

# **Improving the Relationship between Indian Nations, the Federal Government, and State Governments: Developing and Implementing Cooperative Agreements or Memorandums of Understanding**

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## **Native American Topic-Specific Monograph Series**

### **Purpose**

The purpose of the Native American Topic-Specific Monograph project is to deliver a variety of booklets that will assist individuals in better understanding issues affecting Native communities and provide information to individuals working in Indian Country. The booklets will also increase the amount and quality of resource materials available to community workers that they can disseminate to Native American victims of crime and the general public. In addition to the information in the booklet, there is also a list of diverse services available to crime victims and resources from the Department of Justice.

### **Acknowledgements**

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CCAN believes that the information contained herein is factual and that the opinions expressed are those of the consultants/writers. The information is not however, to be taken as warranty or representations for which the Center on Child Abuse and Neglect assumes legal responsibility. Any use of this information must be determined by the user to be in accordance with policies within the user's organization and with applicable federal, state, and tribal laws and regulations.

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# **Improving the Relationship Between Indian Nations, the Federal Government, and State Governments: Developing and Implementing Cooperative Agreements or Memorandums of Understanding (MOUs)**

In order to effectively address criminal justice issues in Indian Country and services for victims of crime in Indian Country, it is vital that productive efforts are made to improve the relationship between Indian Nations, the federal government, and state governments. The first step required in any effort to improve these relationships is an understanding and recognition of the unique sovereign status of Indian Nations. Second, contemporary problems in the relationship between these governments should be examined. Third, recent examples of efforts to improve the relationship between these governments should be reviewed. Then, the potential use of written cooperative agreements - such as Memorandums of Understanding (MOUs) - to improve the relationship between these governments should be examined. Finally, practical tips for developing and implementing written cooperative agreements should be reviewed.

## ***I. Unique Sovereign Status of Indian Nations***

Any effort to improve the relationship between Indian Nations, the federal government, and state governments must begin with an understanding and recognition of the unique sovereign status of Indian Nations. The Congressional findings in the 1993 Indian Tribal Justice Act provides a brief overview of the basic concepts of this unique sovereign status as follows:<sup>1</sup>

The Congress finds and declares that-

- 1) there is a government-to-government relationship between the United States and each Indian tribe;

the United States has a trust responsibility to each tribal government that includes the protection of the sovereignty of each tribal government;

- 2) Congress, through statutes, treaties, and the exercise of administrative authorities, has recognized the self-determination, self-reliance, and inherent sovereignty of Indian tribes;
- 3) Indian tribes possess the inherent authority to establish their own form of government, including tribal justice systems;
- 4) tribal justice systems are an essential part of tribal governments and serve as important forums for ensuring public health and safety and the political integrity of tribal governments;
- 5) Congress and the Federal courts have repeatedly recognized tribal justice systems as the appropriate forums for the adjudication of disputes affecting personal and property rights;
- 6) traditional tribal justice practices are essential to the maintenance of the culture and identity of Indian tribes and to the goals of this Act;

In April 1994, President Bill Clinton reinforced the longstanding federal policy supporting self-determination for Indian Nations and directed federal agencies to deal with Indian Nations on a government-to-government basis when tribal governmental or treaty rights are at issue.<sup>2</sup> Every President since Lyndon Johnson has formally recognized the sovereign status of Indian Nations.<sup>3</sup>

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<sup>1</sup> Indian Tribal Justice Act (Public Law 103-176), 25 U.S.C. 3601.

<sup>2</sup> See memorandum for the heads of executive departments and agencies on the subject of government-to-government relations with Native American tribal governments. Public Papers of the Presidents of the United States, William J. Clinton. 1994, Book 1 at 800-803.

<sup>3</sup> For previous policy statements, see "The Forgotten American," Message from President Lyndon B. Johnson, March 6, 1968, H.R. Doc. 90-272; "The American Indians", Message from President Richard M. Nixon, July 8, 1970, H.R. Doc. 91-363; "Statement on Indian Policy," January 24, 1983, Public Papers of the Presidents of the United States, Ronald Reagan. 1984 Book 1 at 90-100;

## **II. Contemporary Problems in the Relationship Between Indian Nations, the Federal Government, and State Governments**

There are a wide range of contemporary problems in the relationship between Indian Nations, the federal government, and state governments which need to be addressed, including the following:

### *1. Historic Oppression of Native Peoples*

It is difficult to overstate the continuing impact of the historic oppression of Native Peoples upon contemporary problems in Indian Country. For example, it is impossible to understand contemporary child abuse problems in Indian Country without an understanding of the historic governmental interference with Indian family life.<sup>4</sup>

