-2000

All programs available in 1995 are continued. All programs are administered by the Department of Justice unless otherwise noted. Funding for 1996-2000 is, as always, subject to appropriation by the Congress.

- Battered Women's Shelters
  Competitive grant program administered by the Department of Health and Human Services for battered women's shelters and other domestic violence prevention activities.
  $325 million authorized.

- Capital Improvements to Prevent Crime in Public Parks
  Competitive grant program administered by the Department of Interior for states and localities for crime prevention programs in national and public parks.
  $15 million authorized.

- Community Economic Partnership
  Competitive program administered by the Department of Health and Human Services for lines of credit to community development corporations to stimulate business and employment opportunities for low-income, unemployed and underemployed individuals. $270 million authorized.

- Crime Prevention Block Grants

$377 million authorized for a new Local Crime Prevention Block Grant program to be distributed to local governments to be used as local needs dictates. Authorized programs include: anti-gang programs, sports leagues, boys and girls clubs, partnerships (triads) between the elderly and law enforcement, police partnerships for children and youth skills programs.

- Delinquent and At-Risk Youth
  Competitive grant program for public or private non-profit organizations to support the development and operation of projects to provide residential services to youth, aged 11 to 19, who have dropped out of school, have come into contact with the juvenile justice system or are at risk of either. $36 million authorized.

- DNA Analysis
  Competitive grant program for states and localities to develop or improve DNA identification capabilities. $40 million authorized. An additional $25 million is authorized to the FBI for DNA identification programs.

- Drug Treatment
  $383 million for prison drug treatment programs, including $270 million in formula grants for states.

- Education and Prevention to Reduce Sexual Assaults Against Women
  Competitive grant program administered by the Department of Health and Human Services to fund rape prevention and education programs in the form of educational seminars, hotlines, training programs for professionals and the preparation of informational materials.
  $205 million authorized.

- Family and Community Endeavor Schools
  Competitive grants program administered by the Department of Education for localities and community organizations to help improve the overall development of at-risk youth living in poor and high-crime communities. This program is for both in-school and after-school activities.
  $243 million authorized.

- Local Partnership Act
  Formula grant program administered by the Department of Housing and urban Development for localities to enhance education, provide substance abuse treatment and fund job programs to prevent crimes. $1.6 billion authorized.

- Model Intensive Grants
  Competitive grant program for model crime prevention programs targeted at high-crime neighborhoods. Up to 15 cities will be selected. $625 million authorized.

- Police Corps
  Competitive funding for the Police Corps (college scholarships for students who agree to serve as police officers), and formula grants to states for scholarships to in-service law enforcement officers. $100 million authorized for Police Corps and $100 million authorized for in-service law enforcement scholarships.

- Prosecutors
  Competitive grant program for state and local courts, prosecutors and public defenders.
  $150 million authorized.

- Rural Law Enforcement
  Competitive grant program for rural anti-crime and drug efforts. $240 million authorized.

- Technical Automation
  Competitive grant program to support technological improvements for law enforcement agencies and other activities to improve law enforcement training and information systems.
  $130 million authorized.

- Urban Recreation For At Risk
  Youth-Competitive grant program administered by the Department of Interior for localities to provide recreation facilities and services in areas with high crime rates and to provide such services in other areas to at-risk-youth.
  $4.5 million authorized.

FOR MORE INFORMATION CONTACT:

THE VIOLENT CRIME CONTROL ACT RESPONSE CENTER

202-307-1480 OR 1-800-421-6770.

COPS Mission Statement

We, the staff of the Office of Community Oriented Policing Services, dedicate ourselves, through partnerships with communities, policing agencies and other public and private organizations, to significantly improve the quality of life in neighborhoods and communities throughout the country.

We will accomplish this by putting into practice the concepts of community policing in order to reduce levels of disorder, violence, and crime through the application of proven, effective programs and strategies. We will meet the needs of our customers through innovation and responsiveness. We will create a workplace that encourages creativity, open communication, full participation, and problem-solving.

We will carry out these responsibilities through a set of core values that reflect our commitment to the highest standard of excellence and integrity in public service.

U.S. Department of Justice
Office of Community Oriented Policing Services

COPS Facts

Community Policing Combats Domestic Violence

The COPS Community Policing to Combat Domestic Violence Program provides law enforcement agencies with a unique opportunity to execute well-planned, innovative strategies employing community policing to combat domestic violence. This program is one of several initiatives by the U.S. Department of Justice under the 1994 Crime Act to support innovative community policing.

Funding Provisions

There is no local match requirement for this program. Grant applications were submitted under one of three categories:

1. Domestic Violence Training with a Community Oriented Policing Philosophy;
2. Problem Solving and Community Based Programs; Community Policing Partnerships and Problem Solving Initiatives focusing on Domestic Violence; or
3. Changing Police Organizations to be More Responsive to Domestic Violence.

Projects were funded for a one-year period. Additional resources may be obtained for up to two additional years. Grant funds must be used to supplement, and not supplant, state or local funds that otherwise would be devoted to law enforcement.

Eligibility Requirements

All state, local, Indian Tribal, and other public and private law enforcement agencies which are committed to using community policing to address domestic violence were eligible to apply. Police departments were encouraged to partner with non-profit, non-governmental victim service programs, domestic violence shelters, or community service groups. This partnership must be described in a memorandum of understanding signed by both parties as part of the application.

Policing agencies must have an exemplary community-policing plan which demonstrates that they:

1. have been practicing community policing for at least two years;
2. are currently training officers in community policing, and;
3. have implemented an organizational style which is participatory, value-based, result oriented, decentralized, and focused on innovative leadership and effectiveness.

An award under the Community Policing to Combat Domestic Violence Program does not affect the eligibility of an agency to apply to other COPS programs.

For more information, call the U.S. Department of Justice Response Center at 1-800-421-6770.
Updated: May 21, 1996

COPS Facts

Police Corps

The Police Corps is a college scholarship program for students who agree to work in a state or local police force for at least four years. The funds cover education expenses, including tuition, fees, books, supplies, transportation, room and board, and miscellaneous expenses. The program was appropriated $10 million for fiscal year 1996. The Police Corps is administered by the Office of the Police Corps and Law Enforcement Education in the U.S. Department of Justice's Office of Community Oriented Policing Services, in conjunction with participating states.

Eligibility Requirements

Police Corps participants are selected on a competitive basis by each state. Students must pursue an undergraduate or graduate degree in a field approved by the policing agency to which the student will be assigned. Participants must possess the necessary mental and physical capabilities and emotional characteristics to be an effective law enforcement officer, be of good character and demonstrate sincere motivation and dedication to law enforcement and public service. Until 1999, up to 10 percent of Police Corps candidates may be persons with policing experience who have demonstrated special potential and dedication to law enforcement. People interested in participating should contact the U.S. Department of Justice Response Center at 1-800-421-.6770 for a list of participating states and points of contact.

Police Corps scholarship funds also are available to dependent children of law enforcement officers killed in the line of duty. These scholarships may be applied to any course of study, without any service or repayment obligation.

Funding Provisions

Participants may receive up to $7,500 per academic year, with a maximum per student total of $30,000. The student's service commitment must follow receipt of the baccalaureate degree or precede commencement of graduate studies funded by the Police Corps.

Policing agencies that employ Police Corps officers will receive $10,000 per participant for each year of service, or $40,000 per each participant who fulfills the four-year service obligation. However, a policing agency may not receive this payment if its average size has declined by more than 2 percent since January 1, 1993, or if it has laid off officers since that time.

For more information, call the U.S. Department of Justice Response Center at 1-800-421-6770.

CULTURAL SENSITIVITY FOR NON-INDIAN SERVICE PROVIDERS WORKING WITH NATIVE AMERICAN VICTIMS OF CRIME

In recent years, federal employees have been working with Native American victims of crime in increasing numbers. In 1989, the Office for Victims of Crime (OVC) within the Department of Justice, Office of Justice Programs, began funding on-reservation victim assistance programs through the Victim Assistance in Indian Country (VAIC) program. As increasing numbers of Indian victims of crime have come into the criminal justice system, U.S. Attorneys, Federal Victim/Witness Coordinators, FBI Agents, and other federal personnel, who are predominately non-Indian, have encountered cultural differences in working with Native American crime victims.

This monograph will present some of the realities of reservation-based victim assistance programs with the goal of increasing understanding of how VAIC programs may differ from similar non-Indian programs. Any discussion of Indian programs must begin with the caveat that all tribes are different and that there is no single correct way to deal with all Indian programs. Non-Indian personnel working within Indian Country must educate themselves regarding the Indian nations in their jurisdiction.

Non-Indian service providers often work with more than one community. The differences between tribal communities dictate that service providers take care to educate themselves about each tribal nation. Such education may take the form of participation in diversity training and the utilization of consultants, including tribal elders and leaders, to discuss the similarities and differences between tribes and issues related to the tribal structure.

There are three common issues for most Indian Country programs: **boundaries, training,** and **spirituality**. The concept of boundaries may be viewed differently within the context of Native American belief systems and those of non-Indians. Indian Nations tend to be similar in their emphasis on community and placement of value on the concept of "helping out." Rigid role definitions often place service providers at odds with this value. OVC funded victim assistance programs, for example, by legislative limitations, can only provide services to people who are victims of crimes. Perpetrators are not eligible for services.

Clients may not understand why a Victim Advocate who is providing services to one member of the family (e.g. a victim of domestic violence) cannot also provide assistance to other members of the family (e.g. the perpetrator). Traditional communal values and holistic orientations directly clash with limitations placed on certain types of government funded programs.

Federal guidelines are most often developed with the majority non-Indian culture in mind. When these same guidelines are utilized by Indian programs, they may conflict with cultural values unknown to non-Indian law makers. These conflicts can lead to the total break-down of a program. Federally funded programs which directly conflict with tribal values are likely to fail.

Tribal employees may be faced with the conflict of adhering to their traditional values or meeting the goals and objectives under a grant. Since values have sustained tribes throughout history, the traditional values are likely to take precedence over grant goals and objectives. Those personnel responsible for monitoring the Indian country grant may be unaware of the values conflict and only be aware of the program's seeming lack of

achievement.

Indian programs face the challenge of maintaining community values and meeting the goals and objectives outlined in the grant. Non-Indian grant monitors must work with tribal programs to identify any such conflicts and to create mutually respectful solutions.

Many Native American communities operate services on the barest of bare bone budgets. Resources of every type are scare: personnel, materials, funding, office space, housing, vehicles, etc. When resources are scarce, everyone is expected to pitch in and do whatever is necessary. Due to the overwhelming need for services and the scarcity of resources to meet those needs, program staff are often called upon to offer assistance which may be outside the strict definition of their particular job description. This communal approach to providing services can lead to role confusion. For example, some tribal Victim Advocate positions are placed within the Tribal Social Services Department. This placement may lead to the Advocate being treated similar to all other Social Services staff members. Social Services programs often provide 24 hour child protection services to their community. The Advocate may be expected to be on-call as part of the Social Services staff, just like other staff members. This may lead to an Advocate acting as a Child Protective Services worker and removing children from an abusive situation one night and offering the family services as an Advocate the next day.

Clearly this type of situation creates a conflict. However, if the Advocate doesn't take on-call time, the Advocate may be seen as not pulling their weight. Other Social Service staff may resent the Advocate's "privileged" position as someone who does not have to be on-call.

Conversely, due to limited staffing in most victim assistance programs, one Victim Advocate may be expected to be on-call 24 hours a day, 365 days a year. In Kansas, for example, for several years there was only one Native American Victim Advocate in the entire state. She provided services to all Native American crime victims throughout the state on a 24 hour basis. Recent funding increases have allowed a second Advocate to be hired.

The role of Victim Advocate fits well within Indian tradition. The concept of an identified person having a specific talent or role within the community is common among tribes. Every tribal community recognizes some individuals as traditional healers, available to help those in need. Traditional healers are available on a 24 hour basis.

When a person needs to utilize a Medicine person or other type of healer, there are no "office hours." Healers are always available. People may perceive victim service providers in the same category in terms of their availability. Victim Advocates who live on the reservation can be called upon at any time. People will often go to the Advocate's home at midnight, on weekends, or any time that services are needed.

In some communities, the victim assistance program may not offer 24 hour service due to limited staffing. In a program with only one Advocate, for example, that person cannot realistically be "on-call" 24 hours a day, 365 days a week. Since many reservations are small communities where everyone knows everyone else and where everyone lives, victims or other service providers may feel free to access victim service providers at any time of the day or night, just as they would a Medicine person. When someone is standing

on your doorstep seeking assistance, it is difficult to turn them away.

There are many groups which have expectations regarding the services that a victim assistance program will provide: the community, the Tribal Council, federal personnel, and the funding source. It is not unusual for the expectations of these groups to be different or contradictory. The community may believe that victim assistance programs are there to help people, so everyone should be able to access their services (including perpetrators). The Tribal Council may see the need for preventing crimes and expect the program to provide prevention services which are not allowed under the grant. Federal personnel may see the great need for services and expect the tribal program to serve all types of victims although the tribe has highlighted a single type of victim to be served (e.g. domestic violence victims). OVC expects the program to meet their goals and objectives and operate within the guidelines of the Victims of Crime Act.

A tribe which obtains OVC funding for services to victims of domestic violence, for example, may not meet the expectations of several of these groups. If the community wants a program which provides services to everyone, the program will be pressured to provide services to batterers. The Tribal Council may expect the program staff to provide prevention services as well as intervention services. The Federal Victim/Witness Coordinator may see a great need for services to other types of victims and expect the program to offer services to all victims of crime. The program itself must meet their stated goals and objectives and follow the terms of their grant.

These conflicting expectations may lead to the perceived failure of the program by one or more groups. This perception may be the result of a conflict in values. On a national level, there has been strong recognition for the need for services for victims of crime. The criminal justice system's past emphasis on the perpetrator illustrated the need for attention to the victims' needs. A dichotomy has been established between victim and perpetrator.

In the cases of sexual abuse and family violence, however, this dichotomy is less clear. A person who molests a child as the result of generations of incest falls into both categories as victim and offender. The documented history of sexual abuse within boarding and residential schools, forms the basis of several generations of victimization. While federal legislation regarding VOCA is clear that only victims of crime can be served by VOCA funded programs, an individual's status as perpetrator/victim is less distinct. Many programs are faced with the dilemma of policy prohibitions regarding the delivery of services to a sexual offender or batterer who seeks assistance due to his/her history of victimization and tribal values mandating the provision of assistance to those seeking help.

The issue of Tribal Sovereignty is fundamental to how tribes conduct themselves and vital to the future of tribes. Federal programs which grant money to the state for pass through to tribes conflict with the reality of Indian Nations as sovereign nations. Some Indian Nations have a history of conflictual relationships with state government. Direct funding of tribal programs without the state pass through is seen by tribes as a necessary step in developing a Nation to Nation relationship with the federal government. The historical underpinnings to this issue are beyond the scope of this monograph. Both historical

treatment and present day relationships impact, not only the tribe's willingness to work with the state in obtaining funding, but the state's receptivity to seeking funding on behalf of the Indian Nations within their borders.

A tribe, for example, may feel that there is no reason to discuss their problems with crime on the reservation with the state. Particularly if state officials have a history of negative relationships with the tribe or making derogatory comments about Indian people: and especially where there is little or no state jurisdiction over crimes in Indian Country. Tribal officials may believe that sharing information regarding the incidence of crime within their community may be used in a negative manner by the state. However, the current funding procedures for victim assistance programs involves the states applying for funding on behalf of the tribe(s) within the state. This situation means that if a tribal government does not want to provide data to the state about the incidence of crime in their community, they cannot receive funding for a victim assistance program. There is no mechanism for the tribe to apply directly to OVC for funding of a victim assistance program. This type of situation undermines the concept of tribal sovereignty.

Some state Victim Assistance Coordinators have attempted to address this issue by including the tribe in the preparation of proposals to the federal government. The tribe must be included in every aspect of state proposals on the tribe's behalf. Beyond these grants, states must have a mechanism for tribal input into all grants which could potentially benefit tribes, not just Indian specific grants. For states or local governments which have advisory boards, review committees, or other citizen-based organizations which develop, submit, and review grant proposals, Indian representation and participation is essential.

A second area of concern involves the arena of **training**. Tribal representatives need to be involved in all types of victim oriented training. Tribal people may not be included on planning committees unless the training is aimed at Indian people. State training events must be relevant to victim service providers working with Native American clients. When Native American people are included on planning committees, they may be included whether or not they have direct hands-on experience or have lived on the reservation.

In one state, for example, the planning committee of a state-wide victim conference contacted the local university and utilized a Native American professor on their committee. This person did not deliver services on the reservation and had not lived on the reservation for over 20 years. Although she provided valuable input to the planning of the conference, other useful information would have been gathered from the inclusion of someone working with victims on a reservation. While the university professor may have been easily accessible, her input included a limited vision.

A Native American person will always bring their own perspective as a Native person to a every situation. It is important to consider a person's experiences and connection to the community as well as their background in selecting the most useful member of a planning committee.

Native American communities exist in both urban and rural locales. Trainings which focus on service provision only for victims in urban areas are often not relevant or helpful to service providers working in geographically isolated reservation communities. Trainers at

conferences may not be culturally sensitive or knowledgeable about the complex array of jurisdictional issues which impact service delivery to federal victims of crime. This lack of sensitivity or knowledge leads to Native American service providers feeling devalued and unimportant. Workers cannot get their needs met when presenters are ignorant of the realities of providing victim assistance services on the reservation.

There is a need to incorporate Native American service providers and cross-cultural issues in all training events. Training sessions which focus on the needs of Native Americans and those working in Indian Country are important and useful for people to share common experiences and address the unique needs of their programs. There must be careful consideration given to treating Indian programs in a separate but equal manner. Trainings focusing on issues related to service provision in Indian Country should not be viewed as replacing the inclusion of issues important to Indian people in more general victim services training sessions. The inclusion of Native American victim services issues in a general conference must also be undertaken in a sensitive manner. It is clearly offensive to have a panel discussion entitled "Special Populations: Serving Native American and Physically Challenged Victims of Crime." Native Americans are not a special population. Yet such panels are taking place in trainings.

It is incumbent upon training coordinators and conference planners to seek out Native American people to serve on planning committees. Similarly, federal personnel overseeing training contracts must ensure that their grantees include a culturally diverse planning group representing the populations to be served.

Inclusion of Native American participants on planning committees can also be cost efficient. Recently a locality held a training on gangs. Although this topic is of great concern to both Native Americans and non-Native Americans, no effort was made to invite participants from the local reservations. The result is a duplication of training efforts by holding separate trainings for Native and non-Native audiences when a single training effort would suffice. In a time of limited training funds, efforts must be made to maximize the utility of available funds.

It is also necessary for training to be provided on an on-going basis. Indian country programs often experience high levels of staff turnover. The lack of consistency in staff often means that when a person leaves their position, their knowledge leaves with them. Modern technology, where available, may help to alleviate this problem. Programs should be provided with the resources to document their training activities.

Videotaping of training sessions is one mechanism for making training available to new personnel. When training sessions are held on the reservation, the availability of equipment to videotape the training can make the information available to future employees. Similarly, programs can be encouraged to develop manuals providing new employees with a historical overview of the project and with information on how to perform the functions of their position. Funding earmarked for the development of such manuals would definitely assist tribes in their ability to develop these resources.

There is currently an increased focus on building the tribal/state/federal relationship and the coordination of services for victims of crime. It is often assumed that the most

difficult part of this equation is to get tribal participation. State and federal agencies may invite tribal representatives to participate in various meetings and discussions only to have no one from the tribes attend. The perception may be that state and federal agencies offer opportunities for participation only to be ignored.

There are alternative explanations however. Often, these types of meetings are held at the host agency. There is an expectation that if tribes want to participate, they will come to the offices of the state or federal agency hosting the meeting. In some cases those offices can be several hours away from the reservation. While a meeting in downtown Phoenix may be convenient for many state and federal employees, for example, such a meeting means a five hour drive from the Hopi reservation and further drives from other reservations in the state. Simple logistics may preclude tribal participation in such efforts. An hour long meeting may not interrupt someone's day who is located within a half an hour drive from the meeting location. Such a meeting takes up an entire day or even a day and a half for someone located far away.

It is not unreasonable that, on occasion, state and federal employees be expected to travel to a location convenient for the tribal representatives. During on-site visits for OVC, state and federal employees are usually invited to participate. Frequently it is the case that these employees cannot attend the on-reservation trainings because of the distance and time involved to get to the reservation. Tribal/state/federal coordination is a two-way street. Efforts must be extended by all parties. It is unfair to always expect tribal people to travel for the expedience of federal or state employees. State and federal personnel must be willing and able to travel to the reservations in their jurisdictions as well as expecting tribal employees to travel to attend meetings.

It is impossible to ignore the historical fact that "outsiders" have repeatedly come into Indian Country to tell tribes what the tribes need. From federal Indian Agents to BIA Agency Superintendents, representatives from the federal government have controlled policy and implemented their own procedures for service delivery. Every federal and state employee is a representative of the governments which have historically ignored the needs of Indian people and implemented policies regardless of the feelings of the people being impacted.

Non-Indian trainers may experience a lack of acceptance by tribal members, especially if the trainer is unaware of the realities of life on the reservation. There are many differences between offering services to victims of crime on the reservation and those in the city. A trainer who is used to working in a metropolitan area, rich in services may not be able to offer useful training to a small, rural reservation community, lacking in services.

Similarly, psychological and counseling theories which are based on Anglo perceptions and world views may not apply to Native American clients. There are a myriad of factors which influence Native American victims of crime of which a typical victim service provider or trainer may be unaware: historical grief, discrimination, lack of access to education, poverty, cultural disruption/conflict, tribal sovereignty, federal trust responsibilities. While these issues do not appear directly relevant to victimization, they may influence many aspects of a person's life, including their response to being a victim of crime.

A third important consideration is the influence of spirituality in the lives of many Native American people. Spirituality is a broad term which encompasses both religious beliefs and practices as well as a sense of self in relation to the natural world. Spirituality, especially as conceptualized in terms of religion, has been a controversial area. Religion has historically been used as a means of "civilizing" Indians. Missionaries expended great efforts to "save" the savage Indians indigenous to the United States.

Conversion from "heathen" traditional religious practices to Christianity formed the basis of much federal policy during the past 500 years. Indian children were forced to attend boarding schools run by various Christian denominations. Often Indian children were taught that their spiritual beliefs were evil and that Christianity would be the key to their salvation. Forced religious conversions were commonplace.

The forced removal of Indian children to boarding schools meant that children were not able to participate in their spiritual traditions at home. For example, adolescents could not be initiated into religious societies because they were living off-reservation and did not receive the lessons necessary to fulfill their obligations. The punishment of Indian children for speaking their native language led to children unable to speak their language. Participation in traditional religious ceremonies requires an ability to speak one's language.

For many Native people, their spiritual beliefs form the foundation of their entire way of life. Service providers who do not understand either the centrality of spirituality or the importance of participation in certain ceremonial events may cause their clients additional trauma. Workers at a domestic violence shelter, for example, may not understand why a woman insists on returning home to participate in a specific spiritual activity. Shelter rules may prohibit her from returning to the shelter if she leaves overnight, yet her responsibilities within her community may demand that she perform certain tasks over a period of days. She may find herself in the position of having to chose between the safety of the shelter and her religious obligations at home.

Spirituality is an often ignored aspect of assisting victims to heal. Non-Indian service providers may not be aware of the importance of integrating spiritual healing into their services. Native victims of crime may feel that a program which does not address their spiritual needs is not going to be helpful to them. Non-Indian service providers who understand this need may feel that they are not competent to address the spirituality issue and therefore they ignore this dimension.

Integration of tradition healing into a victim services program may pose difficulties, especially if the program serves both Native American and non-native women. It is incumbent upon victim service providers to work with their local Native American communities to develop effective, comprehensive programs for their Native American clients.

The Office for Victims of Crime has undertaken several initiatives in the recent past to improve the delivery of services to victims of crime in Indian country. These initiatives have both improved services and identified the difficulties of attempting to integrate programs developed for non-Indians into Indian communities. Traditional values have enabled Indian people to survive for thousands of years. These values must be respected. The challenge for non-Indian service providers, grant monitors, program developers, and decision-makers, is to

educate themselves and to learn how to respect vital components of tribal life, such as sovereignty and spirituality and how to integrate the sometimes competing demands of federal mandates and tribal values.

LESSONS FROM THE THIRD SOVEREIGN: INDIAN TRIBAL COURTS

by Hon. Sandra Day O'Connor

Today, in the United States, we have three types of sovereign entities-the Federal government, the States, and the Indian tribes. Each of the three sovereigns has its own judicial system, and each plays an important role in the administration of justice in this country. The part played by the tribal courts is expanding. As of 1992, there were about 170 tribal courts, with jurisdiction encompassing a total of perhaps one million Americans.

Most of the tribal courts that exist today date from the Indian Reorganization Act of 1934. Before the Act, tribal judicial systems were based around the Courts of Indian Offenses, which were set up in the 1880's by the federal Office of Indian Affairs. Passage of the Indian Reorganization Act allowed the tribes to organize their governments, by drafting their own constitutions, adopting their own laws through tribal councils, and setting up their own court systems. By that time, however, enormous disruptions in customary Native American life had been wrought by factors such as forced migration, settlement on the reservations, the allotment system, and the imposition of unfamiliar Anglo-American institutions. Consequently, in 1934, most tribes had only a dim memory of traditional dispute resolution systems and were not in a position to recreate historical forms of justice. Swift replacement of the current systems by traditional dispute-settling institutions was not possible. Therefore, while a few tribes, such as the New Mexico Pueblos, have "traditional courts" based on Indian custom, most modern reservation judicial systems do not trace their roots to traditional Indian fora for dispute resolution. Rather, because the tribes were familiar with the regulations and procedures of the Bureau of Indian Affairs, that model provided the framework for most of the tribal courts. Nevertheless, many tribes today attempt to incorporate traditional tribal values, symbols, and customs into their courtrooms and decisions. Some tribal courts, in proceedings that otherwise differ little from what would be seen in State or Federal court, have incorporated traditional features of Indian dispute-resolution to try to infuse the proceedings with values of consensus and community. For example, the placement of litigants and court personnel in a circle aspires to minimize the appearance of hierarchy and highlight the participation and needs of the entire group in place of any one individual.

The tribal courts, while relatively young, are developing in leaps and bounds. For example, many tribes are working to revise their tribal constitutions and to codify their civil, regulatory, and criminal laws to provide greater guidance and predictability in tribal justice. At the same time, tribes have expanded the use of traditional law. Many tribal codes now combine unique tribal law retribution and on keeping harmonious relations among the members of the community. To further these traditional Native American values, tribal courts may employ inclusive discussion and creative problem- solving. The focus on traditional values in contemporary circumstances has permitted tribal courts to conceive of alternatives to conventional adversarial processes.

The development of different methods of solving disputes in tribal legal systems provides the tribal courts with a way both to incorporate traditional values and to hold up an example to the nation about the possibilities of alternative dispute resolution. New methods have much to offer to the tribal communities, and much to teach the other

court systems operating in the United States. For about the last fifteen years, in recognition of the plain fact that the adversarial process is often not the best means to a fair outcome, both the State and Federal systems have turned with increasing interest to the possibilities offered by mediation, arbitration, and other forms of alternative dispute resolution. In many situations, alternative methods offer a quicker, more personal, and more efficient way of arriving at an answer for the parties' difficulties.

The special strengths of the tribal courts-their proximity to the people served, the closeness of the relations among the parties and the court, their often greater flexibility and informality-give tribal courts special opportunities to develop alternative methods of dispute resolution. Many of the issues which come most frequently to tribal courts lend themselves to alternative methods of resolution. For example, vital issues touching on domestic relations, child custody, probate, tort, and criminal prosecutions, may be solved more satisfactorily using a non-adversarial method. A cooperative process is particularly useful where family issues, particularly related to children, are involved, because the process helps the parties to work together to arrive at a fair and workable solution. An adversarial process, in contrast, may worsen the strains between members of the family, and create new conflicts to fuel the old. Too, family problems lend themselves to methods of resolution shaped by the particular character of individual tribal courts, because family issues-involving child custody, juvenile crimes, marriage, and inheritance-are ones where tradition provides a critical guidance for social behavior.

Many tribal courts have already developed methods that meet the needs of their communities and use the underlying traditions and values to the extent possible. A good example is the Navajo Peacemaker Court, which was formed in 1982 by the Judicial Conference of the Navajo Nation to provide a forum for traditional mediation. The Navajo Peacemaker Court is now an active, modern legal institution which incorporates traditional Navajo concepts into a judicial process for dispute resolution. The process is directed by a mediator, who acts to guide and encourage parties to resolve their dispute. The process relies on parties' participation and commitment to reaching a solution, rather than on the imposition of a judgment by an impersonal decision maker. The Navajo Peacemaker Court successfully blends beneficial aspects of both Anglo-American and Indian traditions.

The Northwest Intertribal Court System, a consortium of 15 tribes in the Pacific Northwest, was set up in 1979 to provide court services and personnel to the individual tribal courts of member tribes. Several of the member tribes have supplemented their formal tribal court system with Peacemaker programs that are based on traditional values of consensus and respectful attention to individuals.

> ***"...tribal courts may set out the paradigm for other courts to follow."***

The Indian communities' interest in the development of alternatives for dispute resolution has led to the development of the Indian Dispute Resolution Services, a group formed about six years ago to provide training in conflict resolution. That organization is helping Indian communities to settle unresolved disputes around the county and to provide fair and timely outcomes for parties.

Mediation can be effective not only within a tribal community, but also between the tribe and other groups. The Native American Heritage Commission and the Community Relations Service of the United States Department of Justice have collaborated on several mediation cases involving the repatriation of Indian remains. Some mediations took place between tribes and developers who had discovered remains at construction sites; others took place between tribes and universities that wanted the remains for academic research. Mediation worked to settle successfully the many conflicts that arose over the proper treatment and assignment of such ancestral remains and funerary objects.

The development of methods of alternative dispute resolution may help tribal courts to expand the exercise of their authority over more civil cases. Historically, the great majority of cases heard in tribal courts involves criminal matters, with relatively few civil disputes decided. This might reflect the time and expense required for civil cases, the courts' reluctance to handle civil cases because of a lack of familiarity or advanced legal training, or perhaps because tribal courts serve a less litigious community. Development of alternative methods of dispute resolution allows the tribal courts to take advantage of their strengths in order to provide efficient and fair resolution of such conflicts. It is to be hoped that the tribal courts will continue to explore additional possibilities for alternative methods of dispute resolution. These methods need not be limited in scope to disputes within a tribe, but could be used also to resolve conflicts between one tribe and another, and between a tribe and the State and Federal government, political units, private investors, or contractors. At its best, such a method would provide a cooperative, relaxed forum for the conclusion of disputes, with use of a process that would include all interested parties to ensure their involvement and their consent; and, at the same time, offer important practical advantages by accomplishing its tasks more agreeably, more quickly, and less expensively than the adversarial mode. By expanding such techniques, the tribal courts may set out the paradigm for other courts to follow.

While tribal courts seek to incorporate the best elements of their own customs into the courts' procedures and decisions, the tribal courts have also sought to include useful aspects of the Anglo American tradition. For example, more and more tribal judicial systems have established mechanisms

to ensure the effective appealability of decisions to higher courts. Too, some tribes have sought to provide tribal judiciaries with the authority to conduct review of regulations and ordinances promulgated by the tribal council. And one of the most important initiatives is the move to ensure judicial independence for tribal judges. Tribal courts are often subject to the complete control of the tribal councils, whose powers often include the ability to select and remove judges. Therefore, the courts may be perceived as a subordinate arm of the councils rather than as a separate and equal branch of government. The existence of such control is not conducive to neutral adjudication on the merits and can threaten the integrity of the tribal judiciary. Some tribes, like the Cheyenne River Sioux Tribe in South Dakota, have amended their constitutions to provide for formal separation of powers.

A vital improvement made by tribal judicial systems is the growing number of law-trained, well-prepared people participating in the system, both as lawyers and judges. Many tribal judges have taken steps to craft ethical guidelines and to institute tribal bar requirements for the lawyers who practice before them, and have participated themselves in further training for the task of judging. Both lawyers and judges must be knowledgeable and principled if the tribal judicial systems are to engender confidence in the fairness and integrity of their courts. Whether in tribal court, state court, or federal court, the exercise of a court's jurisdiction is a serious matter, and all persons-Indian and non-Indian-who come before a court are entitled to just and reasoned proceedings.

The three sovereigns can learn from each other, and the strengths and weaknesses of the different systems provide models for courts to consider.

The judicial systems of the three sovereigns-the Indian tribes, the federal government, and the states-have much to teach one another. While each system will develop along different lines, each can take the best from the others. Just as "a single courageous State may, if its citizens choose, serve as a laboratory,"[1] for the development of laws, the experiments and examples provided by the various Indian tribes and their courts may offer models for the entire nation to follow. To give but one example, the Navajo Peacemaker Court has been studied not only by officials within this country, but also from Australia, New Zealand, Canada, and South Africa, for possible use. The Indian tribal courts' development of further methods of dispute resolution will provide a model from which the Federal and State courts can benefit as they seek to encompass alternatives to the Anglo-American adversarial model. And, while tribal courts currently seek to expand the role of traditional law in their judicial systems, they may well choose to incorporate some of the features of the Anglo-American system, such as access to an effective appeal and the independence of the judiciary.

