

JUSTICE ACROSS BOUNDARIES: DOING JUSTICE AMONGST DIVERSE CULTURES

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WHAT'S THIS GUY TALKING ABOUT?

- How State and Tribal Systems can collaborate to deal with wellness issues in tribal communities

Some realities our justice systems have to be prepared for

- They will be systems primarily for indigenous persons (perps and victims) yet using a non-indigenous approach
- There are many generations of victimization amongst native people that have gone unredressed and this oftentimes surfaces in the form of crime
- If we don't heal victims heal from crime we sentence them to crime so perhaps our primary focus should be the victim and not the criminal



WHY “JUSTICE” IS SO DIFFICULT TO GRASP IN NATIVE COMMUNITIES?



- Native persons are most likely to be the victims of crime (especially native women victims of DV), but also disproportionately more likely to be criminals (Incarceration rate for Indians 38% higher than national average and this does not include tribal court incarcerations)- Maybe there is a correlation?
- In tribal communities (with some exceptions) most crime is Indian on Indian crime while outside it is mostly non-Indian on Indian and Indian victimless crimes

What have we done to respond to crime against and by natives?

- Tribal Law and Order Act- passed in 2010 to much fanfare and tribal support- Designed to strengthen tribal authority over crime and to provide for more resources for federal prosecutions- Did not deal with transracial crime problem in tribal communities
- VAWA reauthorization- attempts to deal with pernicious problem of DV committed by non-Indians against native women in tribal communities when Tribes and States have no authority- Also clarifies tribal court civil jurisdiction

STANDING ROCK SIOUX



What have we observed so far

- According to February 20, 2012 NY Times article federal declination rates have not dropped
 - Syracuse University study shows 52% of federal prosecutions in 2011 declined
 - 65% of sexual assaults on native women declined by federal government
 - 61% of sexual abuse of children cases declined
 - In contrast approximately 20% of cases off-reservation in DOJ wheelhouse rejected

What do Native people think about Justice systems?

- From 2004-2010 the BIA did court assessments and reviews and informally surveyed native people
 - Federal Courts- Too harsh
 - State Courts- Too racist
 - Tribal Courts- Too Corrupt

MANDAN, HIDATSA & ARIKARA



Why do we have transracial crime prosecution problems

- Oliphant v. Suquamish Tribe- Tribes implicitly divested of criminal jurisdiction over non-Indians
- General Crimes Act- 18 USC 1152- Preempts state court jurisdiction over crime in Indian communities except non-Indian on non-Indian crime and non-Indian victimless
- Limited federal resources

SISSETON & WAHPETON

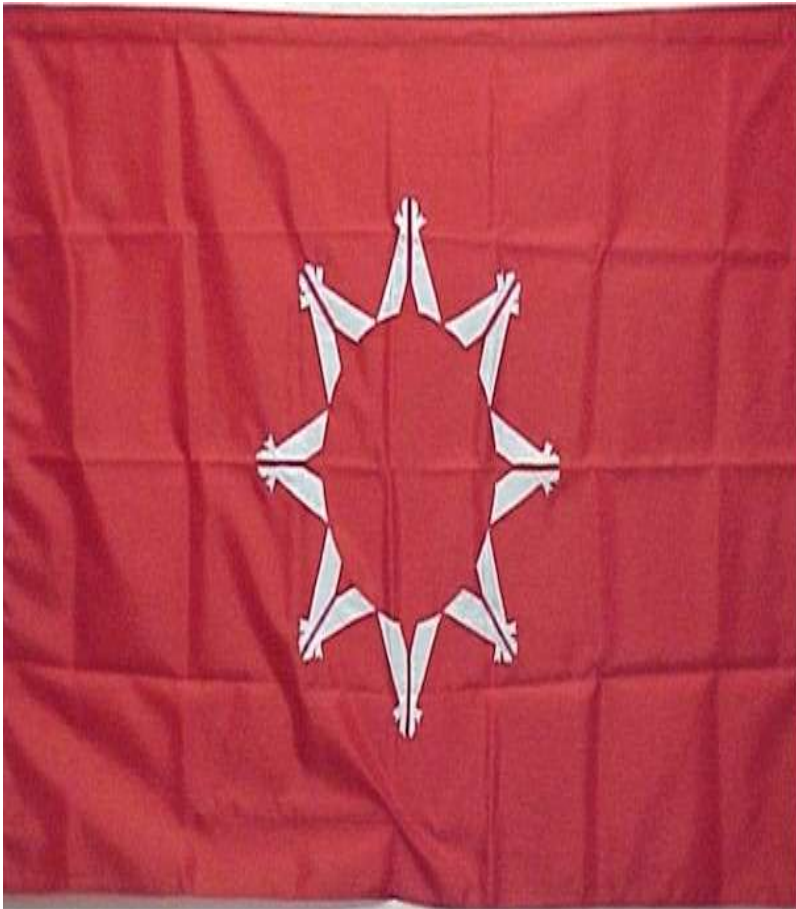


What has hindered doing Justice Across Boundaries?

