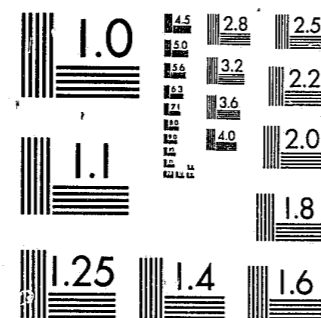


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This Issue in Brief

ACQUISITIONS

Guideposts for Community Work in Police-Social Work Diversion.—Significant steps in community work involved in the development of police-social work diversion programs are described and analyzed by Professor Harvey Treger of the University of Illinois. Techniques and methods of work are suggested for practitioners interested in the planning, implementation, and operation of community-based programs. The effects of change on a system(s) are discussed emphasizing sensitivity to interpersonal, inter-professional, and interagency relationships, as well as client needs and issues of power and control.

Issues in VIP Management: A National Synthesis.—This article by Dr. Chris W. Eskridge of the University of Nebraska deals with a number of critical issues involving the management and organization of Volunteer-in-Probation (VIP) programs. While it is difficult to specifically identify why some projects fail and others succeed, it appears that management variables may well be the most powerful factors. This research effort was undertaken to provide an assessment of where we are now in regards to VIP program organization and management, and to identify areas of concern which suggest the need for future research.

An Analysis of Contemporary Indian Justice and Correctional Treatment.—Dr. Laurence French of the University of Nebraska states there is little doubt that the U.S. criminal justice system has a narrow, ethno-centric biased perspective that tends to view American Indians as "outsiders" to the dominant normative structure. He then proceeds to describe significant changes which have been effected with regard to treatment of the Indian offender—changes brought about

principally by efforts of the Native American Rights Fund.

New Amsterdam's Jail Regulations of 1657.—After the Dutch West India Company established a trading post at the tip of Manhattan in 1626, reports Professor Thorsten Sellin, the community of New Amsterdam grew as its population increased and within three decades the Company was compelled to grant the settlers substantial rights of self-government. Among the institutions developed was a jail and, in 1657, fairly detailed regulations were adopted for its management. It comes as no surprise that the regulations were practically copies from those of the old jail in Amsterdam.

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An Analysis of Contemporary Indian Justice and Correctional Treatment

BY LAURENCE FRENCH, PH.D.
University of Nebraska

NATIVE American justice is currently embroiled in controversy and this dilemma seems to be exacerbated by the two popular, yet contravening, perceptions of this phenomenon. People tend to examine Native American justice from either the aboriginal customary judicial perspective or from the white adversary judicial perspective. Neither perspective accurately portrays a realistic picture of the situation. Clearly, the only viable perspective to Native American justice seems to be a synthesis of these two orientations.

The "harmonious/aboriginal thesis" and its focus on traditional tribal law offers valuable insight into the Native American cultural folkways and customs as they existed both prior to, and during the early stages of white contact. But it is foolhardy to pretend that the aboriginal system exists in its pure form anywhere in the United States today or for that matter, that this system can be reconstituted. Perhaps a contemporary Sioux saying best reflects this cultural time bridge: "The days of the buffalo are gone forever."

By the same token, the "Competitive/white antithesis" and its focus on formal, adversary law tends to obviate viable Native American cultural attributes which have survived or have evolved over time. Clearly, many of the attributes of the Native American "harmony ethic" are contrary to those prescribed by the Western "protestant ethic." And there is little doubt to the fact that the U.S. criminal justice system has a narrow, ethnocentric biased perspective, one that tends to view American Indians as well as other racial, ethnic, sex, age and class groups as "outsiders" to the dominant normative structure.

Medcalf (1978), in her challenging book—*Law and Identity*, articulated this dilemma by pointing out the legal Catch-22 Native Americans often find themselves in terms of government-directed, legal policy. She portrayed the law as a mechanism of legal control and, consequently, minority

suppression, contending that this remains the ulterior function of so-called "sympathetic" liberals, as well.