The role of tribal courts continues to expand, and these courts have an increasingly important role to play in the administration of the laws of our nation. The three sovereigns can learn from each other, and the strengths and weaknesses of the different systems provide models for courts to consider. Whether tribal court, state court, or federal court, we must all strive to make the dispensation of justice in this country as fair, efficient, and principled as we can.

[1] *New State Ice Co. v. Liebmann, 285 U. S. 262 at 311, 76 L. Ed. 747, 52 S. Ct. 371 (1932). (Brandeis, J., dissenting).*

SIXTH NATIONAL CONFERENCE

STRENGTHENING INDIAN NATIONS:
JUSTICE FOR VICTIMS OF CRIME

Workshop on Challenges to Peacemaking

San Diego, California

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TRADITIONAL RESTORATIVE JUSTICE IN NORTH AMERICA

by

The Judicial Branch of the Navajo Nation

Summary

Around the world, justice planners are beginning to recognize that suppression methods of social control do not work. Moreover, many nations now see that traditional indigenous methods of justice are not only more effective in communities, but they offer lessons for alternatives to power, force and authority. This article overviews recent initiatives in Indian Country to revive traditional justice methods of restorative justice; shows why restorative justice is effective; outlines the working of the Navajo peacemaker system; and identifies the role of traditional indigenous restorative justice in the world's justice systems.

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TRADITIONAL RESTORATIVE JUSTICE IN NORTH AMERICA

A major change in the ways of looking at justice is taking place in North America. Following more than a century of suppression of traditional Indian law,[1] American Indian leaders are reviving it.[2] Indian judges and justice leaders make strong policy statements to assert the legitimacy of Indian traditional law,[3] and there are numerous conferences of justice leaders to discuss ways to implement it.[4] The process was similar in Canada, and its aboriginal peoples were placed under provincial

[1] The major tools of suppression in the United States were the imposed Courts of Indian Offenses (1883), which established Bureau of Indian Affairs-controlled courts for Indians. and the Major Crimes Act of 1885, which subjected Indians to federal court prosecution for certain "major crimes" in Indian Country. DOCUMENTS OF UNITED STATES INDIAN POLICY 160, 167 (Francis Paul Prucha, ed. 1990). The Major Crimes Act was the legislative response to the decision in Ex Parte Crow Dog, 109 U.S. 557 (1883), which held that Indians who commit offenses within Indian Country (i.e. areas set aside for Indians) are subject only to their own traditional law. The code of the Courts of Indian Offenses made most customary and religious practices a crime.

[2] While the 1934 Indian Reorganization Act, at section 16, recognizes American Indian legal systems as one of the "powers vested in any Indian tribe or tribal council by existing law," Prucha, *Id.* 222, 224, general American law largely pushed out traditional Indian law until recent times.

[3] American Indian Affairs Law is not the law of American Indians. For the first time. textbooks used to teach Indian Affairs Law are publishing the writings and court decisions of Indian judges. *E.g.* AMERICAN INDIAN LAW: CASES AND MATERIALS 482 (Robert N. Clinton, Nell Jessup Newton & Monroe E. Price, eds. 1991); FEDERAL INDIAN LAW: CASES AND MATERIALS 525-553 (David H. Getches, Charles F. Wilkinson & Robert A. Williams, Jr., 3rd ed. 1993).

[4] *E.g. Tribal Peacemaking Conference*, Native American Legal Resource Center, Oklahoma City University School of Law, Tulsa, Oklahoma, May 21-22, 1993; *Alternative Justice Dispute Resolution Conference*, Native Community Law Office Association of British Columbia, Vancouver, British Columbia, February 24-25, 1995; *Traditional Indian Law*, Federal Bar Association, 20th Annual Indian Law Conference. Albuquerque, New Mexico, April 6-7, 1995; and National Aboriginal Law Section, Canadian Bar Association, *Contemporary Aboriginal Justice Models: Completing the Circle*, Kahnawake Mohawk Territory near Montreal, April 26-27, 1996. The National Indian Justice Center of Petaluma, California offers ongoing training programs on traditional Indian law.

jurisdiction (rather than recognize Indian law and government as was done in the United States.) [5] There too, aboriginal leaders are seeking alternatives to imposed assimilationist policies.[6]

The new movement is not restricted to Indian justice leaders. In 1993, the United States Congress enacted the Indian Tribal Justice Act.[7] It specifically recognizes traditional Indian law and procedure,[8] and Congress declared that "traditional tribal justice practices are essential to the maintenance of the culture and identity of Indian tribes and to the goals of this chapter."[9] On June 1, 1995, United States Attorney General Janet Reno promulgated a new policy to reaffirm Indian nation sovereignty,[10] and established the Office of Tribal Justice[11] and Tribal Courts Project[12] to implement policies to affirm and support Indian justice systems.

Traditional Indian law attracts the attention of the general American justice community. In 1995, the General Practice Section of the American Bar Association published a special journal

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[5] *See* BRADFORD W. MORSE, INDIAN TRIBAL COURTS IN THE UNITED STATES: A MODEL FOR CANADA? (1980).

[6] *See Id.* and authorities below.

[7] Public Law 103-176 (1993) (codified at 25 U.S.C. Secs. 3601-3631).

[8] At 25 U.S.C. Sec. 3631(4).

[9] 25 U.S.C. Sec. 3601(7).

[10] Office of the Attorney General, Department of Justice Policy on Indian Sovereignty and Government-to-Government Relations with Indian Tribes (June 1, 1995).

[11] Office of Tribal Justice, Office of the Deputy Attorney General, U.S. Department of Justice (n.d.).

[12] Tribal Courts Project, Office of Policy Development, U.S. Department of Justice (February 27, 1995).

dedicated to Indian law.[13] and its annual conference was dedicated to Indian law, featuring presentations on traditional Navajo law by a Navajo medicine man, the Chief Justice of the Navajo Nation, and the Solicitor to the Courts of the Navajo Nation. That prompted the president of the American Bar Association to tell the Association's members that American lawyers should act like Navajo peacemakers.[14] The American Judicature Society, a leading independent organization dedicated to justice reform, published a special issue of its journal dedicated to Indian law.[15]

In Canada, the Royal Commission on Aboriginal Peoples conducted a National Round Table on Aboriginal Justice Issues on November 25-27, 1992. The report of proceedings included summaries of aboriginal leader presentations and papers on traditional law and community justice.[16] In February 1996, the Commission issued a report which gives formal government recognition of traditional and community justice systems and recommends that they be established and supported across Canada.[17] Importantly, the Commission recognized that aboriginal justice systems must be within aboriginal communities and operated by them, and not function as part of the general state

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[13] INDIAN LAW, 12(4) THE COMPLEAT LAWYER (Fall 1995). The issued featured an article on traditional Hawaiian peacemaking. Manu Meyer, *To Set Right-Ho'oponopono: A Native Hawaiian way of peacemaking*, *Id.* at 30.

[14] Roberta Cooper Ramo, *Lawyers as Peacemakers: Our Navajo peers could teach us a thing or two about conflict resolution*, ABA JOURNAL 6 (December 1995).

[15] 79(3) JUDICATURE (November-December 1995). In it, Attorney General Janet Reno reaffirmed her commitment to Indian nation justice, including traditional systems. *A federal commitment to tribal justice systems, Id.* at 113.

[16] ABORIGINAL PEOPLES AND THE JUSTICE SYSTEM (Royal Commission on Aboriginal Peoples, ed. 1993).

[17] ROYAL COMMISSION ON ABORIGINAL PEOPLES, BRIDGING THE CULTURAL DIVIDE: A REPORT ON ABORIGINAL PEOPLE AND CRIMINAL JUSTICE IN CANADA (1996).

adjudication system. The Commission used a national conference of the Canadian Bar Association to formally launch its initiative.[18]

As traditional Indian justice is discussed and showcased in North America,[19] the discourse is now one of "restorative" justice.[20] In June 1996, U.S. Supreme Court associate justice Sandra Day O'Connor spoke to the annual Sovereignty Symposium in Oklahoma and said that while the Indian courts created after the Indian Reorganization Act were based on state and federal systems, "now modern tribal courts are trying to meld tradition with those systems."[21] "O'Connor pointed out that many tribal courts seek 'a restorative justice' rather than justice based on winners and losers."[22]

There are two general kinds of legal systems in the world. The primary system, which is linked to the modern state, is adjudication. It is based on power and authority, adversarial methods, coercion and force to control people.[23] The United States imposed a police model of justice upon Indian nations toward the close of the 19th century, and it is not working. The police model

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[18] *Aboriginal Justice Models: Completing the Circle, supra* n. 3.

[19] While Mexico is part of North America, its initiatives are not discussed here. Given the war in Chiapas, the Mexican Government is studying traditional justice initiatives but they have not yet been unveiled.

[20] *See*, RESTORATIVE JUSTICE: INTERNATIONAL PERSPECTIVES (Burt Galaway & Joe Hudson, eds. Kugler Publications, 1996).

[21] *O'Connor Says Tribal Courts Offer Lessons*, 12(7) AMERICAN INDIAN REPORT 10, 11 (July 1996). The speech is Sandra Day O'Connor, *Lessons from the Third Sovereign: Indian Tribal Courts* (June 4, 1996); republished in 9(1) THE TRIBAL COURT RECORD 12 (Special Edition, Spring/Summer 1996).

[22] AMERICAN INDIAN REPORT, *Id.*

[23] Robert Yazzie, *"Life Comes From It": Navajo Justice Concepts,* 24(2) *NEW MEXICO LAW REVIEW* 177-5, 177-180 (1994). The Honorable Robert Yazzie, a Navajo, is the Chief Justice of the Navajo Nation.

reinforces undue federal governmental authority and assimilation and it is elitist.[24] The second form of justice, the original form developed by indigenous peoples, is restorative justice. What is it?

RESTORATIVE JUSTICE

Recent Canadian justice inquiries[25] demonstrate something which is true of indigenous communities around the world: their crime and violence rates tend to be above the national average, and their members are incarcerated at rates higher than the general population.[26] There are many reasons for that result, but the major one is the legacy of colonization in the New World and other areas. Disparities caused by the structure of law and government tend to foster political oppression. "Political oppression is easier when there is a racial or cultural distinction between the masters and the oppressed. Tyranny will be harsher in a state established through conquest of one people by another than in a state where all share the same language, culture, and history."[27] "Tyranny is an

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[24] Robert Yazzie & James W. Zion, *"Slay the Monsters": Peacemaker Court and Violence Control Programs for the Navajo Nation*, in POPULAR JUSTICE AND COMMUNITY REGENERATION: PATHWAYS OF INDIGENOUS REFORM 67, 74-75 (1995).

[25] *See, e.g.* REPORT OF THE ABORIGINAL JUSTICE INQUIRY OF MANITOBA, THE JUSTICE SYSTEM AND ABORIGINAL PEOPLE (2 vols. 1991) and JUSTICE FOR AND BY THE ABORIGINALS: REPORT AND RECOMMENDATIONS OF THE ADVISORY COMMITTEE ON THE ADMINISTRATION OF JUSTICE IN ABORIGINAL COMMUNITIES (Quebec 1995).

[26] Indigenous people in Canada tend to receive more and shorter sentences, and studies in Australia show that outcomes for offenders are affected by the wide discretionary power of police, judicial bias, and pre-trial and pre-sentence decisions. Kayleen Hazlehurst, *Indigenous Models for Community Reconstruction and Social Recovery,* in POPULAR JUSTICE AND COMMUNITY REGENERATION, *supra* n. 24 at xiii.

[27] ELI SAGAN, AT THE DAWN OF TYRANNY: THE ORIGINS OF INDIVIDUALISM, POLITICAL OPPRESSION AND THE STATE 278 (1985). One theorist, Franz Oppenheimer, holds that "law in the strict sense is found only where one group has conquered another and remains in the territory of the conquered as a dominant caste or class. The resulting social stratification is then rationalized, the inferior group is subjected to punishment for any infringement of the interests of their superiors, and thus formal law comes into being." HOWARD BECKER & HARRY ELMER

abuse of hierarchy."[28] Western adjudication systems of state-level justice are hierarchial, and "adjudicatory decision-making as opposed to mediatory activity is almost exclusively linked to the presence of central government."[29] They are a pyramid of power, where an elite maintains power and control from the top, and those who are subject to control by the elite tend to be members of different ethnic groups or the poor.[30]

Restorative justice is a response to the inadequacies of state adjudication and to colonialism. American Indians seek ways to heal from the wounds of internal colonialism,[31] and to "go back to the future" using traditional law.[32] The issues are "who owns the problems?" and how indigenous

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BARNES, 1 SOCIAL THOUGHT FROM LORE TO SCIENCE 30 (3rd ed. 1961). "For any ruler struggling to establish or extend his authority an alternative to attempting direct suppression must be to associate himself closely with indigenous institutions in the first instance and gradually subject them to regulation." Simon Roberts, *The Study of Dispute: Anthropological Perspectives*, in DISPUTES AND SETTLEMENTS: LAW AND HUMAN RELATIONS IN THE WEST 1, 9 (John Bossy, ed. 1983). The British followed that practice in establishing village and tribal courts for control; followed later by the Americans and others. *See*, A. St. J. Hannigan, *The Imposition of Western Law Forms Upon Primitive Societies* 4(1) COMPARATIVE STUDIES IN SOCIETY AND HISTORY 1 (1961). That is precisely what many indigenous groups wish to avoid.

[28] Sagan, *Id.* at 277.

[29] Roberts, *supra* n. 27 at 15.

[30] A study of the legal institutions of sixty societies shows that wealth and class distinctions are primarily associated with modern state-level legal systems. KATHERINE S. NEWMAN, LAW & ECONOMIC ORGANIZATION: A COMPARATIVE STUDY OF PREINDUSTRIAL SOCIETIES 130 (1983).

[31] *See, e.g.*, EDUARDO DURAN & BONNIE DURAN, NATIVE AMERICAN POSTCOLONIAL PSYCHOLOGY (1995).

[32] Raymond D. Austin, *ADR and the Navajo Peacemaker Court*, 32(2) JUDGES' JOURNAL 9, 49 (1993). Austin is an associate justice of the Navajo Nation Supreme Court and a Navajo.

peoples can solve them on their own.[33] As one commentator on colonial administration put it. "studies of cultural processes would seem to indicate that only as change is self-motivated is it really effective. Groups and individuals cannot be compelled by law or by force to modify their customary ways of life and thought. Conversely, they cannot be held back when they want to change. At most, attempts to direct behavior in these arbitrary ways will produce overt conformity to the demanded forms of conduct--when someone is checking up."[34] Imposed control can also prompt negative or self-destructive reactions by indigenous groups:

> They also generate psychological and social reactions which may be exceedingly difficult for the alien authority to handle--insecurity, resentment and hostility, frustration to the point of hopelessness, revulsion and retreat, and outcroppings of compensatory behavior. aggressive or escapist.... Colonial domination has been especially provocative of these manifestations, as with "nativistic" movements, religious cults, noncooperation, boycotts, "revolts" and the gathering forces of nationalism. The violence of such repercussions seems to be in proportion to the impact of compulsion upon the basic securities. The degree of disruption and maladjustment that comes from outside pressure also seems to depend on how far these cultural foundations are disturbed.[35]

Self-motivation is a method of restorative justice. How does it work? When there is a dispute, people use the cognitive and rationalizing functions of the mind to make assumptions about others or to internally justify their conduct.[36] They assume that the other person is wicked, evil, insane, sociopathic, amoral, etc. Offenders assume that victims are weak, vulnerable, and deserve

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[33] Kayleen M. Hazlehurst, *supra* n. 24 at xi.

[34] Felix Keesing, *Applied Anthropology in Colonial Administration*, in THE SCIENCE OF MAN IN THE WORLD CRISIS 373, 394 (Ralph Linton, ed. 1945).

[35] *Id.* at 394.

[36] *See*, Laurie Melchin Grohowski, Cognitive-Affective Model of Reconciliation (March 1995). (Master's Thesis, partially based upon a study of Navajo peacemaking; cited with permission.)

to be abused or have their property damaged or taken. Victims often suffer secondary gain, a psychological state which causes physical pain and comes from a sense of injustice prompted by an injury. Rationalization by offenders takes the form of denial, minimalization and externalization. "Denial" is the state of mind of an offender who says "there's nothing wrong with me; I don't have any problems." "Minimalization" is the excuse, "It's no big deal." "Externalization" is a form of blaming: "It was *her* fault;" or, "Poor me, I'm just a hopeless alcoholic."[37] The processes of traditional justice create a shift in the discourse from cognitive or "head-thinking" to affective or "heart-thinking." It uses emotions, perception sharing, clarification of attitudes and information, values, and empathy to prompt reconciliation.[38]

The traditional Navajo peacemaker justice system recognizes these dynamics. In Navajo peacemaking, community leaders use the processes of prayer, venting, discussion, value-clarification, teaching by a community leader, and group consensus to resolve disputes.[39] Navajos revived their traditional justice system by identifying "law" as norms, values and moral principles which are effectuated in institutions.[40] The institution is a *naat'aanii*, the traditional Navajo civil leader, who today is called a "peacemaker" in English, and is chosen on the basis of reputation and respect by each of the Navajo Nation's 110 local communities (called a "chapter"). The norms,

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[37] Robert Yazzie & James W. Zion, *Navajo Restorative Justice: The Law of Equality and Justice*, in RESTORATIVE JUSTICE: INTERNATIONAL PERSPECTIVES, *supra* n. 20 at 15, 165-66.

[38] Grohowski, *supra* n. 35.

[39] James W. Zion and The Hon. Robert Yazzie, Completing the Circle: An International Perspective of Aboriginal Justice (1996) (cited by permission) (prepared for the Canadian Bar Association conference, *Aboriginal Justice Models: Completing the Circle*, *supra* n. 3.

[40] *Id.*

values and moral principles of the Navajo People are the Navajo common law, and they are transmitted in prayers, ceremonial wisdom and traditional lore in the process of peacemaking. The people themselves are the judges, and they use traditional ways (which are described in western psychological thought, above) to resolve problems by consensus. Navajo peacemaking is used to deal with family violence, driving while impaired, assaults and a wide range of social problems.

The Navajo Nation is unique, because it operates a justice system with both western forms of adjudication and traditional procedure side-by-side. Cases may shift from the adjudication system to traditional peacemaking or begin in peacemaking by choice of the parties, remain there or go into the adjudication system for enforcement or other proceedings. Peacemaking is used to supplement the adjudication process, e.g. to involve victims to propose a sentence, seek the support of an offender's family to implement a sentence, and to get an offender to commit to a program of treatment and rehabilitation.

Traditional procedure does things a system of adjudication cannot. It involves indigenous people in processes which cannot be prompted by outsiders. It recognizes the cultural and community milieu of an offense, because an offender acts out in his or her own personal cultural setting, and the causes of an offense can be dealt with only within the context of that setting. While an offender may not listen to a judge, parole officer, policeman or social worker, that person will listen to peers, relations and community leaders. Victims who feel left out or slighted by an alien system feel free to speak in their own community setting. Restorative justice restores or creates personal and group relationships. In most indigenous communities, people live in small rural areas together. They know each other well and live in continuing relationships. The same is true in urban

areas, where often indigenous people live in distinct communities.[41] Traditional justice can even be used to resolve disputes between indigenous group members and members of other groups. Navajo peacemaking was used to resolve a wrongful death suit where a Navajo child was killed in a clothes dryer and the child's parents sued the dryer manufacturer. The case was resolved in peacemaking in direct discussions between the child's parents and representatives of the manufacturer.[42]

Restorative justice is a very human process. Traditional law is not mystical or mysterious. Indigenous peoples have long recognized that disputes are best resolved in a setting which prompts discussion to find the causes of problems, with consensus to deal with them in practical ways. There is a great deal of controversy on the question of whether criminal sanctions actually deter an offender or others. Restorative justice compels individuals to address their own behaviors and it gives communities the means to resolve their own problems. This is an ownership issue: ownership of the offense by an offender; ownership of the outcome by a victim; and ownership of responsibility for conduct by a community. The process compels individual responsibility, involvement of family members, and intervention by community representatives. The process also makes it possible to intervene early, before an offense is committed, e.g. it can deal with "hooliganism" to deal with acting out before it becomes a pattern of offending. Restorative justice is speedy, simple, and inexpensive. The Navajo Nation has over 250 peacemakers in most of its 110 chapters. They are not paid by Navajo Nation government. Navajo peacemaking revived the tradition that individuals pay for their own healing ceremony when they see a traditional healer. Likewise, Navajos who seek

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[41] *See* CAROL LA PRARIE, SEEN BUT NOT HEARD: NATIVE PEOPLE IN THE INNER CITY (1994) (Canada).

[42] Yazzie & Zion, *supra* n. 37 at 169.

peacemaking pay the peacemaker $60 and expenses for services.[43]

Likewise. urban and rural systems of aboriginal justice which are being established across Canada show both the promising prospects of restorative justice and its success.

The American and Canadian experiences show that restorative justice is a practical approach to justice for indigenous peoples and it holds out hopes for society in general. There should be a shift of authority to communities to resolve their own problems. This is not a debate over "devolution" or "sovereignty." This process need not use the international discourse of "self-determination." Indigenous peoples do have rights to sovereignty and self-determination, and authority is recognized, not devolved. The practical policy consideration is that distinct communities should be left to solve their own problems - in their own ways. There are many ways to link restorative justice with state systems (i.e. police, courts, corrections or social services), but the superior method is to recognize traditional justice systems and allow them to function freely. Associations with state systems should be negotiated, but the primary principle is that indigenous peoples have the right to their own justice systems and they should determine the method of linkage with the state.

EXPERIENCE WITH TRADITIONAL RESTORATIVE JUSTICE

The leading American model is Navajo Peacemaking. Some other American models are the Traditional Dispute Resolution Research Project and Peacemaker Program of the Northwest Intertribal Court System,[44] and the Apache Mediation Center of the White Mountain Apache Nation

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[43] *Id.*

[44] Bruce Miller, Patricia Paul, Diane Vendiola, and Emily Mansfield, *Northwest Intertribal Court System's Traditional Dispute Resolution Research Project and Peacemaker*

of Arizona.[45] Native Hawaiian programs which utilize *ho'oponopono* "to set right" show that indigenous leadership of many cultures are identifying and reviving traditional process successfully.[46] Two leading Canadian examples are the Community Council Project of Aboriginal Legal Services of Toronto,[47] and the Hollow Water First Nation Holistic Circle Healing Project of Manitoba.[48] There are other initiatives in Canada as well (not reported in readily-available literature), such as the Saddle Lake Band, Alberta, Peacemaker Program. initiatives under study by the Federation of Saskatchewan Indian Nations, and plans of the Nisga'a Nation of British Columbia.[49]

The Navajo Peacemaking Case

Navajo peacemaking is unique, because the Courts of the Navajo Nation were able to revive traditional Navajo legal procedure so that it can operate side-by-side with a western system of adjudication.[50] When the Navajo Nation judges created their "new" version of an ancient Navajo

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Program. in TRIBAL PEACE MAKING RESOURCE MANUAL IV-TPM-139 (Native American Legal Resource Center, Oklahoma City University, ed. 1993).

[45] Fort Apache Legal Aid Society, *Apache Mediation Center* and *Determination of Tribal Custom: Apache Custom and Advisory Panel; Journal*, in *Id.* at 180, 182 (brochure and code section).

[46] Manu Meyer, *supra* n. 13.

[47] Royal Commission on Aboriginal Peoples, *supra* n. 17 at 148.

[48] *Id.* at 159.

[49] Canadian Department of Justice Officials feel that the Federation of Saskatachewan Indian Nations and Nsga'a initiatives are the most likely to be successful. Both are in the planning phase at present.

[50] This discussion is based upon discussions with James W. Zion, Solicitor to the Courts of the Navajo Nation and the attorney who developed the Navajo peacemaking system.

system in 1982, they did two things: they identified the traditional Navajo legal institution and the Navajo values used to resolve disputes.

The basic Navajo legal institution is the clan. Navajos relate to each other through their mothers (they are "of" the mother's clan) and fathers (a Navajo is "born for" the father's clan). The clan relation is one of solidarity, reciprocal responsibilities, mutual obligations and deep emotions of love and respect. Navajos are highly individualistic, traditionally possessing greater freedom than the European concept, yet they live within groups. The Navajo maxim about individuality is "it's up to him." but an individual who acts out to harm the group "acts as if he had no relatives." Navajo values respect a great deal of freedom, but it is is exercised in responsibility to the group. The Navajo word which describes both the relationship and its dynamic is *k'e*. Navajo respect values are used to select civil leaders. The traditional Navajo leader is a *naat'aanii*. The word refers to someone who speaks wisely and well and a person who shows leadership and planning ability. The Navajo word *naat'aah* means "planning," and it is a process of group discussion to reach a consensus decision about what the group should do. A *naat'aanii* is chosen by the consensus of the community; often without a formal vote. Another unique thing about Navajo civil leadership is that women are respected for their leadership role. Many of the more than 250 Navajo peacemakers are women.

Navajos do not believe that one person should dictate what to do to another. Navajos reject coercion and authoritarian action, and public leaders do not make decisions for others - they make decisions *with* them. When there is a dispute, those involved in it directly or indirectly are the "judges." A *naat'aanii*, who is chosen for exhibited leadership, planning ability and spirituality, serves as a respected guide to teach disputants how to address their problem.

The actual peacemaking process is simple and effective. Someone who wishes to use peacemaking can go to any of the Navajo Nation's nine courthouses to request peacemaking. A clerk of court or staff peacemaker liaison takes the names and addresses of everyone with an interest in the dispute and a short statement about the nature of the dispute. Following the appointment of a peacemaker, he or she gives notice to interested persons about the date, time and place of peacemaking. The sessions are held in courtrooms or court conference facilities, one of the Navajo Nation's 110 community chapter house, a home, or a traditional hogan.

The process always begins with prayer. One of the reasons for the success of Navajo peacemaking is the close comparability of the process with traditional Navajo healing methods. That is, during a Navajo healing ceremony, Supernatural beings are summoned to participate. Navajos believe that prayer is effective to bring Supernatural Beings together with the "Five-fingered People" (i.e. humans) for action. A patient heals in solidarity with one of the Holy People. Solidarity of the individual with the group, both human and supernatural, reintegrates the individual and gives that person internal motivation to heal. The opening prayer, which focuses upon the nature of the problem and the commitment required by the group to successfully resolve the dispute, commits everyone involved to the process. It also frames their attitudes toward it. Following the prayer, the individual who requested the peacemaking will relate the nature of the problem. If the person who wants action is unable or unwilling to speak, a relative may lay out the problem. This is also the time for "venting," where everyone can express their emotions about the problem or its effects.

Navajos insist that their traditional process is *not* "alternative dispute resolution" or "mediation," and they are correct. Peacemaking is unique because (1) it involves relatives, friends, neighbors, and anyone with even a marginal interest in the dispute; (2) the peacemaker is not a

"neutral" in the sense of having no point of view about the problem; and (3) the process taps deep emotions which can be used to dispel psychological barriers to an agreed decision. Navajos do not focus upon the actors, as with punishing offenders, but upon the action: dealing with a victim's injury and feelings and making certain the offense does not occur again. The Navajo Nation courts identify family responsibility for the future conduct of a past offender as a "traditional probation officer." The family has direct responsibilities to victims and communities as part of the peacemaking decision process.

The next stage is called the "lecture" in English. That is an unfortunate translation, because it is not an abstract recitation of the "shalls" and "shalt nots," but a very practical teaching and problem-solving process. A peacemaker will pull stories about wise or foolish beings (i.e. Holy People, Coyote or Horned Toad) as a form of case law to apply to the problem at hand. The peacemaker, like a medicine person, will relate how and why the traditional story is relevant to the dispute and use it to advise the group.

Following the lecture, the group continues its discussion. The focus is *naat'aah* or creating a plan to resolve the dispute. In traditional times, Navajos discussed both the relationship of the parties and compensation to end the dispute. That is called *nalyeeh*. Unlike western law, where compensation is designed to assess the market value of an injury, the focus of *nalyeeh* is upon feelings and relationships. The test for the kind and amount of compensation is "enough so there are no hard feelings." Compensation can be symbolic: a valuable piece of jewelry or a horse.[51] The

[51] Vincent Craig, the Chief Probation Officer of the Navajo Nation courts, relates that he received a call from a Colorado probation officer about this kind of compensation. A young woman who had been sexually molested was asked what she wanted, and she said "six horses." Horses are valuable to Navajos, and the compensation she demanded is customary in sexual

parties will also commit to future conduct. Many Navajo disputes involve alcohol, so offenders commit themselves to either traditional or western alcohol treatment and family members pledge to help the offender carry out that plan. Navajo treatment professionals are involved in peacemaking. [52] A plan can also include an agreement to undergo a traditional healing ceremony which is designed to cure a problem which may cause a dispute.[53]

Once an agreement is reached by consensus, the session closes with a prayer to commit both the members of the group and the Supernaturals to the decision. The decision may be followed by a court order which requires compliance with the decision or it may be reduced to only a written agreement. In practice, the parties usually make an oral agreement and the record of the decision is a peacemaker's summary report or notes. Proceedings are tape-recorded in the event of any future question about what took place or the agreement of the parties.

How did Navajos revive their traditional process? Once it was identified, by peacemakers who worked with the courts in earlier years, the Chief Justice's staff prepared rules of court to establish procedures to move cases from adjudication into peacemaking and for direct public access. The rules carefully avoided regulating the traditional process itself, and that was left to peacemakers. Upon obtaining funding to hire community organizers, the courts recruited a small staff with

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offense situations.

[52] In September 1996, Lila Help-Tulley, the Director of the Navajo Nation Division of Social Services, said that social workers are working closely with peacemaking and like the ability to intervene informally through peacemaking to give effective assistance to families.

[53] For example, the Hon. Irene Toledo of the Navajo Nation Ramah District Court discovered that many Navajos accused of violent offenses are military veterans who suffer from post-traumatic stress disorder. She finds that when those offenders are referred for the traditional ceremony for war veterans, The Enemyway, there are positive effects.

expertise in Navajo traditions. They developed a training curriculum and recruited peacemakers across the Navajo Nation. Peacemaking largely pays for itself. Following the Navajo tradition that patients pay their traditional healers, those who use peacemaking pay $60 for services. There is a trend in the Navajo Nation for peacemakers and their communities to act independently of the Nation's court system, and that trend is supported by the Hon. Robert Yazzie, Chief Justice of the Navajo Nation.

Is Navajo peacemaking culturally-specific or does it utilize universal human values? Discussions with South African leaders show that the Navajo word *k'e* is very close to the Zulu word *ubuntu*. They both refer to a group process, and while "solidarity" is not a complete translation for either, that is one of the dynamics of the process. It relates directly to Navajo perceptions of healing. Navajo justice leaders insist upon their own unique approach, and while many mediation techniques are similar, Navajos have learned how to utilize their own institutions and processes in accordance with Navajo values.

Common Themes in Traditional Justice

Navajo court officials have travelled to Australia, New Zealand, Papua New Guinea, Vanuatu, Fiji, Bolivia, South Africa, and Canada to both relate their experience with traditional justice and to learn from others. Navajo peacemaking was adopted by the Saddle Lake Band of Alberta as an independent process, i.e. it is not attached to a court system. Peacemaking has been recommended for the Manitoba provincial judicial system. The Federation of Saskatchewan Indian Nations is interested in the Navajo model for its proposed justice system.

The worldwide lesson is that effective justice for indigenous peoples relies upon (1) traditional institutions, (2) the use of traditional values and procedures, (3) community settings, (4)

the traditional language (where it is still spoken), (5) religious or moral values, and (5) utilizing all human faculties in the process. including emotions.

Western adjudication and traditional justice can be explained by the use of two symbols: the triangle and the circle. The triangle illustrates the hierarchial nature of western law as a pyramid of power. The circle shows equality in relationships and implies that discussion within the circle promotes the respect required for a decision by consensus.

Traditional justice methods are effective because they use personal commitment in place of threatened or actual punishment. Navajo women have the choice of traditional peacemaking or modern restraining orders for domestic violence and most often choose peacemaking as their preferred remedy. That is likely due to the fact that threatened punishment is not a deterrent in a remote area while a process which addresses the underlying problems an offender has is effective. Families and communities are empowered when they know of the existence of a problem and are encouraged to deal with it directly.

Internationally. there are active movements to revive traditional indigenous justice in the United States. Canada. Bolivia. New Zealand and Australia. Increasingly, national governments are becoming aware that state-regulated adjudication with its power. force and authority does not work for indigenous peoples or for people in general. State systems are costly and inefficient, and the use of police force to control distinct populations is counter-productive. Traditional restorative justice is cheap, efficient, speedy and it gives long-term solutions. The experience of indigenous justice leaders in other countries show methods to link traditional justice with state systems. The preferred approach is one of recognition. where the state simply acknowledges the existence of indigenous institutions and respects their processes. The alternative of integrating indigenous peoples and their

problems in state systems does not work.

The Navajo Nation experience, along with that of other Indian nations which are reviving their traditional justice methods, shows that community solutions work; traditional values and methods work; people in communities work when they can solve their own problems. Traditional restorative justice in North America is alive and well.

