

# Tribal Justice: Utilizing Indigenous Customs and Beliefs While Navigating Cross-Jurisdictional Issues

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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

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## 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
- But for many, traditional methods, often rooted in religious ceremonies, were lost



# A Guide to Build Cultural Awareness

- Cultural Customs:
  - Specific cultural customs among AI/AN groups may vary significantly, even within a single community.
  - Deeply held values, general world view, patterns of communication, and interaction are often the differences that affect the helping relationship.
  - Respectful questions about cultural customs are generally welcomed, yet not always answered directly.
  - Sharing food is a way to welcoming visitors, similar to offering a handshake.



# CULTURAL IDENTITY

*Each person has experienced their cultural connection in a unique way.*

*Many AI/AN families are multicultural and adapt to their surrounding culture.*



# 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.

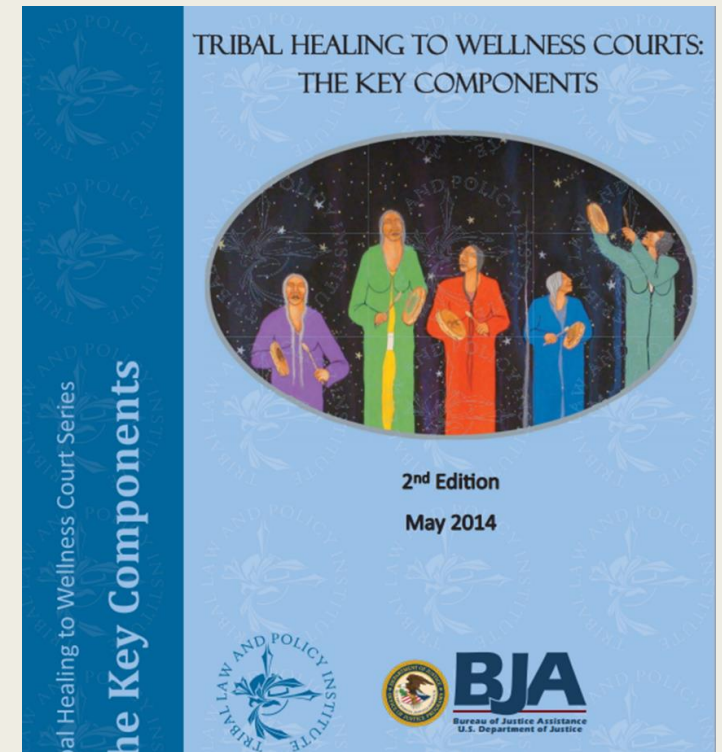
The term “Healing to Wellness Courts” was adopted to

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

# Tribal Key Components

Tribal Key Components recognize

- Community involvement
- Family relationships and involvement
- Culture and Tradition
- Exercise of Tribal Sovereignty







Due Process Court	WMDCP
1. Event oriented, i.e., did a certain crime happen as alleged: Historically, this is the jurisprudential link between the criminal courts and the community.	1. Process oriented, i.e., does the offender have a drug/alcohol addiction and can treatment benefit the offender? This type of process is considered in far more limited types of criminal charges.
2. Offense-specific	2. Behavior-specific
3. The determination of guilt and imposition of sentence is essentially the end of the criminal law process.	3. The determination of addiction and referral to drug court is essentially the beginning of the process.
4. The process is identical for all equally accused persons. Quite often, punishment is mandated to be identical as well. The offender's family is rarely considered in this process.	4. The offender is central to the process and quite often the treatment is individualized. The offender's family and community are viewed as an ingredient in the overall treatment decisions.
5. Judicial interaction exists only with the representatives of the parties.	5. Court team interaction exists directly with the offender.
6. Responsibility equals atonement and punishment. The relationship of the offender to the community is one where, as a result of the adjudication of guilt, the offender is removed from or placed in a condition that protects or shield the community from the offender.	6. Responsibility equals behavioral changes leading to restoration of holistic health. The offender is viewed as a part of the community. As the offender will generally be treated while an outpatient in the community, behavioral change is designed to reduce conflict by reducing addictive behavior.
7. When there is post adjudication monitoring, it is generally designed to uncover violations and therefore done primarily for enforcement of probation terms.	7. There is always extensive post adjudication monitoring. It is always designed to reinforce treatment.
8. The judge is neutral agent among various competitors.	8. The judge is an active participant in a partnership between the offender, the treatment providers, and the court.
9. The legal history supporting this system is approximately 400 years old; change is difficult.	9. The legal history that supports this system is 10 years old; change is relatively easy.