Here she weaves an intricate discussion linking the philosophical ideals of John Locke, notably its American liberal adaptation, to U.S. policy which, on the surface, seems to be manifestly directed toward helping the American Indian find his place within the larger dominant social order. Particular focus is placed on the 1968 (Titles II-VII) Native Bill of Rights. Her argument is clear, legal solutions to Indian problems are superficial, if not suspect, at best: "To think of other human beings in terms of rights is to rob them of much of their humanity, because it reduces humanity to the bare essentials . . . to reduce human relationships to rights and responsibilities, one against the other, is to render human relationship possibilities barren, to make human relationships an 'irreducible minimum' just short of nothing at all (p. 125)."

However, Medcalf made the common error of jumping from an effective critique of the "competitive/white antithesis" to that of the "harmonious/aboriginal thesis" somehow giving the impression that the latter is the "real" solution to the Indian dilemma: "Reexamination of the Indian Civil Rights Act, which extends constitutional guarantees to all individual members as against the tribe, provides an example. Such constitutional guarantees assume the prior absence of individual rights. But Native Americans must have had traditional ways of relating to each other and to their 'governments.' Why then institute individual rights against the tribal government (p. 125)?"

The American Bar Foundation has recently taken the opposite position. In its report, *American Indian Tribal Courts*, Brakel (1978) argued that tribal courts and tribal justice are white American creations and that the Indians have a difficult time administering white-type justice to their people. The study even went on to condemn the reservation system claiming that: "They

are little more than depressed areas for marginal and dependent societies of Indians, whites, and mixed-bloods. They are sociological nurseries to which those who find life difficult outside can always return, places of more or less voluntary detention for the ones who have never left, zoos for white tourists, and laboratories for academics (p. 102)."

Thus, while this report stressed many of the same points Medcalf did in her book, Brakel argued in favor of a greater reliance upon the "competitive/white antithesis": "The tribal courts do not work well, and necessary improvements would require much time and involve many difficulties. To perpetuate them at all runs counter to the evolutionary trends in the Indians' relation to the dominant culture in this country. Therefore, it would be more realistic to abandon the system altogether and to deal with civil and criminal problems in the regular county and state court systems (p. 103)."

PanIndianism: The Native American Synthesis

The genesis of contemporary Native American movements extends back to the years following the Second World War when young Indian servicemen organized the National Congress of American Indians (NCAI). While other white-sponsored Indian advocacy movements preceded the NCAI, this was the first viable Indian-sponsored program. Later, a more radical-oriented Indian group emerged in the early 1960's. This was a reaction to what young Native Americans, during the turbulent 1960's, felt to be the ineffectiveness of the NCAI. The National Indian Youth Council (NIYC) challenged the now middle aged membership of the NCAI while at the same time following the trend of other discontented youth of the time. NIYC fostered the more radical

¹ The Indian Historian Press has published a number of scholarly works by Native Americans, notably: *The Pueblo Indians* (Sando), *Indian Treaties* (Costo and Henry), *The Only Land I Know* (Dial and Eliades); *The Iroquois in the Founding of the American Nation* (Grinde), *Textbooks and the American Indian* (Costo and Henry); *Legends of the Lakota* (LaPointe), *The Right to be Indian* (Schusky), *Give or Take a Century* (Senungetuk), *Tsali* (Bedford), *Pima and Papago Ritual Oratory* (Bahr), *When the Navajo had too Many Sheep* (Boyce), *Anthropology and the American Indian* (Costo and Henry) among others.

² Also see the Task Force Reports of the American Indian Policy Review Commission, notably:
No. 1. Federal Indian Relations. Hank Adams, chair.
No. 2. Tribal Government. Wilbur Atcity, chair.
No. 3. Federal Administration. Sam Deloria, chair.
No. 4. Federal, State and Tribal Jurisdiction. Sherwin Broadhead, chair.
No. 5. Indian Education. Helen Scheirbeck, chair.
No. 6. Indian Health. Everett Rhoades, chair.
No. 7. Reservation and Resource Development and Protection. Peter MacDonald, chair.
No. 8. Urban and Rural Non-Reservation Indians. Al Elgin, chair.
No. 9. Indian Law Revision. Peter Taylor, chair.
No. 10. Termination and Non-Federally Recognized Indians. Jo Ho Hunt, chair.
No. 11. Alcohol and Drug Abuse. Reuben Snake, chair.

