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The Changing Federal Role in Indian Country

by Kim Baca



Before contact with Europeans, Native American communities were largely governed by strong, traditional social structures.

“In ancestral times, people were limited to certain behaviors and all those unwritten rules were well enforced,” explained Hayes A. Lewis, a Zuni Pueblo, New Mexico, tribal member who works with anti-substance abuse and antiviolence programs on the reservation.

“Back then, you didn’t want to embarrass your family or yourself. Our parents used to tell us, ‘If you bring any shame to you, you’re just not shaming yourself, you are shaming your family,’” he added.

The waning of traditional Indian culture and social controls and the introduction and dominance of Western culture have contributed to a public safety crisis in Indian Country today.

While Americans elsewhere are enjoying decreasing crime rates, self-reported data from crime victims indicate that the 1.4 million American Indians living in the U.S. are victims of violent crime at more than twice the rate of all U.S. residents.¹ At the same time, the number of law enforcement officers who patrol the more than 56 million

about the author

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acres of tribal lands in the lower 48 States lags far behind the per capita officer ratio in non-Indian communities.

The public safety crisis in Indian Country has prompted the Federal Government to rethink its approach to crime and justice on Indian lands.

Rethinking Ways to Support Traditional Customs

The Department of Justice launched the Indian Country Justice Initiative (ICJI) in 1995 to streamline the Justice Department’s support for Indian Country. Two tribes were invited to participate in the pilot effort—the Laguna Pueblo in New Mexico and the Northern Cheyenne tribe in Montana.

According to Carol Lujan, the former director of American Indian Studies at Arizona State University who evaluated the initiative, the program “advocated innovative approaches to justice that provided for strengthening traditional mechanisms of social control.”²

For example, Laguna Pueblo, which consists of six villages, created a project to assign nonviolent offenders to work on various projects with leaders within their villages.

Another program, the Mayordomo Project, emphasized collaboration between the traditional justice practices and the contemporary judicial system. Through the project, which derives its name from the Spanish word for elder, the villages elected mayordomos—village elders and spiritual leaders—to handle some disputes, encourage traditional approaches, and oversee the care of the land, including the mending of fences and maintenance of roads and ditches.

The project also fostered mentoring between elders and youth to help young people rediscover their community’s traditional and cultural social order.

The programs have been successful overall, but there is always room for improvement. Even though American Indians had more say on how to tailor projects to their specific needs, they expressed concerns about lack of understanding on the part of the Federal Government. Federal officials had similar complaints. Both sides, however, said the initiative expressed a new way to acknowledge the sovereign status of tribes.

Finding a New Way Through Interagency Collaboration

To continue to improve the relationship between the Federal Government and tribal Nations, the Departments of Justice and Interior

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The CIRCLE Project

In 1997, the Northern Cheyenne tribe noticed a rash of burglaries in its isolated community near Billings, Montana. It wasn't non-tribal members committing the crimes. It was Native community children hooked on methamphetamine. The tribe also was seeing more violent activity.

"We had a youth murdered and stabbed 60 to 80 times," recalled Kim Dahle, Northern Cheyenne tribal member and coordinator of the tribe's Community Justice Program, "and we didn't have full law enforcement."

Tribal officials, concerned about safety in their community, applied for the first collaborative grants available under the 1995 Indian Country Justice Law Enforcement Initiative. This initiative, created by the U.S. Department of Justice, was a comprehensive and innovative program to improve criminal justice and strengthen the working relationship between tribes and the Federal Government.

The program's biggest advantage was that it focused on the rising crime rates in Indian Country through a multiagency strategy involving many DOJ offices and programs committed to reducing child abuse and substance abuse and improving law enforcement. These efforts evolved into the Comprehensive Indian Resources for Community and Law Enforcement (CIRCLE) project.

The CIRCLE project is a 3-year Federal effort that seeks to find effective ways to address public safety in Indian Country. The project promotes the exchange of ideas and experiences and fosters coordination among the tribes for more efficient use of resources.