# WAABSHKI-MIIGWAN

*Culture. Family. Community. HOPE!*

The Mission of the WAABSHKI-MIIGWAN (White Feather) Program is to implement a collaborative partnership among the community, service providers, court and adults who face substance abuse challenges and to restore holistic balance using Odawa values and teachings as envisioned by our ancestors to spark the healing and rehabilitation of non-violent addicted offenders.



Little Traverse Bay Bands  
of Odawa Indians  
Tribal Court  
Healing to Wellness Concepts

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## Key Component 1: Individual and Community Healing

- Little Traverse Bay Bands of Odawa Indians' White Feather story



## Key Component 2: Referral Points and Legal Process

- *Consider* referral and transfer agreements:
  - condition of probation;
  - sentence diversion

# Key Component 4: Treatment and Rehabilitation

- Wellness Courts utilize clinical best practices, including
  - *phased treatment,*
  - *individual counseling,*
  - *group counseling,*
  - *cognitive behavioral therapies,*
  - *support groups,*
  - *family therapies*
  - *residential treatment*

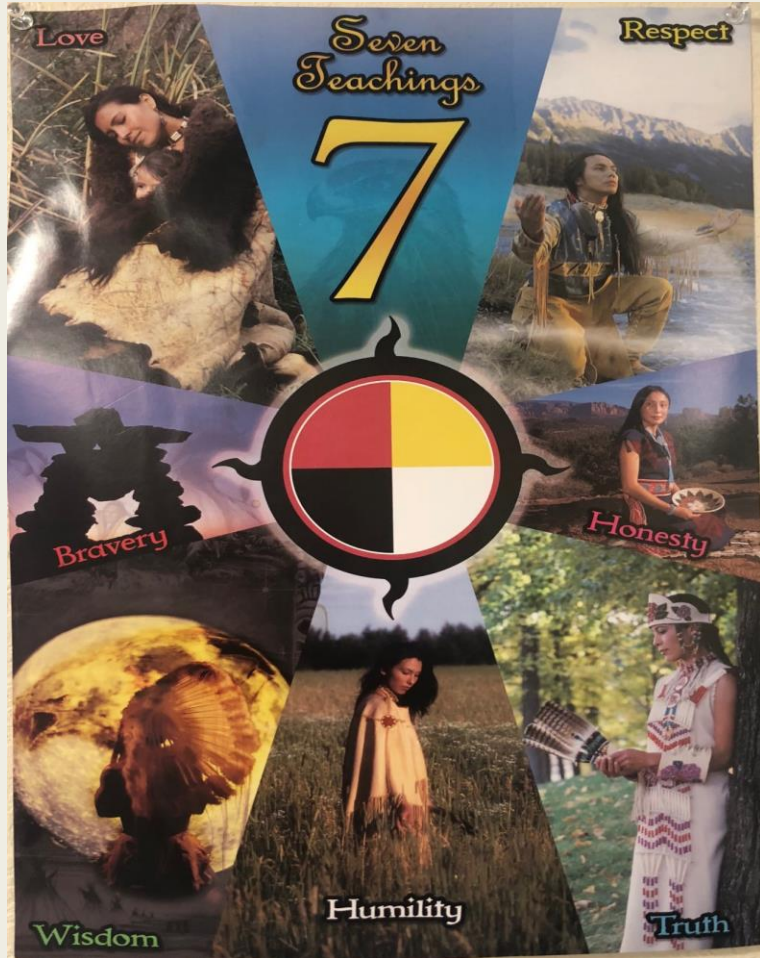


## Key Component 4: Incorporating Culture and Tradition

- Formal native healing treatments, such as
  - *White Bison/Wellbreity*
  - *Cultural Advisor on staff*
  - *Fatherhood/ Motherhood is Sacred*