AIM (American Indian Movement) faction much like the SDS fostered the "weathermen."

These growth problems aside, Indian movements were instrumental in promoting a positive universal Indian image—an image that did much to dispel the old negative stereotypes long promoted in movies, in books and on television. This phenomenon soon became known as the Pan-Plains Indian movement. Not only did Native Americans seek out a common ethnic image, they now strived for self-sufficiency and self-determination. It was within this protest environment that young Indian scholars began to consolidate their efforts so as to best serve their people.

Correspondingly, a number of Indian-run, Indian interest groups and organizations emerged. In 1964 the American Indian Historical Society became incorporated and has served from that time as the Native American academic honor society disseminating Indian news and scholarly works through its press (Indian Historian Press) and its publications (Wassaja, Indian Historian, Wee Tree as well as many books by Native Americans).¹

Other Indian organizations soon followed suit: the Mohawk Nation's *Akwesasne Notes*; the Institute for the Development of Indian Law's, *American Indian Journal*; the American Indian Faculty and Staff Association at the University of Oklahoma and its influence in the development of the *American Indian Law Review*, and the Native American Rights Fund and its *National Indian Law Library Catalogue and Announcements*.

Moreover, Indian scholars like Vine Deloria, Jr., Bea Medicine, Rupert Costo, Adolph Dial and others did much to disseminate this information to the general public through professional, academic and public meetings, assemblies and media events. They served notice to the rest of the Nation and the world that the popular negative stereotypes of American Indians as being simplistic, primitive and savage entities would no longer be tolerated. Hence, the 1960's and 1970's saw an increase in Indian attorneys, scholars, medical doctors, administrators and the like. This was the Indian response and the emergence of contemporary panIndianism.²

Native American Correctional Survival

Native American correctional survival is the basic philosophy of the special, Federally supported, Swift Bird project, the Indian-run, mini-

um security prison located in South Dakota designed to serve Plains Indian inmates. The concept actually stems from the Indian survival school philosophy which has its roots in the Red School House in St. Paul, Minnesota.

Basically, the Indian survival philosophy works on the assumption that much of the contemporary Indian problems are grounded in "marginality," the process of being caught between two worlds (the traditional Indian and the white dominant cultures) with little hope of fully belonging to either (Park, 1950; Sellin, 1938). Indian survival attempts to strengthen the Native American's self-image, what they refer to as their "Indianism." Once this task has been accomplished emphasis is then given to learning the basic skills necessary to survive in both of these cultural worlds.

Until cultural building and other preventive programs emerge, the "Native American synthesis" will have to continue to focus upon its current ex post facto, resocialization programs. Presently, two Native American correctional orientations offer programs which fit the Native American synthesis perspective: (1) Indian correctional institutions exclusively for Native American clients, and (2) Native American prison survival schools for Indian clients incarcerated within larger inmate populations.

The Institute for the Development of Indian Law described the problems with typical State and Federal prisons in relation to Indian clients as such: "The prison environment, in which a disproportionate number of Native Americans find themselves, given the selective and discriminatory law enforcement system, is one which they find especially hostile and alien. Indians are greatly overrepresented in prison populations, yet often lack a voice in their operation (Kickinbird, 1978:19)."

The Native American Rights Fund (NARF) initiated changes that would attempt to resolve some of these problems articulated by Kickinbird. They first initiated action within the State prison system through the Federal courts and later helped to develop the first Indian-run correctional

facility for Indian clients—the Cheyenne River Swift Bird project.

Indian Corrections—Swift Bird Facility

In their first significant criminal suit, the Native American Rights Fund was instrumental in bringing about needed changes in the Nebraska prison system. Here NARF successfully argued a class action suit for the Indian inmates, filed in U.S. District Court against the director of the Nebraska Correctional Services Department (October 1974).