Perhaps most importantly, it focuses on the development and implementation of a comprehensive strategic plan as well as streamlines DOJ resources so that tribes can apply for grants through a single application.

CIRCLE's guiding principles are based on an understanding that: (1) the most effective solutions to the problems faced by tribal communities are likely to come from within the communities themselves, rather than being imposed by the Federal Government, and (2) the problems to be addressed require a comprehensive approach that incorporates coordinated and multidisciplinary efforts.

DOJ's funding partners and their commitments are as follows:

- The Office of Community Oriented Policing Services (COPS) is providing fully trained and equipped officers.
- The Corrections Program Office is supporting construction of detention facilities.
- The Bureau of Justice Assistance is combining technical assistance and funding for enhancement of tribal courts.
- The Office of Juvenile Justice and Delinquency Prevention is funding activities to enhance the tribal juvenile justice system and address gangs and substance abuse.
- The Office for Victims of Crime is funding activities related to child abuse.
- The Violence Against Women Office is supporting activities to address violence against native women. (See "Protecting Indian Women From Domestic Violence" by Eileen Luna, *NIJ Journal*, January 2001, page 28.)

- The Office of the Comptroller within the Office of Justice Programs is providing assistance in supporting financial enhancement activities.

Northern Cheyenne, Pueblo of Zuni, and Oglala Sioux are the three Indian communities that are pilot grantees.

Northern Cheyenne, which began receiving Federal funds in 1995 as part of the Indian Country Justice Law Enforcement Initiative, has seen significant changes in the community. Dahle said the tribe's first juvenile probation officer was hired, more cops were hired, and more youth programs were established at the Boys and Girls Club. The tribe also has tried to integrate traditional activities as an alternative to drugs with the creation of a youth drum group.

"We knew what the issues were, and we had tried to work on them for years. And then the opportunity came up to strengthen our programs," Dahle said. "It's been a lot of work, but we've been successful. We've been able to put a lot more resources into the community."

At Pine Ridge, South Dakota, the Oglala Sioux tribe has seen a reduction in gang activity and domestic violence since the CIRCLE project was initiated, according to Bart Mardanian, former Oglala CIRCLE program coordinator. Prior to the CIRCLE funding, there were few repercussions for either juvenile delinquents or domestic violence offenders. Courts were understaffed and manually operated. Only 40 officers patrolled the reservation's 54 small communities.

But Mardanian said many of the problems have decreased since 1999, when the first round of funding was received. He says the tribe also has returned to its roots in trying to rehabilitate offenders through the Court-Appointed Special Advocate (CASA) program.

“There is a resurgence of people across the reservation to get back to the traditional way of life,” he said. “Many times, the children who are facing challenges are encouraged to attend various religious ceremonies to help them cope with their problems.”

Mardanian said gang activity has risen over the last 6 years with the influence of television on reservation youth trying to mimic urban life.

“We are caught up in a quandary of who we are as a people—whether we should go back to the old ways or adopt new ways. We’re going to have to find an equilibrium,” he said.

NIJ is now evaluating CIRCLE through a grant to the Project on American Indian Economic Development at Harvard University.

The evaluation will focus on the development, implementation, and outcomes of CIRCLE.

An evaluation team member affiliated with a local college will be available at each site for the duration of the evaluation to provide feedback to both the sites and the CIRCLE project’s evaluation subcommittees. Project sites will be asked to comment on how this participatory evaluation should be put into operation for the project as a whole.

joined tribal leaders in forming an executive committee to more thoroughly analyze crime and justice problems on tribal lands. The committee’s key findings included:

- Serious and violent crime, such as child sexual and physical abuse, was rising significantly in Indian Country, in sharp contrast to national trends.
- Law enforcement in Indian Country often failed to meet basic public safety needs.
- The single most glaring problem was the lack of adequate resources.³

Following up on the executive committee recommendations, the Attorney General and Secretary of the Interior recommended that spending be increased to address the public safety crisis by providing resources for tribal justice systems. The DOI-DOJ collaboration became known as the Indian Country Law Enforcement Improvements Initiative.

