

Joint Jurisdiction: Tribal Courts and State Courts Working Together

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Historical Perspective



- Understanding current tribal relations requires understanding United States historical and contemporary treatment of Indian Nations and Indian sovereignty
- Each Indian Nation has a unique history of contact, but there are common themes
- Each Indian Nation has unique culture, norms and values
- No “one size fits all”

Tribal Sovereignty

- Tribes retain nationhood status and *inherent* powers of self-governance
 - *Cherokee Nation v. Georgia* (1831); *Worcester v. Georgia* (1832)
- Indian Self-Determination and Education Assistance Act of 1975
 - Encourages “maximum Indian participation in the government and education of Indian people”
 - Self-governance: process by which tribes assume administration of federal programs by contracts or grants from certain federal agencies
- Tribes can:
 - *Define their tribal membership criteria.*
 - *Enact civil, criminal, and regulatory legislation.*
 - *Provide specific areas of law enforcement and establish a court system.*
 - *Assert jurisdiction over their people and lands.*
 - *Tax non-tribal members engaged in economic activity on tribal lands.*

Each Tribe Has Its Own History of Colonization and Cultural Connection

Some tribes have been forcibly removed from their homelands

Many tribes were consolidated on reservations, resulting in shared land and government

Tribes have various retention of traditional practices and language

Many tribes have treaties; many do not

Generally, tribes have a strong respect for spirituality, but this can be traditional, Christian, or a combination

Ceremonies are generally closed to the public. But feasts, PowWows, and other events are generally open



Origin of Tribal Judiciaries

- Divergence of Values:
Tribal Councils and Chiefs more likely to serve a dispute resolution role, rather than executive or legislative duties
 - Goal was mediation as opposed to ascertaining guilt
 - Facilitator as opposed to decision-maker
- Courts of Indian Offenses
 - 1849 – Creation of the Interior Department
 - 1883 – CFR Courts are institutionalized, *Ex Parte Crow Dog*
 - Heightened need for inter-tribal/Indian-non-Indian dispute resolution
 - Staffed by Indian judges, but served at the pleasure of the Indian agent

INSTITUTE FOR GOVERNMENT RESEARCH

STUDIES IN ADMINISTRATION

THE PROBLEM OF INDIAN ADMINISTRATION

Report of a Survey made at the request
of Honorable Hubert Work, Secretary
of the Interior, and submitted to him,
February 21, 1928

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Modern Tribal Courts

- 1934 – Indian Reorganization Act
 - Many tribes assumed judicial functions, replacing CFR courts
- Opportunity
 - For a system that is more responsive to tribal needs and under tribal control
 - To resurrect traditions and customs
- Many courts apply large bodies of written law, as well as custom and tradition.



Jurisdiction

- “Indian Country” – 18 U.S.C. § 1151
 - Reservations, dependent Indian communities, and/or Indian allotment
 - Land held in trust
- Civil Jurisdiction
 - Inherent over Indians within Indian country (and sometime beyond, e.g. hunting and fishing rights)
 - Non-Indians: *Montana v. U.S.* (1981)
 - Non-Indian enters into consensual relationship with tribe or its members; or
 - A non-Indian’s conduct threatens or has a direct effect on the political integrity, economic security, or health or welfare of the tribe.
 - Or, act of Congress, e.g. Clean Water Act

Criminal Jurisdiction

Indian Status	Major Crime	All Other Crimes
Indian perpetrator Indian victim	Federal (under MCA) and tribal	Tribal
Indian perpetrator Non-Indian victim	Federal (under MCA) and tribal	Federal (under General Crimes Act) and tribal
Non-Indian perpetrator Indian victim	Federal (under General Crimes Act)	Federal (under General Crimes Act) and tribal (if VAWA SDVCJ)
Non-Indian perpetrator Non-Indian victim	State	State

- Major Crimes Act (MCA), 18 U.S.C. 1153: murder, manslaughter, kidnapping, maiming, sexual abuse, incest, serious assault, assault of a minor, felony child abuse, burglary, robbery, and major theft

PL 280

- 1953: Legal transfer of jurisdiction from the federal government to the states
 - *Mandatory for enumerated states*
 - *Optional for other states*
 - *Tribes had NO say (until 1968 for some tribes*)*
- State jurisdiction preferred over tribal sovereignty – federal policy that favors assimilation into non-Indian social and political communities.
- Congress cited need for
 - *Law enforcement*
 - *Civil dispute resolution*

PL 280

- Federal criminal jurisdiction in Indian country transferred to the state.
 - 6 mandatory states
 - California
 - Minnesota
 - Nebraska
 - Oregon
 - Wisconsin
 - Alaska (upon statehood)
 - Other states could opt in, while later legislation permitted states to retrocede (opt out), and for tribes to request federal reassumption of jurisdiction
- Also consider PL 280-like schemas, such as the States of New York, Maine, Seminole Nation of Florida, and Flathead Reservation of Montana

PL 280

■ Grants states

- “jurisdiction over offenses” committed by or against Indians, and
- “civil cause of action” to which Indians are parties
- State “criminal laws” and “civil laws that are of general application to private persons or private property”