A summary of the charges are as follows: "Plaintiffs who comprise the class of Indian inmates incarcerated in the Nebraska Penal and Correctional Complex sued (the) defendant . . . claiming certain deprivations of rights secured to them under the First and Fourteenth Amendments . . . Specifically, plaintiffs claimed that officials refused to permit an Indian Culture Club; that access to Indian religion, including the Native American Church was denied to them; and that they were discriminated against in various ways in the rehabilitation process including work release, work assignments and the failure to provide Indian counselors and instructors (*Indian Inmates of the Nebraska Penitentiary v. Vitek*, No. 72-L-156, D.Neb., Order of October 31, 1974)."

The suit resulted in the court ordering a number of changes including allowing Indian inmates to wear their hair long in traditional hairstyles, for official recognition of an Indian spiritual cultural club including the construction of sweat lodges and the use of medicine men for services. This order also included the Native American Church but the Nebraska Department of Correctional Services has "stonewalled" all attempts to implement this element of the court order (see Public Law 95-341/August, 1978).

Moreover, it was decreed that the Nebraska correctional department would formulate an affirmative action plan designed to hire Indian personnel at their facilities and that the Nebraska penal and correctional complex was to provide accredited courses relevant to Indian culture and Indian studies for their Native American clients.

Indeed, this was a victory over past penal policies directed toward Indian cultural genocide, the process of destroying Indian culture for the purpose of forced assimilation.³ Indian inmates in Nebraska now have an opportunity to retain aspects of their cultural heritage, and to even

³ Most Indian scholars and Native American leaders commonly refer to the long history of public policy designed to accommodate Indian culture as "cultural genocide." Involved in this process are a number of critical governmental doctrines, including: (1) 1830, Removal Treaty; (2) 1868, Treaty of Fort Laramie; (3) President Grant's Peace Policy of 1870; (4) 1883, Ex Parte Crow Dog; (5) 1885, Major Crimes Act; (6) 1887, General Allotment (Dawes Act); (7) 1898 Curtis Act; (8) 1924, Indian Citizenship Act; (9) Wheeler-Howard (Indian Reorganization Act), 1934; (10) Indian Claims Commission Act, 1946; (11) Public Law 280 (termination), 1953; (12) 1954, Relocation; (13) Indian Civil Rights Act, 1968; and (14) Indian Self-Determination, 1975.

strengthen it, while incarcerated. More importantly, this suit was the forerunner of the Cheyenne River Swift Bird Project—the prototype of Indian-run correctional facilities to be developed across the Nation.

This alternative Indian rehabilitation center was the product of Indian and white faculty and students at the University of Nebraska working in conjunction with NARF staff. The director of the facility, Rick Williams (Lacota Sioux) was a student at the University of Nebraska when the idea was conceived. Following his graduation, he served an apprenticeship with NARF under the direction of Walter Echo-Hawk, one of the NARF attorneys involved in the Nebraska penal suit.

The Swift Bird facility is a voluntary pre-release Indian-run correctional facility designed to serve Native American clients from five northern Plains states (South and North Dakota, Nebraska, Minnesota and Montana) as well as the Federal Bureau of Prisons. The concept of Swift Bird is to provide individualized "cultural reprogramming" for short-term Indian clients convicted and sentenced in either Federal court and/or in the courts of the participating states.

According to the Swift Bird mandate these volunteers: "Shall be dealt with humanely, with efforts directed toward their rehabilitation and return to the community as safely and promptly as practicable (Echo Hawk, 1977:13)." Native American cultural and spiritual treatment are important considerations with the Swift Bird comprehensive classification and rehabilitation program effort.

As mentioned earlier, this orientation is similar to that employed by Native American "alternative" and "survival" schools. The basic premise here is that a person has to feel good about himself and who they are before they can become fully responsible and autonomous members of society. Alternative and survival school orientations stress the positive attributes of being Indian, reinforcing the panIndian and particular cultural orientation of the client's home world environment, while at the same time providing the necessary skills needed to survive in the dominant white culture.

