# FUTURE TRENDS IN STATE COURTS

## 2012

## *Meaningful and Ongoing Engagement of Tribes and State Courts in Child Protection*

*by Alicia K. Davis and Gina Jackson*

NCSC
National Center for State Courts

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# MEANINGFUL AND ONGOING ENGAGEMENT OF TRIBES AND STATE COURTS IN CHILD PROTECTION*

**Alicia K. Davis**
Principal Court Management Consultant, National Center for State Courts

**Gina Jackson**
Model Court Liaison, National Council of Juvenile and Family Court Judges

*The Indian Child Welfare Act of 1978 requires states to "protect the best interests of Indian children." Many states are collaborating with tribal courts and leaders in innovative ways to ensure permanency and safety for Native American children.*

Theresa Pouley, chief judge of the Tulalip Tribal Court, and Indian law and order commissioner, testified before the United States Senate Committee on Indian Affairs last September:

> Some state court systems are beginning to recognize that tribal courts can and should be important partners in the administration of justice in this country. . . . [T]ribal courts are being recognized for their often innovative and effective operations.

Collaboration and authentic engagement with tribal communities is a best practice. It needs to happen at federal, state, and local levels to ensure compliance with the Indian Child Welfare Act (ICWA) and eliminate the disproportionate representation of Native American children in the child welfare system. Congress passed ICWA in 1978 in response to the alarmingly high number of Indian children being removed from their homes by both public and private agencies. Congress declared it is the policy of this Nation to "protect the best interests of Indian children and to promote the stability and security of Indian tribes and families" (25 U.S.C. § 1902). Each state court is charged to work diligently and creatively to collaborate meaningfully with the state child welfare agency, as well as with Indian tribes, to ensure safety, permanency, and well-being for children. This article considers recent policy and program developments that support state-tribal collaboration in child welfare with examples that demonstrate meaningful and ongoing collaboration with a commitment to respect and mutual learning.

> It's about our children and our cultures. If we listen to our young people they will lift us out of darkness (Judge Deloresa Cadiente, former chief justice of the Central Council of the Tlingit and Haida Indian Tribes of Alaska).

## State Court Improvement Program Requirements

In 1993 Congress created the Court Improvement Program (CIP) in each state to improve the handling of child abuse and neglect cases. State courts are required to demonstrate "meaningful, ongoing collaboration" between the courts, social services, and Indian tribes as applicable. "Meaningful, ongoing collaboration" means that courts and agencies will identify and work toward shared goals and activities to increase the safety, permanency, and well-being of children in the child welfare system. Courts must also form a statewide, multidisciplinary task force, which should include tribal representation. The *2010 Census Briefs* report that 78 percent of Native American people live outside of American Indian and Alaska Native areas (Norris, Vines, and Hoeffel, 2012). In cities or states without tribes, there are often Native urban organizations that can bring tribal voices to the table.

For the first time since the creation of CIP, limited funding will be available to tribes through a competitive process. In support of tribal CIP, the National Council of Juvenile and Family Court Judges (NCJFCJ) stated that "building tribal court capacity is an important component to ensure that American Indian and Alaskan Native children are served in their own communities." The development of tribal CIP, in conjunction with state CIP mandates, can lead to a cross-pollination of ideas, from government to government and court to court, creating a learning community that encompasses state and tribal court colleagues and changing the causal factors that bring children, youth, and families into child welfare systems.

## Meaningful Collaboration Between State Courts and Tribes

State courts across the country are beginning to involve tribes in state CIPs, developing relationships built on mutual respect, learning from one another, and acknowledging the historical trauma experienced by Indian people. Acknowledging

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the local history and experience of the state-tribal relations is foundational to developing authentic relationships. As states take steps in fulfilling the mandate of meaningful collaboration, it is imperative for states to understand how respect is demonstrated in tribal communities and to ensure the collaboration is truly meaningful to tribes.

## State-Tribal Court Engagement

A number of states have tribal representation on their state's CIP committee, which is essential to foster better understanding among justice systems and to enhance proper ICWA enforcement.