Another collaborative funding initiative involving a number of DOJ offices became known as the Comprehensive Indian Resources for Community and Law Enforce-

Table 1: Congressional Appropriations			
Indian Country Law Enforcement Improvements Initiative			
	Fiscal Year 1999	Fiscal Year 2000	Fiscal Year 2001
Tribal correctional facilities	\$34 million	\$34 million	\$34 million
COPS Tribal Resources Grant Program	\$40 million	\$40 million	\$40 million
Tribal courts	\$5 million	\$5 million	\$8 million
Tribal youth	\$10 million	\$12.5 million	\$12.5 million
FBI	50 positions (30 agents and 20 support staff)		
U.S. Attorneys			\$5 million for 60 positions, including 33 attorneys
Bureau of Justice Statistics (tribal criminal justice statistics)			\$2 million
Alcohol and crime demonstration grants			\$5 million

ment (CIRCLE) project. (See “The CIRCLE Project.”)

In fiscal year 1999, Congress appropriated and DOJ dispersed \$89 million in grants to more than 120 tribes throughout Alaska and the lower 48 States for the following activities:

- Police staffing, training, and equipment (\$40 million).

- Tribal correctional facilities (\$34 million).
- Juvenile justice programs (\$10 million).
- Tribal courts (\$5 million).

Other programs and offices within DOJ were awarded grants to improve victim services for women and children and to establish tribal drug courts.⁴

Tribal Sovereignty and the Department of Justice

In 1994, an executive memorandum was issued on government-to-government relations with Native American tribes. The memorandum reaffirmed the Federal Government's unique legal relationship with tribes under treaties signed more than 100 years ago.

The United States recognizes the sovereign status of Indian tribes as "domestic dependent nations," based on *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1, 17 (1831). Also, in early treaties, the United States pledged to "protect" and ensure the "welfare" of Indian tribes, therefore establishing one of the bases for the Federal trust responsibility.

Based on this early case law, all branches of the Federal Government were directed to

consult with all Indian tribal governments before taking actions that would affect those tribes. DOJ, like some other Federal agencies, took the directive a step further and committed itself to assisting Indian tribal governments in strengthening their justice systems.

After the executive memorandum was issued, Federal officials sponsored a historic Listening Conference in New Mexico in 1994, where tribal leaders expressed their concerns about safety on the reservation while reaffirming the importance of sovereignty between the U.S. Government and Indian nations.

Acknowledgment of sovereignty, however, isn't an easily understood

issue, as many American Indians relayed.

"It's been hard sometimes to make them realize that we are a sovereign nation and that we are capable of running our own successful programs," said Kim Dahle, Community Justice Program coordinator for the Northern Cheyenne tribe in Montana. She said one of the main problems is that Federal officials don't know the culture or justice issues on the more than 500 sovereign nations in the United States. Federal officials said they have heard these complaints and are trying to learn. They want to give American Indian communities the tools and resources they need to improve safety and justice.

While an important aspect of the Department's efforts has been the combined funding of Federal agencies to support tribes, the most significant component is the Initiative's encouragement of a government-to-government relationship that better appreciates tribal leaders' decisionmaking role.

"We were trying to avoid the mistakes of the past by saying, 'This is the right way to do it,'" said Philip Baridon, a senior policy analyst in DOJ's Criminal Division. "In a way, we are trying to conceptualize the government-to-government relationship that the law recognizes but hasn't always practiced." (See "Tribal Sovereignty and the Department of Justice.")

Collaborative Funding Maximizes Resources

The collaborative Federal funding from DOJ offices and the streamlined grant-making process will help tribes pull together resources to develop even better planning efforts and treatments for some of their most ailing social problems.