### *2. Historic Mistrust Between Tribal, State, and Federal Governments*

The historic oppression of Native Peoples has resulted in an historic mistrust of state and federal governmental agencies. For example, Congress recognized the continuing impact of the historic oppression and mistrust when it found in enacting the Indian Child Welfare Act that “the States, exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families.”<sup>5</sup>

### *3. Cultural Differences*

Any effort to improve the relationship between Indian Nations, the federal government, and the state governments must address the critical issue of cultural differences. Although there is much diversity within Native American communities, an Office for Victims of Crime (OVC) Monograph entitled “Cultural Differences in Working With American Indian Crime Victims” suggests three common areas to consider in dealing with Native communities, 1) boundaries (limits of acceptable behavior), 2) training representation and sensitivity issues, and 3) the important role of spirituality.

### *4. High Crime Rate in Indian Country*

While the crime rate, especially the violent crime rate and juvenile crime rate, has been substantially declining nationally, these crime rates have been increasing substantially in Indian Country.<sup>6</sup>

### *5. Jurisdictional Complexities and Limitations in Indian Country*

There are many jurisdictional complexities and limitations in Indian Country which present overwhelming difficulties for any effort to improve the relationship between Indian nations, the federal government, and state governments. The confusing division of jurisdiction among tribal, federal, and state governments results in a jurisdictional maze and the resultant jurisdictional gaps and disputes. This jurisdictional maze is complicated by the lack of tribal court criminal jurisdiction over non-Indians<sup>7</sup>, the practical impact of Public Law 280<sup>8</sup>, and other limitations on tribal criminal jurisdiction. The difficulty of determining jurisdiction, and provisions for concurrent jurisdiction of certain cases, can cause conflict and confusion for law enforcement, prosecution, courts, service providers, and crime victims in Indian Country.

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“Government-to-Government Relationship of the United States with Indian Tribal Governments,” Statement by President George Bush, June 21, 1991, 137 Cong. Rec. S. 8388-01.

<sup>4</sup> See *The Destruction of American Indian Families* (Association on American Indian Affairs, 1977), Library of Congress Catalog Card Number 76-24533.

<sup>5</sup> Indian Child Welfare Act (Public Law 95-608), 25 U.S.C. 1901 (5).

<sup>6</sup> For example, see Testimony of Attorney General Janet Reno before the U.S. Senate Committee on Indian Affairs, June 3, 1998.

<sup>7</sup> *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978).

<sup>8</sup> See Office for Victims of Crime (OVC) Monograph entitled “Public Law 280: Issues and Concerns for Victims of Crime in Indian Country”.

#### 6. *Coordinating the Investigation and Prosecution of Criminal Cases in Indian Country*

The jurisdictional complexities and limitations in Indian Country substantially complicate any effort to improve the coordination of the investigation and prosecution of criminal cases in Indian Country.<sup>9</sup>

#### 7. *Problems with Cross-Recognition of Judgements, Final Orders, Laws and Public Acts Between Tribal, State, and Federal Courts*

The issue of reciprocal recognition of judgments between tribal, state, and federal courts is an important and contentious issue in tribal-state-federal relations.

#### 8. *Lack of Knowledge and Contact with Tribal Criminal Justice Systems*

The historic lack of knowledge and contact with tribal criminal justice systems, including tribal court systems, by state and federal court systems has greatly complicated the relationship between Indian Nations, the federal government, and state governments.

#### 9. *Inadequately Funded Tribal Criminal Justice Systems*

The well documented lack of adequate funding for tribal criminal justice systems has presented substantial problems for improving the relationship between Indian Nations, the federal government, and state governments. For example, Congress found in enacting the Indian Tribal Justice Act that “tribal justice systems are inadequately funded, and the lack of adequate funding impairs their operation”.<sup>10</sup>

#### 10. *Lack of Facilities/Resources and Isolated Rural Locations of Most Indian Reservations*

The lack of facilities and resources available to most tribal criminal justice systems (see above) has presented substantial problems for improving the relationship between Indian Nations, the federal government, and state governments.<sup>11</sup> This situation is complicated by the isolated, rural locations of most Indian reservations.