- Aunt Bea's pickles syndrome- No one likes the taste so we try to change the recipe, but we cannot control the recipe
- Fundamental concerns with the independence of each other's justice systems
- Political fear



Problems in the Civil Arena



- Domestic Violence Protection Orders and full faith and credit
- Who prosecutes a non-Indian, for example, who violates a protection order in a tribal community
- Will states and tribes prosecute violations of the other's protection orders in their jurisdictions?
- Will child custody and visitation orders be honored without registration?

Some possible solutions

- More tribal-state judicial forums
- Sharing criminal justice information (sex offenders, protection orders, juvenile offenders)
- More sharing of resources available to state governments
- Rediscovering tribal justice methods for state and tribal governments, including allowing access to justice for the poor



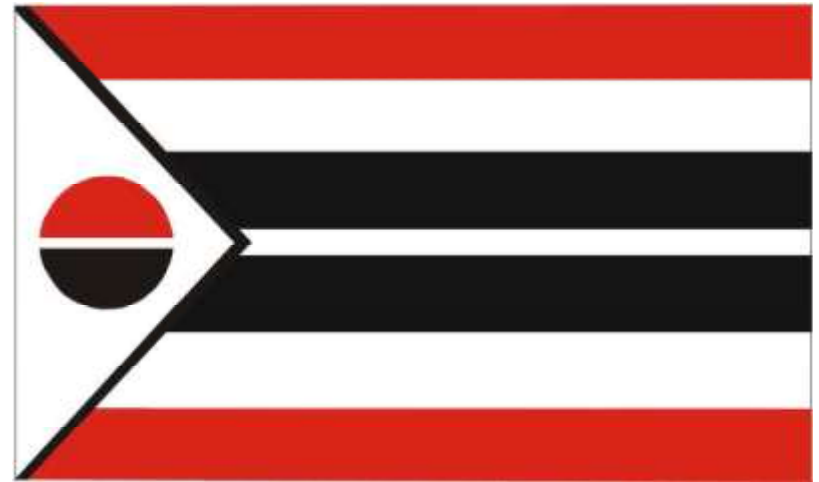
Some urgent problems facing our communities

- Domestic Violence Against Native Women- Transracial and inter-jurisdictional issues
- Introduction of drugs (especially meth and alcohol) into Indian communities by non-Indians
- Over use of pharmacology instead of therapy and traditional healing to respond creating the next drug problem in Indian communities
- More communication on predators entering and leaving Indian country



What would a victim-centered justice system look like?

- More treatment programs, emphasis on therapy (traditional and non-traditional), and more money spent on the playpen than the state pen
- Every victim entitled to be remembered after the perpetrator is jailed
- More emphasis on alternative courts (drug courts) for offenders of drug and alcohol offenses



What's the payoff?

FLANDREAU SIOUX



- A healthy seventh generation
- Incorporating the best of native justice systems and western justice systems

IROQUOIS



- The Iroquois also focused on restoring the offender to good behavior by supplying bad consequences for misbehavior. Any man who beat his wife was led to a red-hot statue of a female, and told to beat it as he beat his wife. As he would beat it sparks would fly off and burn him.
- Sally Roesch Wagner, *Sisters in Spirit, Haudenosaunee (Iroquois) Influence on Early American Feminists*, *Native Voices: TN* (2001), p. 66.

A decorative graphic at the top of the slide consists of a row of five circles. The first circle is solid light purple and contains the word 'OJIBWAY' in black, bold, uppercase letters. The second circle is white with a light purple outline. The third circle is solid light purple. The fourth circle is white with a light purple outline. The fifth circle is solid light purple.

OJIBWAY

- The Ojibway believe that the offender could not have avoided the wrong acts, so there is less blame and forgiveness takes on a different perspective. As a result, when a domestic violence offender was sentenced to jail time and was about to be led off to jail, a circle of fifteen elderly women formed a circle around him and hugged and kissed him and whispered in his ear.
- Rupert Ross, *Dancing with a Ghost, Exploring Indian Reality*, Octopus Publish Group: Ontario (1992) p. 162.