- Since 2009, the North Carolina CIP served as an ad hoc member of the state's Commission of Indian Affairs' Standing Committee on Indian Child Welfare. The committee's mission is to advocate for the rights of Indian families, tribes, and children with regard to suitable and culturally relevant foster care and adoption placement.
- In an effort to engage the state judicial systems, the Alabama-Coushatta Tribe of Texas hosted a Tribal-State Judicial Symposium. Participants learned about the tribe's court system, including their peacemaking court, which uses a cultural foundation and traditional model of problem solving as a cutting-edge best practice to approach family issues, including dependency matters. Said Judge William Thorne of the Utah Court of Appeals and NCJFCJ Trustee: "This was an example of how with open minds and good will, parallel judicial systems can learn from each other—discovering new approaches to serving communities and avenues for cooperation."

The Alabama-Coushatta State-Tribal Symposium, Texas

Many tribes have welcomed visits from CIPs and their state court counterparts. In August 2011, the Colorado CIP took a team of representatives to meet with leaders from the Ute Mountain Ute Tribe, Navajo Nation, and Southern Ute Tribe to foster greater respect and understanding regarding child welfare in the state and tribal courts. The CIP team learned about historical trauma, the creation of reservations, and the removal of Indian children to be placed in boarding schools. They also learned about the Navajo Nation Peacemaking Court, which is a renowned restorative justice program. Participants said that the visit helped the state move beyond the legal requirements of ICWA to an awareness of the trauma generated by earlier policies and an understanding that respecting ICWA is as important as applying ICWA. The Colorado CIP also witnessed the importance of family and culture within the Native American communities and the importance of building relationships that build strong communities.

> [T]he court becomes a community – less punitive, a place for healing, for repairing, and for peacemaking. The greatest lesson that we took away from the visit was the importance of community and the development of community on a systems level (Bill DeLisio, Colorado Family Law Programs Manager).

## Collaboration Through Forums and Consortia

Collaborative forums and consortia can promote resolution of jurisdictional conflicts and interjurisdictional recognition of judgments. Many of these consortia

originated from Walking on Common Ground, an ongoing initiative to promote and facilitate collaboration between tribal, federal, and state justice communities.

- In 1997 the New Mexico Supreme Court created the statewide Tribal-State Judicial Consortium to facilitate communication and collaboration between state and tribal judges. Rich collaborative training has been developed on court orders, IV-E funding, and the tribal best practice of traditional adoptions. Last year, the Pueblos of Laguna and Jemez hosted regional meetings on the rights of incarcerated parents of Indian children involved in the child abuse/neglect system. Through presentations by the Children's Law Center; tribal and state judges; staff of the New Mexico Children, Youth and Families Department, Department of Corrections, and Navajo Department of Justice; and national tribal advocates, a report was published to clarify policies, procedures, and culturally appropriate services.
- Several states have strong collaborative judicial groups, such as Wisconsin and California. New groups are emerging in other states, such as Nebraska and Washington.


The "Connecting Legacies" conference in Arizona: Judge Melvin Stoof, Pascua Yaqui Tribe; Judge Kathleen Quigley, Pima County Juvenile Court; Judge William Thorne, Utah Court of Appeals; and Caroline Lautt-Owen, Director of Dependent Children's Services Division, Arizona Administrative Office of the Court (l to r).

The State-Tribal ICWA Conference in Mississippi

## Collaborative Training

Many issues of noncompliance with ICWA can be significantly addressed by cross-training and communication. There are a number of examples of states and tribes collaborating to provide ICWA training.

- This past year the Arizona CIP, in collaboration with several Arizona tribes, held a conference, "Connecting Legacies Working Hand in Hand with ICWA," with 300 attendees. As a result of close state-tribal relationships, Judge Kami Hart of the Gila River Indian Community and Judge Kathleen Quigley of the Pima County Juvenile Court spearheaded the formation of an ICWA workgroup in the Arizona State, Tribal, and Federal Forum to improve ICWA compliance.
- The Mississippi CIP is working with the Mississippi Band of Choctaw Indians to plan its 2nd Annual State-Tribal ICWA Conference and develop a collaborative ICWA curriculum. The first gathering resulted in setting priorities for state and tribal judges, caseworkers, and other system stakeholders. Mississippi has included the tribe as a valued partner on the state CIP team, which is an excellent example of partnership based on respect and trust.
- Minnesota held a series of statewide Children's Justice Initiative Meetings, attended by nearly 1,000 judges, court administrators, attorneys, social workers, tribal representatives, and others. One of the key topics addressed was "Partnering with Tribes to Achieve Timely Permanency for

Indian Children," presented by Anita Fineday, former chief judge of the White Earth Tribal Court. The presentation helped improve state-tribal court relationships and outcomes for Indian children.