Judicial Branch of the Navajo Nation

(Adapted from a briefing paper prepared for the Maori Nations of Aotearoa [New Zealand]).

Government-to-Government Relations With Native American Tribal Governments

Memorandum for the Heads of Executive Departments and Agencies

The United States Government has a unique legal relationship with Native American tribal governments as set forth in the Constitution of the United States, treaties, statutes, and court decisions. As executive departments and agencies undertake activities affecting Native American tribal rights or trust resources, such activities should be implemented in a knowledgeable, sensitive manner respectful of tribal sovereignty. Today, as part of an historic meeting. I am outlining principles that executive departments and agencies, including every component bureau and office, are to follow in their interactions with Native American tribal governments. The purpose of these principles is to clarify our responsibility to ensure that the Federal Government operates within a government-to-government relationship with federally recognized Native American tribes. I am strongly committed to building a more effective day-today working relationship reflecting respect for the rights of self-government due the sovereign tribal governments.

In order to ensure that the rights of sovereign tribal governments are fully respected, executive branch activities shall be guided by the following:

(a) The head of each executive department and agency shall be responsible for ensuring that the department or agency operates within a government-to-government relationship with federally recognized tribal governments.

(b) Each executive department and agency shall consult, to the greatest extent practicable and to the extent permitted by law, with tribal governments prior to taking actions that affect federally recognized tribal governments. All such consultations are to be open and candid so that all interested parties may evaluate for themselves the potential impact of relevant proposals.

(c) Each executive department and agency shall assess the impact of Federal Government plans. projects, programs, and activities on tribal trust resources and assure that tribal government rights and concerns are considered during the development of such plans; projects, programs, and activities.

(d) Each executive department and agency shall take appropriate steps to remove any procedural impediments to working directly and effectively with tribal governments on activities that affect the trust property and/or governmental rights of the tribes.

(e) Each executive department and agency shall work cooperatively with other Federal. departments and agencies to enlist their interest and support in cooperative efforts: where appropriate, to accomplish the goals of this memorandum.

(f) Each executive department and agency shall apply the requirements of Executive Orders Nos. 12875 ("Enhancing the Intergovernmental Partnership") and 12866 ("Regulatory Planning and Review") to design solutions and tailor Federal programs, in appropriate circumstances, to address specific or unique needs of tribal communities.
The head of each executive department and agency shall ensure that the department or agency's bureaus and components are fully aware of this memorandum, through publication or other means, and that they are in compliance with its requirements.

This memorandum is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right to administrative or judicial review, or any other right or benefit or trust responsibility, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

The Director of the Office of Management and Budget is authorized and directed to publish this memorandum in the Federal Register.

[Signature omitted]
[Signed William J Clinton]

CHILD SEXUAL ABUSE

PROTOCOL DEVELOPMENT GUIDE

DEVELOPING PROTOCOLS FOR THE INVESTIGATION AND PROSECUTION OF CHILD SEXUAL ABUSE CASES

Many Indian Nations and non-Indian communities have identified the need to develop protocols for the investigation and prosecution of child abuse cases. Some of these protocols deal with the handling of both serious physical and sexual abuse cases. For the purpose of this paper, we will focus on the development of protocols for the investigation of child sexual abuse cases only. The ideas and guidelines will be useful for the development of any type of child abuse protocol.

WHAT IS A PROTOCOL?

A protocol is a set of policies, procedures and agreements. An interagency protocol specifies which agencies will perform which specific tasks in the investigation of child sexual abuse allegations. A protocol is a written document outlining each agency's role and responsibility. The most successful protocols are those which are approved by the people in charge of each participating agency. High-level support will help to ensure that all agency personnel will be expected to follow the procedures outlined in the protocol.

There is often a great deal of confusion as to the role of each agency in the investigation and prosecution of child sexual abuse cases. Similar cases may be handled in different ways within the same agency. Cases may "fall through the cracks" due to a lack of effective communication between agencies. There may be frustration among workers in various agencies due to a lack of understanding of the roles and responsibilities of workers in other agencies. Animosity can build up between people who need to work together for child protection. Territory or turf issues may create a situation where "battle lines" are drawn rather than agencies coming together for the benefit of the child.

WHY HAVE A PROTOCOL?

A protocol can help to eliminate these problems. Very often people working together in child protection related jobs form relationships with others doing similar work. The manner in which a specific case of child abuse is handled is often person-dependent. That is, two people may form a working relationship based on their personal styles. For example, a child protective services (CPS) worker may form a working partnership with a particular criminal investigator (CI). As long as those two people work together, they always handle their cases in a specific manner. If one of these people leaves their position, however, their replacement may have a different idea about how to handle cases. A written protocol ensures that all cases are handled in an identical manner, regardless of the specific people who are dealing with the case.

A protocol allows for accountability. Since each agency's role is specifically outlined, it is clear what the agency's role is. Therefore, the agency can be held accountable for the actions or inactions of its employees.

Protocols can be as simple or as complex as you want to make them. Protocols can cover only the basics: how referrals are made, who accepts referrals, how the investigation is handled. Or protocols can be very complex, outlining each step of the process beginning with the initial referral and proceeding through how the prosecution is handled including post-conviction services for convicted offenders. At a minimum, a protocol should include the major tasks which you identify as the most important in investigating and prosecuting child sexual abuse cases. These tasks will vary according to the needs of each community. A brief example will help to illustrate how a protocol can be developed and utilized.

SAMPLE PROTOCOL

1. All child sexual abuse cases shall be reported to Child Protective Services (CPS).

2. CPS will immediately inform Law Enforcement Services (LES) of all child sexual abuse referrals.

3. CPS will investigate referrals for child sexual abuse according to the following priority system:

   A. Highest Priority
   Cases in which the child is in immediate danger or imminent danger of abuse.
   These cases will be investigated within three hours of receiving the report.

   B. High Priority
   Cases in which the child is not in immediate danger but the abuse is ongoing or likely to reoccur.
   These cases will be investigated within two working days of receiving the report.

   C. Low Priority
   Stale reports, reports of abuse which has occurred in the past and in which the perpetrator does not have access to the victim.
   These cases will be investigated within ten working days of receiving the report.

4. All investigations will be carried out by a team consisting of a CPS worker and a CI. Multiple interviews of victims are to be minimized.

5. Every effort will be made to keep child victims in their own homes. In cases where the child would be endangered by remaining in the home, CPS shall be responsible for finding an appropriate placement.

This example outlines several important features of a protocol. The sample outlines which agency is responsible for receiving referrals and investigating reports of child sexual abuse. When reporting procedures are not clear, people and agencies may be confused about how to make reports. Each community will need to identify one or two primary agencies to receive reports. The fewer the possible number of reporting agencies, the easier it will be for people to make reports.

There needs to be a mechanism by which incoming reports can be communicated between CPS and LES. Not all child sexual abuse cases will need the involvement of both CPS and LES. However, immediate communication between these two agencies will ensure that all cases will be handled by the appropriate agency in a timely manner.

A protocol which outlines time-frames for investigations to occur provides accountability to the community. The investigating agency makes a public statement about how it will respond to child

abuse cases. If investigations are not carried out in a timely fashion, then the appropriate agency can be held accountable.

A protocol can also be a vehicle for a community to express its values. In the sample protocol, the community's values are articulated by the statements concerning minimizing the number of interviews a child undergoes and keeping child victims in their own homes. A more detailed sample protocol is provided following this article.

PROTOCOL DEVELOPMENT

There are several ways in which a community can develop a protocol. The first question to be answered is who is going to write the protocol. Some tribes have hired a single consultant to write the protocol. Others have formed task forces or work groups. These groups may include subcommittees of child protection teams, or specially formed groups. Whoever actually writes the protocol will need to have input from all of the agencies involved in child protection and the prosecution of child sexual abuse cases.

Which agencies will need to be involved will vary with each community. However, you may want to consider including Tribal, Indian Health Services (IHS), and Bureau of Indian Affairs (BIA) programs. These programs may include CPS, Social Services (both tribal and IHS), Mental Health, Tribal Prosecutor, LES, education programs/schools, and victim advocates. Inclusion of Tribal, BIA, and IHS programs in the protocol will necessitate the agreement being signed off by the local IHS Service Unit Director, BIA Superintendent, and the Tribal Council or their delegated representatives (i.e., department heads). In states where there is concurrent federal jurisdiction over child sexual abuse crimes, the U.S. Attorney's Office must also be involved. In states with local jurisdiction, the appropriate LES and judicial services agencies must also be involved.

Agency involvement does not necessarily mean that all of the agencies participate in drafting the protocol. However, for the document to be useful, all of these agencies must be allowed to have input into drafts of the document prior to its finalization.

A protocol should be considered a document which will require modification and periodic review. A time and a manner for review of the protocol should be built into the protocol itself. Changes can then be made as necessary in accordance with a pre-established procedure. Initially, you may want to review the protocol every six months.

WHAT ELEMENTS SHOULD A PROTOCOL INCLUDE?

Every community will have its own unique set of concerns to be addressed in a protocol. Some Tribes will have their own Tribal social services programs while others will rely on state and county agencies for social services. These individual concerns will need to be taken into account in developing a protocol for your community. In this section we will review some elements which you may want to consider including in your Tribal protocol.

1. Philosophy. What is your community's basic philosophy about child sexual abuse? You may want to include this philosophy as an introduction or position statement to the protocol.

2. Definitions. What is child sexual abuse? A protocol can be an educational tool as well as a set of policies and procedures. It may be useful for community members and service providers to be provided with definitions of the terms used in the protocol.

3. Reporting procedures. It is strongly recommended that your protocol include a clear description of how reports of abuse should be made. What agency(ies) are responsible for receiving reports of child sexual abuse? Are different agencies responsible for receiving reports at different times (e.g., one agency receives reports during working hours and another receives reports after hours and on holidays)? The procedure for making a report (i.e., can reports be made verbally or must they be written; can a report be made anonymously) should be clearly defined.

4. Jurisdiction. Jurisdictional issues are often very confusing in Indian country. A clear jurisdictional statement in the protocol can be very useful.

5. Time Frames. What is the time frame for investigating reports of child sexual abuse? The community deserves to be informed of what can be expected in the investigation: how long will it take for a report to be investigated? One of the most frequent complaints from reporters is that their reports of abuse are not promptly investigated. By specifying the time frames for investigations, everyone will know what is expected.

6. Priorities for Investigation. A sample of these priorities was provided earlier. Each Social Services and LES agency has some type of priority system for investigating reports. This priority system may be confusing to those outside that particular agency. The inclusion of the criteria for prioritizing investigations can help to clarify seeming inconsistencies in investigation.

7. Roles. You may want to utilize a portion of the protocol to outline the roles of each participating agency. This can be a crucial portion of the protocol. Confusion concerning agency roles is a major problem for many CPTs. Roles may be defined in a separate section for each agency or may be defined throughout the protocol by identifying specific responsibilities attached to the various agencies. Some protocols specifically include statements stressing what a particular agency should not do, such as a statement that Social Services will not interview suspected perpetrators without prior approval of law enforcement.

   An important inclusion in this section would be a discussion of the multi-disciplinary child abuse team (variously known as CPTs, Suspected Child Abuse and Neglect Teams, and Multi-D Teams). What is the child abuse's team role? It may include staffing cases, investigations, case management, making recommendations to the court. These roles could be articulated in this section.

   The roles of volunteers and staff who assist the victim can also be included. Positions such as Court Appointed Special Advocate (CASA), Victim Advocate, or Guardian Ad Litem can be described in this section. Inclusion of these positions validates the importance of victim services.

8. Adjudication. What is the adjudication process in tribal and federal court? The protocol can be an educational instrument, outlining the procedures that victims and suspects can expect in the adjudication process. There may be statements concerning special courtroom arrangements for child victims, including testimony in the judge's chambers or the possibility of a support person accompanying the child on the witness stand.

9. Post-Adjudication Services/Alternatives to Adjudication. What happens to the victim after adjudication? Are there alternatives to the adjudication process, such as offender treatment under a deferred prosecution arrangement? This section can also include services such as probation and parole: what special conditions will be imposed on the probation and parole of convicted sex offenders?

DRAFTING TRIBAL LAWS

A Manual for Tribal Governments

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CHAPTER 9

SPECIFIC TRIBAL LAWS

This chapter focuses on particular tribal laws and possible approaches and pitfalls for the tribal codewriter in drafting them.

9.1 Constitution

Most Indian tribes are organized as governments pursuant to a written constitution adopted by tribal members. Many tribes adopted constitutions under the authority of Section 16 of the Indian Reorganization Act of 1934 (IRA), 25 U.S.C. 476.

Constitutions are generally of two kinds. The first kind enumerates or describes the powers the government may exercise, reserving all other powers to the people to exercise by referendum or to delegate to the government by constitutional amendment. The federal constitution is of this type. The second kind delegates general sovereign powers to the government, but specifying any limitations on the exercise of those powers. Most state constitutions are of this type. Most tribes, upon advice of the B.I.A., adopted the enumerated powers (federal) type of constitution.

The result of this has been that many powers which tribes need today to fully exercise their powers of self-government are reserved to the general membership and cannot be effectively exercised. This has occasionally resulted in somewhat strained interpretations of tribal constitutions by tribal courts in order to allow tribes to function as governments. See e.g., Squaxin Island Tribe v. Thomas, 10 Ind. L. Rep. 6005 (Sq.I. Ct. App., May 18, 1982)

Instead of putting up with a situation that hampers efforts to get the most basic kind of legislation adopted and enforced, tribes should be advised to consider focusing attention on amending their constitutions to either add additional enumerated powers, or to revamp the constitution entirely from one of enumerated powers to the general powers kinds. Even under a general powers constitution, adequate limitations reserving membership approval for certain kinds of laws of transactions can be incorporated, as well as protection of individual civil rights.

Efforts to revise a tribal constitution would probably meet with

support from B.I.A., especially if the revisions include separation of powers (legislative, judicial, executive) between different branches of tribal government. (See section 8.5)

9.2 Court System

Tribal court systems may vary a great deal from one reservation to another. Some tribal laws provide for election of judges by tribal members, while in others judges are appointed by the tribal council. If the tribal constitution does not establish the tribal court, the tribal council has broad power to establish the kind of court system it wants. The court can be delegated broad jurisdiction and powers of judicial review, or it can be given very restrictive jurisdictional powers. The goal should be to achieve a balance of power that will allow the government to function effectively and that will allow tribal members access to an independent forum for the resolution of disputes. Care should be taken to insure that the court is not given such broad powers that it effectively ends up governing the tribe through judicial review. On the other hand, the court must have sufficient powers to provide protection for individual rights so that it is viewed as a meaningful institution of government. Judicial review need not be a threat to tribal councils if limitations on the scope of review are made clear and other doctrines (for example, exhaustion of administrative remedies, political question, and comity) are rationally employed. Before giving constitutional review authority to a tribal court, however, the Council should take a long hard look at its constitution to see whether a narrow reading of its governing powers might render tribal government dysfunctional (*See* section 8.5).

Rules of procedure (general, criminal, civil, appellate) for the tribal court can be enacted by the Council. Caution should be exercised before adopting in their entirety rules from state or federal courts. Many of these may not be appropriate for the tribal court based on its budget and staffing situations, and especially if most people appearing in court are not represented by lawyers. State and federal court rules were written for judges and lawyers, not for "real" people. (Note: The Navajo Peacemaker Court has two sets of

rules, one for lawyers and judges, and another for lay persons. See BIBLIOGRAPHY)

9.3 Criminal Code

The simplest course to follow in drafting a tribal criminal code (often called a Law and Order Code) is to borrow provisions from the codes of other tribes, or from state codes if appropriate. The criminal provisions at 25 C.F.R., Part 11, for B.I.A. Courts of Indian Offenses may also serve as a useful guide. (Note, however, that some sections are quite archaic, and that each provision applies to Indians only - see discussion below.)

One of the first issues that must be addressed is the scope of personal jurisdiction. The C.F.R. code and some tribal codes, say "...any Indian who..." Because of the Supreme Court's decision in Oliphant, the immunity of non-Indians from tribal criminal prosecution is a fact of life. However, by stating the limit outright the tribe is imposing that limit on itself. Should the courts or Congress develop exceptions to Oliphant in the future, a tribe that had limited its criminal jurisdiction to Indians only would not be able to take advantage of the change without amending its code.

The "any Indian who..." or "any tribal member who..." limitations on personal criminal jurisdiction may cause other problems. An exclusion ordinance may refer to violations of the criminal code as a basis for excluding a nonmember. If the nonmember is non-Indian in "any Indian who..." jurisdiction (or an Indian in an "any tribal member who..." jurisdiction), it may be argued that he cannot be excluded for violation of the criminal code because the class of persons to which he belongs is exluded from coverage.

Finally, by listing "Indian' or "tribal member" as the actor in the crime, proof that the person accused is Indian or is a tribal member may be a required element of the offense that must be proved by the prosecution. The best course would be to use the phrase "any person who..." and in an introductory section on jurisdiction indicate that persons not subject to tribal criminal jurisdiction as a matter of federal law will not be criminally prosecuted for violations of the criminal code, but other judicial or administrative

remedies may be exercised.

9.4 Exclusion Ordinance

Exclusion ordinances are necessary if tribes are to retain any significant control over nonmembers, especially non-Indians, who violate tribal laws of personal conduct (for example, criminal laws). The kinds of conditions or conduct that will trigger the exclusion process should be clearly stated. Notice and opportunity for a hearing also must be provided. Authority to exclude may be exercised by the tribal council or it may be delegated to the tribal court, or a tribal agency or official. All of this should be set forth in the ordinance. Owners of fee land cannot be excluded from the land they own, but they can be restricted in their access to other areas within the tribe'e territorial jurisdiction. Exclusion orders can completely exclude or they can set time, place and manner restrictions on access to the reservation. Likewise, a monetary fine or similar sanction could be imposed as a condition to an exclusion order not being enforced. In theory, and notwithstanding the Oliphant decision, a non-Indian violating a tribal criminal law could be allowed to remain on the reservation on the conditions that he pay a $500.00 fine and stay in the tribal jail for six months. Even though a non-Indian cannot be criminally prosecuted and imprisoned by the tribe, the resulting remedy would be almost the same. The choice would be up to the non-Indian violator. He could choose to abandon his jail visit at any time, but face immediate exclusion.

A more troubling question is whether or not tribal members can be excluded. Most (if not all) ordinances deal only with the exclusion of nonmembers. However, there may be instances where a tribe would want to exclude a member. To use a "worst case" example, a tribal member who commits a grisly multiple homicide on the reservation may only be subjected to six months in jail for each murder under tribal law (assuming tribal concurrent jurisdiction for major crimes). The U. S. Attorney might prosecute, or decline to prosecute, or the defendant might be acquitted, or the case might be dismissed on a procedural error. Does the tribe want this member back in its community again after serving either no time or at most several months in jail? What about the families of the victims? How

much confidence will the community have in the tribe's ability to provide for the "health, safety, moral and general welfare?"

In such a situation, and others perhaps not as notorious, exclusion of members may be desirable for the safety of the tribal community. For many tribes expulsion of members was one of the traditional sanctions used against non-conforming behavior. Reference to how other governments deal with those who commit heinous acts against the government may or may not be helpful since the penalty restrictions imposed on tribes by the Indian Civil Rights Act (ICRA) do not exist elsewhere.

If it appears that exclusion of a member would violate tribal constitutional and ICRA safeguards of substantive due process, a tribe might consider provisions for disenrollment in its enrollment ordinance. After meeting due process notice and hearing requirements for a proposed disenrollment, the member could be disenrolled and then excluded under the exclusion ordinance as a nonmember.

Tribes may balk at such measures as being unduly harsh, but sometimes harsh measures are required to deal with dangerous situations where express or implied limitations on tribal powers leave the tribe otherwise incapable of protecting its members and other reservation residents. Legal advice should be sought before trying this, and especially, questions of substantive due process should be carefully examined.

9.5 Children's Code

Many tribes have enacted Children's codes since the passage in 1978 of the Indian Child Welfare Act (ICWA). A Children's code allows a tribe to exercise jurisdiction (inherent, or granted or restored by the ICWA) over cases transferred from state court proceedings involving the placement of dependent Indian children. A model children's code is available from the American Indian Law Center at the University of New Mexico in Albuquerque. Other sample codes are available from the Northwest Intertribal Court System (NICS).

Essential to effective implementation of a children's code is the availability of social services to provide for evaluation, in-

vestigation, counseling and placement of dependent Indian children. If the tribe cannot provide these services itself, or get funding for them from the B.I.A., it may need to negotiate a cooperative agreement with a social services agency of the state, another tribe, or a private organization.

Other issues related to children's code are discussed in publications listed in the BIBLIOGRAPHY.

9.6 Gaming Ordinance (Bingo)

In the last few years, many tribes have enacted ordinances to establish and control reservation bingo operations. The promise of great economic fortune from bingo has been realized by some tribes, but not by all. Where tribes have been successful, state and local politicians have attempted to eliminate tribal bingo (and other gambling activity) through lawsuits and Congressional lobbying.

The cases deciding the issue have generally upheld tribal bingo in states where charitable bingo was permitted and regulated by the state, or at least where there was no state public policy prohibiting bingo. See Seminole Tribe v. Butterworth, 658 F 2d 655 (5th Cir. 1981), cert. denied 455 U.S. 1020 (1982); State of Washington v. Hatch, ____ F.Supp.___ (W.D.Wa., Aug. 14, 1984). appeal dismissed (9th Cir., Feb. 21, 1985). But see State of Oklahoma v. Seneca-Cayuga Tribe of Oklahoma, 12 Ind. L. Rep. 5085 (Okla. Sup. Ct., July 2, 1985) (State can regulate tribal bingo). If lower court cases are reviewed by the Supreme Court, tribal bingo may suffer the same fate of tribal cigarette and liquor sales. Legislation pending in Congress - some bad, some not as bad - could well decide the future of tribal bingo enterprises. See Hearing on S.902, etc, June 26, 1985, Senate Select Committee on Indian Affairs, Washington, D.C. (BIBLIOGRAPHY).

Before enacting a gaming ordinance a tribe would be well-advised to consult an attorney or congressional representative about the current status of the law in this area. (See BIBLIOGRAPHY: Native American Rights Fund)

9.7 Housing Ordinance

Tribes that establish housing projects under HUD programs are required to adopt a ("boilerplate") ordinance set forth in Title 24

C.F.R., Part 805. Beyond that, there are many areas relating to regulations of housing that tribes can address.

Usually the first concern is an eviction ordinance since the HUD-generated ordinance requires the tribal government to exercise its authority to provide remedies for lease or home-ownership contract violations. A number of tribes have adopted eviction ordinances, some of which are available from NICS. States also have eviction laws ("unlawful detainer" statutes) which may serve as a model. Care should be taken to determine the precise relationship between the residents of the housing project and the housing authority (lessor-lessee? mortgagor-mortgagee?), and the resulting effect on each party's rights and liabilities as to occupancy, property, fixtures, repairs, etc. Also, what if the primary tenant wants to evict others living in the household with him or her?

A housing ordinance might also address such matters as building, electrical and plumbing standards (See section 9.14, Uniform Codes). Other issues are discussed in the housing law publications listed in the BIBLIOGRAPHY.

9.8 Hunting and Fishing

Hunting and fishing rights are substantial rights tribes never relinquished, or that were specially reserved in treaties with the United States. Court decisions have said that the right includes the authority to participate in management of the resource. As a result, many Pacific Northwest and Great Lakes area tribes have enacted fishing ordinances as a major component in their regulatory management scheme. Where fishing rights exist off-reservation these ordinances allow the tribes to exercise their jurisdiction over their fishing licensees in those off-reservation areas. Sample fishing ordinances are available from NICS. Tribes claiming treaty-reserved hunting rights have begun to adopt hunting ordinances to regulate off-reservation hunting areas.

Tribes that have substantial reservation land bases regulate hunting on-reservation, as well. Samples of these may be found in the Johnson Microfiche collection, or obtained directly from the tribes. (See BIBLIOGRAPHY.)

9.9 Tax Codes

Most governments supported themselves by raising revenue through taxation. Recently, tribes have begun to use their taxing powers to provide revenue needed to support tribal programs. Royalty taxes and severance taxes on gas, oil and mineral leases and production are probably the most well known. For those tribes that do not have such resources, sales of fish and fireworks are taxed, businesses and occupations (B & O) are taxed, along with other activity. If tribes are to achieve true self-government they must begin exercising their taxing powers to the fullest extent possible. Taxation ordinances provide the mechanism for implementing and collecting taxes. (See also Hoff, Tribal Taxation for Economic Development, BIBLIOGRAPHY)

9.10 Business Codes

Tribal business codes serve to regulate business practices and to encourage business development. If tribes are to effectively encourage and administer economic development on their reservations, a solid foundation of business laws is needed (See section 9-15, Uniform Codes). Some sample codes are available in the Johnson microfiche materials. (See BIBLIOGRAPHY) In addition, model tribal business codes are available. (See Press, Legal Structures for Business Development on Reservations, BIBLIOGRAPHY)

9.11 Domestic Relations

Tribal domestic relations ordinances generally regulate marriage and divorce of tribal members. In the absence of tribal laws or customs state law may apply or, in P.L. 280 states, state courts may have jurisdiction but may have to apply tribal law or custom. In enacting tribal domestic relations laws sensitivity to tribal custom is especially important. Such laws should provide for resolution of child custody and division of property and debts.

More recently, domestic relations legislation in the states has focused on domestic violence. The purpose of this special legislation is usually to provide a prompt and effective mechanism for law enforcement and judicial intervention in situations involving threatened or actual physical abuse of one spouse by another, or of one household member against another. In the past, without such

legislation, women that were being abused by their husbands often had to leave home and file for divorce before they could obtain any help from the courts or from police. Under typical domestic violence legislation, the abused spouse or household member can obtain immediate response from law enforcement, including arrest of the abusers. Without filing for a divorce or moving out, the abused person can obtain an immediate court order that restrains the abuser from coming to the premises where the abused person lives, subject to arrest for violation of the order.

Citation to Washington State's domestic violence law is listed in the APPENDIX.

9.12 Probate

Probate, the process for settling the estate of someone who has died, becomes much more complex where Indian property is involved. The usual purpose of probate laws are 1) to provide an efficient process for distributing property of a deceased person's estate to designated heirs and to creditors and 2) to determine who should be entitled to inherit in the absence of any will of the deceased person. State probate codes establish elaborate schemes for meeting these purposes.

Because Indian property may include trust assets, distribution of these assets must be done by the B.I.A., based on federal law. All other assets of the estate may be probated in tribal court. Where there is no will, the probate law indicates which of the deceased's heirs will inherit what assets. State codes usually attempt to follow what people generally would have intended had they written a will. Thus, the statutory distribution is based on perceived notions of dominant American cultural views of inheritance. These cultural values may not be shared, in whole or in part, by a given tribe. Investigation into the predominant inheritance practices and values of tribal members should precede legislation in this area.

Fractionated heirship, in which many Indians inherit small fractions of beneficial ownership interests in trust lands, is another difficult problem. Land may be tied up and unusable for years

because of problems in getting consent from so many heirs. The Indian Land Consolidation Act of 1982 was intended to help remedy some of these problems by allowing tribes to condemn trust land that was so fractionated that the leasehold value to any one heir was minimal. Because of strong feelings among heirs about their rights of ownership of even small factions, tribes can expect to encounter opposition to any such legislative efforts.

Sources of further information on matters relating to tribal probate codes are in the BIBLIOGRAPHY.

9.13 Traffic

Traffic codes are one of the best-suited areas for "decriminalization." This is especially important where a large number of motor vehicle drivers on the reservation are non-Indians. Without a cooperative arrangement with local city, county or state law enforcement agencies, the tribe must devise a legislative scheme that will allow it to keep unsafe drivers, Indians or non-Indian, off of reservation roads.

Many states, and some tribes, have adopted civil traffic procedures which are enforced through payment of fines and suspension of licenses to drive. If a driver violates a tribal traffic law he is issued a citation or notice which gives him the opportunity to either pay the specified fine or request a hearing before a judge to either contest the violation or explain mitigating circumstances. If a driver fails to pay the fine, or appear in court, his privilege to drive on the reservation is suspended. He is subject to immediate removal pursuant to the tribe's exclusion power. The department of licensing in the state where the driver is licensed may be notified of suspension and violations, and that state may take action to suspend the driver's license, depending upon that State's laws. Resident Indian motorists could be criminally prosecuted and jailed for the same reasons the non-Indian may be excluded from the reservation. (See discussion of exclusion considerations, section 9.4).

An example of a tribal civil traffic law is cited in the APPENDIX.

9.14 Zoning

Zoning is the mechanism by which state, local and tribal governments control land use development within their territorial jurisdiction. It allows certain geographic areas to be developed for residential housing and other areas to be developed for commercial and industrial purposes.

Tribal zoning ordinances that primarily affect tribal members will likely encounter no serious problems if they are related to a rational governmental objective. Zoning laws that directly affect non-Indians, however, will be scrutinized under the principles set forth in the Montana case, and related cases, discussed earlier. Where there are significant numbers of non-Indian residents and businesses on fee land within the reservation, zoning may be difficult. The problem is made even more complex where a local non-Indian government also zones the same areas. If zoning is undertaken, efforts should be made to involve the affected persons as much as possible, and early on, in an attempt to obtain support from them and avoid litigation. If there will be benefits to those affected this should be stressed.

A tribal zoning ordinance is cited in the APPENDIX. Before relying on any one scheme, other tribes who have zoning laws should be contacted to find out what problems they have encountered, or if they are enforcing their laws at all.

9.15 Uniform Codes

More and more states are adopting uniform laws in an effort to improve regulating of activities that routinely cross state lines. Examples of such laws include the Uniform Commercial Code (regulating business and financial transactions) and the Uniform Child Support Enforcement Act (regulating the collection of child support payments from absentee spouses). Other uniform codes are adopted because of their highly technical nature; for example, the Uniform Building Code, Uniform Electrical Code, and the Uniform Plumbing Code. Tribes may find it useful to adopt some of these laws for many of the same reasons. (See BIBLIOGRAPHY)

Especially where tribes are developing cooperative agreements

with state and local agencies, tribal adoption of laws identical or similar to the participating jurisdictions may be helpful. Of course, this should only be done if the other jurisdiction's laws are suitable to tribal needs. If they are not, the negotiations for a cooperative agreement may need to include discussion of both governments adopting uniform laws.

9.16 Employment Preference (TERO)

Essential to successful tribal economic development on Indian reservations is the employment of tribal members. Tribal employment rights ordinances (TERO - also an acronym for tribal employment rights office) are a means of securing employment and business opportunities for tribal members. Employers and others doing business on reservations are required under a TERO to meet certain requirements in hiring preferences for tribal members or other Indians who are otherwise unsuitably skilled or trainable for the available jobs. If construction contracts and sub-contracts are to be let out, for example, Indian firms are given preference over other bidders.

Sources for more information about tribal employment rights and sample ordinances are listed in the BIBLIOGRAPHY.

9.17 Other Laws

Legislation is appropriate for any kind of problem or need for which the tribal council determines that a legislative solution can help. As a result, there are countless areas in which tribes can, and should, regulate by legislation to preserve their interest and promote their powers of self-government. The legislation suggested in the preceding sections is only a sampling of the most common laws that tribes adopt or consider for adoption. In areas where there is controversy or substantial risk of exposure to liability or litigation, legal advice should be obtained before venturing forth with new legislation.

The following are some additional subjects that tribes may want to consider for legislation:

1. Legislation Ordinance (setting out procedures for submission of draft laws to the Council; rules of

style, grammer, etc. as discussed in this manual; format for draft laws and amendments; procedure for keeping legislative histories, and codifying and updating tribal laws).

2. Environmental Laws
3. Election Ordinance
4. Licensing Ordinance
5. Utility Code
6. Fire Safety Code
7. Administrative Procedures
8. Personnel Policies

SUMMARY

This chapter presented only a brief look at each of the tribal law areas discussed. More research is advised before proceeding confidently in any particular areas. However, the approach to each area can be applied in drafting other tribal laws.

CHILDREN'S BILL OF RIGHTS
PREAMBLE

The Salt River Pima-Maricopa Indian Community Council is concerned with the general welfare of all of its members. That concern is particularly strong for children who cannot provide for or protect themselves. In this document the Salt River Pima-Maricopa Indian Community reflects this special concern by recognizing that its children have certain legal rights that the Community will respect and defend.

In enumerating these rights and thereby proclaiming the Community's special responsibility to its children, the Community Council continues to recognize and affirm that:

(1) The Family is the societal unit that first has primary care and protective responsibility for children;

(2) The interests of the Community's children are best served within the environment of the Community's
(3) cultural values and heritage;

(4) Every child has the right to a permanent home that affords affection, love and guidance through nurturing, caring family members;

(5) All children have the right to be a useful member of their Community and their specific tribe and to be involved in its culture;

(6) Every child has the right to be a unique person and to individual expression of choice;

(7) Every child has the right to competent health and medical care and the promotion of a healthy, wholesome lifestyle;

(8) Every child has the right to a safe, protective environment which provides an adequate standard of living;

(9) Every child has the right to be protected against all forms of neglect, cruelty, abuse and exploitation;

(10) Every child has the right to an education with maximum opportunity for preparation for earning a livelihood, family life and citizenship; and

(11) Every child has the right to enjoy these rights in a spirit of peace, maintained by meaningful relationships with all those people who are important to him or her.