### **III. *Recent Examples of Efforts to Improve the Relationship Between Indian Nations, the Federal Government, and State Governments***

There have been many efforts in recent years to improve the relationship between Indian Nations, the federal government, and state governments. These efforts need to be examined in order to determine the most effective strategies. The following are some of these recent efforts:

#### 1. *Congressionally Authorized or Mandated Cooperation (1978-Present)*

The U.S. Congress has occasionally enacted legislation which either authorizes or mandates cooperation between Indian Nations, the federal government, and state governments. These Congressional Acts have included the following:

- The *Indian Child Welfare Act of 1978* (Public Law 95-608, 25 U.S.C. 1901-1963) sets out a series of Congressional mandates including, (1) that Indian tribes shall have exclusive jurisdiction over certain Indian child custody proceedings (section 1911(a)) and transfer from state court in others (section 1911(b)); (2) that “the United States, every State, every territory or possession of the United States, and every Indian tribe shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that such entities give full faith and credit to the

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<sup>9</sup> See Office for Victims of Crime (OVC) Monograph entitled “Improving Tribal/Federal Prosecution of Child Sexual Abuse Cases Through Agency Cooperation.”

<sup>10</sup> Indian Tribal Justice Act (Public Law 103-176), 25 U.S.C. 3601 (8) - Unfortunately, Congress has yet to appropriate any of the funding promised under this 1993 Act.

<sup>11</sup> For example, see Testimony of attorney General Janet Reno before the U.S. Senate Committee on Indian Affairs, June 3, 1998.

public acts, records, and judicial proceedings of any other entity” (section 1911 (d)); and (3) authorizes States and Indian tribes to enter into agreements with each other respecting care and custody of Indian children and jurisdiction over child custody proceedings (section 1919).

- The *Indian Law Enforcement Reform Act of 1990* (Public Law 101-379, 25 U.S.C. 2801-2809) authorizes federal law enforcement officials (Bureau of Indian Affairs, Federal Bureau of Investigation, and United States Attorneys) to provide Indian Nations with comprehensive federal prosecution declination notification reports (including the reasons why the investigation or prosecution was declined or terminated) and access to investigation case files.
- The *Indian Child Protection and Family Violence Prevention Act of 1990* (Public Law 101-630, 25 U.S.C. 3201-3211) authorizes the exchange of child abuse information between Indian Nations, the federal government, and state governments - “...agencies of any Indian tribe, of any State, or of the Federal Government that investigate and treat incidents of abuse of children may provide information and records to those agencies of any Indian tribe, any State or the Federal Government that need to know the information in the performance of their duties. For purposes of this section, Indian tribal governments shall be treated the same as other Federal Government entities” (section 3205).
- The *Victims of Child Abuse Act of 1990* (Public Law 101-647, 18 U.S.C. 3509 (g)) provides that federal agencies must work and consult with local governmental multidisciplinary child abuse teams (MDTs), including MDTs established by Indian Nations.
- The *Violence Against Women Act (VAWA) of 1994* (Public law 103-322, 108 Stat. 1902-1955) provides that full faith and credit must be accorded to all protection orders from other jurisdictions, including those from tribal courts.

## 2. *United States Commission on Civil Rights Report on The Indian Civil Rights Act (June 1991)*

The U.S. Commission on Civil Rights made several recommendations concerning the relationship between Indian Nations, the federal government, and state governments, including a recommendation that “The Commission believes that Federal support for reciprocal recognition of State and tribal court judgments will result in greater public respect for tribal court authority, and encourages the Congress to reflect such support in tribal court legislation.”

## 3. *Building on Common Ground Report (1988-1993)*

In 1988, the Conference of Chief Justices of State Supreme Courts convened a Committee on Jurisdiction in Indian Country and began a process to improve the working relations between tribal, state, and federal judicial systems. The culmination of this process was a national leadership conference in Santa Fe, New Mexico in September 1993 (the sponsoring organizations included the State Justice Institute, Conference of Chief Justices, Native American Tribal Courts, Committee of the National Conference of Special Court Judges of the American Bar Association, National American Indian Court Judges Association, and National Center for State Courts). At the Santa Fe conference, the participants unanimously adopted a series of recommendations for the improvement of the working relations between tribal, state, and federal judicial systems which were later compiled into a written report entitled “*Building On Common Ground: A National Agenda To Reduce Jurisdictional Disputes Between Tribal, State, And Federal Courts.*” The following are the four major recommendations from that report (the report includes many more specific recommendations to implement each of these four major recommendations):

- I. *Tribal, state, and federal courts should continue cooperative efforts to resolve and reduce jurisdictional disputes.*
- II. *Congress should provide resources to enhance and expand tribal court operations concomitant with their increased authority.*