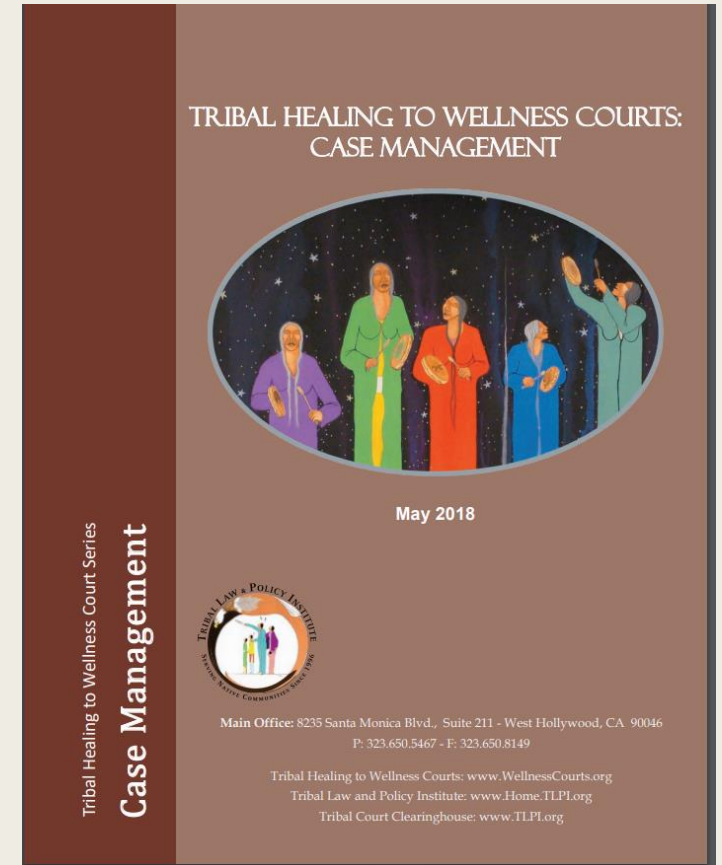


## Key Component 4: Incorporating Culture and Tradition

- Smudging
- Traditional gifts
- Feasts
- Ceremony preparation/clean-up
- Name ceremony
- Native language
- Genealogy assignment
- Craft classes
- Elder community service

# Key Component 5: Intensive Supervision and Case Management

- Case Manager
- Coordinator
- Integrated drug testing protocols
- Probation Officer(s)
- Law Enforcement Officer(s)



# Key Component 7: Judicial Interaction



# SOVEREIGN-TO- SOVEREIGN COLLABORATION

# Collaboration between Sovereigns

- Jurisdictional, administrative, bureaucratic, historical, and cultural conflicts between judiciaries have long impeded their collaborative success, including drug courts.
- However, as courts grow in their sophistication, so too do the creative strategies for collaboration.



# Practical 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

# More Benefits

- Expression and exercise of sovereignty – Community & Nation Building
- Cross-sovereign education & understanding
- Holistic Approach - Culturally Accordant
- Promotes and/or maintains culture & tradition
- Enhances Services to Citizens/Communities



# Barriers to Collaboration

- Collaboration is not telling or being told what to do
- Slippery Slope to becoming a State Actor or Tribal Actor
  - Assume responsibilities without compensation
  - Assume liability
  - Appearance of surrendering sovereignty and/or independence
- When Historical Issues have not been addressed
  - Collaborators must understand the cultural trauma underlying each community
  - Simultaneously, we must move on: empathy over guilt



# 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



# The Tribal Law and Policy Institute

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