For example, according to Hayes Lewis, the Pueblo of Zuni substance abuse and antiviolenace programs administrator, the Pueblo in north-eastern New Mexico used the funding from several agencies to hire four more law enforcement officers, buy equipment, provide training (especially in community policing), streamline the court system, and develop a youth leadership program.

But while the Department of Justice is off to a good start by streamlining

the way it awards CIRCLE grants, some Indian program administrators say some Federal employees still have no understanding of American Indian culture. Indian program administrators also complain of high turnover among Federal program directors. However, Federal employees have the same complaint about high turnover among tribal administrators.

Other questions or concerns on the part of some Federal personnel and congressional lawmakers include the rising economic power of various tribes as a result of casino gambling. Of the 561 federally recognized tribes, 195 operate some type of gambling operation, totaling 309 gaming locations in 28 States. But only about 5 percent make a sizable income for the tribe's operations, according to the National Indian

Gaming Commission.⁵ Twenty-two tribal operations account for 56 percent of the revenue.

“What we are looking to do is make this initiative more than a temporary fix,” said Todd Araujo, deputy director of the Office of Tribal Justice. “We are seeking permanent funding to provide tribes a base for infrastructure. For example, tribes that receive money from the COPS program will get funding for 3 years, after which the tribe is obligated to pick up the tab. The problem is that most tribes will not significantly improve their economic status in 3 years, nor will the need for police disappear in that time period.”

“The Department of Justice’s primary involvement in Indian Country prior to this initiative was to investigate and prosecute crimes,” said Araujo. “This recent shift in policy seeks to empower tribes to combat crime at the local level by enhancing programs designed to better their own justice systems, just as the Department does with State and local government.”

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For More Information

- Visit the Office of Tribal Justice, U.S. Department of Justice, at <http://www.usdoj.gov/otj>.
- Attorney General Policy Directive, “Department of Justice Policy on Indian Sovereignty and Government-to-Government Relations With Indian Tribes,” Office of the Attorney General, June 1, 1995. Available on the Web site of the U.S. Department of Justice, Office of Tribal Justice, November 24, 2000, <http://www.usdoj.gov/otj/sovtrb.htm>.
- Wakeling, Stewart, Miriam Jorgensen, and Susan Michaelson, “Policing on American Indian Reservations,” *NIJ Journal*, January 2001: 2 (NCJ 186185).

Notes

1. Greenfield, Lawrence A., and Steven Smith, “American Indians and Crime,” U.S. Department of Justice, Bureau of Justice Statistics, Washington, DC, February 1999 (NCJ 173386).
2. Lujan, Carol Chiago, James Riding In, and Rebecca Tsosie, “Justice in Indian Country: A Process Evaluation of the U.S. Department of Justice Indian Country Justice Initiative,” Final Report, Executive Summary, April 1998: 7 (NCJ 181048).
3. The executive committee’s report and a list of members can be found in “Report of the Executive

Committee for Indian Country Law Enforcement Improvements: Final Report to the Attorney General and Secretary of the Interior,” October 1997. Available on the Web site of the U.S. Department of Justice, Office of Tribal Justice, November 24, 2000, <http://www.usdoj.gov/otj/icredact.htm>.

4. For example, funds were awarded by the Office for Victims of Crime under the Children’s Justice Act for Native American Communities and Victim Assistance in Indian Country, by the Violence Against Women Office under the Violence Against Indian Women Discretionary Grant program, and by the Drug Court Program Office under the Tribal Drug Courts Program.
5. Kyle Nayback, Director of Congressional and Public Affairs, telephone interview, August 2000. See also National Indian Gaming Commission, Indian Gaming Facts, at <http://www.indiangaming.org/library/index.html> (October 31, 2000). Note: Pueblo of Zuni and Northern Cheyenne do not have casino gambling. Oglala Sioux has a limited gaming operation.

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