- Last year, the Indiana CIP invited Chief Judge Michael Petoskey of the Pokagon Band of the Potawatomi Tribal Court to speak at the annual meeting of juvenile court judicial officers. Judge Petoskey spoke about common judicial ground and the band's desire to develop strong, positive, and cooperative relationships with those working in the child welfare and juvenile justice system.

## Tools for ICWA Performance Improvement

As states and tribes move toward increasing ICWA compliance, it is imperative that tools and resources are available to collect baseline/ongoing data. Wisconsin established an ICWA review instrument after completing numerous focus groups with tribal representatives about the types of issues that arose in cases involving Indian children. This consultation with focus groups was instrumental in establishing a state-specific requirement for proof of notice to be included in the court files. These reviews have been tremendously beneficial in encouraging ICWA compliance in Wisconsin.

The QUICWA Compliance Collaborative is a national consortium of Indian tribes, urban organizations, and advocacy groups who work on Indian child welfare issues using ICWA compliance data to advocate for change in the behaviors, practices, and policies of individual child welfare agencies throughout the country. The QUICWA Compliance Collaborative uses the data to identify ICWA compliance trends across individual agencies and uses those local trends to influence ICWA policy at the national level. QUICWA has been integral in the development of ICWA compliance work and tools. Along with QUICWA, the following organizations have made great strides in capturing ICWA compliance:

*Successful collaborative efforts built on respect, cooperation, and mutual responsibility will ultimately light a path toward better outcomes for Native children.*

- NCJFCJ has developed an *ICWA Compliance-Court Readiness and Implementation Continuum* based upon the innovative work of Tribal STAR and the American Indian Enhancement Project's Implementation Toolkit, which helps courts assess their current level of "readiness" for implementing provisions of ICWA and for assessing compliance.
- The NCJFCJ, in collaboration with QUICWA, has updated an ICWA checklist to be used by judges, attorneys, caseworkers, tribes, and system stakeholders to provide baseline data as to improve ICWA performance in courts across the nation.
- Casey Family Programs is working with QUICWA and Michigan State University Law School's Indigenous Law and Policy Center to collect data. Other states such as Washington may be sites for similar projects.
- The University of Minnesota at Duluth will have students use the QUICWA tool and observe court hearings in the Minnesota state courts.

## Collaboration Using Technology

State court systems with a statewide case management system can and should share child welfare information with tribal courts in their states. Tribal courts have not had the same access to funding for developing case management systems.

Many states are including tribal court contact information on their Web sites to encourage communication. California posts a *Tribal Courts Directory*, which provides descriptions and contact information. They are also working to pilot an innovative ICWA e-noticing project with the National Center for State Courts to provide electronic notice in lieu of registered, certified mail in ICWA cases. This project will focus on expediting notice to tribes and reducing costs for states.

## Resolutions in Support of State-Tribal Collaboration to Protect Children

The Conference of Chief Justices (CCJ) and Conference of State Court Administrators (COSCA) unanimously adopted "Resolution 5: To Encourage Greater Collaboration Between State Courts and Tribal Courts to Protect Native American Children" last year. NCJFCJ, in partnership with tribal judicial leaders, resolved that tribal courts should be treated as equal and parallel systems of justice. The National Association for Court Management (NACM) resolved last year to "work with the tribal courts, tribal councils and other tribal authorities to ensure

equal treatment of all native families and children at all levels of government." The resolutions signal intent and demonstrate commitment serving as a guidepost for action.

> WHEREAS, tribal courts serve the children and families of sovereign nations with the same authority and responsibility as state courts; and
>
> WHEREAS, collaboration between state courts and agencies responsible for child protection and education has greatly contributed to the improvement of the process and outcomes of child protection cases around the country; and
>
> WHEREAS, the federal Indian Child Welfare Act (ICWA) requires close communication and cooperation between state and tribal courts when a Native American child not residing in Indian Country is removed from her/his home or is offered for adoption; and
>
> WHEREAS, close communication and cooperation between state and tribal courts have been inhibited by: the lack of contact information for tribal judges in many states; the difficulty in electronically exchanging information regarding child protection cases between tribal and state courts; the lack of information regarding the requirements of ICWA, the reasons for those requirements, and the relationship of ICWA to other federal legislation on child welfare such as the Adoption and Safe Families Act (ASFA) and the Fostering Connections Act;
>
> NOW, THEREFORE, BE IT RESOLVED that the Conference of Chief Justices encourages each court system in states that include Indian Country to:
>
> (1) Encourage the state court judges who hear child protection and adoption cases to communicate and collaborate with their tribal court counterparts when a Native American child or family may be involved in a case;
>
> (2) Provide a brief discussion and description of the state's tribal courts in new judge orientation programs and materials;
>
> (3) Include on the state court website contact information for each tribal court in the state;
>
> (4) Offer each tribal court in the state the case management system module(s) on child protection used by the state; and
>
> (5) Present training on the requirements of ICWA and the relationship of ICWA to other federal legislation on child welfare such as the ASFA and the Fostering Connections Act for state court judges and invite tribal judges to participate in that training.
>
> CCJ/COSCA Resolution 5 (January 2011)