- State duty to provide law enforcement and criminal justice services

- No state regulatory or taxing jurisdiction, only claims that are prohibitory
- No applicability of local regulation by a county

PL 280 – Concurrent Tribal/State Jurisdiction

- PL 280 left the inherent civil and criminal jurisdiction of Indian nations untouched
- But this consensus has developed relatively recently
 - *No double jeopardy – though jurisdictions have enacted laws to limit double prosecution*
 - *Civil: Race to litigate in forum of choice*

Criminal Jurisdiction – PL 280

Indian Status	Major Crime	All Other Crimes
Indian perpetrator Indian victim*	State and tribal	State and tribal
Indian perpetrator Non-Indian victim	State and tribal	State and tribal
Non-Indian perpetrator Indian victim	State (and tribal if VAWA SDVCJ)	State (and tribal if VAWA SDVCJ)
Non-Indian perpetrator Non-Indian victim	State	State

- * Under TLOA, a tribal gov't may request federal concurrent, subject to U.S. Attorney General approval
- Major Crimes Act (MCA), 18 U.S.C. 1153: murder, manslaughter, kidnapping, maiming, sexual abuse, incest, serious assault, assault of a minor, felony child abuse, burglary, robbery, and major theft

Cooperative Agreements

Benefits of collaboration

- Coordinate the exercise of authority
- Share resources
- Reduce administrative costs
- Deliver services in more efficient and culturally appropriate ways
- Address future contingencies
- Save costs of litigation
- Respond to unique community needs



Tribal Healing to Wellness Courts



Tribal Healing to Wellness Courts are tribal adaptations of a drug court.

There is particular interest in how drug courts can address alcoholism and its associated crime that is prevalent in Indian country, especially in a non-adversarial nature.

The term “Healing to Wellness Courts” was adopted to

- (1) incorporate two important Indigenous concepts - Healing and Wellness; and
- (2) promote the program’s efforts to promote wellness as an on-going journey.

Opportunities for Collaboration in Healing to Wellness Court and Drug Courts

Transfer Agreement
for eligible
participants

Provision of drug
testing and other
oversight services

Sharing of database
information

Consultation for
particular subject
matter (e.g. cultural
activity or treatment)

Consultation for
particular
participants

Joint team members

Communication
between
Coordinators

Observation of each
other's hearings

Joint Jurisdiction Courts

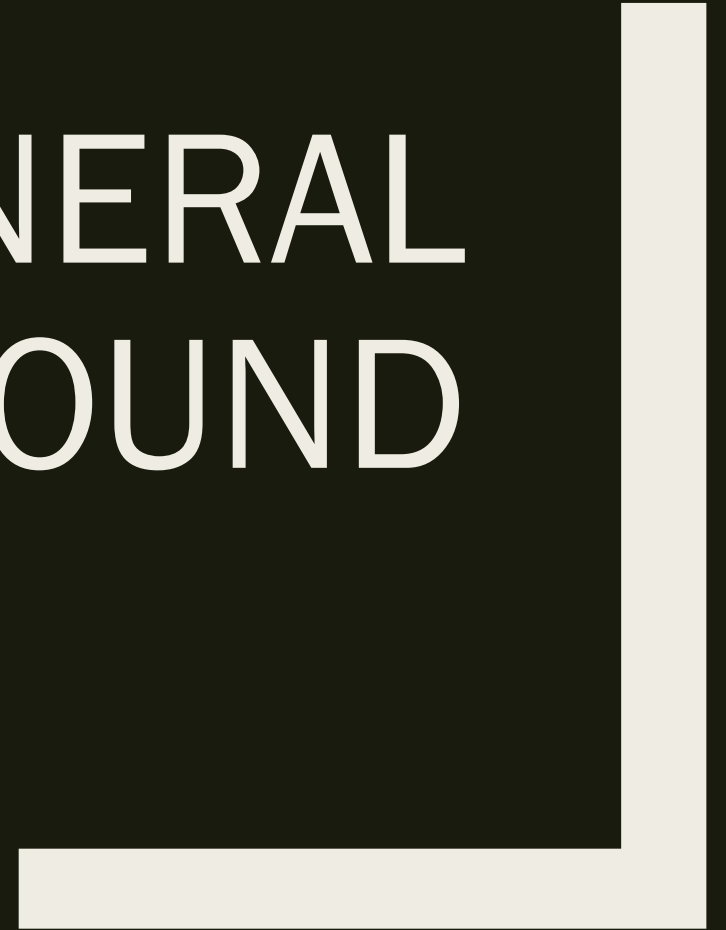


Shingle Springs Band of Miwok Indians
and
El Dorado County, California



Family Wellness Joint Jurisdictional Court

GENERAL BACKGROUND



The Joint Jurisdiction Project Concept

- The Superior Court of El Dorado County and the Shingle Springs Band of Miwok Indians Tribal Court established a joint-jurisdictional, collaborative court for juvenile and family cases across the two jurisdictions.
- Court planning took place in 2014 as a tribal-county team
- The court began hearing cases in 2015