TRIBAL COURTS, VIEWED FROM A FEDERAL JUDGE'S PERSPECTIVE

*by Hon. William C. Canby, Jr.**

Only a few years ago, it would have been easy to describe the view of tribal courts held by a "typical," federal judge (if indeed such a creature existed). The typical federal judge would have had no view at all of tribal courts beyond a dim awareness of their existence. Federal judges were deeply enmeshed in their own cases, and they simply did not cross paths with tribal judges.

It has been true from the beginning of the United States, of course, that federal courts dealt with issues of "Indian Law." The typical federal Indian Law case, however, set out the boundaries of jurisdiction between the federal government, the States, and the tribes concerning matters that arose in Indian country. Thus, Supreme Court decisions in the Cherokee Cases of 1831 and 1832[1] recognized that the tribes had an inherent right of self-government, but no attention was paid by the federal authorities as to how that self government might resolve civil and criminal disputes. Indian matters were left to the tribes, and federal courts paid no particular attention to the institutions that the tribes may have employed to administer justice.

This inattention by federal judges continued as the Secretary of the Interior established Courts of Indian Offenses in the late nineteenth century, and even as these institutions were replaced by the tribes' own tribal courts under the Indian Reorganization Act of 1934.[2] In 1959, the Supreme Court decision in Williams v. Lee[3] came as a bit of a wake-up call, for it held that an Indian could not be sued in state court on a debt that arose in Indian country; the matter was exclusively consigned to the tribal courts for decision. So now the federal judges knew that the tribal courts were there, and that they were sufficiently important that the States were forbidden to encroach on their jurisdiction. Yet we did not really know what the tribal courts did.

When the Indian Civil Rights Act[4] was passed in 1968, federal courts became aware that the tribal courts had misdemeanor criminal jurisdiction, and were subject to most of the provisions of the Bill of Rights. And the Supreme Court again emphasized the importance of the tribal courts when it left all non-criminal enforcement of the Civil Rights Act to the tribal courts alone.[5] Federal judges were further reminded of the important and broad civil jurisdiction of tribal courts when the Supreme Court rendered two more decisions in the mid-1980's, National Farmers Union Ins. Cos. v. Crow Tribe o[f] Indians and Iowa Mutual Ins. Co. v LaPlante.[7] In those cases, the Suprem[e] Court held that federal courts, whe[n] called upon to decide the boundaries o[f] tribal court jurisdiction under feder[al] Indian law, must stay their hands an[d] give the tribal courts the first opportu[]nity to decide their own jurisdiction.

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[1] See Cherokee Nation v. Georgia, 30 U.S. (5 Pet.) 1, 8 L. Ed. 25 (1831); Worcester v. Georgia, 31 U.S. (6 Pet.) 515, 8 L. Ed. 483 (1832).

[2] 25 U.S.C. §§461-479.

[3] 358 U.S. 217, 3 L. Ed.2d 251, 79 S.Ct. 269 (1959).

[4] 25 U.S.C. §§1301-1341 (1989). References to the Indian Civil Rights Act and to the Indian Bill Of Rights should be viewed as references to §§1301-1303.

[5] Santa Clara Pueblo v. Martinez, 436 U.S. 49, 56 L. Ed. 2d 106, 98 S. Ct. 1670 (1978).

[6] 471 U.S. 845, 85 L. Ed. 2d 818, 105 S. Ct. 2447 (1985).

[7] 480 U.S. 9, 94 L. Ed. 2d 10, 107 S. Ct. 971 (1987).

Despite these decisions, it was still easy for federal judges not to focus on the work of the tribal courts. Most of the cases that come before federal judges have nothing to do with Indian law. So when a federal judge was faced with the occasional Indian law case, and even when he or she abstained to permit the tribal court to exercise its jurisdiction first, the federal judge in all probability knew little or nothing of the nature and operation of the tribal court, or of its judges and other personnel.

This situation is now changing. one reason is that the tribes are developing economically, and are engaging in enterprises that intersect, more and more, with the non-Indian population. Increasing law enforcement problems highlight the problems of division of criminal enforcement among states, tribes, and the federal government. Problems such as air and water pollution are not easily confined inside or outside reservation boundaries. As a consequence of all of these factors, some means of cooperation and interchange between the federal, state and tribal judiciaries has become essential.

The states and tribes led the way, with formal and informal meetings among their judges. Some law schools helped by arranging and supporting such gatherings. Then the Conference of Chief Justices of State Supreme Courts and the National Center for State Courts sponsored state-tribal forums in certain states, and later sponsored conferences of federal, state and tribal judges to consider mutual problems. Then my court, the Court of Appeals for the Ninth Circuit, created the Ad Hoc Task Force on Tribal Courts to help inter-judicial coordination and assistance. The Tenth Circuit, just east of us, also established a similar Task Force. Finally, at the Ninth Circuit Conference in August 1996, part of the program will be devoted to tribal courts.

At the same time, the Justice Department under Attorney General Janet Reno has taken an unprecedented interest in the role of the tribal courts. United States Attorneys are helping to coordinate law enforcement in Indian country, and are participating in federal-state-tribal forums that grew out of the former state-tribal organizations. And now, the Bureau of Justice Assistance of the Department of Justice has funded a project to improve interaction among tribal, state and federal courts; the project is being administered by the National Indian Justice Center.

The upshot of this flurry of activity is that federal judges at last are being confronted with a full picture of the nature and activities of the tribal courts. What do they see?

Any characterization of tribal courts from the standpoint of federal judges must still be preceded by a warning that our view of the tribal courts is new, and we have much to learn. With that limitation understood, I offer a few impressions.

Any characterization of tribal courts from the standpoint of federal judges must still be preceded by a warning that our view of the tribal courts is new, and we have much to learn.

First. The tribal courts are surprisingly functional institutions. This fact is not news to the tribes or their courts, but federal judges had not known much of it. The tribal courts are doing a huge business, and we in the federal and state judiciary could not do without them. The courts of the Navajo Nation this year will decide about 25,000 civil and criminal cases, and this figure does not include traffic offenses, juvenile matters, alternative traditional court proceedings, or appeals. The smaller Gila River Indian Community Court decided 3,200 cases last year. A disappearance of the tribal court system would be a major judicial disaster, not just for the tribes and their courts, but for our whole national system of civil and criminal justice.

Second. The tribal judges are a most valuable resource, responsible for the considerable accomplishments of the tribal courts, and there is much to be learned from them. In their understanding of the controversies and parties before them, they are extremely sophisticated. For settling traditional disputes, they are consequently extremely well prepared. In the kind of legal training they may need to deal with increasingly complicated cases arising from complex tribal economic activity, they vary greatly. Some are graduates of fine law schools; others have no formal education past high school. No one knows or feels the diversity in training levels more than the judges themselves; opportunities for further training and education are always oversubscribed. In fashioning alternative methods of dispute resolution, the tribal judges are particularly well-adapted to creating a workable system in the tribal environment.

Third. The tribal courts are starved for resources. This problem leaps out at the viewing federal judge, for federal judges are well supported, by the standards of the nation. We complain that we do not get new courthouses on time, but we do get them, and they are well staffed and well equipped. The tribal courts, in contrast, get by on a shoestring. I remember one tribal judge from one of the New Mexico Pueblos explaining that his tribe had no jail, and so contracted with the county to house tribal prisoners. If he sentenced a person to two weeks in jail, the expenses charged by the county used up the tribal court's entire budget for the year. Needless to say, that judge was most energetic in finding alternatives to incarceration. But the lack of resources affected almost everything that his court tried to do. A few years ago, Congress recognized the dire needs of the tribal

courts and authorized $50,000,000 to support tribal courts, in the Tribal Justice Act, but Congress has never appropriated that money. So the tribal courts struggle on without adequate resources. As a federal judge, I can only admire them. If the federal courts were as little supported as the tribal courts, I believe that they would cease to function.

Fourth. The tribal judges are the symbols of law in their communities, and the relation between the community and the judge is far more intense than it is in the case of federal judges. This intense relationship is valuable, but it places great strain on the daily lives of many tribal judges. In a remote way, the whole country tends to blame judges for everything that goes wrong in the community, but in a tribal setting this feeling is often very direct. The judge is held responsible by his or her neighbors for almost everything done or not done by the police, for example. Small-town state judges may understand the pressures that attend this community attitude, but federal judges are usually too distant and too well-protected to feel such pressures intensely. We can only sympathize with a tribal judge who has an inadequate budget, limited jurisdiction that does not reach to some crime in Indian country (particularly crime by non-Indians), and is held responsible by his community for the perceived failure of the reign of law and order. The tribal judges, by and large, maintain their good humor in these circumstances, and federal judges can only admire that quality. Of course, tribal judges draw strength from their surrounding community as well, but the role of the judge in a small community is not one for the weak of will.

Fifth. Tribal courts vary greatly in the amount of protection they enjoy from political or other external influences. Some tribal court systems, such as that of the Navajo Nation, are well-established as a separate branch of government, and the judges enjoy indefinite tenure. Some other tribes initially established their tribal courts as part of a system where tribal judges were appointed by the tribal council, and appeal from court decisions was to that council. Those structures have changed now, but in some tribes the tradition of independence has not developed to the point where political interference in the judiciary is clearly taboo. Thus, a federal judge viewing the plight of a tribal court that does not enjoy independence from some political pressure is likely to be a bit shocked, while remaining sympathetic to the tribal judge who is attempting to ignore such pressures. The shock is a matter of the federal judge's own perspective. Federal judges enjoy the greatest protection from political or public pressure imaginable: the Constitution grants them what amounts to life tenure; they can only be removed by impeachment by Congress for high crimes and misdemeanors; and their salary cannot be reduced. Every federal judge realizes the importance of those protections and cherishes the independence it gives him or her in deciding difficult cases. on this point we are likely to be a bit evangelistic. because we are convinced that judicial independence is essential for a viable system of justice. At the same time, we must understand the problems of those less protected than we are.

Sixth. There is so much variety in the tribal courts that virtually every statement about them must be understood to have exceptions. This fact simply reflects the variety of tribes. There are well over two hundred tribal court systems in the country, and they vary from tribes having little or no land base and a tiny population to the large tribes in Arizona with thousands of square miles of territory. Some tribes are almost entirely agricultural or pastoral; others are engaged in highly sophisticated and complex economic activity. Most of the tribes are strapped for resources, but a few have new-found (and perhaps temporary) gaming resources. These variations are reflected in the tribal court systems. Some have tribal judges who are graduate lawyers; others do not. Some have numbers of courthouses, adequately furnished; others have no physical home at all. The list could go on. The point is simply that it is not useful to approach every tribal court or tribal judge with a generalized idea of what tribal courts are like, and assume that it fits this particular court or judge. There is a lot of local learning to be done before one can gain a reasonably clear picture of the functions, problems, and possibilities of any tribal court.

Seventh and last. The tribal courts and their personnel have made immense strides in the last two decades, and the rate of improvement is accelerating. A federal judge who is looking at the tribal courts for the first time might not recognize this fact, because he or she would have no points of comparison. So here I will leave the "typical," federal judge and will speak as one who has observed the tribal courts since 1967. There were good tribal judges then, and some of them are still serving. But there is no comparison between 1967 and today in the tribal judges' expertise, range of experience, training, ability to cope with complex cases, staff support, ability to handle a caseload, and every other positive attribute. Today the tribal courts are miles ahead of where they were in 1967. More important, most of the gain has occurred in the last ten years, and the pace of improvement is clearly accelerating. I am particularly pleased to see Indian law graduates assuming some of the tribal judges' positions. All in all, there is much to be optimistic about in the tribal justice scene. I have no doubt that the rate of improvement will continue to accelerate, but I cannot help thinking that it would be sky high if the proper amount of resources were devoted to this important component of the judiciary.

So those are some of the views that a federal judge might have of the tribal courts. The subject is so rich that many more factors could be added, but I think the above impressions would probably be foremost in the minds of most viewing federal judges. As for this federal judge, I can only pass on my thanks to tribal judges for a job well done in difficult circumstances, and hopes for more understanding on our part, and more support from community and nation in the future.

**The views expressed in this article are those of the author personally, and do not represent the views of the Court of the Appeals or the Task Force.*

PARTNERSHIP: BRINGING TOGETHER TRIBAL AND STATE COURT JURISDICTIONS

by Hon. William Thorne

On the surface it would seem a simple proposition to bring together Tribal and State court jurisdictions. On closer examination, however, it appears to have been successfully accomplished only with careful planning and coordination. Unfortunately, it has not been as simple as calling a meeting and then having everyone in one room sit down and talk to each other. The purpose of this article to highlight successful strategies and erect warnings around the buried hazards.

The history of relations between tribes and states is strewn with checkbooks emptied to pay the army of litigators employed to battle each other. Virtually every possible dispute that can arise between governmental entities has arisen, and in some instances has become commonplace, in the history of tribal and state relations. In the era of shrinking budgets, and money from Washington drying up for both sides of these battles, it may be time to place a small portion of the war chest aside for attempts to create state and tribal alliances. Indeed, this may be the time when the window of opportunity has opened to let in a breath of clean refreshing air. It is time for traditional enemies to find that although there are still substantial differences, and a profound lack of trust, there are also areas of mutual interest and common concern. Each belligerent needs desperately to reprogram funds away from fighting toward meeting the needs of their citizens in this time when federal dollars are becoming increasingly rare. In addition, there are now federal statutes requiring that the disputing jurisdictions deal with each other as equals. This may be the time to make one more attempt at building bridges and then partnerships.

Twenty years ago it would have been highly unusual for state and tribal courts to get together for joint problem solving. In fact, to the extent that they even thought of each other at all, it appears that they viewed each other as a significant source of problems. Despite this, tribal and state courts have, over the last couple of years, begun to talk to each other.[1] The many successes, as well as the occasional failure, have mapped the preferred routes out of the mine fields. Today, with the right planning, cease-fires may be put into place and alliances created.

There are several components common to a successful forum project. These include: 1) a group of "problem solvers" 2) gathered equally from both tribal and state courts 3) with an agenda focused on finding areas of mutual concern or shared interest 4) willing to explore, not just the way things have always been, but new ways of improving the working relationship between courts, even within their own systems.

Problem Solvers

Tribal-state projects will not succeed if the process is one of simply finger-pointing and blaming someone else for whatever problems are identified. Instead, the approach must be one of attempt to circumnavigate the obstacles, to seek cooperative ventures. Not everything needs to be solved definitively. Sometimes it is best to leapfrog the barriers that others have set up and continue to the goal. When viewing the differences between tribal and state courts, the gulf may ap-

[1] Due in no small part to the forum project sponsored by the Conference of Chief Justices, the National Center for State Courts, the American Bar Association, and the National American Indian Court Judge's Association. Two national conferences were held, a 1991 conference in Seattle "Civil Jurisdiction of Tribal and State Courts: From Conflict to Common Ground" and a subsequent 1993 session in Santa Fe "Building on Common Ground: A Leadership Conference To Develop A National Agenda To Reduce Jurisdictional Disputes Between Tribal, State, and Federal Courts."

pear insurmountable. Much like the starving man who is overwhelmed at the prospect of making a meal of an elephant, the solution is one bite at a time. It is not necessary to create a comprehensive and universal solution to the problems that are created from parallel systems not working well together. Rather, the short term goal should be to create an ever expanding series of small agreements.

Policy decisions are generally beyond the realm of courts and court systems. The policy differences between tribal governments and state governments, including the sub- systems of county and other local governments, need not separate parallel court systems. Instead, if the focus is on working jointly to solve problems faced by both systems, they can become allies and not adversaries. Creative solutions to concrete difficulties need not involve inherent policy issues. Each has much to learn from the other. There is still more that can be created with the wisdom and experience of each being jointly applied to a problem.[2] If it is taken as a given, that the parallel system exists for similar reasons as our own, then there is someone available to share the burden (or, at least, commiserate).

Equal Representation In Forum

Of the initial attempts to create forums for state and tribal courts to discuss experiences, exchange information, and generate cooperative plans, the most successful have begun with equal representation from state and tribal court systems. The balance is important to ensure that the forum is not perceived as the property of either system, where the other is the guest. Instead, it is viewed as a setting to share, learn, and explore in a safe environment.[3] The forum project that failed had minimal tribal representation.

Areas of Mutual Concern or Shared Interest

The sole forum project that went awry concluded that there were too many jurisdictional and other problems surrounding tribal courts and their relations with state courts for the participants to come to mutually acceptable solutions. The particular project compiled a litany of problems. Litigation to resolve the issues was viewed as the only conceivable means to resolve the differences. The participants in that project concluded that their forum project was not an useful experience.[4]

In the jurisdictions that succeeded, the projects have focused upon identifying areas of commonality, not differences. In one state, North Dakota, this has meant focusing upon traffic as a common concern in a statewide meeting sponsored by their state supreme court. Their attempts at working together focused upon mutual enforcement of traffic regulation and sharing of traffic records targeted at reducing the loss of life and injuries that resulted from a lack of coordination in traffic enforcement. From this innocuous beginning, the various tribal and state courts are exploring larger issues.

This may be the time to make one more attempt at building bridges and then partnerships.

In other states they chose not to limit themselves to one subject matter, but instead sought areas of agreement wherever they could find them. Washington's and Arizona's forum projects quickly identified training as one area of shared concern. The forum members concluded that lack of knowledge or contact between the two systems was a root cause of mistrust. Each state issued invitations to tribal court personnel to attend statewide training. In one instance the state authorized payment of per diem expenses for tribal judges attending. Two goals were met by encouraging attendance at the same training sessions. First, the joint training raised the professional training and standards for both court s personnel and second, it initiated an informal network of contacts between judges from the two systems.[5]

The key portion of an agenda is to focus on areas where cooperation can be achieved. This creates confidence and trust that will smooth the road where genuine disagreements are encountered. Without the backdrop of cooperative working relationships, it is too easy for the separate systems to walk away from the other, shaking their heads over the lack of understanding or perception in the other. The project that failed, by contrast, concentrated on problems and not areas of mutual concern. Cooperative relationships can create a setting where disagreements are simply that, disagreements. Not indicators of some fatal flaw in the system, integrity or good will of the parallel court.

New Ways Of Working

One of the observations I have made over the last seventeen years of working as a tribal and state judge is that neither system has an exclusive franchise on the !best way to do things. I have learned from an older tribal judge[6] to deal with "people" who appear in court, not just the case; to treat each person with respect. I have learned as a state judge the advantage of working in a system where a significant number of the more vexing problems are no longer questions of first impression. In state courts some of the more basic questions have already been resolved. In addition, there are more resources to attempt creative approaches in state systems.

Historically, tribal communities have been committed to problem solving as well as concern for victims long before it has come into vogue in Anglo court systems. Over one hundred years ago the United States Congress determined that restitution and concern for victims was an improper consideration in criminal cases. With the passage of the Major Crimes Act[7] tribes were bluntly told that the sole permissible concern in criminal matters was the defendant. Now, over one hundred years latter, Anglo courts and the community at large have reached the place in their civilization were concern for

[2] *For example, the Navajo Supreme Court and the Judicial Council for the State of Utah have reached an agreement to augment the number of Navajo people serving on jury duty in San Juan County state courts. The agreement recognizes the sovereignty concerns of each as well as the interest of both in getting a representative jury panel into the courthouse.*

[3] *If this reminds you of the environment for preschool or kindergarten, that may not be an inappropriate analogy. It is there that many of us learned to socialize and develop needed interpersonal skills. In this case it is the development of intercourt skills that needs to be developed.*

[4] *This was also the same project that included less than equal tribal representation.*

[5] *Some of the most profound learning experiences in judicial conferences comes from the after-hours discussions among colleagues sparked by the day's presentations. The same was true when tribal and state judges were presented with opportunities to learn about each other.*

[6] *This judge did not have a high school diploma. He was appointed because of his common sense and fairness. I believe that the public at large would endorse those characteristics for their judges rather than one requiring simply advanced education.*

[7] *18 U.S.C. §1153.*

victims is receiving more attention. Thirteen years ago I participated in a settlement program at a tribal court where a settlement judge (not the judge for the trial) met with the parties attempting to solve the problem by agreement. This was a mandatory process resulting in over 80% settlement. Within the last year a settlement process has been initiated in the state court system where I now work. In that process a settlement judge (not the trial judge) meets with the parties and attorneys attempting to resolve cases. The experiences of tribal courts can serve as teaching lessons for state courts, as well as vice versa. Each has much to learn from the other. And there is still more that can be created with the wisdom and experience of each being jointly applied to a problem.[8]

States have had a couple of hundred years experience running both urban and rural court systems. They have dealt with issues surrounding conflict of interest,[9] ethical requirements for judicial personnel and the role of courts within the scheme of a democratic government.[10] Tribal courts need not independently rediscover all the basic notions of fair dealing with it's citizenry. In addition, there have been developments in tort law, constitutional law, and jury practices that may be instructional to tribal court systems.

A word of caution is in order here. Too often the goal of efforts to enhance tribal courts, from the perspective of outsiders, is to re-create tribal courts in the image and likeness of state and federal courts. Unfortunately it is often overlooked or ignored that tribal courts are not intended to be pale imitations of state courts. Rather, the goal sparking the development of tribal courts has been the desire to create courts that properly reflect the values and concerns of the local community. A blending of the experience and worldview of each might create new and even better ways of resolving disputes for our communities.[11]

Sharing The Burden

Tribal and state courts have more in common than they have differences. Each is seeking to meet the expectations of a community. Each battles a shortage of resources. Each is held responsible for a perceived inability to deal with increasing crime and other social ills. Each is charged with being the sometimes unwilling counterweight to legislative and executive actions. The role and goal of each are similar, the methods, however, may differ in implementation.

Tribal courts are in particular need right now. While many state budgets are being restricted, the BIA budget for tribal courts is disappearing. Money is being funneled away from supporting tribal courts into other areas of need. Tribes are not in a position to adequately fund their court systems.[12] One option that tribal courts must look at seriously is the opportunity to begin sharing resources with local state courts.

Tribal and state courts have similar needs to access substance abuse programs, probations services, adult education programs, and mental health agencies. Likewise they will each encounter and be responsible for clients that live within the other s jurisdiction. Not to share supervision and treatment of clients would be both wasteful and unnecessarily frustrating. It is difficult enough to hold probationers accountable in normal settings, even more so when given the opportunity to play one jurisdiction against the other.[13]

In addition, cooperation is now mandated pursuant to the Violence Against Women Act recently passed by Congress.[14] Pursuant to VAWA full faith and credit must be accorded protective orders from other jurisdictions, including those from tribal courts. In order to comply with the requirements of VAWA, tribal and state courts will have to develop cooperative working relationships. For example, criminal enforcement of protective provisions will not be simple in situations where the violator may not be subject to the criminal jurisdiction of the local court.[15] To adequately protect victims, it will be necessary to funnel violations to the court having the appropriate jurisdiction.

State and tribal judicial systems have a great deal of experience to share. In addition, a coordinated effort to share resources and training would significantly reduce the drain on tribal court budgets that are already seriously in danger of collapse in some locations.[16] Tribal court budgets are inadequate to pay staff at a professional level or provide even minimal levels of support.

It is time for the hostility that so often marked the exchanges between tribes and states to be replaced by genuine cooperation. It is time to conserve and share resources, rather than fund pointless legal struggles. It is time to be a good neighbor!

TOPICS FOR STATE AND TRIBAL COOPERATIVE VENTURES

Below are a list of possible areas of cooperation that can be undertaken to initiate the cooperative venture of state and tribal courts. This list is not all inclusive, nor a guarantee of success, but simply an effort to outline avenues of approach that may be successful.

Indian representation on state jury venires.

Virtually everyone agrees that juries ought to reflect the composition of the local communities. Too often tribal members are left out by the process undertaken to summons jurors. With some effort the problem can be addressed. Utah and the Navajo Nation are currently implementing an agreement to begin to remedy the problem by utilizing a tribal list of voters and cooperation between tribal and state courts to issue jury summons in the name of the tribal court to Navajos for jury service in state court proceedings.

Mutual recognition of domestic violence protective orders.

The recently adopted Violence Against Women Act requires that protective orders issued in one jurisdiction be fully enforced in other jurisdictions. This Act

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[8] See supra *text accompanying note 2.*

[9] *Not always successfully, but at least there are rules in place.*

[10] Marbury v. Madison, *5 U.S. (1 Cranch) 137, 2 L. Ed. 60 (1803).*

[11] *For example, the Navajo Peacemaker system is being studied by various non-Indian courts as an alternative to "traditional" adversarial conflict.*

[12] *Adequately, being defined as a level approaching the per capita expenditure of states for their court systems.*

[13] *Not unlike children playing one parent against the other when the parents fail to communicate well with each other.*

[14] *Pub. L. 103-322, 108 Stat. 1902-1955 (1994).*

[15] *Pursuant to* Oliphant v. Suquamish Indian Tribe, *435 U.S. 191, 55 L. Ed. 2d 209, 98 S. Ct. 1011 (1978) tribal courts lack criminal jurisdiction over non-Indians. Similarly, states lack criminal jurisdiction over Indians within reservation boundaries, absent consent of Congress.*

[16] *In the past couple of years, I have learned that an associate trial judge, with a great deal of experience in tribal court, left to take a job as a substance abuse counselor because it paid so much more.*

specifically includes tribal courts in the requirement for Full Faith & Credit of protective orders. Because Tribal Courts do not have criminal jurisdiction over non-Indians, coordination with local state courts is essential to protect victims.

Assessment of child support and facilitation of collection efforts.

All responsible people agree that children ought to be supported by their parents. Problems sometimes arise, however, when child support awards are based on formulas applicable to a state at large. Tribal economic situations can be vastly different from even those of surrounding non-Indian communities. Culturally acceptable methods of meeting that support requirement may also differ. An effort to arrive at appropriate support levels and methods can be a part of an overall effort to more effectively collect child support.

Access to / sharing of criminal histories.

Currently, criminal histories (also known as rap sheets) from state jurisdictions are not generally available to tribal courts, and vice versa. Most people working within court systems recognize that it is important for sentencing purposes for judges to have prior criminal histories. However, state and tribal judges are almost always ignorant of prior proceedings held in the parallel system. State law often restricts access to data banks of criminal histories and tribal courts may be hesitant to release records that may be used for enhancement purposes in state courts.[17] Discussions can help resolve some of the conflicting concerns and create avenues of access to helpful information from the parallel system.

Recognition of parallel judgements.

Some states currently accord Full Faith & Credit to all tribal court orders and decisions. Others utilize the concept of comity. Still others fail to recognize tribal court orders at all. There are also tribes where state decisions are not given their due. It is to everyone's advantage to resolve these issues.

Certification of membership questions for ICWA matters.

One of the perplexing questions presented to state courts in Indian Child Welfare Act[18] matters is the question of tribal membership. The Navajo Supreme Court, by rule, permits any court (including state trial courts) to certify questions of Navajo law for decision by the Navajo Supreme Court. Full utilization of this service would help resolve ICWA and other questions of tribal law faced by state courts. Other tribal courts ought to consider whether a similar approach would also serve their own communities interests.

Sharing of training resources.

The Bureau of Indian Affairs has drastically curtailed national training money for tribal courts.[19] Tribes often do not have the resources or expertise to create an in-house training program to address CLE and staff training needs. States generally do an excellent job of creating in-house training either as a supplement or a replacement to national training programs. With the program already in place, the incremental costs of including tribal court personnel in such programs is relatively low. Some states have already issued invitations to tribal courts to attend state training; at least one state has even offered to fund the attendance of tribal people at the training sessions. In this time of diminishing resources, it is necessary to share whatever resource is available.

Inter-jurisdiction management of probationers/parolees.

Given the mobility of people in this country today, it is not unusual to have probationers/parolees cross jurisdictional lines for work, family concerns, or to relocate permanently. When predictable, it is certainly easier to have such clients check in with the local probation department, whether tribal or state. Each system has an interest in tracking offenders.

Sharing of treatment resources for criminal cases.

Services dependant upon federal dollars are in jeopardy today, if they have survived this long. Substance abuse treatment, education and job training programs, domestic violence treatment, parenting classes, etc. are all needed in each system. To the extent that the services would simply be duplications, sharing of access ought to be the standard approach. Where special programs are developed that may have unique tribal/cultural focus or methodology, these programs ought to be made available to state judges who are attempting to resolve cases with Indian parties.

Facilitation of restitution assessment and collection.

People ought to be held accountable for their conduct, including the repayment of losses caused by their actions. Agreements between parallel systems would help assess the appropriate restitution and facilitate repayment to victims.

Community service in lieu of fines for work in other jurisdiction.

There is no reason that community service, properly verified, that is performed in one jurisdiction could not be counted to clear an obligation in a parallel jurisdiction.

Conclusion

These are only some of the possible areas that initial collaborative efforts can find fertile for cooperation. The good will derived from successes in these areas can help the parallel systems to trust their colleagues from another system when the more intractable problems are confronted.

Today, most people recognize that both state and tribal courts are an inevitable presence in or around Indian country. The suspicions, hostilities and jealousies of the past must be replaced by a cooperative working relationship. There is simply too much at stake. Nor are there enough resources available to waste some on unnecessary fighting or duplication. In a time when everyone must do more with less, sharing and cooperation is the only reasonable response to the presence of a parallel system. The responsibility of court systems to the public, both tribal and state, is to fairly and efficiently resolve disputes and dispense tempered justice. Neither system is the exclusive repository of justice or knowledge. Each can learn from the other. Each can share whatever is working well. Each can cooperate to find new and better approaches to common problems. The era of hostility and ignorance must give way to a time of partnership. To do less would be to abandon our duty to our communities.

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[17] *Utah and Navajo have undertaken discussions to allow release of non-certified tribal convictions that may be utilized for sentencing purposes, but that would not qualify as an enhanceable offense (to which the tribe is opposed).*

[18] *25 U.S.C. §§ 1901-63.*

[19] *The Indian Tribal Justice Act (Pub. L. 103-176) was signed into law on December 3, 1993. It promised $58.4 million per year in federal funding for the operation and enhancements of tribal courts instead of the approximately $12-$14 million per year currently funded. However, the Bureau of Indian Affairs (BIA) continues to block implementation of the Act. No funds have been appropriated under the Act.*

Strengthening Indian Nations
Justice for Victims of Crime
Sixth National Conference

Materials on
Tribal and State Court Forums
that Have Addressed the Prevention
and Resolution of Jurisdictional Conflicts
between These Court Systems

These Materials Will be Used as a Foundation
for the Conference Program:

"Using Tribal, State, and Federal Forums
to Address Victim Issues"

Friday, January 24
11 a.m.

Materials Submitted by
H. Ted Rubin, Consultant,
Boulder, Colorado, and
Former Staff Director
Tribal Courts and State Courts:
The Prevention and Resolution
of Jurisdictional Disputes Project,
The National Center for State Courts

Cooperation, communication, and comity--the three "C's"-- can forstall the need for suit or simplify jurisdictional issues if suit becomes necessary.

Tribal Courts and State Courts:

From Conflicts to Common Ground

H. Ted Rubin

Last summer, nearly 250 people gathered in Seattle, Wash., for a national conference, "Civil Jurisdiction of Tribal and State Courts: From Conflict to Common Ground." The participants represented 22 states and Canada and included state chief justices; state court justices; tribal court justices; state, tribal, and federal government officials; and members of other organizations interested in improving intergovernmental relationships. The conference capped a 30-month project to improve state-tribal court relations, which was conducted by the National Center for State Courts and funded by the State Justice Institute. The goal of the conference was to share information on the nature of state-tribal conflicts, provide solutions that have worked in other states, and let participants draft plans to improve state-tribal court relations in their states. This article presents the content, process, and results of that conference.

EDITOR'S NOTE: *This article and the conference it describes were supported by a grant from the State Justice Institute. The views and opinions expressed do not necessarily reflect the views or policies of the grantor or grantee.*

H. Ted Rubin is a senior staff attorney at the Institute for Court Management of the National Center for State Courts in Denver. He directs a project called "Tribal Courts and State Courts: The Prevention and Resolution of Jurisdictional Disputes." The project had been limited to civil disputes, but a recent State Justice Institute grant will allow the project to expand into disputes covering criminal jurisdictions.

The nature of state court-tribal court relationships

Several speakers emphasized the need for state courts and tribal courts to find common ground as they begin to improve their relationships, including Chief Justice Tom Tso, of the Navajo Nation Judiciary; Chief Justice Ralph J. Erickstad, of the Supreme Court of North Dakota; and Judge Roger Wollman, of the U.S. Circuit Court of Appeal for the Eighth Circuit. They cited the critical importance of the jurisdictional issue and the need to select the correct forum before initiating suit. Other speakers described how cooperation, communication, and comity, which became known at the conference as "the three C's," can forestall the need for suit or simplify jurisdictional issues when suit is necessary. One state appellate judge added a fourth "C," common sense, advising practical solutions to what could become very complicated problems.

Tribal/state relationships often lack harmony. Some of this may be because people who are not Native Americans don't understand the precept of tribal sovereignty, the independence of tribal governments, and their lawful ability to make and enforce their own laws. Tribal assertion of treaty rights may trigger hostility, as was the case in Wisconsin several years ago, when non-Indians were blocked from fishing in certain waters protected for the tribe by treaty. Others may be critical of reservation life or aspects of it that often are associated with a culture of poverty. Some think that Indians should give up the reservation, move into cities, and assimilate more or less like everyone else—a defunct 1950s federal policy that did not earn high marks.