The Cheyenne River (South Dakota) Swift Bird facility was opened in the Fall of 1979 and only time will tell if it is successful. Perhaps the greatest obstacle to this program is the contravening jurisdictions involved and the lack of

a clear legal mandate for the clients they serve. All clients (up to 70) must be admitted on a voluntary basis under a contractual agreement made between the Swift Bird staff and the sending institutions. Thus the sending units have ultimate jurisdiction and legal custody over their clients while they are at Swift Bird. The Native American prison survival concept has equal relevance to Indian clients incarcerated in State and Federal penal facilities. It tries to provide the essence of the Native American resocialization within both types of correctional environments.

Indian Prison Survival Schools

Indian prison survival schools have a serious mandate in that they must overcome the damage already done by the prisonization and reservation life. Consequently, the Indian survival curriculum must consider certain cultural attributes unique to Native American clients. This involves the important first phase of Indian survival school programs—the development of a sense of Indian self-worth (the opposite of trying to "white-wash" Indian clients). The next phase involves learning the basic skills necessary to cope within both the Indian white worlds. Indeed this is a challenging endeavor for any person and more so for those already suffering the stigma of incarceration.

The "Indianism" process involves teaching the marginal Indian his cultural roots, panIndianism and the tenets of the "harmony ethic." Here the client is exposed to the Indian orientation and encouraged to adopt a native-oriented cognitive style. Native American learning strategies include teaching native custom, rituals and language, all designed to enhance the person's self-awareness and to provide a positive, "cultural proactive" status resulting from incarceration. A consequence of this educational process is the shared, collective panIndian identity.

Once these attributes are internalized, the marginal Indian can begin to reassess his past failures and ascertain why he/she is plagued by alcohol, violence and/or incarceration. Moreover, it is at this level of awareness that conventional treatment modalities can be introduced into the cultural program. And the introduction of popular counseling and/or experiential group modalities into the program does not provide an alien element since consensual treatment itself has a long aboriginal tradition, existing within Native American groups centuries prior to group psychother-

apy, T-groups, encounter groups, network therapy and the like came into vogue within western societies.

The final institutional stage of the Indian survival program is dedicated to teaching Indian inmates how to cope beyond their subculture and make it in the larger, white-dominated society as well. The teachers in both phases of the Indian prison survival school program should be comprised of both Indians and non-Indians. Indeed, traditional Indian inmates make excellent teachers in both phases. These individuals, unlike their marginal counterparts, seem to have a better sense of their cultural identity including the relevant rituals, the language and the like, hence seem to maintain a strong sense of their "Indianism" even when incarcerated. This is the basic format of the Indian prison survival school.

In conclusion, it is interesting to note that Native Americans have long been expected to understand both cultural world views (harmony and protestant ethos) while members of the dominant culture, especially those involved in legal and social service delivery (prosecutors, judges, law enforcement officers, defense attorneys, correctional, social service and health personnel, psychologists, psychiatrists, teachers . . .) usually do not feel compelled to have to try and understand American Indian cultures. The "Native American synthesis" allows for this cross-cultural educational exchange between both Indians and non-Indians while neither the "harmonious/aboriginal thesis" nor the "competitive/white anti-thesis" considers this form of reciprocity being

viable. Cultural survival according to the "Native American synthesis," is a two-way process. This perspective also recognizes the value in the preservation of one's unique cultural heritage, therefore, makes a distinction between forced accommodation/assimilation or other attempts to obviate attributes of Native American cultures and the reality of cultural pluralism.

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"THE DEMANDS of civilized life on man are subtly and cruelly exacting; the fine discriminations demanded of him are innumerable and difficult." So stated a psychiatrist in the 1930's, years prior to World War II, jet airliners, "the bomb," and the "cold war." Many feel that such demands have become exacting and that such discriminations are even more innumerable and difficult. Perhaps increases in divorce, mental illness, alcoholism, and the incidence of ulcers attest to the pressures involved in living in contemporary society. Is this to say that it is difficult for the majority of people, who have been born and reared in this society, to adjust to it? What then about those who were neither born nor reared in it but who are expected to adjust to it?—ARTHUR S. RIFFENBURGH

END