Shingle Springs Band of Miwok Indians

- Established in 1916 through land purchase by BIA.
- 330 Tribal Members.
- 80 residents on the reservation.
- Located within El Dorado County

El Dorado County

- One of 58 Counties in California.
- Rural “Cow County”.
- Population 181, 737.
- Geographically large county.
 - *5 Courthouse locations.*



Location

Challenges

- Historically, conflicts between Tribe and County.
- California is a PL-280 State.
 - *Increased conflicts.*
 - *Decreased Tribal justice system development.*
- Still lack of trust in both communities.
- Tribal Youth getting lost in the system.
 - *Charter School.*
 - *Juvenile records.*

Strengths – Intra - Tribal

- Shingle Springs believes Wellness Court is good governance.
- General funds available to fund the court.
- Established a Wellness Board of key personnel and officials to recommend Wellness plans for individuals.
- Robust health clinic with many services on the reservation.

Strengths – Intra - County

- El Dorado County has extensive experience with “specialty” court models and success
- County Leaders are favorable to progressive approaches to juvenile justice

Strengths – Inter

- Strong relationship with El Dorado County Court since Tribal Court began.
- Tribal Court State Court Forum
- Collaboration on Truancy Cases
 - *Student Attendance Review Board (SARB)*

JOINT JURISDICTION PLANNING



The T.A. Grant

- Tribal Court and County Courts already working together.
- Informal, not a lot of structure.
- Applied for the Technical Assistance grant to develop a Joint Jurisdiction Court.
- Based on the Leech Lake Band of Ojibwe-Cass County Wellness Court Model
- We were honored to be selected!!!

OHSU Project TEAM



- Oregon Health and Science University Project TEAM
- Project TEAM is dedicated to helping tribes and local governments create, implement and manage joint jurisdiction collaborations. Our goals are to improve justice outcomes while building positive community relationships.
- Stay tuned for future TA opportunities

The T.A. Team

- Our Consulting T.E.A.M. (Together Everyone Achieves More) includes:
 - *Judge Korey Wahwassuck – Minnesota District Court of Itasca County*
 - *Judge John Smith – Minnesota Court of Appeals*
 - *Attorney Jennifer Fahey – Jennifer Fahey Consulting, Boston, Massachusetts*
 - *Allison Leof, PhD – Oregon Health and Science University*

Planning Key Steps

- We identified the key players in the planning process; the departments/agencies from the tribal and county sides that we needed in our planning process.
- Shingle Springs Band of Miwok Indians hosted 3 facilitated meetings.
- Work groups were established to work out details of forms, waivers and consents, participant manuals etc...

FAMILY WELLNESS COURT



Vision and Mission

- Collaboratively created a Vision and Mission:
- The Court's Vision: One safe, strong community of thriving families created through trust and healing.
- The Court's Mission: Joining together to provide justice through trust, respect, and love by empowering youth and families to create positive change.

Goals – Part 1

- Administer justice in a safe and supportive environment.
- Reduce incarceration.
- Reduce crime and prevent re-offenses.
- Improve public safety.
- Empower and support our youth and families.

Goals – Part 2

- Promote self-sufficiency through positive behavioral change.
- Promote community and family connections.
- Create more effective, cooperative interventions.
- Foster positive community relations.
- Celebrate cultural diversity and understanding.

What Court Looks Like

- 2 Judges sitting side by side
- One from the County, one from the Tribe
- In the Tribal Courtroom
- Hearing cases and issuing orders together

Initial Target Population

- Juveniles and “transitional youth”
- Up to age 24.
- Not limited to drug offenses.
- No offense restrictions.

Our Actual Caseload

- Caseload has consisted of juvenile dependency and juvenile delinquency cases
- We have also focused on early intervention with team planning and court supervision:
 - *Truancy cases (pre-delinquency-600 petition)*
 - *Voluntary maintenance cases (pre-dependency-300 petition)*

Family Wellness Court “Team”

- In all cases the team works with the family to create a wellness plan to be supervised by members of the team and the judges.
- County probation works with Tribal Probation and takes the lead in delinquency cases.
- County Social Services works with Tribal Services and takes the lead in dependency cases.
- We rely on Tribal Health and Wellness Center for the majority of direct services.
- The Tribal education department and County SARB have major roles as well.
- County DA, Public Defenders and minors counsel play a role on the team as well as the Tribal Attorney.

Advisory Committee

- Continued participation from the larger steering committee/advisory group regarding policies and procedures.
- The Family Wellness Court Advisory Committee meets quarterly to discuss court progress and goals.

CHALLENGES AND GOALS



Goals

- Expanding the jurisdiction of the court to include more case types, other populations
- Serve as a model court for other jurisdictions
- Leverage project success to benefit other, related county and tribal projects

Challenges

- Resources – better outcomes = reduced caseloads = reduced “need”
- Staff intensive work – direct service and supervision heavy cases
- Staff turn over – important to institutionalize the project

We still have work to do but it will be done
and we will be successful in our goals
Questions?