The conference's keynote speaker, Judge Monroe Gunn McKay, of the U.S. Court of Appeals for the Tenth Circuit, described "cultural chauvinism" as the worst obstacle to tribal-state relations. He indicated that state courts and judges fall short by many standards, while tribal courts, despite their lack of resources, are capable of very farsighted decisions. Indian tribes today, he said, have four primary assets: water, minerals, land, and territorial government. He urged that the federal government honor its

treaties with Indians as part of its own self-interest and that Indian tribes adhere to their own self-interest based on these assets.

U.S. Senator Daniel Inouye, of Hawaii, another featured speaker, focused on U.S. Senate acceptance of tribal sovereignty in the form of an amendment to the crime bill that would permit tribes to vote and determine whether the proposed expanded capital crime provisions should apply in Indian country. Inouye, who chairs the Senate Select Committee on Indian Affairs, also claimed that legislation introduced by his committee would improve the resources of the tribal courts. He urged a partnership between the tribal courts, the National Center for State Courts, and the U.S. Administrative Office of the Courts. Finally, Inouye noted also that approximately 800 treaties with Indians had been signed by a president, but 430 of these had never been ratified by the U.S. Senate. "Ratified or not," he said, "we've proceeded to violate every single treaty."

Professor Ralph W. Johnson, a legal scholar and consultant to the project, traced the history of tribal courts. In the 1880s Courts of Indian Offenses were instituted and controlled by the Bureau of Indian Affairs. Tribal courts that operated on the principle of inherent sovereignty were created following the Indian Reorganization Act of 1934. However, these courts declined when federal funding was withdrawn after the enactment of Public Law 280 in 1953, which authorized state court jurisdiction over reservations, part of a revised policy directed toward terminating tribes as self-governing entities.

The so-called self-determination era that began in 1960, and still continues, renewed and expanded tribal court activities and jurisdiction. This development was fueled by congressional legislation such as the Indian Civil Rights Act of 1968, which applied nearly all of the Bill of Rights to tribal courts and governments; the Indian Self Determination Act of 1978; the Indian Child Welfare Act of 1978; and the American Indian Religious Freedom Act of 1978. Indian-directed training programs for tribal court judges and officials became available; university law schools began teaching Indian law courses; and tribal codes were vastly expanded to cover civil and traffic codes, health, custody and adoption, building codes, and other areas.

As tribal court civil jurisdiction has broadened, according to Johnson, new conflicts with state courts have arisen. Depending on the subject matter, either the tribal or state court may have exclusive jurisdiction or they may have concurrent jurisdiction. While the U.S. Supreme Court has ruled that questions of jurisdiction shall first be resolved in a tribal court, subject to federal court review, a standard jurisprudence is used to determine which court system has authority.

Forums work to resolve disputes

In this new era of increased jurisdiction and increased conflict, the National Center for State Courts began a program in 1989 aimed at reducing conflicts in civil jurisdiction. Statewide forums emerged as the most effective way to reduce these conflicts within states. The National Center helped three states—Arizona, Oklahoma, and Washington—hold statewide forums in 1990 to resolve jurisdictional disputes. The project is now in its second year, and many of the solutions worked out at the forums are in place and working well.

Leaders of the conference reported on their activities and urged other states to adopt similar methods of resolving jurisdictional and other disputes between state and tribal courts. They emphasized that tribal and state jurists could work effectively together to define and set up a range of projects to resolve disputes. They identified an important component of their forums: the mutual trust that arises when committed people work together toward common objectives. Tribal court officials need to have the respect of their own and other tribes. State court officials need to understand the values inherent in justice in Indian country and to be familiar with the federal government's recognition of the sovereignty of the tribes.

Members of the Arizona, Oklahoma, and Washington forums described how their four meetings in 1990 had led them to a series of recommendations that were already being followed. The Arizona forum's call for an annual tribal-state jurisdictional conference began last year at the Arizona State University Law School. The Indian law section of the Arizona Bar Association has accepted the forum's recommendation to open their membership to nonattorney Indians who have been certified by their tribes to perform certain legal tasks.

The Oklahoma forum had recommend extensive use of the rule-making authority of its supreme court to clarify jurisdictional boundaries and concerns. Its members described one such rule that requires state court judges to enter findings consistent with the mandates of the federal Indian Child Welfare Act in all such cases. The Indian law section of the Washington Bar Association has followed the forum's recommendation that it update and reprint the tribal court directory that was initially prepared by the forum. The directory describes the characteristics of the state's 26 tribal courts, their requirements for attorney practice, provisions regarding codes and constitutions, appellate procedures, agreements the tribal court has entered into, and other information on the appropriate scope of the jurisdiction of these courts. Treatises on important federal court decisions, the sources of tribal law, and the history of Washington's tribal courts are included as well.

Another way to reduce disputes that was used by the Arizona and Washington forums was the collection and distribution of intergovernmental agreements. Both states distributed examples of agreements between tribes and state or local courts that covered such areas as cross-deputization of law enforcement

personnel, courtesy probation supervision, tribal purchase of beds in a local juvenile detention facility, joint hunting and fishing regulations, a tribal-county regional land-use and environmental quality maintenance program, and child welfare services. Other states were urged to initiate or expand similar intergovernmental agreements. However, Jeanne Whiteing, a legal scholar and consultant to the project, warned that a tribe may have to initiate a suit to encourage state or local governments to negotiate such agreements.

Too often, state court judges and tribal judges whose jurisdictions border each other do not even know each other's names. One of the most important lessons from the state forums in Arizona, Oklahoma, and Washington is that tribal and state court judges whose jurisdictions border each other should be on a first-name basis, should visit each other's courts, should be familiar with each other's court procedures, and should pick up the telephone when questions arise to determine if issues could be worked out this simply.

In many instances, the conference marked the first time that state, tribal, and federal officials had sat down together. An Alaskan tribal official commented that people in that state had never thought of tribal-state collaboration and that the opportunity to share information between tribal and state officials was the most valuable component of the conference.

A North Carolina state court judge stood up near the end of the conference to announce that he had just met his neighboring Cherokee court judge for the first time, that they had exchanged phone numbers, would visit each other, and had already planned a conference for state and tribal court officials and attorneys. (This conference took place last August.)

States plan action to reduce conflicts

As the North Carolina example demonstrates, meetings between state and tribal officials from each of the 22 states represented were integral to the conference design. The meetings allowed the representatives from state and tribal courts to meet each other and discuss common concerns, and, more importantly, to draft concrete steps to resolve conflicts. State groups met separately at the conference to discuss particular problems that affected jurisdiction between tribal and state courts in their states, rank these concerns, and devise an agenda to address one or several of these problems.

Washington, with more than 40 officials at the conference, determined to implement some of the earlier work of its forum. Arizona's 32 tribal and state representatives added five additional tasks to the original 15-item agenda of its forum report. They wanted to continue their forum with more involvement and help from additional tribal leaders and to develop something similar to the Washington Centennial Accord, in which the governor of Washington and the state's 26 tribes signed an agreement for a government-to-government relationship, with protocols set forth to implement the accord. Further, Arizona plans to work much more through supreme court rule than by legislation to cover such areas as subpoena of Indians into state courts, service of process, extradition, and recognition of civil judgments.

New Mexico's Commission on Indian Affairs staff and the state chief justice announced a conference and also began planning for a Washington-style accord.

Idaho, one of three state where there was tribal but no state court representation, expressed concern about the state officials' failure to attend the conference. Idaho Indian representatives aimed their plan at improving communication between tribal and state courts and also between the tribal courts themselves. They also expressed interest in furthering recognition of judgments between the two court systems by full faith and credit or comity.

Kansas officials laid the foundation for an agreement to resolve a conflict relating to the state's plan to require a tax on cigarettes sold on reservation land to non-Indians. This and issues surrounding divorce, child custody, and transfer of cases between tribal and state courts received further consideration at an August meeting.

Maine representatives isolated Indian Child Welfare Act concerns as their priority for an educational project. The chief justice of the Supreme Judicial Court of Maine, who attended the Seattle conference, offered to use his influence to place this matter on the annual judicial conference educational program.

The 22 representatives from North Dakota, who included the state chief justice, announced a conference held in late October to take up highway safety concerns.

Many states were interested in a model developed in Washington—the supreme court invites all tribal court judges in that state to the annual state judicial conference, where topics pertinent to the tribal-state court issues are now on the schedule. Wyoming and Utah plan to follow suit. The example of then-Chief Justice Frank X. Gordon, of Arizona, who visited the judicial center of the Navajo Nation at Window Rock, encouraged several state court officials to visit tribal courts in their states.

A number of state plans began with the goal of improving communication between tribal and state court officials. States sought either to arrange an early, informal meeting or to seek the initiation of a forum much like those in Arizona, Oklahoma, and Washington, invoking the involvement of the state chief justice to select forum members. Many states were also interested in statewide conferences on civil jurisdiction or multistate, regional conferences that would

address a number of the issues raised in Seattle.

In addition to communication, common themes included the information gap, the human relations gap, the need for familiarity, and the importance of "crossovers" into knowing each other and each other's court system and laws. Specific steps developed by the states included:

- cross-deputizing tribal and state law enforcement officers;
- listing and describing tribal courts in state bar directories;
- encouraging state court administrators to become more involved in tribal-state concerns;
- holding conferences on domestic relations law concerns, such as paternity, child support enforcement, and custody;
- educating state bar association members about tribal court authority and procedures;
- developing supreme court rules or state legislation on full faith and credit or comity;
- inviting tribal probation officers to state probation-training institutes;
- inviting tribal court administrators and clerks to educational programs for state trial-court administrators and clerks;
- arranging dialogues between state legislative leaders and Indian tribal representatives; and
- helping tribal governments maintain codes and appellate court decisions in an accessible location, such as a state supreme court or law school library.

Some states will fulfill the agendas they prepared and announced in Seattle. Others will take some steps, and perhaps some will not go beyond their good intentions. Several may formalize their efforts into a forum similar to those in Arizona, Oklahoma, and Washington. For those that choose forums, the Arizona forum's "dos and don'ts" list in Figure 1, should help.

continued on page 34

Figure 1

Tribal/State Court Forum Dos and Don'ts
(based on the experience of the members of the Arizona forum)

Membership

DO select forum members from diverse perspectives who have demonstrated interest, expertise, or experience in addressing Indian law issues.

DON'T select forum members based only on their position within the judiciary or elsewhere.

Mutual Respect

DO acknowledge differences between tribal and state court systems and seek ways of cooperating consistent with those differences.

DON'T characterize either system as better or worse or more or less sophisticated than the other.

Scope

DO proceed in phases with predetermined time frames, including a study phase in which issues are identified, before implementing recommendations.

DON'T devote resources to implementation until a consensus is reached concerning priority issues and recommendations.

Persistence

DO design a process that invites broad-based participation in identifying issues and making recommendations.

DON'T be discouraged by lack of participation or lack of progress.

Performance

DO assign manageable tasks to forum members or subcommittees to be accomplished within established time frames.

DON'T delay too long before dividing the work of the forum into tasks that can be accomplished within the time frames established.

Solutions

DO emphasize creative solutions to jurisdictional issues that avoid litigation and are consistent with the rights of the parties, sovereignty, and judicial independence.

DON'T emphasize jurisdictional limitations.

Communication

DO emphasize person-to-person communication and education to address jurisdictional issues.

DON'T seek to address jurisdictional issues solely through large-scale change in the law or legal systems.

RECOMMENDATIONS
NORTH DAKOTA TRIBAL/STATE COURT FORUM
December 1993

1. ICWA

* Periodic ICWA training and education programs stressing the practical application of the Act as well as the Act's substantive legal requirements. These education efforts should be directed to state and tribal judges, juvenile court personnel, prosecutors, lay advocates, and social service personnel.

* Greater use of Indian guardians ad litem in ICWA proceedings and clarification of how tribal lay representation may participate in these proceedings.

* Identification by the organized bar and medical profession of attorneys and psychologists who will participate in ICWA proceedings on a pro bono basis.

* Resolving the shortage of off-reservation Indian foster homes by formal recognition by state authorities of tribally licensed foster homes pursuant to the ICWA.

2. Recognition of Tribal and State Court Judgments and Orders

* The Forum recommends a rule providing for the presumptive recognition of tribal court orders and judgments unless recognition is objected to by a party to the judgment.

3. Criminal Jurisdiction

* Aggressive measures should be pursued, either by appointment of a federal magistrate or through appropriate federal legislation, to address issues concerning misdemeanor criminal offenses committed by non-Indians against Indians within Indian country.

* Discussion and experimentation should be encouraged with respect to cross-deputization and cooperative law enforcement agreements.

* More extensive training and education of law enforcement concerning jurisdictional issues.

4. <u>Education and Implementation</u>

* Continued involvement of tribal court judges and personnel in state judicial and court personnel education programs.

* Inclusion in Judicial Institute and Judicial Conference programs of substantive Indian law issues.

* Development of a Tribal Court Handbook, which would contain an abstract of relevant information concerning tribes within the state and respective tribal codes.

* Periodic visits to each others' courts by tribal and state court judges.

* Establishment of a Standing Committee on Tribal and State Court Affairs within the Judicial Conference or Supreme Court.

EVALUATION OF TRIBAL-STATE FORUMS BY SOUTH DAKOTA AND MICHIGAN FORUM MEMBERS

A ten-question tribal-state court forum evaluation form was mailed to South Dakota and Michigan Forum members. Three responses were received from South Dakota and five from Michigan. The salient findings include:

1. A forum should consist of a one-year action plan development phase and a second year implementation phase. Individual respondents suggested that most state court judges would not be able to serve more than one year and other judges or officials would need to be appointed for the second year, that others such as political leaders should be appointed the second year to help with implementation, or that the second year should be part of an ongoing effort and should be conducted by a permanent committee that is different from the year one action plan development forum. Another respondent saw two years as insufficient and urged a long-term process.

2. There were several opinions that five or six meetings may be necessary during the first year in order to develop a comprehensive action plan agenda, and that a 12 month span was preferable to an 8-9 month forum. A suggestion was made that the chair and vice-chair, consultant, and staff should meet prior to the first meeting to enable the first meeting to be more substantive rather than "organizational."

3. The guideline of four state court officials and three tribal court officials as members of a forum was seen, generally, as quite suitable. A Michigan respondent suggested these numbers be equalized and that there be equal numbers of state and tribal officials. Individual respondents suggested that there be a non-judicial representative, that the state court administrator be one of the appointed members, and that a representative of the state department of social services and a law enforcement representative should be members if public hearings are not held where the view points of those officials are received.

4. There was consensus that public meetings should be held in or near Indian country to receive input from tribal and state/local officials. Not only is public input important but the public hearing sends a message of the forum's seriousness in improving the

circumstances. A South Dakota respondent suggested that one hearing be held in an urban area that has a large Indian population to ensure receiving a cross section of Indian concerns.

5. There was a split of opinion whether the attorney general's office should be invited to testify at a forum meeting. This has advantages in the discussion of both law enforcement and civil issues. Alternatively, such testimony was not seen as necessary or should deserve no greater influence than testimony from other executive or legislative officials. The local prosecutor or public attorney might be invited to testify.

6. There was absolute concurrence in the value of the appointment of the forum by the chief justice. The legal consultant role is seen as necessary to forum accomplishments although one Michigan respondent suggested that the consultant need not be an attorney and that a non-attorney consultant would be less expensive.

7. The state supreme court and tribal courts can implement a number of forum recommendations, such as by court rule. Education of the judiciary and other governmental officials and a second year of the forum or other body is essential to further implementation.

8. What has been the best thing your forum has done? Tribal-state court cooperation, communication, understanding, and the public hearings held. The valuable relationships created will prevent or resolve problems.

9. Other suggestions?

- A new forum should review the reports of prior forums
- Emphasize Indian judges understanding of state courts as much as state judge understanding of tribal courts
- Avoid obvious disagreement areas and avoid turf wars with other branches of government
- Plan an approach of more than two years' duration
- Have the national project director at the last meeting of the forum as well as the first meeting
- Have a tribal "pipe carrier" bless the forum in a teaching ceremony at the first meeting

WASHINGTON

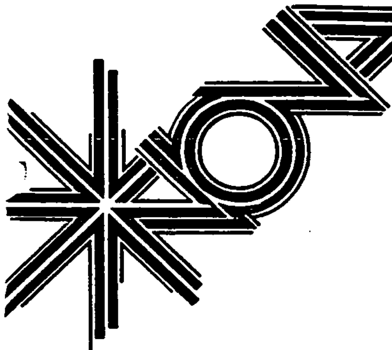
COURT RULES

STATE

1996

Approved Rule 82.5, Tribal Court Jurisdiction, Rules for the Superior Court of the state of Washington, regulates state trial court procedures in regard to actions where there is a) exclusive tribal court jurisdiction or b) concurrent tribal-state court jurisdiction, and provides for c) the enforcement of tribal court orders in the state court.

This rule was prepared by the Washington State Forum to Seek Solutions to Jurisdictional Conflicts between Tribal and State Courts. The rule was submitted for approval by the chairperson of the Washington State Forum, Washington State Chief Justice Vernon R. Pearson (retired).



NATIONAL ORGANIZATION FOR VICTIM ASSISTANCE ®

Newsletter

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Victim Rights Amendment Wins Friends in High Places

As forecast in the last **Newsletter**, *this is a special report on the ongoing saga of putting victim rights in the U.S. Constitution.*

Since its introduction on April 22, 1996, a proposed U.S. Constitutional amendment for victim rights made surprising progress, garnering support at the highest levels of government. Lead Senate sponsors Jon Kyl (R-AZ) and Dianne Feinstein (D-CA) won over then-Senator Robert Dole as a co-sponsor on June 5, six days before his resignation from that body, and on June 25, President Bill Clinton declared his support for such an amendment. Thanks to the stature of its supporters, Democrats and Republicans alike endorsed an amendment as part of their party platforms.

Amendment supporters were pleased with the generally-positive hearings before the Senate and House Judiciary Committees, on April 23 and July 11, respectively —and then were disappointed that no committee or floor votes on the amendment were taken in the 104th Congress — but then were somewhat consoled when Senate Judiciary Chairman Orrin Hatch (R-UT) pledged fast action in the new Congress next January. Notably, his House counterpart, Representative Henry Hyde (R-IL) was the third original co-sponsor.

Supporters also noted that the senior Democrat on the Senate Judiciary Committee, Joseph Biden (D-DE), has become a vocal supporter of an amendment. His House counterpart, John Conyers (D-MI), has not declared a position on a proposal.

The main reason why the proposal did not advance further is that the main proponents of an amendment could not come to terms on all of its principles nor on language expressing all the principles they did agree on. Nonetheless, they came closer together over time, and their efforts to forge a consensus draft are continuing. Those negotiations are expected to become especially intense between November's elections and January's opening of the 105th Congress.

Origins of S.J.Res. 52

The initial impetus began with a meeting in April, 1995, when Phoenix attorney Steve Twist broached an old friend, freshman Senator Jon Kyl (R-AZ), on the idea of a victim rights amendment.

It was a comfortable topic for both men, each of whom brought a fair amount of history to the discussion. Before going into politics, Mr. Kyl helped found the private Maricopa County Crime Victims Foundation and helped raise hundreds of thousand of dollars for the public and private victim compensation program. He later championed victim issues as a member of the U.S. House of Representatives.

For his part, Steve Twist had a long history in the victim rights' movement. As the state's chief assistant Attorney General, Mr. Twist was the drafter of many of Arizona's victim rights laws and was the author of its far-reaching state amendment, for which he earned NOVA's 1990 "allied professional" award. He later sought and won election to the NOVA Board.

At the meeting, Mr. Twist walked Senator Kyl through a Federal amendment which he and over a dozen members of the "National Victims' Constitutional Amendment Network" (NV-CAN) had recently drafted.

NV-CAN was the outgrowth of a January, 1986, NOVA conference to debate the merits of the Federal amendment proposed three years earlier by the President's Task Force on Victims of Crime. For several years, NV-CAN had focused on helping allies pass state constitutional amendments. Then, beginning in April of 1995, the group held a number of weekend retreats to revisit the "core values" it believed should be embodied in any amendment, state or Federal. At the first of these meetings, Mr. Twist discussed his friendship with Senator Kyl and asked if he should bring the group's handiwork to the Senator.

That offer was instantly appealing to the NV-CAN activists. For the first time in years, they were returning to their deferred dream of putting victim rights in the U.S. Constitution, and the idea that one of NV-CAN's active members had a friend who was both sympathetic to their cause and part of the new Republican majority in Congress was irresistible.

The Twist-Kyl discussions continued through the year, and were invigorated by a September, 1995, NV-CAN meeting which revisited its "core values" approach and the language to express them. By late January, 1996, Senator Kyl was ready to wade in.

Congressional Introduction

Between February and April of 1996, Senator Kyl had taken two important steps. First, he sought out potential co-sponsors, among the first of whom was a Judiciary

(See "Amendment," page 2)

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("Amendment," from page 1)

Committee colleague of the other party with whom he felt comfortable, Senator Feinstein. Though a Senator for only four years, the Californian had already been judged "an active and influential senator ... she has a tough, prosecutorial demeanor, and on the podium she is one of the best speakers in American politics today," according to *The Almanac of American Politics, 1996*, a respected publication. Senator Kyl was delighted when she agreed to sign on.

He was no less pleased when an old colleague from the House, Representative Hyde, agreed to be an original co-sponsor. Mr. Hyde, the new Chairman of the House Judiciary Committee, is "one of the most respected and intellectually honest members of the House," again according to the *Almanac*.

> *"... it is time for us to make sure that ... government does not trample on the rights of the innocent." — President Bill Clinton*

And second, Senator Kyl, along with Senator Feinstein, went back to square one to test whether the collection of rights expressed in the latest NV-CAN draft did represent essential core values that deserved constitutional protection, and if the language expressing them was well-crafted.

On the first score, the NV-CAN proposal met the test. But by the time their resolution was introduced, the language reflected the imprint of its two lead sponsors and their advisors in the start of an extended give-and-take. Thus, Senator Kyl's lead staff member on this legislation, counsel Steven Higgins, had logged in the original NV-CAN version as "draft 1" on his office computer — and he was already up to draft 10 or 12 by the April 22 introduction date of Senate Joint Resolution 52 (or "S.J.Res. 52," as the caption reads).

One of the changes resulted from Senator Feinstein's overtures to the California District Attorneys Association. It did not object to victims' challenging plea bargains, but not twice — at both the hearing on the offered plea and at a later sentencing hearing. If the victims' fundamental objections to the plea could be made at just the sentencing hearing, it would allow prosecutors to respond only once. It would also let them continue accepting what they regarded as good, last-minute guilty pleas which could be tested later in the sentencing hearing.

Only when these views were reflected in the draft did Senator Feinstein and the California District Attorneys Association pledge their support to the amendment.

Mr. Hyde also signalled some struggles over language when he introduced a companion resolution on the same day in the House, for he actually introduced two of them. H.J.Res 173 was a more modest version of the Kyl-Feinstein submission, while H.J.Res. 174 was identical to it.

The Senate Judiciary hearings were held the next day (not coincidentally, during National Victim Rights Week.) The first three panels of witnesses were all proponents: Mr. Hyde by himself, and then two groups of victim/survivors: Katherine Prescott, President of Mothers Against Drunk Driving Ralph Hubbard, State Coordinator of Parents of Murdered Children of New York State (and a NOVA Board member), John Walsh, host of "America's Most Wanted," and Patricia Pollard, a survivor of attempted murder — and of injustices done to her by the Arizona justice system until its new constitutional amendment vindicated her rights.

On the next panel was survivor Collene Campbell, Mayor of San Juan Capistrano, CA, Rita Goldsmith, spokesperson for of Parents of Murdered Children (the national organization as distinct from Mr. Hubbard's state group), and Robert Preston, President of Justice for Surviving Victims (and Co-Chair of NV-CAN, whose formation he, more than anyone else, brought to life).

The fourth panel pitted two attorneys on the NV-CAN board, Steve Twist and University of Utah law professor Paul Cassell, against two opponents: Bruce Fein, a prominent conservative attorney and commentator, and American University law professor Jamin Raskin, a political progressive and commentator.

The disagreements were interesting in what they were *not* about. As a general rule, these opponents and others support the kinds of victim rights the amendment would enshrine, but asserted that, since they could be achieved by statutes, they should not be put in the Constitution (a view the proponents strongly contested). They also took issue with the specific language of the resolution, sometimes painting scenarios of chaotic, unforeseen consequences if it were adopted.

Readers of the hearing transcript might fairly conclude that the Twist-Cassell team won the informal debate, but in the weeks that followed, as often-friendly critics kept raising concerns over the practical effects of the proposed language, adjustments were made in the text. The net effect was that, by the time Senators Kyl and Feinstein introduced a fresh resolution — version 41 in the Kyl tally — many of the practical objections to the proposal had been addressed.

The Other Shoe

Given Senator Dole's stature as Senate Majority Leader and presumptive Presidential nominee, his June 4 co-sponsorship of the Kyl-Feinstein resolution was welcomed by proponents, although Senator Feinstein worried that fellow Democrats would have a different reaction, given that she was having difficulty gaining Democratic co-sponsors.

But there were stirrings in the Executive Branch, as noted in the last **Newsletter**. In commenting on Attorney General Janet Reno's August speech at the annual NOVA conference, the **Newsletter** reported:

"In all likelihood, historians will someday reveal the reactions of the Clinton White House and Justice Department when [the sponsors] first introduced their amendment resolutions on April 22 of this year. Until those facts are uncovered, one can only speculate that there was interest in the proposal in both parts of the Administration, since it seems unlikely that Ms. Reno's reactions would have been so strong without at least a nod of interest from the President and his policy advisors.

"The strength of her reactions is a matter of public knowledge. Within a matter of weeks, the Attorney General had convened a high-level working group of department officials to study the Congressional initiative. Then, as NOVA Executive Director Marlene Young noted in introducing Ms. Reno at the conference, 'it is the Attorney General who responded ... with the order of a massive, nationwide search for evidence of the need for such an amendment, and then for the principles on which it should be founded.'"

Whatever the nature of the process, three weeks after candidate Dole became a co-sponsor, the other shoe dropped, when President Clinton announced his support for an amendment. At a White House ceremony attended by numerous victims and advocates, including Marlene Young and other NOVA members, he said, "Today, it is

time for us to make sure that while we continue to protect the rights of the accused, government does not trample on the rights of the innocent. When someone is a victim, he or she should be a the center of the process, not on the outside looking in."

His complete remarks, reprinted on pages 6 and 7, omit one noteworthy fact: in his long pubic career, Bill Clinton has endorsed only two Constitutional amendments — the victim rights amendment and the equal rights amendment for women.

During the ceremony, the President was flanked by Vice President Al Gore, the Attorney General, Office for Victims of Crime Director Aileen Adams, Violence Against Women Office Director Bonnie Campbell, and Maryland victim rights activist Roberta Roper. Vice President Gore said that the President's support "sends a very powerful message to America's crime victims and survivors. The message is, 'You are not forgotten.'" Ms. Reno added that "victims' rights are critically important to effective law enforcement." And Roberta Roper, speaking for many victims, declared that much of the legislation that is intended to protect victims rights is in reality "largely paper promises," and that "the criminal justice system remains more criminal than just."

In his remarks, the President paid tribute to a number of amendment supporters present at the ceremony. One of the many not mentioned, Harvard law professor Laurence Tribe, quickly surfaced in the media follow-up as the President's most articulate champion. Excerpts of his debate on that evening's edition of the PBS "NewsHour with Jim Lehrer" appear on pages 10 and 11. Amendment supporters were pleased with Mr. Tribe's contributions, not the least being his stature as the nation's most eminent liberal constitutional scholar. The amendment again appeared to transcend party and ideology.

But "the" amendment did not yet take form. The President did not endorse any specific wording, and by his silence, he had not signed onto a few of the elements of the Kyl-Feinstein draft. This opened the way for his White House and Justice Department officials to begin weeks of discussions with the Congressional sponsors and their advisors.

Negotiating the Framework, Language

Those discussions were extraordinary in their tenor and effects. First, the participants in the discussions represent a wide philosophical spectrum — perhaps the one thing they share in common is that they are regarded by their peers as bright and judicious. In addition to the three original cosponsors or their staff, they sometimes included staff of the White House Counsel's office and the U.S. Justice Department, notably Associate Attorney General John Schmidt and Assistant Attorney General Eleanor Dean Acheson and their aides. Also sometimes involved were Senate Judiciary Chairman Orrin Hatch (R-UT), ranking minority member Joseph Biden (D-DE), and two advisors from outside of government: Steve Twist, and less frequently, Laurence Tribe.

"... in an unusual form of negotiations ballet, issues were explored but were not exactly resolved."

Perhaps half a dozen meetings took place, some lasting for hours, always with a few members joining in by speakerphone. According to participants, the sessions had the flavor of an intellectual roundtable, so that there were occasional differences of opinion expressed among the Justice Department lawyers or among the sponsors, if only in a tentative way. There was sufficient trust among the participants to preclude the need for a code of loyalty to a group's "bargaining position."

Indeed, in an unusual form of negotiations ballet, issues were explored but were not exactly resolved. Thus, the only written material before the members was the latest Kyl-Feinstein draft, reflecting the sponsors' best judgment of how to express ideas for change that they and others agreed on, while retaining the Kyl-Feinstein language on issues where there remained disagreement.

For all open-mindedness in the discussions, the Administration, the Senate sponsors, and NV-CAN would always regroup and consult among themselves after the meetings to form a position on new ideas that came up. Even when one party found it could live with a suggested change, it did not necessarily concede the point since the parties all understood that, ultimately, there were no firm agreements on the particulars until there was agreement on the whole package.

And from the outset, there was an openness by all the participants to get between-session reactions from other interested bystanders in the criminal justice field. Many of the changes, in fact, were made in response to suggestions from outside of the circle.

It was not always easy to keep up. After the President's announcement, several professional associations, including the National District Attorneys Association, the National Association of Attorneys General, and the National Governors' Association, appointed working groups whose members would, it was said, sometimes start a conference call with, "Do you all have a fax of draft 34?" and the conference would be postponed until they were all literally reading off the same page. Even if apocryphal, that story rings true to dozens of participants.

It was, in short, a fluid process, and slightly chaotic, but always conducted in good faith. Thus, for example, it was Steve Twist, Senator Kyl's closest collaborator over the original resolution, who spotted a potential difficulty with that draft, one giving victims a right to "a speedy trial." If one puts aside the "speedy" qualifier, does not that phrase also give victims a right to force a prosecutor to go to trial? If the courts so ruled, that would end the prosecutor's discretion to plea-bargain or dismiss charges — and thus accidentally put a lie to the victim advocates' long-standing claim that "all we seek is a voice, not a veto" in having victims participate in the justice process.

According to participants, there was always consensus in support for most of the basic principles contained in the original Kyl-Feinstein-Hyde proposal. On one such issue, the sponsors had already agreed to a change in the wording of S.J.Res. 52. They conceded that the tools of redress over rights violations should be limited to various kinds of judicial orders, not money damages — a change that many victim advocates had expected and accepted, just as they have done in virtually all twenty state amendments now on the books.

Participation of Important Observers

The NV-CAN coalition that laid the groundwork for the amendment drive were a number of veterans of state amendment campaigns. These included Bob Preston and Greg Novak of Justice of Surviving Victims (FL and CO), Roberta Roper of the Stephanie Roper Committee (MD), and David Voth of the Ohio Victim-Witness Association, as

examples. Among the participating lawyers with similar state experience were Paul Cassell, Steve Twist, and Jay Howell, a Florida practitioner specializing in representing crime victims.

Among the national groups represented at the NV-CAN meetings were NOVA, the National Victim Center, and Mothers Against Drunk Driving. With the introduction of S.J.Res. 52, these were formally joined by other victim groups, including Concerns of Police Survivors, the National Coalition Against Sexual Assault, the National Center for Missing and Exploited Children, Parents of Murdered Children (this being only the second time POMC has taken a stand on an issue of public policy), and the Victims' Assistance Legal Organization.

In addition to the working groups at the associations representing district attorneys, attorneys general, and governors, others who began investigating the proposal included the American Bar Association, the American Civil Liberties Union, the International Association of Chiefs of Police, the National Legal Aid and Defender Association, and the National Association of Criminal Defense Lawyers. The last two groups were the only ones to take a hard position on the issue—they were against it.

The main reason for the neutral or tentative reaction among the others was that they all seemed to contain voices of support, along with some skepticism, among their members. Moreover, the many participants with problems over the specific wording of a draft often had difficulty keeping up with the re-drafting, which added confusion and irresolution to the advice-giving.

Perhaps the most negative group of outside observers, other than organized criminal defense bar, were newspaper editorial writers and op-ed columnists. Though not many weighed in, only a few who came to the attention of NV-CAN were supportive. Particularly harmful, from NV-CAN's perspective, was a negative piece by veteran columnist Anthony Lewis of The New York Times, a piece that was reprinted by quite a number of other newspapers.