## Conclusion

There is a tremendous opportunity for state courts and tribes not only to collaborate but to learn from one another to meet the needs of children and families in a culturally appropriate manner. The federal mandate that state CIPs engage in meaningful and ongoing collaboration with tribes is a solid beginning, a foundation to build upon. These examples of innovative state-tribal collaboration require working together to develop a common vision of safety, permanency, and well-being that can lead toward improved relationships and compliance with ICWA. Successful collaborative efforts built on *respect, cooperation, and mutual responsibility* will ultimately light a path toward better outcomes for Native children.

## ENDNOTES

*This article is dedicated to Judge Deloresa Cadiente (1947-2011), former chief justice of the Central Council of the Tlingit and Haida Indian Tribes of Alaska, a champion for honoring tribal sovereignty through unity and advocacy. You have challenged us and inspired us to move forward with vision.

## RESOURCES


American Indian Enhancement Project of California (2011). "Implementation Toolkit for the American Indian enhancement Project." http://calswec.berkeley.edu/CalSWEC/AIE/AIE_home.html

California's Center for Families, Children and the Courts, Tribal Projects Unit. www.courts.ca.gov/programs-tribal.htm

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— (2011b). "Resolution in Support of Tribal Courts." Adopted by the NCJFCJ Board of Trustees, St. Petersburg, Fla., January.

National Council of Juvenile and Family Court Judges. www.NCJFCJ.org

National American Indian Court Judges Association. www.naicja.org

National Indian Child Welfare Association. www.NICWA.org

National Resource Center for Tribes. www.NRC4Tribes.org

National Urban Indian Family Coalition. http://nuifc.org

Native American Rights Fund. www.narf.org

Navajo Tribal Courts. www.navajocourts.org

Norris, T., P. L. Vines, and E. M. Hoeffel (2012). "The American Indian and Alaska Native Population: 2010," *2010 Census Briefs*, U.S. Census Bureau, January. www.census.gov/prod/cen2010/briefs/c2010br-10.pdf

Stenzel, P. (2009). "Full Faith and Credit and Cooperation Between State and Tribal Courts: Catching Up to the Law," 2 *Journal of Court Innovation* 225.

Tribal STAR, a program of the Academy for Professional Excellence, San Diego State University School of Social Work. http://theacademy.sdsu.edu/TribalSTAR/resources/Resource_List.htm

Walking on Common Ground. http://walkingoncommonground.org/index.cfm

NCSC
National Center for State Courts

300 Newport Ave.
Williamsburg, VA 23185-4147
Phone (800) 616-6164

**DENVER, CO**
707 17th St., Ste. 2900
Denver, CO 80202-3429

**ARLINGTON, VA**
2425 Wilson Blvd., Ste. 350
Arlington, VA 22201-3320

**WASHINGTON, DC**
111 Second St., NE
Washington, DC 20002-7303

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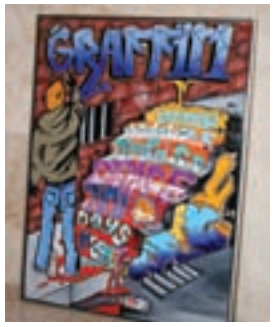


Justice Eileen C. Moore was charged with finding artwork for the new 4th District Court of Appeal building in Santa Ana, California with no budget. She contacted the school superintendent and then the probation department got involved. Students read court cases and depicted them in murals. This year's Trends cover was created by a 17 year old at Juvenile Hall. The case involved gang violations and disfiguring a public place and the young artist had also been charged with graffiti crimes. The resulting mural hangs in the courthouse, along with more than a dozen other paintings depicting Orange County, California cases.

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