Worse, from that perspective, was a guest column published by The Washington Post two days after Rose Garden ceremony. In it, Scott Wallace, special counsel to the National Legal Aid and Defender Association, laid into the proposal with a string of apocalyptic inaccuracies. Among his charges: "[p]rosecutors' offices would be tied in knots," "[c]orrections officials wouldn't know what hit them," "[t]he courts particularly would be crippled," "... the public would actually be less safe with such an amendment in force. And the amount of taxpayer dollars spent could be staggering."

The polemicist chose to make no reference to the twenty states where such amendments were already in force, some of them for years — and where none of Wallace's predicted disasters has come to pass.

The harm of his opinion piece was in its being reprinted in many papers subscribing to The Post's news service — but none of which ran the "Taking Exception" column refuting his distortions—because The Post itself chose not to publish an offered rebuttal.

"... reports from the discussions convinced a number of the NV-CAN members that the talks were at an impasse ..."

The End (of Session) Game

In many respects, the July 11 House hearings were similar to the Senate's except that now the Administration weighed in through the testimony of Associate Attorney General Schmidt.

Meanwhile, the redrafting process continued. Readers can view the effects of those efforts by comparing the texts of S.J.Res. 52 and 65, reprinted on page 5. While a future **Newsletter** will present a clause-by-clause analysis of the revised version, one can get a flavor of the changes with three examples.

The original draft described its federal victim rights as "fundamental ... to liberty, justice, and due process," which was a device to ensure that they also would be applied to the states' justice systems. For the Supreme Court has held that *fundamental* rights in the U.S. Constitution are incorporated in the Fourteenth Amendment's mandate that states guarantee "due process" to their citizens. Some Federal rights, such as the right to a grand jury, are not treated as fundamental, and thus are not imposed on the states.

Those who argued that this was too backhanded a way to achieve the desired result prevailed in having the redraft read, "The rights established by this article shall apply in all federal, state, military, and juvenile justice proceedings, and shall also apply to victims in the District of Columbia, and any commonwealth, territory, or possession of the United States." The reference to the U.S. jurisdictions outside of the 50 states was an example of the precautious, "cross-every-t" tenor of the redraft.

The right to "a speedy trial [and] a final conclusion free from unreasonable delay" was collapsed to "a final disposition free from unreasonable delay." As noted earlier, the term "speedy trial" could impose unwanted limits on prosecutorial discretion, and, it is believed that the new language would serve to ban "unreasonable delay" in both the pre-trial and appellate stages.

As a final example, "full restitution from the convicted offender" became a right to "an order of restitution from the convicted offender" in the belief that the Constitution should only make promises on which it can deliver, here, the *order* of restitution, not its payment.

Sensing and Fighting Impasse

Hidden within the language of the redraft are points of contention between the Senate sponsors and the principle negotiators at the Justice Department. The Justice officials appeared to want to limit the rights just to victims of violent crime, and not permit Congress and the states to extend them over time to victims of property crimes, as the sponsors proposed. Second, the Justice officials evidently wanted to expand the list of decisions victims could *not* overturn, after their rights had been violated, to include a plea bargain or sentence. And third, the officials seemed to want to apply any "unreasonable delay" rule just to stage between charging and trial, not to the appeals process.

Given the reluctance of the Justice Department staff to state their views in writing, one must be tentative in describing them. Yet the reports from the discussions convinced a number of the NV-CAN members that the talks were at an impasse on these three issues (and unresolved on several lesser ones). Distressed at the Department's positions, the amendment supporters decided to seek a meeting with the Attorney General, whom they consider a friend and an ally, and who heretofore had not joined in the group discussions.

On August 30, through joint letters from NOVA Executive Director Young and

NV-CAN Co-Chair Roberta Roper, the supporters made that request. Ms. Reno accepted, and the meeting was held on September 10.

In addition to the meeting's requestors, the NV-CAN representatives included Tom Howarth, MADD's Washington representative, attorney Jay Howell, National Victim Center Acting Director David Beatty, NOVA Deputy Director John Stein, and, by speakerphone, Steve Twist, NV-CAN's representative in the earlier discussions. Also present were about two dozen Justice Department officials and staff.

While the meeting was designed to reaffirm NV-CAN's support of the Senate sponsors' position on the three points at impasse, the Attorney General also used the occasion to probe how the states which had similar amendments were tackling the same issues. As the Department's lead prober into the jurisprudential and practical ramifications of any amendment language, Ms. Reno did not voice a position on any of the three points of contention except to hint in her questions that it would not be wise to limit the reach of the amendment just to violent crime victims — a viewpoint expressed less obliquely in a later meeting with the Senate sponsors.

On September 11, the day after the NV-CAN meeting with the Attorney General, Senators Kyl and Feinstein met with Chairman Hatch to discuss a Judiciary Committee vote on their resolution. They reluctantly concluded that in the absence of an agreement with the Administration — critical to rounding up Democratic votes — it was premature to move the resolution in the waning days of the 104th Congress, especially since there was no longer any prospect of the House taking up the measure in that timeframe.

In planning on how to build on the surprising gains they had made in the less than a year — only once has Congress ever voted amendments to the Constitution in less than a year, and that was for the original Bill of Rights, according to Wisconsin victim advocate Steve Derene — Senators Hatch, Kyl, and Feinstein pledged to try to move the resolution quickly in the next Congress, and Senate Majority Leader Trent Lott (R-MS), trusting he retains that position, promised quick floor action. The group also agreed to seek support of the amendment in their parties' platforms, which they achieved.

And just before Congress adjourned, the sponsors also opted to file S.J.Res. 65 as an aid to further deliberations in the wider public arena. The discussions resume after the November elections. □

HONOR AND RESPECT: RECOGNITION AND ENFORCEMENT OF COURT JUDGMENTS IN INDIAN COUNTRY

by

Hon. William D. Johnson

Introduction

Senator Daniel Inouye, from Hawaii, at a recent tribal judicial conference in Albuquerque, New Mexico said: "Tribal governments are judged by how their laws are administered." He stressed the importance of tribal governments into today's society. He said with growing commercial activities on reservations and in Indian country it is very important for tribes to assure fairness in the content of their laws and in their application.

The primary focus of the following will be the recognition and enforcement of state and tribal court judgments in Indian country. Tribes and States vary in how they deal with this situation. Tribes and States have attempted to clarify it by entering cooperative agreements, enacting legislation, case law interpretation, or court rule. These actions are usually based on the concepts of full faith and credit and comity. These concepts will be included in the following discussion.

Hopefully, with improved knowledge of each other's laws and procedures, and the interests to be served by mutual recognition there will be improved service to our communities.

Tribal Recognition

Indian tribes in the United States are sovereigns which exercise the power and authority of their people in regulating the internal and social relations within their country. Indian country is defined as the specific reservation to which tribes have been assigned, usual and accustomed fishing and hunting sites or areas off reservation, dependent Indian communities, and rights of way on reservation used for roads or freeways. Tribes have been governing themselves for a long time. Our forms of government are based on honor and respect for the people as a whole or as a community. We seek to maintain the whole or the tribe and enact laws based on this perspective. Our traditions and customs, unique to each tribe, are part of the people and our culture and are also maintained by our laws.

Tribal judicial systems are an exercise of tribal sovereignty. We are judged by our people on how we administer our laws, including respect and honor of our traditions and customs. Our sovereign powers, even though inherent and reserved by treaty, are limited because of our status as "domestic dependent nations" within the United States and Congress' plenary power over Indian affairs.[1] This means the extent of our inherent sovereignty is

1. U.S. CONST. art. I, § 8, cl. 3.

subject to case law interpretation. We must also exercise our sovereignty with regard to federal laws which are specifically directed at tribes. An example is the Indian Civil Rights Act of 1968[2] which requires certain protection for individuals in the exercise of governmental powers.

Most tribal judicial systems administer tribal laws as intended. They exercise jurisdiction over civil and criminal laws which regulate all activities occurring within their territory. Courts with a positive community rapport usually are proactive rather than reactive. They allow no political interference in their decision-making process. They abide unique cultural values in dispute settlement processes. They use competent court staff persons, tribal members or persons who are adequately trained experienced and professional. They have adequate funding to administer the laws as mandated. They abide procedural and substantive due process, as mandated by the Indian Civil Rights Act. In addition, they have good working relationships with courts, law enforcement agencies, social service agencies, and others who are located on and off reservation. Sometimes this is exemplified by recognition and enforcement of the judgments and acts of other tribal or state sovereigns.

In Oregon there are five tribal courts in operation. They are the Warm Springs Tribal Court, The Umatilla Tribal Court, the Burns-Paiute Tribal Court, the Siletz Tribal Court, and Grand Ronde Tribal Court. In a survey conducted by phone each indicated they honor other tribal court judgments and in some cases state court judgments when authorized by court rule, statute or case law interpretation.

The Warm Springs Tribal Court has been in existence since the late 1930's. It was specifically exempted from coverage of Public Law 83-280.[3] It exercises criminal and civil jurisdiction. This court operates in a professional manner, is proactive, taking into consideration unique traditions and customs in its decision-making. This is particularly true in its exercise of juvenile jurisdiction and implementation of traditional discipline. The court abides the Indian Civil Rights Act in its processes allowing appearance of attorneys and lay advocates. It also provides appellate procedures for final judgments. The Warm Springs Tribal Court recognizes and authorizes execution of state or other tribal arrest warrants, protective restraining orders, service of process, and garnishments not involving tribal members. This is done by court rule.

The Umatilla Tribal Court exercises limited civil and criminal jurisdiction. Licensed attorneys as well a lay advocates may appear. The Indian Civil Rights Act including procedural and substantive due process is abided. An appellate court system for appeals of final criminal and civil judgments is provided. Recognition and enforcement of tribal and state judgments or orders is authorized under provisions of our juvenile code. This provision

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2. 25 U.S.C. §§ 1301-1341 (1988). References to the Indian Civil Rights Act and to the Indian Bill Of Rights should be viewed as references to §§ 1301-1303.

3. Act of August 15, 1953, ch. 505, 67 Stat. 588-90 codified as amended at 18 U.S.C. § 1162, 28 U.S.C. § 1360, 25 U.S.C. §§ 1321-1326, 28 U.S.C. §1360.

reads as follows: The Umatilla Tribal Court shall give full faith and credit to state and other tribal child custody orders, as defined by the Indian Child Welfare Act [4] and by the Umatilla Tribal Juvenile Code.[5]

The Umatilla Tribal Court also recognizes and enforces foreign court civil judgments under provisions of our Financial Responsibility Code. These provisions read as follows:

SECTION 26. Recognition and Enforcement of Foreign Judgments: Authority: Proof Required: Standards for Recognition or Denial

A. The Umatilla Tribal Court shall not recognize and enforce any foreign judgment unless the proponent of the foreign judgment:
   (1) Complies with the procedure set forth in Sections 26 and 27 of this Code;
   (2) Submits proof that the person against whom the foreign judgment has been rendered is subject to the jurisdiction of the Umatilla Tribal Court
   (3) Submits proof that the foreign judgment is based on valid subject matter jurisdiction;
   (4) Submits proof that an attempt was made to enforce the judgment in the jurisdiction in which the foreign judgment was rendered and that such attempt was unsuccessful; or good cause why an attempt at enforcement of the foreign judgment in the jurisdiction in which the foreign judgment was rendered would be futile;
   (5) Submits proof that the foreign judgment is final and that no appeal therefrom is pending; and
   (6) Submits proof that the government from which the foreign judgment is issued extends comity to the orders, decrees and judgments of tribal courts.

B. The Umatilla Tribal Court shall not recognize or enforce a foreign judgment when to do so would require the Confederated Tribes to waive its immunity from suit, except when the Confederated Tribes is served as a garnishee for the wages or property of an employee, in which case the requirements set out in Section 26(A) and all other applicable Sections of this Code shall be adhered to.

C. The Court need not recognize a foreign judgment if:
   (1) The defendant in the proceedings in the foreign court did not receive notice of the proceedings in sufficient time to allow him to defend;
   (2) The foreign judgment, decree or order violates the Indian Civil Rights Act of 1968;[6]
   (3) The foreign judgment was obtained by fraud;

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4. 25 U.S.C §§ 1901-63 (1978).

5. ch. 10 § 10.

6. 25 U.S.C. §§ 1301-1303.

(4) The foreign judgment would violate any federal law, any tribal law, custom or tradition, the Treaty of June 9, 1855, or the law of the foreign jurisdiction from which the judgment was obtained; or
(5) The cause of action on which the judgment is based is contrary to the general welfare of the Confederated Tribes or its members.

SECTION 27. Recognition and Enforcement of Foreign Judgments; Procedures

A. In order for a foreign judgment to be recognized and enforced, such judgment shall be filed by its proponent with the Umatilla Tribal Court within one year from the date of its issuance.
B. Proper filing of a foreign judgment with the Court shall be accomplished when the proponent has delivered to the Court:
   (1) A certified copy of the foreign judgment showing the date of its entry in the foreign court;
   (2) The record of any subsequent entries affecting it, such as levies of execution and payments in partial satisfaction; and
   (3) A motion requesting that the Court recognize and enforce the foreign judgment. The motion shall be accompanied by supporting affidavit containing the proofs required in Section 22(A) of the Code. A properly filed foreign judgment shall be docketed and recorded in the Court in the same manner as other cases.
C. Upon proper filing of a foreign judgment with the Court, the Court shall issue a summons directing the defendant to appear on a date not more than 30 days from the date of service and respond to the motion requesting the Court to recognize and enforce the foreign judgment. Such a summons shall be served on the defendant in a manner consistent with this Code.
D. Where the proponent of the foreign judgment seeks enforcement of same through garnishment or attachment, Sections 1719 and 23 of this Code shall also apply.
E. Failure to appear as directed by the summons or failure to respond to the motion requesting the Court to recognize and enforce the foreign judgment once personal jurisdiction over the defendant has been obtained shall not prevent the Court from ruling on the motion.
F. After reviewing all the relevant evidence concerning the foreign judgment the Court shall issue an Order granting or denying the motion to recognize and enforce the foreign judgment. Such an Order shall be a final judgment of the Court in favor of either the plaintiff or defendant to the foreign judgment and shall be enforceable as such.

The Umatilla Tribal Court has recognized and enforced juvenile custody orders of other tribes and states under these provisions. We have also recognized and enforced civil judgments from the state of Oregon pertaining to child support and garnishment for debts. We have also had cooperation from tribal and state courts concerning child welfare and custody matters involving our members. The Umatilla Tribal Court has also recognized and enforced arrest warrants from the state under provisions of our extradition agreement with the state of Oregon and our extradition code. Our arrest warrants for persons found outside the reservation are

honored under this agreement and code by the state of Oregon.

Full Faith And Credit

In some instances tribal court orders and judgments are given full faith and credit as mandated by law. The Indian Child Welfare Act requires full faith and credit in child custody proceedings involving an Indian child. The recently enacted Violence Against Women Act, includes a provision that requires reciprocal full faith and credit for tribal and state court civil protective orders.[7] The Full Faith and Credit for Child Support Orders Act[8] was passed which requires reciprocal full faith and credit for child support orders in tribal and state courts. Indian country is defined as a state for purposes of recognition and enforcement under this act. The Indian Land Consolidation Act provides for full faith and credit for certain actions taken under the Act.[9] Public Law 280 requires tribal laws and customs to be given "full force and effect" in state proceedings conducted under the Act.

Under provisions of the United States Constitution states have an obligation to grant full faith and credit to the laws and public acts of other states.[10] Congress implemented this obligation by enacting the Full Faith and Credit Act.[11] This statute expands the coverage of full faith and credit and creates a federal obligation extending beyond state courts, including courts of territories and possessions of the United States.

Professor Robert Clinton, in his presentation to the Tribal Judicial Conference in Albuquerque, contends that Indian tribal court judgments fall within the meaning of territory or possession under the Full Faith and Credit Act and therefore should receive and give full faith and credit. He cites United States use of Mackey v. Coxe,[12] in support of his proposition. The U.S. Supreme Court held in Mackey that tribal courts were courts of territory for purposes of a statute with language similar to the Full Faith and Credit Act. Professor Clinton provides an excellent discussion of this proposition in his presentation titled *Full Faith and Credit, Comity and Tribal Courts.*[13]

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7. 18 U.S.C § 2265.

8. 28 U.S.C § 1738 B.

9. 25 U.S.C § 2207.

10. U.S. CONST art. IV, § 1.

11. 28 U.S.C § 1738.

12. 59 U.S. (18 Howe) 100, 15 L. Ed. 299 (1856).

13. Robert Clinton, *Full Faith and Credit, Comity and Tribal Courts*, Address before the Judicial Conference, National American Indian Court Judges Association, (April 1996).

The majority rule is that tribal court judgments are not accorded full faith and credit under the Constitution. No clear rule exists concerning the application of the Full Faith and Credit Act to tribal court judgments. In Jim v. CIT Fin. Servs. Corp.,[14] the New Mexico Supreme Court considered the Full Faith and Credit Act and the Mackey case, supra, concluding tribal court judgments are not entitled to full faith and credit under the Act. A minority of courts hold that under the Full Faith and Credit Act tribal court judgments should be accorded full faith and credit. Shephard v. Shephard,[15] *In re* Adoption of Buehl.[16]

Comity

Comity is a legal principle used by tribes and states in enforcing foreign judgments as a matter of courtesy and respect rather than as a matter of obligation.[17] The Supreme Court in Hilton provided guidance and conditions on when recognition is appropriate. Courts enforcing foreign judgments have adopted these conditions which must be met for enforcement. These conditions are: the foreign court must have personal and subject matter jurisdiction; the foreign judgment must not be obtained by fraud; the foreign court must be administered in a fundamentally fair way in which due process is observed; and the judgment should not contravene the public policy of the enforcing jurisdiction.

The provisions of the Umatilla Tribal Financial Responsibility Code cited previously are examples of the use of comity to recognize and enforce foreign court judgments.

State Recognition

State recognition of tribal court judgments is usually provided under the concept of comity. Even though states have passed laws which are based on full faith and credit, in practice they are actually based on the concept of comity. Process for recognition in state courts usually requires meeting of these conditions: must be a court of record; must have personal and subject matter jurisdiction; must not be fraudulently obtained judgment; must not contravene state public policy; and must grant reciprocal recognition.

In Oregon, tribal judgments in divorces are entitled to recognition under the comity principle. (*In re* Marriage of Red Fox,[18] This involved a divorce decree issued by the Warm Springs Tribal Court.

The following is a list of other state recognition, the concept and procedure used to

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14. 86 N.M. 784, 527 P.2d 1222 (Ct. App. 1974).

15. 104 Idaho 1, 655 P.2d 895 (1982).

16. 87 Wash. 2d 649, 555 P.2d 1334 (1976).

17. Hilton v. Guyot, 159 U.S. 113, 40 L. Ed. 95, 16 S. Ct. 139 (1895).

18. 23 Or. App. 393, 542 P.2d 918 (1975).

recognize tribal court judgments:

1. Arizona: under comity, by case law interpretation and rule of the state supreme court (repossession of property);

2. California: under full faith and credit by case law interpretation (witness subpoena);

3. Idaho: under full faith and credit by case law interpretation (adoption decree);

4. Montana: under comity by case law interpretation (default judgment on loan);

5. Nebraska: under full faith and credit by legislation, much like the Indian Child Welfare Act;

6. New Mexico: under full faith and credit by case law interpretation (repossession action);

7. North Dakota: under comity by case law interpretation (repossession action);

8. Oklahoma: under full faith and credit by statute and case law;

9. Oregon: under comity by case law interpretation (divorce decree);

10. South Dakota: under comity by legislation.

11. Washington: under full faith and credit by case law interpretation.(child custody order).

12. Wisconsin: under full faith and credit by statute. 13. Wyoming: under full faith and credit by statute.

Conclusion

Courts in today's society are judged by how they settle disputes within their respective communities. Making decisions for these disputes and having them recognized and enforced by other jurisdictions, if necessary, will provide economy of process and improve service to all concerned. This discussion has focused on how this can be done and how it works in some jurisdictions.

200.025 Civil Jurisdiction.

(1) Jurisdiction over the Person. The Tribal Court shall have jurisdiction over the following persons:

(a) All Indians, without regard to where they may be round, in cases wherein the Tribal Court has subject matter jurisdiction.

(b) Non-Indians, corporations, and other legal entities in cases authorized by the Warm Springs Tribal Code or other Tribal Council enactments.

(2) Jurisdiction of the Subject Matter.

(a) The Tribal Court shall have subject matter jurisdiction over cases arising upon the Reservation, land owned by the Confederated Tribes, or held by the United States in trust for the Confederated Tribes, or involving an Indian defendant, found upon the Reservation.

(b) Claims for money damages. Recovery in cases other than actions based upon contracts, or in which a money judgment may be rendered in favor of the Tribes, against a single defendant shall not exceed the greater of $25,000 or, in the event the liability of that defendant is covered by insurance, the liability limits of any applicable policy or policies or insurance. In an action based upon contract or in which a money judgment may be rendered in favor of the Tribes, the amount recoverable shall be unlimited.

(3) Who may bring an action in Tribal Court. The following persons may bring an action in Tribal court:

(a) Indians.

(b) The Confederated Tribes.

(c) Non-Indians, corporations, and other legal entities in cases for personal injury or property damage arising upon the Reservation in which an Indian is a defendant or when authorized by a specific Tribal Council enactment.

(4) Interest and Nonpayment Charge on Obligations to the Confederated Tribes. Unless the parties otherwise agree, days past due shall bear the Confederated Tribes that are more than 20 days past due shall bear interest at the rate of 13% per annum from the date due until the date paid. In addition, to encourage prompt payment, a nonpayment charge of 5% of the unpaid balance shall accrue on obligations that are more than 30 days past due. Interest and nonpayment charges due on such obligations shall be deemed a part of the obligation in any action in any tribal, federal or state court in which an action for collection is maintained, and any judgment entered shall include sums representing interest and nonpayment charges accruing until the payment of the judgment. This section applies to obligations to the Confederated Tribes arising from:

(a) WSTC 200.020 "Business Privilege Tax;"

(b) WSTC 311.340 "Vehicle Overloads;"

(c) WSTC 306.035 "Civil Trespass;"

(d) WSTC 400.405 "Eviction from Tribal Housing;"

(e) WSTC 451.300 "Woodcutting;" or

(f) Tribal Leases.

TRIAL CONDUCT

301.300 Appearance.

(1) If a defendant fails to appear in a civil action, the plaintiff may be awarded a default judgment.

(2) If a plaintiff fails to appear in a civil action the Court may take the following action:

(a) Dismiss the case for lack of prosecution.

(b) Allow defendant to offer proof.]

(c) Continue the case and reschedule.

(3) Where both parties fail to appear at a scheduled civil proceeding, the Court may dismiss the action or set over for tribal at another time.

300.910 Civil Penalties. Any person that knowingly violates an order of exclusion issued pursuant to this Chapter commits a civil infraction punishable by a fine not to exceed $500. The trial of any such infraction shall be by the court without a jury, and the prosecution shall have the burden of proving the alleged infraction by a preponderance of the evidence. There shall be no appeal from a judgment involving such an infraction.

A Brief Explanation of

The Community Crisis Response Team

A Project of The National Organization for Victim Assistance

Founded in 1975, the National Organization for Victim Assistance is a private, non-profit, umbrella organization working on behalf of victims of crime and of other crises. NOVA is guided by four purposes: to serve as the national advocate in support of victim rights and services; to provide direct services to victims; to help state and local victim assistance programs expand and improve their services; and to be of service to its members.

The Community Crisis Response Team (CCRT) is part of NOVA's Victim Services Division.

Like individuals, whole communities suffer trauma in the aftermath of disasters or especially gruesome crimes. The community may experience a sort of paralysis immediately following the incident. Almost everyone is in shock, yet each individual is soon likely to react with a different set of emotions, which may include sadness, anger, fear, helplessness, or euphoria.

The caregivers in the community, though wanting to help in the crisis, may themselves be affected by a sense of shock. They may also be unsure of what to do, since few are trained in using their helping skills in catastrophic situations. Organizing a plan of action may be difficult in the confusion of the moment.

For all these reasons, it often helps to have outsiders come for a short period of time to offer information and suggestions on how to mobilize a program of responding to the community's distress. That is the mission of the CCRT — to serve as consultants to the leaders and caregivers of a community in severe distress.

A CCRT consists of service professionals from all over the country, typically including victim advocates, members of the clergy, and psychologists. The team for each disaster is formed in consideration of that particular community's demographics. All team members are volunteers with only their travel and lodging expenses covered by the local community or from donations to NOVA. NOVA will send a crisis response team to any community in crisis within twenty-four hours of a request.

There are three tasks the team performs: help local decision-makers identify all the groups at risk of experiencing trauma; provide training to the caregivers who are to reach out to those groups; and lead one or more group "debriefings" to show how those private meetings can help victims start to cope with their distress.

For more information on the Community Crisis Response Team Project, please call NOVA's 24-hour number: (202) 232-6682. Victims wanting assistance may call the same number at any time.

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Presentation Outline

1. Overview Of Forensic Interviews

   A. Disclosure as a process

   B. The Child's statement is only one part of the investigation

   C. The Multidisciplinary Approach

2. Challenges With Child Witnesses

   A. Speech and Language

   B. Developmental obstacles

   C. Inconsistent Statements

   D. Multiple interviewers

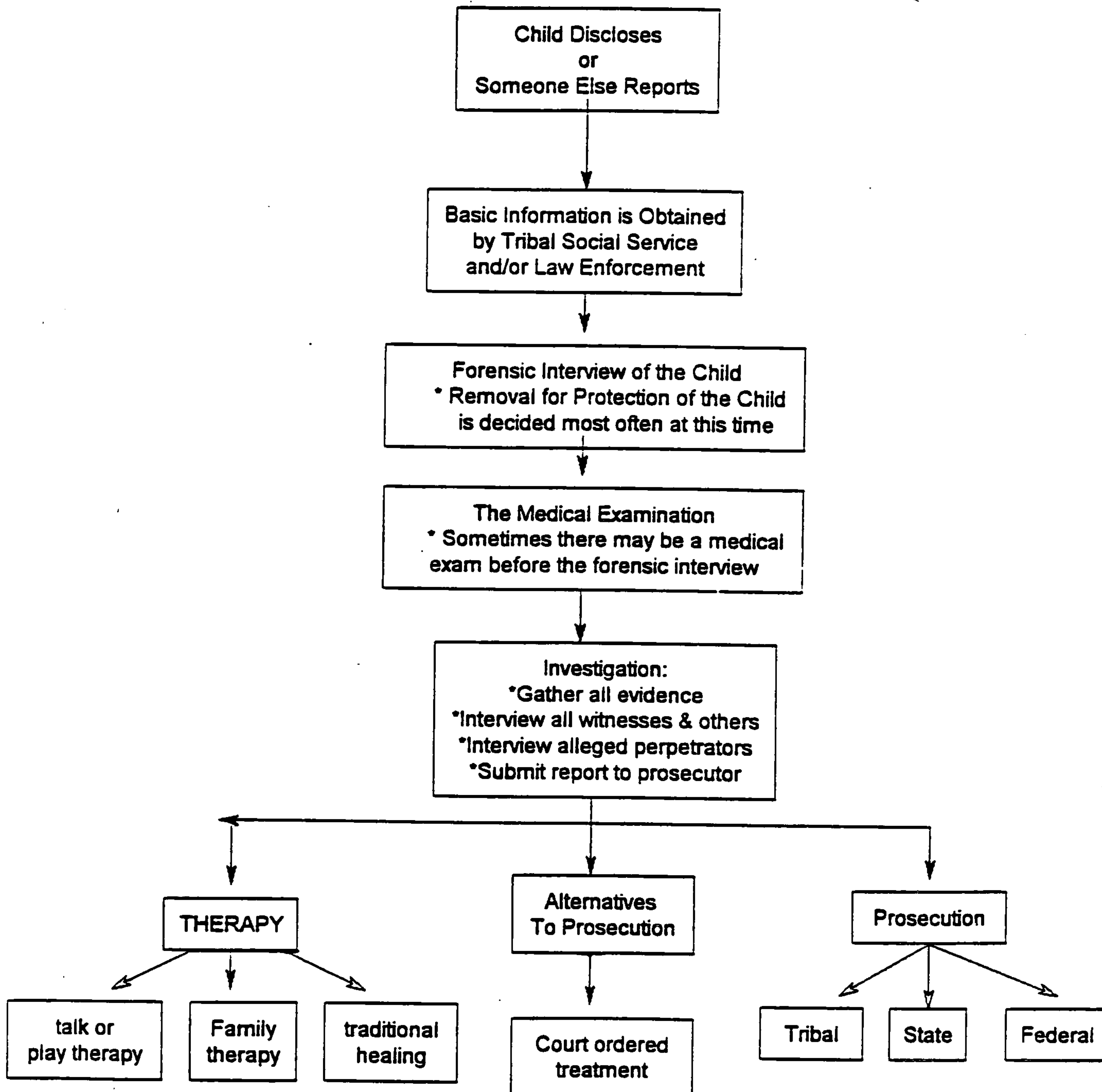
   E. Retraction/Retaliation

   F. Cultural Differences

   G. Inexperienced professionals and the "Backlash"

   H. How are our legal systems set up to accommodate child witnesses

PROCEDURE FOR A CHILD ABUSE CASE



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STRUCTURE THAT EMPOWERS CHILDREN CAN ENHANCE CHILDREN'S RESISTANCE TO MISLEADING QUESTIONS DURING FORENSIC INTERVIEWS.

-Dennison Reed

1. Respect And Give Children Choices.

2. Friendly Vs. Controlling/Authoritarian.

3. Child Can Be In The Role Of Educating And Teaching The Interviewer About What Happened. Children Often Think Adults Already Know About What Has Happened To Them.

4. Explain To The Child That When You Repeat Questions Or Responses That It Doesn't Mean The Child Said Something Wrong. Reassure The Child That You Need To Be Sure That You Heard And Understood What The Child Was Trying To Say.

5. Give Children Permission Not To Answer If They Aren't Comfortable.

6. Encourage The Child To Admit Confusion Or Lack Of Knowledge. Tell The Child Not To Guess.

7. Encourage Children To Disagree And Correct The Interviewer When They Say Something Incorrect.

8. Develop Unique Ways To Empower Children Within The Forensic Interview Structure.

9. Create Boundaries That Provide Privacy And Safety

Overview Of Forensic Interviews

1. Purpose of the Forensic Interview: Objective/Fact Finding Stage of the Investigation, Investigation that Follows will Attempt to Corroborate Each Part of the Child's Statement.

2. It is Naive to Presume that all Allegations of Child Sexual Abuse are Authentic. It is Unprofessional to Assume most Allegations are False.

3. Gather and Obtain Information Vs. Conducting a Blind Interview. Avoid Disclosing Known Facts.

4. Disclosure is a Process not an Interview. Child Sexual Abuse Cases are Complex.

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FORENSIC INTERVIEWING TIPS

1. MAGICAL THINKING CAN BE THE REASON CHILDREN MAKE UP A CAUSE FOR THE ABUSE THAT SEEMS UNLIKELY.

2. CHILDREN LIE MOST OFTEN TO GET OUT OF TROUBLE.

3. AVOID USING "WHY" WHICH OFTEN IS ASSOCIATED WITH BLAME AND SUBSTITUTE "HOW COME".

4. AVOIDANT BEHAVIOR CAN INDICATE FEAR ABOUT TELLING ABOUT ABUSE.

5. AVOID REACTING TO CHILDREN'S ABUSE STORIES.

6. AVOID BEGINNING OR ENDING WITH THE OFFENDER WHEN GIVING CHILDREN CHOICES.

7. AVOID LEADING QUESTIONS. CONSIDER WHEN TO USE FOCUSED QUESTIONS.

8. CONSISTENT INCONSISTENCIES SHOULD GIVE RISE TO CONCERNS ABOUT A CHILD'S STATEMENT.

9. "HOW WE ARE WITH CHILDREN IS MORE IMPORTANT THAN WHAT WE SAY TO CHILDREN." KEE MACFARLANE

10. AVOID INTERRUPTING CHILDREN.

11. REMEMBER, THERE ARE MANY DIFFERENT STYLES AND TECHNIQUES IN INTERVIEWING CHILDREN. AVOID GETTING INTO THE TRAP, "THERE'S ONLY ONE RIGHT WAY" TO INTERVIEW.

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DRAFT FORMAT FOR A FORENSIC INTERVIEW

I. ESTABLISHING TRUST WITH CHILD/BUILDING RAPPORT:

A period of free play and exploration. This time can also be used to begin to assess the child's developmental level. It is important to equalize the power base with the child at the beginning of the interview. Enhancing children's resistance to misleading questions can be achieved by explaining the process and framework of the interview.

II. COMPETENCY/DEVELOPMENTAL ASSESSMENT:

Assessing the child's understanding of the difference between a truth and a lie can help to demonstrate the competency of the child. What is the child's ability to narrate a past event? What is the child's knowledge of body parts and functions? A developmental assessment of the child's concepts and language acquisition can be accomplished during this phase of the interview. When children testify in federal court they are presumed competent to do so.

III. FOUNDATION/ESCALATION:

It is critical to lay the foundation of all probes that could be leading or suggestive of the alleged abuse or events surrounding the alleged abuse. In order to establish the foundation it is critical to explore and understand the context in which the alleged abuse may have occurred. The interviewer then begins to slowly escalate

her probes IF the child discloses. If the child is shutting down or is resistant the interviewer should avoid escalating the nature of the probes.

IV. DISCLOSURE, A COGNITIVE APPROACH FOR CHILDREN AGE 6 AND OLDER:

A. Avoid the use of imagine or pretend, ask the child to picture that time when . . . . as if they were there right now.

B. Tell the child, "I want you to tell me everything that happened from the very beginning to the middle and to the end."

Also say, "Tell me everything you remember even the things that do not seem like they are important. I want you to tell me everything even the parts that do not seem important. Tell me everything you felt, saw, heard, tasted, or smelled."

C. Do not interrupt the child's narrative.

D. Reverse order.

E. Change of perspective. Ask the child to put her/himself in ____'s body. "Tell me everything you see, hear, feel, taste or smell."

F. Ask the child to "show me" or "tell me".

Clarify that s/he will only talk about what really happened. . . things they saw, felt, heard, tasted, or smelled.

Always begin with general probes and move to more specific inquiries as the situation merits, avoiding leading questions.

It is suggested to use a variety of tools to help the child express herself or himself. The use of free drawings, play dough, doll house, and other props can help the interviewer explore issues that may come up with the child.

The use of anatomical drawings is suggested for use after a child has disclosed abuse to clarify and/or demonstrate certain issues as needed. The use of anatomically detailed dolls should be limited to interviewers familiar with the use of such dolls in a forensic context.

Once an initial disclosure has been made, inquiries about the facts surrounding the abuse need to be asked in a non-leading manner. All of the criminal issues need to be addressed, including: where, who, how, when, and how many times, etc. All of the protection issues need to be covered.

Inquire about the use of drugs, lubricants, condoms, pornography, games, other offenders, other victims and anyone else the child may have told can be incorporated as needed. (See Interview Issues to be covered in the protocol.)

V. ENDING THE INTERVIEW:

Ask if the child has any questions or if there is something else s/he thinks you should know. Be sure the child is ready to leave the interview room. Thank the child for coming while avoiding any offers or rewards or assessments of the interview.

VI. OTHER ISSUES THAT EMERGE IN AN INTERVIEW THAT MAY MODIFY THIS BASIC PROTOCOL WITH CHILDREN:

A. Incidental vs. purposeful disclosures.
B. Acute trauma
C. Children under the age of 6.
D. Children over the age of 12 (adolescents).

E. Children in an in-patient hospital setting.
F. Custody cases.
G. Multi-victim, multi-perpetrator cases.
H. Monolingual children.
I. Abuse reactive children.
J. Complex sexual abuse cases.
K. Children with developmental disabilities.

Pre-Interview Considerations

1. Consider The Disclosure:

   a) Accidental Or Purposeful
   b) Whom Has The Child Disclosed To (Custody Issues Etc.)
   c) Is The Disclosure The Child's Words Or Rephrased By Others.
   d) Nature Of The Allegations

2. Review Any Documents, Speak With Primary Contacts: Law Enforcement, Social Worker, Therapist, Physician, Family, Anyone Who Has Talked With The Child About The Allegations.

3. Determine The Child's Age, Developmental Level: Can the Child Read, Write, Count, And Tell Time.

4. Carefully Screen Referrals For Any Developmental Or Learning Disabilities, Speech And Language Issues, And Behavioral Problems. If The Child Is Developmentally Disabled Consider If Another Trained Professional Will Be Needed To Communicate With The Child.

5. Determine The Families Reaction To The Allegations And How Supportive They Are Of The Child. Find Out The Knowledge And Language The Child Uses For Body Parts. Determine If The Child Has Displayed Any Behavioral/Physical Signs Of Distress And Who Noticed This.

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6. DEVELOP A PLAN FOR MONOLINGUAL CHILDREN. A TRANSLATOR MAY BE NEEDED THROUGHOUT THE INVESTIGATION AND PROSECUTION PROCESS.

7. DETERMINE WHETHER ONE INTERVIEW OR A SERIES WILL BE NECESSARY. (IE: YOUNG CHILDREN, CHILDREN WITH DEVELOPMENTAL DISABILITIES, HOSPITALIZED CHILDREN)

8. WHO WILL CONDUCT THE INTERVIEW. CONSIDER ANY CULTURAL DIFFERENCES. HAS THE CHILD MADE ANY REQUESTS OR VOICED ANY PREFERENCES. WILL A JOINT INTERVIEW BE CONDUCTED AND WHAT WILL BE THEIR ROLE IN THE INTERVIEW.

9. CONSIDER THE TIMING OF THE INTERVIEW:

   A) IS THE CHILD IN THE HOME
   B) DOES THE CHILD TAKE A NAP
   C) IS THE CHILD HUNGRY/TIRED/SICK/BAD DAY/MEDICATED
   D) SPECIAL EVENT AT SCHOOL

10. CONSIDER WHO WILL BE IN THE ROOM WHILE THE CHILD IS BEING INTERVIEWED. CONSIDER WHO CAN VIEW THE INTERVIEW IN PROGRESS OR LATER VIA VIDEOTAPE.

11. CONSIDER THE LOCATION OF THE INTERVIEW.

12. RECORDING THE INTERVIEW: PROTECTIVE ORDERS

13. WILL THE INTERVIEWER NEED TOYS, PROPS, DOLLS, DRAWINGS ETC.

14. CHILDREN CAN CHOSE A VARIETY OF MEDIUMS TO

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DISCLOSE. (IE. DRAWINGS, DEMONSTRATION, WRITING, PHONE)

15. AVOID FEEDING THE CHILD DURING THE INTERVIEW.

16. PROVIDE PRIVACY. BE RESPECTFUL OF TALKING ABOUT THE CHILD IN FRONT OF OTHERS. CONSIDER USING A "DO NOT DISTURB" SIGN ON THE INTERVIEW DOOR. CONSIDER HAVING THE CHILD ACCOMPANY YOU TO INFORM OTHERS NOT TO DISTURB YOU FOR PHONE CALLS ETC.

17. DOCUMENTATION. CHAIN OF CUSTODY.

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THE FORENSIC INTERVIEW

1. INTRODUCTIONS. MEET THE CHILD FIRST, ASK THE CHILD WHO THEY BROUGHT WITH THEM TODAY.

2. EXPLAIN THE PROCESS, RULES, AND THE INTERVIEWER'S JOB.

3. RAPPORT/FREE PLAY IS VITAL TO THE INTERVIEW. BE PATIENT AND COMFORTABLE WITH CHILDREN.

   A) EXPLORE THE CHILD'S WORLD
   B) INTERESTS/SCHOOL/FAMILY
   C) LIKES/DISLIKES
   D) DAILY ROUTINE
   E) CHILD'S DISTRESS LEVEL

4. DEVELOPMENTAL ASSESSMENT:

   A) COLORS/COUNTING/TIME
   B) ABILITY TO NARRATE A PAST EVENT
   C) TRUTH/LIE, REAL/PRETEND, RIGHT/WRONG
   D) CONCEPTS: ON, OFF, INSIDE, OUTSIDE, UNDER, OVER, ON TOP OF, CLOTHES, FURNITURE ETC.
   E) COGNITIVE INTERVIEW APPROACH WITH CHILDREN AGES 6 AND OLDER
   F) DOLLS CAN PRESENT PROBLEMS WITH CHILDREN AGES 3 AND UNDER
   G) SPEECH AND LANGUAGE

4. SIMPLIFY LANGUAGE WITH YOUNG CHILDREN:

   A) AVOID PRONOUNS
   B) AVOID COMPOUND SENTENCES

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c) Avoid Double Negatives
e) Avoid Technical Words
f) Use The Child's Language
g) Substitute "How Come" For "Why"
h) Substitute Something For Anything, Someone For Anyone
i) Avoid Starting Questions With, "Do You Remember When?"
j) Consider How Concrete Children Are When Framing Questions

5. Framing Questions:

a) Avoid Leading Questions
b) Begin With Open Ended Questions: Tell Me About.......
c) Consider When To Use Focused Questions
d) Promote A Narration Of A Disclosure By Utilizing Techniques Such As, "And Then What Happened.......
e) Tell Me About.......The First Time, Last Time, A Time You Can Remember

6. Promoting Disclosures:

a) Foundation/Escalation (play, words, drawings)
b) Ask The Child If There Was A Special Reason They Came To Talk With You Today
c) Likes/Dislikes
d) Family Context
e) Schedule/Events
f) Medical Exam

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G) Body Parts (using dolls or drawings)
H) Worries/Concerns/Scary
I) "Yucky Secret" Kee MacFarlane
J) Letting Children Off The Hook: Context

7. Consider The Use Of Drawings And Dolls.

    A) Anatomically Detailed Dolls
    B) Anatomical or Freehand Drawings

8. Avoid Taking Notes If The Interview Is Recorded

9. Details Of The Abuse Can Corroborate The Child's Statement By Providing Evidence Used In The Prosecution

10. Be Honest And Respectful With The Child. Avoid Making Any Promises Or Assuring Children Of Things You Can Not Follow Through On.

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CLOSING THE INTERVIEW

1. THANK THE CHILD FOR HELPING YOU WITH YOUR JOB.

2. TELL THE CHILD THEY ARE NOT TO BLAME FOR WHAT HAPPENED; CHILDREN ARE NOT RESPONSIBLE FOR WHAT BIG PEOPLE DO. (CHILDREN ARE NOT RESPONSIBLE FOR WHAT OTHER CHILDREN DO)

3. GIVE THE CHILD AN OPPORTUNITY TO ASK YOU ANY QUESTIONS. ASK THE CHILD IF THEY ARE FINISHED AND READY TO LEAVE THE INTERVIEW ROOM. ALLOW THE CHILD TO FINISH PLAYING OR DRAWING.

4. EXPLAIN TO THE CHILD WHAT HAPPENS NEXT.

5. IF THE CHILD VOICES ANY FEARS OR WORRIES ADDRESS THEM.

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After The Interview

1. Offender/Family/Protection Issues
2. Pace Of The Investigation
3. Medical Exam: Preparation
4. Throughout Investigation Consider Possible Defenses
5. Corroborate Each Piece Of The Child's Statement (Search Warrants)
6. Multidisciplinary Team Approach From The Beginning Of The Investigation
7. Gather And Review All Documents
8. The Offender Interview
9. Interview Of Non-Offending Parents
10. Interviews Of Other Witnesses

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Forensic Interview Vs. Clinical Interview

Points Of Comparison		Forensic	Clinical
1.	Purpose:	Fact Finding Of Uncontaminated Information	Assessing The Child's Psychological State
2.	Professional's Role:	Fact Finder	Advocate
3.	Relationship:	Investigator/ Interviewer	Therapist/ Client
4.	Client:	Judicial System	Child/Family
5.	Perspective:	Objective/Neutral	Pro-Child
6.	Technique:	Legally Defensible/ Structured Setting	Therapeutic/ Unstructured
7.	Assumptions:	Multiple Hypothesis Objective Reality	Trustworthiness Of Child; Subjective Reality
8.	Structure:	Shorter In Length And Sessions/ Recorded	Longer In Length And Sessions/ Private

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INTERVIEW AIDS

1. ANATOMICALLY DETAILED DOLLS
2. DRAWINGS: FREEHAND OR ANATOMICAL
3. VIDEOTAPE OR AUDIOTAPE: ALWAYS ADVISE THE CHILD OF THIS PROCESS
4. TOYS/PROPS: (MEDICAL KIT, PHONE, DOLL HOUSE, MARKERS, ETC.)
5. MAPS, WRITTEN STATEMENTS, DRAWINGS

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FOR VICTIM ASSISTANCE

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CRISIS AND STRESS

A Training Handout
Prepared by
Marlene A. Young
National Organization for Victim Assistance

I. Crisis and Stress

A. Individuals exist in normal state of equilibrium.

B. Occasional stressors will move the individual out of the state of equilibrium but most people most of the time stay in a familiar range of equilibrium.

C. Crisis throws people so far out of their range of equilibrium that it difficult for them to restore a sense of balance in life.

D. Crisis may be precipitated by an "acute" stressor or many "chronic" stressors.

1. An acute stressor is usually a sudden, arbitrary, often random event.

2. A chronic stressor is one that occurs over and over again — each time pushing the individual toward the edge of his state of equilibrium, or beyond.

E. Most crises come from acute, unexpected stressors like crime, natural disasters, accidents, acts of war.

1. But some come from quite predictable (but hated) stressors like chronic child, spouse, or elder abuse.

2. "Developmental crises" come from transitions in life, like adolescence, marriage, parenthood, and retirement.

3. Though similar to acute crises, chronic and developmental crises have significant differences not covered in this review.

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II. The Crisis Reaction

A. The normal human response to crisis follows a similar pattern in all of us.

B. Physical response is based on our animal instincts.

1. Physical shock, disorientation, and numbness: "frozen fright" shows a psycho-phyisiological incapacity to acknowlegde a dangerous threat.

2. "Fight-or-flight" instinct: the psycho-phyisiological response to feelings of danger that are acknowledged.

3. Physiological reaction to fight-or-flight instinct:
- o Adrenalin begins to pump through body
- o Body may relieve itself of excess materials, like ingested food
- o Physical senses -- one or more may become very acute while others "shut down"
- o Heart rate increases
- o Hyperventilation, sweating, etc.

4. Heightened physical arousal associated with fight or flight cannot be prolonged indefinitely. Eventually will result of exhaustion.

C. Emotional reaction is heightened by physical response

1. Stage one: shock, disbelief, denial

2. Stage two: cataclysm of emotions -- anger/rage, fear/terror, grief/sorrow, confusion, frustration, guilt/self-blame

3. Stage three: Reconstruction of equilibrium -- emotional roller-coaster that eventually becomes balanced

D. Crisis is accompanied by a multitude of losses

1. Loss of control over one's life

2. Loss of trust in God or other people

3. Loss of a sense of fairness or justice

4. Loss of personally-significant property, self, or loved ones

5. Loss of a sense of immortality and invulnerability

6. Loss of future

E. Crisis is often accompanied by regression to childhood — mentally and physically

1. The need for nurturing returns

2. The need for an outside authority to restore order

F. Severity of crisis reaction is affected by:

1. Intensity of event

2. Suddenness of its occurrance

3. Duration of event

4. Ability to understand what happened

5. Stability of victim/survivor equilibrium at time of event

IV. Recovery from Crisis

A. Many people live through a crisis and are able to reconstruct their lives without outside help.

B. Most people find some type of benign outside intervention useful in dealing with crisis.

C. Recovery from crisis is often affected by:

1. Severity of crisis reaction

2. Ability to understand in retrospect what happened

3. Stability of victim/survivor equilibrium after event

4. Supportive environment

5. Validation of experience

D. Recovery issues include:

1. Getting control of event in victim/survivor's mind

2. Working out an understanding of event and, as needed, a redefinition of values

3. Re-establishing a new equilibrium/life

4. Re-establishing trust

5. Re-establishing a future

6. Re-establishing meaning

C. Crisis Intervention

1. "Safety and Security"

2. "Ventilation and Validation"

3. "Prediction and Preparation"

4. Useful phrases:
   - o You are safe now (if they are)
   - o I am sorry it happened
   - o It wasn't your fault
   - o I'm glad you're here with me now, or I'm glad you're talking to me about it now
   - o Your reaction is a normal response to an abnormal event
   - o You are not going crazy
   - o Things may never be the same, but you can get better
   - o Your imagination can sometimes make a horrible reality worse than it is, so ask people to give you the bad news up front

V. Long-Term Traumatic Stress Reaction

A. When someone survives a catastrophic crisis, they often experience stress reactions for years.

B. Long-term stress reactions are <u>normal</u> responses of people who have survived a traumatic event.

C. Stress reactions may involve Post-traumatic Stress Disorder. The following is the description of that disorder in "DSM-III-R":

"309.89 Post-traumatic Stress Disorder

"A. The individual has experienced an event that is outside the range of usual human experience and that would be markedly distressing to almost anyone, e.g., serious threat to one's life or physical integrity; serious threat or harm to one's children, spouse, or other close relatives and friends; sudden destruction of one's home or community; or seeing another person who is being (or has recently been) seriously injured or killed as the result of an accident or physical violence.

"B. The distressing event is persistently reexperienced in at least one of the following ways:

"(1) recurrent and intrusive distressing recollections of the event (which may be associated with guilty thoughts about behavior before or during the event)

"(2) recurrent distressing dreams of the event

"(3)sudden acting or feeling as if the event were recurring (includes a sense of reliving the experience, illusions, hallucinations, and dissociative [flashback] episodes, even those that occur upon awakening or when intoxicated) (in young children, repetitive play in which themes or aspects of the distressing event are expressed)

"(4) intense psychological distress at exposure to events that symbolize or resemble an aspect of the event, including anniversaries of the event.

"C. Persistent avoidance of stimuli associated with the distressing event or numbing of general responsiveness (not present before the event), as indicated by at least three of the following:

"(1) deliberate efforts to avoid thoughts or feelings associated with the event

"(2) deliberate efforts to avoid activities or situations that arouse recollections of the event

"(3) inability to recall an important aspect of the event (psychogenic amnesia)

"(4) markedly diminished interest in significant activities (in young children, loss of recently acquired developmental skills such as toilet training or language skills)

"(5) feeling of detachment or estrangement from others

"(6) restricted range of affect, e.g., unable to have loving feelings

"(7) sense of a foreshortened future, e.g., child does not expect to have a career, marriage, or children, or a long life

"D. Persistent symptoms of increased arousal (not present before the event) as indicated by at least two of the following:

"(1) difficulty falling or staying asleep

"(2) irritability or outbursts of anger

"(3) difficulty concentrating

"(4) hypervigilance

"(5) physiologic reactivity at exposure to events that symbolize or resemble an aspect of the event (e.g. a woman who was raped in an elevator breaks out in a sweat when entering any elevator)

"E. Duration of the disturbance of at least one month.

"Specify delayed onset if the onset of symptoms was at least six months after the distressing event."

D. Stress reactions <u>may</u> have a biological component

1. Animal model of "inescapable shock"
   - o Deficits in learning to escape from novel adversive conditions
   - o Decrease in motivation to learn new contingencies
   - o Chronic evidence of subjective distress
   - o Learned helplessness

2. Chronic exaggerated neurochemical change in response to subsequent stressors

3. Stress-induced analgesia/"feeling no pain"; endorphin response

4. "Addiction to trauma"
   - o Opiod response cause
   - o Tranquilizing effects
   - o Reduction of rage and aggression
   - o Reduction of paranoid inadequacy
   - o Anti-depressant

5. Withdrawal from physical opiates
   - o Anxiety
   - o Irritability
   - o Explosive outbursts
   - o Insomnia
   - o Hyperalertness

6. Fixation on trauma

E. Long-term crisis reactions

1. Not all victim/survivors suffer from long-term stress disorder.

2. Many victims may continue to re-experience crisis reactions over long periods of time.

3. Such crisis reactions are normally in response to "trigger events" that remind the victim of the trauma.

4. Trigger events will vary with different victims but may include:

   - o Identification of the assailant
   - o Sensing (seeing, hearing, touching, smelling, tasting) something similar to something that one was acutely aware of during the trauma

- "Anniversaries" of the event
- The proximity of holidays or significant "life events"
- Hearings, trials, appeals or other critical phases of the criminal justice proceeding
- Media articles about a similar event

F. Long-term stress or crisis reactions may be exacerbated or mitigated by the actions of others. When such reactions are exacerbated, the actions of others are called the "second assault" and the feelings are often described as a "second injury." Sources of the second assault may include:

- The criminal justice system;
- The media
- Family, friends or acquaintances
- Clergy
- Hospital and emergency-room personnel
- Health and mental-health professionals
- Social service workers
- Victim service workers
- Victim compensation system

G. The intensity of long-term stress reactions usually decreases over time, as does the frequency of the re-experienced crisis. However the effects of a catastrophic trauma cannot be "cured". Even survivors of trauma who reconstruct new lives and who have achieved a degree of normality and happiness in their lives -- and who can honestly say they prefer the new, "sader-but-wiser" person they have become -- will find that new life events will trigger the memories and reactions to the trauma in the future.

VI. Dealing with Long-Term Stress Reactions

A. Safety and Security

1. Make sure the victim/survivors feel safe or secure at this point in time
2. Respond to need for nurturing -- but be wary of becoming a "rescuer" on whom the victim becomes dependant
3. Help victim/survivors to re-establish a sense of control over the small things, then the larger ones, in their lives

B. Ventilation and Validation

1. Describe the event
2. Describe where you were
3. Describe your reactions and responses
4. Place yourself on the chart of stress
5. Place yourself on the emotional roller-coaster
6. Validation of normal responses and coping reactions

C. Prediction and Preparation
  1. Prediction of normal trigger events
  2. Preparation for reactions
  3. Preparation for dealing with reactions

D. Rehearsal and Reassurance
  1. Cognitive rehearsal
  2. Behavioral rehearsal
  3. Written and verbal reassurance
  4. Re-establish and maintain hope

E. Education and Expertise

  1. Homework: reading and writing
  2. Development of skills such as relaxation techniques, communication skills, survival skills

F. Involvement of families, friends, neighbors

G. Trauma mastery must be incident-specific for specific resolution of the problem.

Who will have access to the test results?

At the testing site, no name or identifying information is recorded to link test results to individuals. Instead code names or numbers are used so that you are the only one who can find out your test results.

Do I need to be tested again?

You or your child should be tested a second time approximately six months after the sexual assault. Even though an initial test may be negative, you could still be infected with HIV. It can take up to six months after infection for antibodies to show up on a test. The U.S. Attorney's Office can assist you in obtaining this second test at no cost to you.

How do I find out if the defendant is infected with HIV/AIDS?

As the victim of a sexual assault, you have the right to request that the defendant be tested for AIDS. (The law only allows for a defendant to be tested for HIV/AIDS, not for other sexually transmitted diseases). You cannot be infected with HIV if the offender does not have AIDS or has not been infected with HIV.

The Assistant U.S. Attorney assigned to your case will present the request to the judge. If the initial test is negative, the judge can order the defendant to be tested again six and twelve months after the initial test.

What about the defendant's test results?

The results of the defendant's test will be give to you, however you will only be allowed to share this information with your doctor, counselor, family member or any sexual partner(s) you may have had since the sexual assault. Disclosure of these results to anyone else is a violation of law.

HOW TO CONTACT US:

The Victim/Witness Office
United States Attorney's Office
230 North First Avenue
Room 4000
Phoenix, Arizona 85025
1-800-800-2570

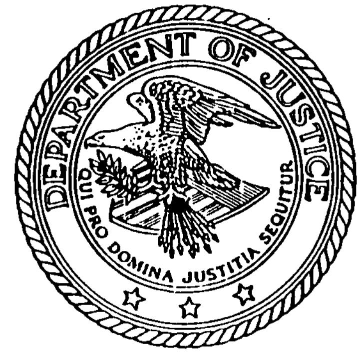
The Victim/Witness Office
United States Attorney's Office
Acapulco Building, Suite 8310
110 South Church Avenue
Tucson, Arizona 85701
(520) 620-7300

For additional information and a list of free testing sites nearest you, contact:

National Aids Hotline	1-800-342-2437
National STD Hotline	1-800-227-8922
Arizona AIDS Hotline	1-800-334-1540
Arizona Aids Project (Phoenix)	602-625-3300
Tucson Aids Project	520-326-2437
Indian Aids Information Line	1-800-283-2437

YOUR RIGHTS AS A CRIME VICTIM

WHAT YOU SHOULD KNOW ABOUT SEXUAL ASSAULT AND TESTING FOR SEXUALLY TRANSMITTED INFECTIONS



Prepared by:

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Janet Napolitano
United States Attorney

IMPACT OF SEXUAL ASSAULT

Sexual assault can be an extremely traumatic experience. As a survivor of sexual assault, or the parent/guardian of a child who has been sexually assaulted, you may have been hurt both physically and emotionally. Feelings of anger, guilt, shame and fear are common reactions. In addition to dealing with these emotions, you may also be concerned about being infected with a sexually transmitted disease or HIV, the virus that causes AIDS.

During this difficult time, you need to protect your health and the health of your loved ones. This brochure is designed to provide you with information about sexually transmitted diseases and medical and counseling services that are available to help you deal with your concerns. Remember - **it is not your fault**... you are not alone.

What should be done if a sexual assault has occurred?

You should go to a safe place and contact your local law enforcement agency. The sooner you report the assault, the greater the chances that the offender will be caught. You should seek medical attention immediately. Because sexual assault is a violent act, you or your child may need treatment for injuries such as bruises, cuts, broken bones or internal injuries. It is also possible that as a result of the sexual assault you or your child may have been infected with a sexually transmitted disease (STD).

It is also critical that you or your child be examined so evidence can be collected. If possible, do not shower before being examined. Evidence collected immediately after an assault is very important to the investigation of the offense.

What should I do if medical attention was not sought immediately after an assault?

Get medical attention as soon as possible. It is important that you or your child get a medical examination and are tested for HIV and other sexually transmitted diseases. Even though the results may turn up negative the first time, you should be tested again in 3-6 months.

How can I get counseling and/or information about sexual assault and sexually transmitted diseases?

Most sexual assault crisis centers have hotlines operated by counselors who understand sexual assault and will talk with you confidentially. Please feel free to contact the U.S. Attorney's Office number or the National Hotline number listed on the back of this brochure for a referral to the sexual assault crisis center nearest you.

Most medical testing centers also provide counseling. If counseling is not available at the testing site you have chosen, a Victim Witness Advocate from the United States Attorney's Office will assist you in making arrangements for counseling.

What are sexually transmitted diseases?

Syphilis is a sexually transmitted disease caused by a germ called a spirochete. Symptoms usually begin with a painless sore (on the vulva, mouth, anus, vagina or cervix) which goes away in two to six weeks, although the disease is still there.

Later symptoms include a rash on the feet, hands or body; sores on the genital area and flu-like symptoms, such as headache, nausea or sore throat. Syphilis is treated with antibiotics, the length of treatment depending on what stage the disease is in.

Gonorrhea is a sexually transmitted bacteria which is not always accompanied by symptoms. Some women may experience a vaginal discharge, itching, irritation or bleeding after intercourse. Men with gonorrhea may experience a discharge from their penis or burning with urination, or both. Gonorrhea is easily treated with antibiotics.

Chlamydia is a sexually transmitted bacteria which is rarely accompanied by symptoms. In some cases, there may be symptoms similar to those of gonorrhea, but in most cases people are not aware that they are infected unless they are tested for the infection. Chlamydia is easily treatable with antibiotics.

HIV (Human Immunodeficiency Virus) is the virus that causes **AIDS (Acquired Immune Deficiency Syndrome)**, a breakdown of the body's immune system. HIV/AIDS can be passed through semen, blood (including menstrual blood), and vaginal fluids. HIV can be spread during a sexual assault through vaginal, anal or oral penetration or through any physical injury that involves bleeding.

You cannot be infected with HIV if the offender does not have AIDS or has not been infected with HIV. Even if someone tests positive for HIV, there is no way to tell if and when that person will develop AIDS or get sick. HIV is not curable but it is treatable.

How is testing conducted?

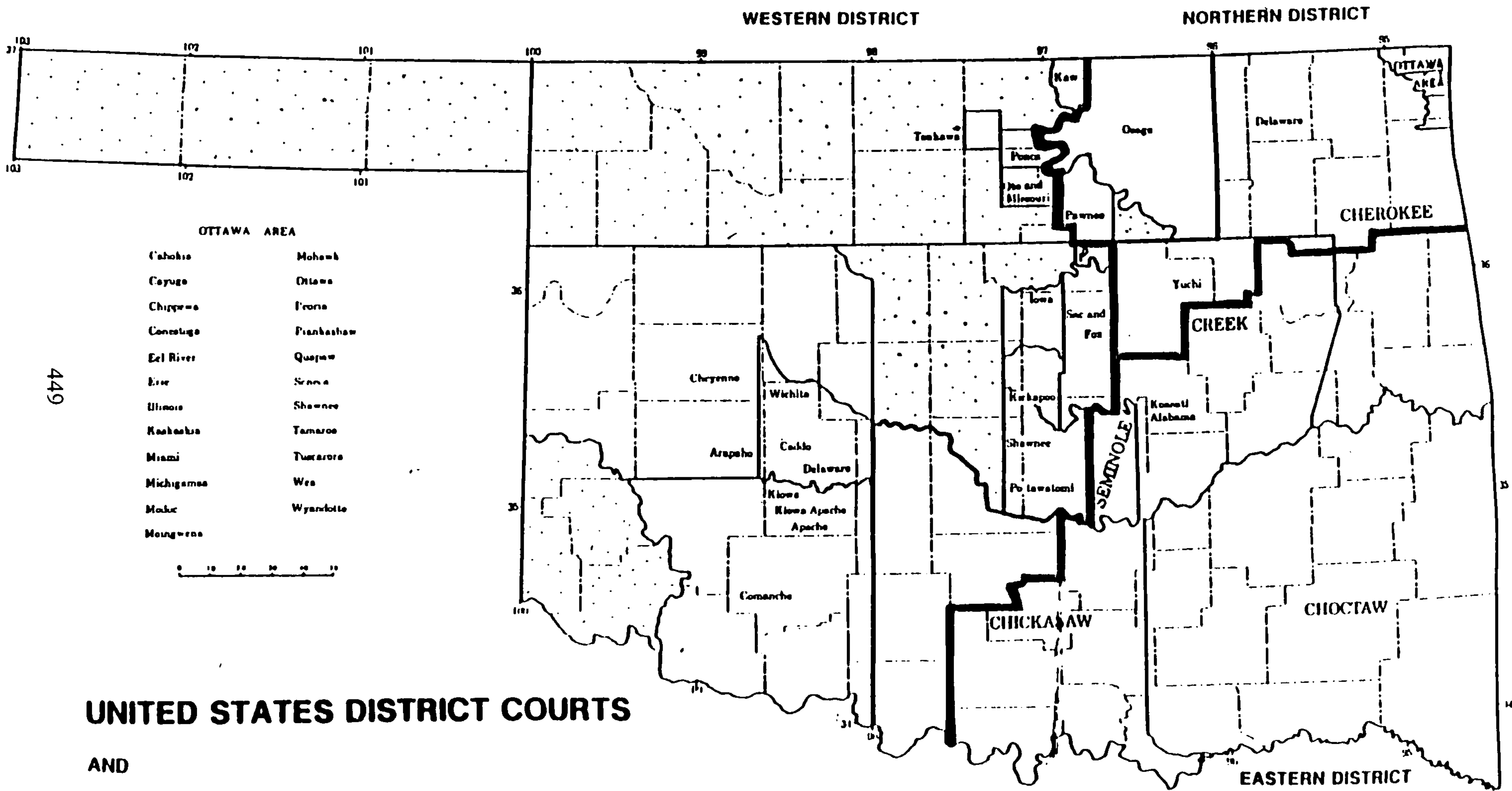
Testing for Chlamydia and Gonorrhea is done by using a small swab during a pelvic exam. The swab is sent to a laboratory for testing. Results can take up to a week, depending on the laboratory. Syphilis and HIV are diagnosed through blood tests. Results usually take up to two weeks.

How much will testing cost?

Your rights as a victim entitles you to two anonymous and confidential tests, and a counseling session by a medically trained professional regarding the accuracy of such tests, at no cost to you. If you are unable to locate a free testing site, contact the Victim Witness Advocate at the United States Attorney's Office, who will arrange for testing at no cost to you. Telephone numbers for some testing sites are listed on the back of this brochure.

Guidelines for Reporting and Investigating Child Abuse in Indian Country

These guidelines should be used any time an Indian child appears to be the victim of physical or sexual abuse or if the suspected perpetrator appears to be Indian, regardless of the race of the child victim.



UNITED STATES DISTRICT COURTS

AND

INDIAN NATIONS IN OKLAHOMA

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU) is made by and between the United States Attorney's Office for the Western District of Oklahoma; the Federal Bureau of Investigation (FBI); the State of Oklahoma Department of Human Services (DHS); the Bureau of Indian Affairs (BIA); the Indian Health Service (IHS); the Absentee Shawnee Tribe of Oklahoma, the Apache Tribe of Oklahoma, the Caddo Tribe of Oklahoma, the Cheyenne-Arapaho Tribes of Oklahoma, the Chickasaw Nation, the Citizen Band of Potawatomi Tribe, the Comanche Tribe of Oklahoma, the Fort Sill Apache Tribe, the Iowa Tribe of Oklahoma, the Kaw Nation, the Kickapoo Tribe of Oklahoma, the Kiowa Tribe of Oklahoma, the Otoe-Missouria Tribe of Oklahoma, the Pawnee Tribe of Oklahoma, the Ponca Tribe of Oklahoma, the Sac & Fox Nation, the Tonkawa Tribe of Oklahoma, and the Wichita and Affiliated Tribes.

Pursuant to 25 U.S.C. § 2801 et seq., 25 U.S.C. § 3201 et seq., and the memorandum of understanding between the United States Department of the Interior - Bureau of Indian Affairs, and the United States Department of Justice - Federal Bureau of Investigation, the United States Attorney's Office for the Western District of Oklahoma has prepared the following guidelines for the investigation of child sexual/physical abuse in Indian country as defined by 18 U.S.C. § 1151.

I. GOALS

The goals of these guidelines are the protection and safety of the child victims and the identification and prosecution of the perpetrator. This MOU shall not alter or amend any existing agreements, memoranda of understanding, treaties, regulations or statutes between the tribes and/or agencies named herein.

II. GUIDELINES TO BE USED

These guidelines are to be used in all reported cases in which incidents of child sexual or physical abuse occur in Indian country involving:

A. an Indian child, or
B. an Indian perpetrator, including a minor, or
C. a non-Indian perpetrator involving Indian child victims.

III. MULTIDISCIPLINARY TEAMS

The investigation of all child sexual/physical abuse or neglect cases shall be undertaken by a Multidisciplinary Team (MDT), when feasible. An MDT, as defined in 25 U.S.C. § 3209 and 18 U.S.C § 3509 shall include, but is not limited to personnel, with a background in:

A. law enforcement
B. child protection services
C. juvenile counseling and adolescent mental health, and
D. domestic violence.

IV. INITIAL REPORT

When an initial report of child sexual/physical abuse or neglect involving an Indian child and/or an Indian perpetrator is received by the Oklahoma Department of Human Services (DHS), the Indian Health Services (IHS) or the Child Protection Services agency of an Indian Tribe (CPS), each relevant agency/person within Sections A, B, C and D must be notified by phone immediately (within 12 hours):

A. Law enforcement agencies:

1. Osage Agency (918) 287-1847
2. Miami Agency (918) 542-6921
3. Cherokee Nation (918) 456-9224
4. Muscogee (Creek) Nation (918) 756-8700 ext. 382
5. Pawnee Tribe (918) 762-3013
6. Chickasaw Nation (405) 436-1166
7. Choctaw Nation (405) 286-3977
8. Seminole Nation (405) 382-0045
9. Thlopthlocco Tribal Town (918) 623-2620 or (918) 623-0419

- or -

In the event that the above law enforcement agencies cannot be reached, call:

1. Muskogee BIA (918) 687-2266
2. Anadarko BIA for Pawnee Tribe (405) 762-2335
3. BIA Child Abuse Hotline 1-800-633-5155, if unable to contact the Muskogee or Anadarko offices

- and -

B. United States Attorney's Office
(918) 581-7463 (Tulsa) or (918) 687-2543 (Muskogee)

- and -

C. Child Protection Services for the tribal affiliation of the victim
1. Cherokee Nation (918) 456-0671
2. Muscogee (Creek) Nation (918) 756-2112
3. Osage Nation (918) 287-4615
4. Quapaw Tribe (918) 542-1853
5. Seneca-Cayuga Tribe (918) 542-6637
6. Pawnee Agency (918) 762-2585 or 1-800-521-5432
7. Chickasaw Nation (405) 436-7253
8. Choctaw Nation (405) 924-8280
9. Seminole Nation (405) 257-6259
10. Thlopthlocco Tribal Town (918) 623-2620 or (918) 623-0419

- and -

D. FBI: (918) 664-3300 (Tulsa); (918) 687-7500 (Muskogee); (405) 223-2018 (Ardmore); (405) 924-4382 (Durant); (918) 423-1413 (McAlester); (405) 842-7471 (Oklahoma City); (405) 879-3175 (Hotline)

Initial notification must occur irrespective of the location of the child, perpetrator or the alleged crime. **Failure to report is a federal criminal offense.**

V. 36-HOUR REPORTS

Within 36 hours of the initial report, the agency (State or Local law enforcement, DHS, IHS or CPS) which received the report shall follow the telephone report with a written report to the agencies/persons notified under Section IV which contains the following:

A. The name, address, age and sex of the child that is the subject of the report, including current whereabouts;

B. The grade and the school in which the child is currently enrolled;

C. The name and address of the child's parents or other person responsible for the child's care and the current whereabouts of the parents or other person responsible for care;

D. The name and address of the alleged offender and whereabouts;

E. The name and address of the person who made the report to the agency;

F. A brief narrative as to the nature and extent of the child's injuries, including any previously known or suspected abuse of the child or the child's siblings and the suspected date of the abuse;

G. Any other information the agency or the person who made the report to the agency believes to be important to the investigation and disposition of the alleged abuse, i.e. emergency room reports, previous court cases, etc...

VI. INDIAN COUNTRY JURISDICTION

Upon receipt of the initial report, if possible, or the 36-hour report, BIA or Tribal Law Enforcement will take immediate action to determine if it is probable that the alleged offense occurred in Indian Country. For the purpose of further investigation it shall be presumed, unless otherwise established, that if the child or the perpetrator resides in Indian Country, the probability exists that the offense occurred in Indian Country.

VII. COORDINATION OF LAW ENFORCEMENT

If it is determined by BIA or Tribal Law Enforcement that the probability exists that the offense occurred in Indian Country, BIA or Tribal Law Enforcement shall notify the local Resident Agency of the FBI. The law enforcement agencies will make a determination as to which agency will conduct the investigation or if they will conduct a joint investigation together with each other or any other federal, state or local law enforcement agency, and a matter will be opened in the United States Attorney's Office.

VIII. DETERMINATION OF NEED FOR REMOVAL

The investigative agency or agencies working together with the MDT, shall make an initial assessment to determine the following:

A. The probable facts;
B. The need for protection;
C. The need for removal;
D. What other actions need to be taken for the safety and the protection of the child.

This information shall be conveyed in writing to all members of the MDT, the United States Attorney's Office, and the prosecutorial agency responsible for emergency removal.

IX. EMERGENCY REMOVAL

If immediate removal is necessary, the responsible law enforcement agencies and/or child protection service will follow the appropriate procedures for emergency removal.

X. TEMPORARY OR PERMANENT REMOVAL

If temporary or permanent removal is necessary, the appropriate child protection service worker and/or law enforcement officer will prepare the necessary information and present to the proper prosecutorial agency for the filing of appropriate court documents.

XI. NEED FOR INCARCERATION OF PERPETRATOR

On a case by case basis, where in the judgment of the investigative agency or agencies in consultation with the MDT, and the Assistant United States Attorney assigned to the case, separation of the child from the offender is necessary for the child's protection, and cannot be accomplished and maintained without incarceration of the perpetrator, the Assistant United States Attorney may initiate the filing of a complaint or an indictment, where probable cause exists, and obtain the detention of the offender. This should be done only in cases where the investigation can reasonably be expected to be completed and the case prepared for trial in compliance with the Speedy Trial Act. In this regard, where necessary, cases of this nature should be given priority by all concerned since detention of the offender may be the only practical way to protect the child.

XII. MEDICAL EXAMINATION

An immediate medical examination will be arranged if there is an acute need, such as injury to the child, which requires medical attention, or the need to preserve evidence, such as the preparation of a rape kit or other examination, or existing conditions make it advisable. Otherwise, a medical examination will be arranged in the normal course of business.

XIII. FORENSIC PSYCHOLOGICAL EVALUATION

A forensic psychological evaluation will be arranged during the investigation process, unless special circumstances such as threatened suicide or perceived danger to the child or others exist necessitating immediate evaluation.

XIV. FOLLOW-UP SERVICES

Counseling and other follow up services will be arranged for the victim and family members as necessary or advisable by the MDT.

XV. FEDERAL PROSECUTION

The completed investigation will be presented to the U.S. Attorney's Office by the investigative agency or agencies with the assistance of the MDT.

XVI. LIAISON WITH VICTIM

After presentation to the U. S. Attorney's Office, the investigating officer or victim/witness coordinator will act as liaison with the victim and the family, the service providing agencies, and others as necessary.

XVII. CRIMINAL JUSTICE PROCESS

The investigating agent, Assistant U.S. Attorney, or victim/witness coordinator, with the assistance of the other service providers, shall assist in familiarizing the victim with the criminal justice process, the courtroom, travel and lodging arrangements during court appearances, counseling, victim impact statements, entry into the Bureau of Prisons Victim/Witness notification program, and other needs as they are determined.

III. CHILD PROTECTION TEAMS & MULTIDISCIPLINARY TEAMS

The investigation of all child sexual or physical abuse cases shall be undertaken by law enforcement and a Child Protection Team (CPT) with input from a Multi-disciplinary Team (MDT), when feasible. An MDT, as defined in 25 U.S.C. § 3209 and 18 U.S.C § 3509, shall include, but is not limited to, personnel with a background in:

A. law enforcement,
B. child protection services,
C. juvenile counseling and adolescent mental health, and
D. domestic violence.

IV. INITIAL REPORT

When an initial report of child sexual or physical abuse involving an Indian child and/or an Indian perpetrator is received by the Oklahoma Department of Human Services (DHS), the Indian Health Service (IHS), the Indian Child Welfare Program of an Indian tribe (ICW), the Social Services program of an Indian tribe (SS), or the Child Protection Services agency of an Indian tribe (CPS), each relevant agency/person within Sections A, B, and C must be notified by phone immediately (within 12 hours):

A. The local law enforcement agency having jurisdiction over the Indian country involved:

1. Absentee Shawnee Tribal Police, 405/275-3200, telefax: 405/273-7193 (notify prior to faxing);

2. Apache Tribe (Bureau of Indian Affairs, Anadarko Agency, Law Enforcement Services - 405/247-6712, 405/247-6673, Ext. 425, telefax: 405/247-9232);

3. Caddo Tribe (Bureau of Indian Affairs, Anadarko Agency, Law Enforcement Services - 405/247-6712, 405/247-6673, Ext. 425, telefax: 405/247-9232);

4. Cheyenne-Arapaho Tribal Police, 405/262-4814, 800/767-4814, telefax: 405/262-7901;

5. Chickasaw Nation (Bureau of Indian Affairs, Chickasaw Agency, Law Enforcement Services, 405/436-1166, telefax: 405/436-4704);

6. Citizen Band Potawatomi Tribal Police, 405/275-3121, telefax: 405/275-0198;

7. Comanche Nation Police, 405/492-3789; telefax, 405/492-4981;

8. Fort Sill Apache Tribe (Bureau of Indian Affairs, Anadarko Agency, Law Enforcement Services, 405/247-6712, 405/247-6673, Ext. 425, telefax: 405/247-9232);

9. Iowa Tribal Police, 405/547-2403, telefax: 405/547-5294;

10. Kaw Nation Police, 405/269-2552, telefax: 405/762-2389;

11. Kickapoo Tribal Police, 405/964-5941, telefax: 405/964-2745;

12. Kiowa Tribe (Bureau of Indian Affairs, Anadarko Agency, Law Enforcement Services, 405/247-6712, 405/247-6673, Ext. 425, telefax: 405/247-9232);

13. Otoe-Missouria Tribal Police, 405/723-4540, telefax: 405/723/4273;

14. Pawnee Tribal Police, 918/762-3013, telefax: 918/762/2389;

15. Ponca Tribal Police, 405/765-3587, telefax: 405/762-7436;

16. Sac & Fox Nation Police, 918/968-2098, telefax: 918/968-3887;

17. Tonkawa Tribal Police, 405/628-4132;

18. Wichita Tribe (Bureau of Indian Affairs, Anadarko Agency, Law Enforcement Services - 405/247-6712, 405/247-6673, Ext. 425, telefax: 405/247-9232).

- and -

B. The Child Protection Services agency having jurisdiction over the Indian country involved, or the BIA Child Abuse Hotline (800/633-5155) if unable to contact a Child Protection Services agency:

1. Absentee Shawnee Tribe, Child Protection Worker, 405/275-4030, telefax: 405/275-1922;

2. Apache Tribe (Bureau of Indian Affairs, Anadarko Agency, Child Protection Worker - 405/247-6673, Ext. 422; telefax: 405/247-9232);

3. Caddo Tribe (Bureau of Indian Affairs, Anadarko Agency, Child Protection Worker - 405/247-6673, Ext. 422; telefax: 405/247-9232);

4. Cheyenne-Arapaho Tribes, Child Protection Worker, 405/262-0185, telefax: 405/262-0745;

5. Chickasaw Nation, Child Protection Worker, 405/436-2603, telefax: 405/436-4287;

6. Citizen Band Potawatomi Tribe, Child Protection Worker, 405/275-3125, telefax: 405/275-0198;

7. Comanche Tribe, Child Protection Worker, 405/492-3771, telefax: 405/492-4981;

8. Fort Sill Apache Tribe (Bureau of Indian Affairs, Anadarko Agency, Child Protection Worker - 405/247-6673, Ext. 422; telefax: 405/247-9232);

9. Iowa Tribe, Child Protection Worker - 405/275-3125; telefax: 405/275-0198;

10. Kaw Nation (Bureau of Indian Affairs, Pawnee Agency, Child Protection Worker - 918/762-2585, telefax: 918/762-3201);

11. Kickapoo Tribe, Child Protection Worker, 405/964-2075, telefax: 405/964-2745;

12. Kiowa Tribe, Child Protection Worker, 405/654-2300, telefax: 405/654-2188;

13. Otoe-Missouria Tribe (Bureau of Indian Affairs, Pawnee Agency, Child Protection Worker - 918/762-2585, telefax: 918/762-3201);

14. Pawnee Tribe (Bureau of Indian Affairs, Pawnee Agency, Child Protection Worker - 918/762-2585, telefax: 918/762-3201);

15. Ponca Tribe (Bureau of Indian Affairs, Pawnee Agency, Child Protection Worker - 918/762-2585, telefax: 918/762-3201);

16. Sac & Fox Nation, Child Protection Worker, 918/968-2031, telefax: 968-3887;

17. Tonkawa Tribe (Bureau of Indian Affairs, Pawnee Agency, Child Protection Worker - 918/762-2585, telefax: 918/762-3201);

18. Wichita Tribe (Bureau of Indian Affairs, Anadarko Agency, Child Protection Worker - 405/247-6673, Ext. 422; telefax: 405/247-9232);

- and -

C. The Federal Bureau of Investigation (office nearest to location of offense) or the FBI Hotline (405/879-3175) if unable to contact a local office:

1. Ardmore, 405/223-2018;
2. Elk City, 405/225-6000;
3. Enid, 405/237-6322;
4. Lawton, 405/353-3090;
5. Norman, 405/364-5137;
6. Oklahoma City, 405/842-7471; telefax: 405/879-3185
7. Stillwater, 405/372-1645;
8. Woodward, 405/372-1645;

Initial notification must occur irrespective of the location of the child, perpetrator or the alleged crime. **Failure to report to a law enforcement officer is a federal criminal offense.**

V. 36-HOUR REPORTS

Within 36 hours of the initial report, the agency (DHS, IHS, ICW, SS or CPS) which received the report shall follow the telephone report with a written report to the agencies/persons notified under Section IV which contains the following:

A. The name, address, age and sex of the child that is the subject of the report, including current whereabouts;

B. The grade and the school in which the child is currently enrolled;

C. The name and address of the child's parents or other person responsible for the child's care and the current whereabouts of the parents or other person responsible for care;

D. The name and address of the alleged offender and whereabouts;

E. The name and address of the person who made the report to the agency;

F. A brief narrative as to the nature and extent of the child's injuries, including any previously known or suspected abuse of the child or the child's siblings and the suspected date of the abuse;

G. Any other information the agency or the person who made the report to the agency believes to be important to the investigation and disposition of the alleged abuse, i.e. emergency room reports, previous court cases, etc.

VI. INDIAN COUNTRY JURISDICTION

Upon receipt of the initial report, if possible, or upon receipt of the 36-hour report, BIA or Tribal Law Enforcement will take immediate action to determine if it is probable that the alleged offense occurred in Indian country. For the purpose of further investigation it shall be presumed, unless otherwise established, that if the child or the perpetrator resides in Indian country, the probability exists that the offense occurred in Indian country.

VII. COORDINATION OF LAW ENFORCEMENT

When it is determined by BIA or Tribal Law Enforcement that the probability exists that the offense occurred in Indian country, BIA or Tribal Law Enforcement shall

immediately notify the local Resident Agency of the FBI concerning the Indian country status of the land. The law enforcement agencies will make a determination as to which agency will conduct the investigation or if they will conduct a joint investigation together with each other or any other federal, state or local law enforcement agency. The FBI shall contact the United States Attorney's Office concerning opening a matter for review.

VIII. EMERGENCY REMOVAL OF A CHILD

If immediate removal is necessary, the responsible law enforcement agencies, Indian child welfare worker, and/or child protection services will follow the appropriate procedures for emergency removal of the child.

IX. ASSESSMENT CONCERNING PROTECTION OF A CHILD

The investigative agency or agencies, working together with ICW and the CPT, with input from the MDT, shall make an assessment to determine the following:

A. the probable facts,
B. the need for protection of the child,
C. the need for removal of the child, or continued protective placement,
D. what other actions need to be taken for the safety and the protection of the child.

This information shall be conveyed to the responsible ICW programs, all members of the CPT, the United States Attorney's Office, and the appropriate tribal or state prosecutorial agency.

X. TEMPORARY OR PERMANENT REMOVAL OF A CHILD

If temporary or permanent removal is necessary, the responsible Indian child welfare worker, child protection service worker and/or law enforcement officer will prepare the necessary information and present it to the proper tribal or state prosecutorial agency for the filing of appropriate court documents.

XI. NEED FOR INCARCERATION OF PERPETRATOR

On a case-by-case basis where, in the judgment of the investigative agency or agencies in consultation with the CPT and/or the MDT, and the Assistant United States

Attorney assigned to the matter, separation of the child from the offender is necessary for the child's protection and cannot be accomplished and maintained without incarceration of the perpetrator, the Assistant United States Attorney may initiate the filing of a complaint or an indictment, where probable cause exists, and request the detention of the offender. This should be done only in cases where the child cannot be removed from an unsafe environment and the investigation can reasonably be expected to be completed and the case prepared for trial in federal court in compliance with the Speedy Trial Act. In this regard, where necessary, cases of this nature should be given priority by all concerned since detention of the offender may be the only practical way to protect the child.

XII. MEDICAL EXAMINATION

An immediate medical examination shall be arranged by the investigative agency or agencies, or the CPT: 1) if there is an injury to the child which requires medical attention, 2) to preserve evidence through the preparation of a rape kit or other examination, or 3) where existing conditions make it advisable. Otherwise, a medical examination will be arranged in the normal course of business.

XIII. FORENSIC PSYCHOLOGICAL EVALUATION

Where appropriate, a forensic psychological evaluation will be arranged during the investigation process, unless special circumstances such as threatened suicide or perceived danger to the child or others exist necessitating immediate evaluation.

XIV. FOLLOW-UP SERVICES

Counseling and other follow-up services will be arranged for the victim and family members as necessary or advisable by the investigative agency or agencies, the CPT, or the MDT.

XV. FEDERAL PROSECUTION

The completed investigation will be presented to the United States Attorney's Office by the investigative agency or agencies. The United States Attorney's Office will determine if the matter will be prosecuted in federal court. If a matter is declined for

The National Court Appointed Special Advocate Association
100 West Harrison St. • North Tower, Suite 500 • Seattle, Washington 98119
(206) 270-0072 • Fax (206) 270-0078 • E-mail:staff@nationalcasa.org

CASA Fact Sheet

What is a CASA volunteer?

A Court Appointed Special Advocate (CASA) volunteer is a trained citizen who is appointed by a judge to represent the best interests of a child in court. Children helped by CASA volunteers include those for whom home placement is being determined in juvenile court. Most of the children are victims of abuse and neglect.

What is the CASA volunteer's role?

A CASA volunteer provides a judge with carefully researched background of the child to help the court make a sound decision about that child's future. Each home placement case is as unique as the child involved. The CASA volunteer must determine if it is in a child's best interests to stay with his or her parents or guardians, be placed in foster care, or be freed for permanent adoption. The CASA volunteer makes a recommendation on placement to the judge, and follows through on the case until it is permanently resolved.

How does a CASA volunteer investigate a case?

To prepare a recommendation, the CASA volunteer talks with the child, parents, family members, social workers, school officials, health providers and others who are knowledgeable about the child's history. The CASA volunteer also reviews all records pertaining to the child -- school, medical and case worker reports; and other documents.

How does a CASA volunteer differ from a social service caseworker?

Social workers generally are employed by state governments. They sometimes work on as many as 60 to 90 cases at a time and are frequently unable to conduct a comprehensive investigation of each. The CASA worker is a volunteer with more time and a smaller caseload (an average of 1-2 cases at a time). The CASA volunteer does not replace a social worker on a case; he or she is an independent appointee of the court. The CASA volunteer can thoroughly examine a child's case, has knowledge of community resources, and can make a recommendation to the court independent of state agency restrictions.

How does the role of a CASA volunteer differ from an attorney?

The CASA volunteer does not provide legal representation in the courtroom. That is the role of the attorney. However, the CASA volunteer does provide crucial background information that assists attorneys in presenting their cases. It is important to remember that CASA volunteers do not represent a child's wishes in court. Rather, they speak to the child's best interests.

Is there a "typical" CASA volunteer?

CASA volunteers come from all walks of life, with a variety of professional, educational and ethnic backgrounds. There are more than 38,000 CASA volunteers nationally. Local programs vary in number of volunteers they utilize. Aside from their CASA volunteer work, 52 percent are employed in regular full-time jobs; the majority tend to be professionals. 82% of the volunteers nationwide are women; 18% are men.

How does the CASA volunteer relate to the child he or she represents?

CASA volunteers offer children trust and advocacy during complex legal proceedings. They explain to the child the events that are happening, the reasons they all are in court, and the roles the judge, lawyers, and social workers play. CASA volunteers also encourage the child to express his or her own opinion and hopes, while remaining objective observers.

How many cases on the average does a CASA volunteer carry at a time?

The number varies from jurisdiction to jurisdiction, but an average caseload is one to two.

Do lawyers, judges and social caseworkers support CASA?

Yes. Juvenile and family court judges implement the CASA program in their courtrooms and appoint volunteers. CASA has been endorsed by the American Bar Association, the National Council of Juvenile and Family Court Judges, and the Office of Juvenile Justice and Delinquency Prevention of the U.S. Department of Justice.

Does the federal government support CASA?

CASA is a priority project of the Department of Justice's Office of Juvenile Justice and Delinquency Prevention. The office encourages the establishment of new CASA programs, assists established CASA programs, and provides partial funding for the National CASA Association.

-more-

How many CASA programs are there?

There are now 641 CASA programs in all 50 states, Washington DC and the U.S. Virgin Islands. New programs start up at the average of three or four per month.

How effective have CASA programs been?

Preliminary findings show that children who have been assigned CASA volunteers tend to spend less time in court and less time within the foster care system than those who do not have CASA representation. Judges have observed that CASA children also have better chances of finding permanent homes than non-CASA children.

How much time does it require?

Each case is different. A CASA volunteer usually spends about 10 hours doing research and conducting interviews prior to the first court appearance. More complicated cases take longer. Once initiated into the system, volunteers work about 10-15 hours a month.

How long does a CASA volunteer remain involved with a case?

The volunteer continues until the case is permanently resolved. One of the primary benefits of the CASA program is that, unlike other court principals who often rotate cases, the CASA volunteer is a consistent figure in the proceedings, and provides continuity for a child.

Are there any other agencies or groups that provide the same service?

No. There are other child advocacy organizations, but CASA is the only program where volunteers are appointed by the court to represent a child's best interests.

What children are assigned CASA volunteers?

Children who are victims of abuse and neglect who have become wards of the court are assigned CASA volunteers. The program is most common in juvenile and family court cases.

What is the role of the National CASA Association?

The National CASA Association is a non-profit organization that represents and serves the local CASA programs. It provides training, technical assistance, research, media and public awareness services to members.

How is CASA funded?

At the local level, CASA programs are generally funded through a state's department of justice. Many programs are privately funded through service organizations such as the Junior League and the National Council of Jewish Women. The National CASA Association is funded through a combination of private grants, federal funds (U.S. Justice Department), memberships and contributions.

How can I find the CASA program in my community?

CASA programs are known by a variety of names, including Guardian ad Litem, ProKids, Child Advocates, Inc., and Voices for Children, to name a few. If you cannot find a program in your area, contact the National CASA Association for referral.

How do I get more information about becoming a CASA volunteer or joining the National CASA Association?

Contact:
National CASA Association
100 West Harrison St.
North Tower, Suite 500
Seattle, WA 98119
Phone: (206) 720-0072 or
(800) 628-3233
Fax: (206) 720-0078

DEVELOPMENTAL ACTIVITIES FOR CASA PROGRAMS

CHECK LIST

Use this check list in conjunction with the *Guide to Program Development* as an aid in the development of CASA programs.

❖❖ YEAR ONE ❖❖

Planning Phase

(These activities are not necessarily in chronological order as some tasks may be undertaken simultaneously)

- ❑ Conduct needs assessment
- ❑ Obtain judicial support
- ❑ Determine community interest and elicit support
- ❑ Create steering committee
- ❑ Inform and seek support from other community agencies
- ❑ Develop a written statement of the mission of the program
- ❑ Identify funding sources and develop fundraising plan
- ❑ Create first year budget
- ❑ Seek funding
- ❑ Determine administrative oversight of program (public vs. private) and what role the volunteers will play
- ❑ File for incorporation and prepare bylaws
- ❑ Research liability issues and explore purchase of insurance (if necessary)
- ❑ Create organizational plan, determine staffing needs and staff and board job descriptions
- ❑ Establish Board of Directors
- ❑ Develop written goals and objectives
- ❑ Determine how legal services will be provided for volunteers
- ❑ Develop job description for volunteers
- ❑ Establish office and obtain equipment and supplies
- ❑ Recruit, hire and train executive director

Initial Operational Phase

- ❑ Continue training of director and any other staff hired
- ❑ Develop and implement a public relations/recruitment plan
- ❑ Obtain public relations and training materials
- ❑ Establish written working agreement with the court
- ❑ Establish written agreement with department of children's services
- ❑ Develop policies, procedures forms and case management tools (including data collection)
- ❑ Screen potential volunteers
- ❑ Conduct training of the first class of volunteers
- ❑ Swear in volunteers
- ❑ Appoint first case(s)
- ❑ Develop inservice training and support system for volunteers
- ❑ Develop evaluation system for volunteers and program
- ❑ Establish methods of ongoing volunteer recognition

POTENTIAL FUNDING SOURCES FOR CASA PROGRAMS

Office of Juvenile Justice and Delinquency Prevention (OJJDP)

When the National CASA Association successfully secured recognition of CASA in federal legislation in the Fall of 1988, the door also opened for local CASA programs to tap into federal funding.

The potential source of revenue is formula block grant money from the Office of Juvenile Justice and Delinquency Prevention (OJJDP), a division of the U.S. Department of Justice. OJJDP has been a long-time supporter of CASA, and provides a high percentage of the National CASA Association's funding. The agency also provides money to states. These funds are administered as formula block grants. They are awarded each year for a variety of delinquency prevention and juvenile justice system improvement programs in local communities.

OJJDP formula grant money is awarded to each participating state and territory. Each state and territory receives a minimum allotment. The remaining formula grant funds are divided among the states and territories based on their relative population of persons under age 18. Four states currently are not participating in the program: Hawaii, North Dakota, South Dakota, and Wyoming.

Each participating state must submit a state plan to OJJDP outlining how funds will be used. Once the plan is approved by OJJDP, each state determines how funds are to be distributed within the state to carry out the plan. Funds can be used for virtually any program to reduce or prevent delinquency or improve the juvenile justice system. This includes programs that deal with areas as diverse as restitution, drug abuse prevention, school crime, and serious juvenile offenders.

The funds are funneled through a state agency designated by the Governor. State Advisory Groups (SAG's) help administer the formula grant program in each state. SAG's are comprised of volunteers appointed by the governor of each state who have training or experience in either the prevention and treatment of juvenile delinquency or the administration of justice. Members include elected officials, representatives of local government agencies, and representatives of private organizations within their state.

SAG's have varied responsibilities within their states, including: advising the Governor and the legislature on pertinent youth issues; supervising the preparation and administration of the comprehensive state juvenile justice plan; reviewing and overseeing the award of grants, and reviewing the progress and accomplishments of programs under their plans.

State plans are generally devised in the beginning of the fiscal year, which begins October 1. However, according to OJJDP, it is not uncommon for states to be late in submitting their plans, or for the plans to change in midyear.

In order for your CASA program to obtain OJJDP formula grant money, you need to build a relationship with your SAG or state agency to make them aware of why you deserve the funding.

Some recommendations:

➢ Begin by writing or calling the National CASA Association. We will provide CASA programs with the name of the SAG or state agency director in your state.

➢ Pool your efforts. CASA programs in each state should work jointly through the state CASA office to pursue the funding rather than competing with one another by going after the grants separately.

➢ Check with your state political connections to find out as much as possible about the members of the group, and who they have funded in the past. Try to determine if the group is the actual decision-maker, or if it serves as a rubber stamp for someone else's decisions.

➢ Get a copy of your state's "plan" for OJJDP moneys. This should be available through your Governor's office.

➢ If you have determined that the "funding power" actually lies within the SAG or state agency, make an appointment to do a 15 minute presentation on CASA at the group's next meeting. Remember that OJJDP funds focus on delinquency prevention, so stress the proven connections between abuse and delinquency, and CASA's effectiveness in improving conditions for youth. If a politically influential judge or community leader is affiliated with your program, ask them to go with you.

➢ Inquire about the possibility of future funding through the OJJDP formula grants. Tell the group how much money you need, and how it will be used.

➢ Take along a copy of the recent federal legislation calling for the support of CASA programs (available from National CASA).

➢ Cover all your bases. Remember that the funds are originally passed through the Governor's office, so be sure to include the Governor and his/her staff in your public education efforts.

Victims of Crime Act (VOCA)

The Victims of Crime Act (VOCA), enacted in 1984 and amended by the Children's Justice and Assistance Act of 1986 (CJAA) and the omnibus drug bill of 1988 (H.R. 5210, Title VII, Subtitle D) establishes a Crime Victims Fund in the Treasury. The Fund can receive up $125 million through FY 1991 and $150 million through FY 1994 from four sources: criminal fines collected from convicted federal defendants; penalty assessments imposed on convicted federal defendants; forfeited appearance bonds, bail bonds and collateral security posted by criminal defendants; and literary profits due certain convicted federal defendants (Son of Sam provision).

VOCA authorizes the Attorney General to make annual grants from the Fund according to the following formula. Of the first $110 million deposited in the Fund:

- 49.5% is allocated for grants to state crime victim compensation programs. Funds permitting, compensation programs will be reimbursed for 40% of the prior year's victims compensation awards;

- 45% is allocated for grants to states for the purpose of assisting local units of government and private non-profit organizations to provide direct services to victims of crime. VOCA gives primary responsibility for the selection of programs to be funded to the states, with only minimal federal requirements. The state is required to give funding priority to programs providing assistance to victims of sexual assault, spousal abuse, or child sexual abuse;

- 1% is allocated to the Justice Department's Office of Justice Program (OJP) for the purpose of providing training and technical assistance to state and local programs and for services to victims of federal crimes. At least half the money must be spent on services to victims; and

- 4.5% is transferred from the Fund to the Secretary of Health and Human Services for making grants to states to improve the treatment, prevention, and prosecution of child abuse and to protect the victims of child abuse. Of these funds, 15% must be used to assist victims of child abuse on Indian reservations.

- If the Fund exceeds $100 million, the next $5.5 million (between $100 million and $105.5 million) deposited in the Fund goes to the Secretary of Health and Human Services for child abuse prevention grants. All deposits in the Fund in between $105.5 million and $110 million should be available for the purpose of aiding crime victim assistance programs. If the Fund exceeds $110 million, the money shall be distributed as follows:

  - 49.5% for crime victim assistance programs;
  - 49.5% for crime victim compensation; and
  - 5% for assistance to victims of federal crimes

Combined Federal Campaign

If you are a non-profit CASA program located in an area that has a significant number of federal employees (i.e. near a military base, V.A. hospital, or regional government offices), you will want to consider the Combined Federal Campaign as a potential source of revenue.

The Combined Federal Campaign (CFC) is the sole authorized fundraising drive conducted in the federal workplace. Similar to, and often coordinated and administered by the United Way, the campaign raises money for those local organizations that meet eligibility requirements.

Organizations that qualify to be included are listed in a local brochure with a paragraph description of the program. Contributions are either earmarked for a specific recipient, or put into a pot that is divided among all the participating organizations. The amount raised in each area depends on the number of federal employees.

A CASA program, as a voluntary health and human services organization, can apply to be included in the campaign if it meets these requirements:

- Has 501-C-3 tax exempt status
- Is directed by a volunteer board of directors
- Has a paid or volunteer staffed office (can be a portion of a residence) that is open a minimum of 15 hours per week
- Fundraising and administrative expenses are less than 25% of total support and revenues
- Is audited by an independent CPA unless the annual budget is less than $50,000, in which case an IRS 990 is required in lieu of an audit

The best source of information regarding your local CFC is through the United Way office in your area. Chances are good that they are contracted to run the campaign, and will be able to tell you who to contact for application information. The campaign is run in the fall, and applications are generally taken in the spring.

Specific rules and regulations governing the CFC are published in the Federal Register of May 26, 1988. For further information, contact Sue Shecket, Membership Services Director.

MADD Outline

I. MADD's Mission

The mission of Mothers Against Drunk Driving is to stop drunk driving and to support victims of this violent crime.

II. MADD's Victim Assistance Programs

A. Policies

B. Literature

C. Court Accompaniment

D. Support Groups

E. Victim Impact Panels / Victim Impact Classes

F. Advocate Training Institutes

Each workshop participant will receive a full set of materials to start a Victim Services Program for Victims of Drunk Driving Crashes. For information about attending a Victim Advocate Training (3-days) at no cost, call Janice Lord at 1-800-438-6233, ext. 254.