- III. *Appropriate action should be taken to assure cross-recognition of judgments, final orders, laws and public acts between tribal, state, and federal courts.*
- IV. *It should be a goal of all concerned for Indian tribes to have some jurisdiction, at their option and as their resources permit, over conduct in Indian Country, whether by Indian tribal members, non-members, or non-Indians.*

#### 4. *Tribal/State/Federal Court Forums (1991-Present)*

In January 1989, the Conference of Chief Justices created the Prevention and Resolution of Jurisdictional Disputes Project to improve the operational relationships among tribal, state, and federal judicial systems. This Project implemented a series of tribal court-state court forums. For the most part, these forums have been very effective in providing a methodology for addressing an improvement of the operational relations among tribal and state courts. Over time, most of these forums have been expanded to also include federal courts and to more fully address improving the relations between tribal, state, and federal court systems. Overall, these forums have been very effective in addressing potential conflicts between tribal, state, and federal courts - for example, many of the forums have played a critical role in the enactment of state court rules and/or statutes granting full faith and credit or comity for tribal court judgments. There are at least three critical resources concerning this court forum process which provide an excellent examination of the lessons to be learned from this court forum process:

- *Tribal Courts and State Courts: From Conflicts to Common Ground* by H. Ted Rubin (State Court Journal, Winter 1992, pages 17-20).
- *Tribal Court-State Court Forums, A How-To-Do-It Guide to Prevent and Resolve Jurisdictional Disputes and Improve Cooperation Between Tribal and State Courts* by H. Clifton Grandy and H. Ted Rubin (National Center for State Courts, 1993).
- *Partnership: Bringing Together Tribal and State Court Jurisdictions* by Hon. William Thorne (*The Tribal Court Record*, Volume 9, Number 1, Spring/Summer 1996, pages 21-24).

#### 5. *U. S. Department of Justice Initiatives (1990-Present)*

The United States Department of Justice has implemented a series of initiatives in recent years to improve the relationships between Indian Nations, the federal government, and state governments, including the following:

- The Office for Victims of Crime (OVC) began a series of Indian Country initiatives in 1990 which have focused upon child abuse, especially child sexual abuse, and victims of crime issues. Of particular importance here, most OVC programs have focused upon improving the investigation and prosecution of criminal cases, especially child abuse cases, in Indian Country through improved coordination and cooperation between tribal, state, and federal agencies. Furthermore, OVC funded the development of two important resource guides - *Resource Packet on Tribal/Federal Coordination of Child Sexual Abuse Cases* and *Child Sexual Abuse Protocol Development Guide*.
- In May 1994, the Departments of Justice and Interior sponsored the National American Indian Listening Conference in Albuquerque, New Mexico. (Attorney General Janet Reno played a critical role in the Listening Conference and in the many Justice Department efforts to support tribal justice systems which have followed through on the recommendations of the Listening Conference.)
- In 1994, the Justice Department established a Tribal Courts Project to assist tribes in developing and strengthening their systems of justice - the Tribal Courts Project spearheaded the September 1995 designation of 45 Indian Nations as Tribal Court-DOJ Partnership Projects.
- The Tribal Courts project also initiated the symposium of articles on tribal justice systems for a special *Indian Tribal Courts and Justice* issue of *Judicature* (November-December 1995,



Volume 79, Number 3) as part of its effort to increase the visibility of tribal courts as essential participants in the nationwide administration of justice.

- In 1994, the Justice Department established the Office of Tribal Justice to serve as a coordination center for all Department of Justice activities relating to Native Americans.
- In 1995, the Justice Department established an American Indian and Alaska Native Desk in the Office of Justice programs to enhance access by Indian Nations to information regarding criminal justice funding opportunities and technical assistance.
- In August 1997, President Clinton directed the Attorney General and the Secretary of the Interior to work with tribal leaders to analyze law enforcement problems on Indian lands and suggest ways for improving public safety and criminal justice in Indian Country. As a result of that process, the Clinton Administration - through the Joint Department of Justice - Department of the Interior Indian Country Law Enforcement Initiative - has requested an additional \$182 million in fiscal year 1999 funding (\$157.5 million through the Department of Justice) for law enforcement in Indian Country, including \$10 million to establish an Indian Tribal Courts Program at the Justice Department.
- The Justice Department has also implemented a series of Indian Country law enforcement programs including, (1) U.S. Attorneys in Indian Country have been asked to designate Assistant U.S. Attorneys to serve as tribal liaisons and to work cooperatively with tribal police, investigators, prosecutors, and judges; (2) the FBI created an Office of Indian Country Investigations (OICI) in January 1997; (3) the Justice Department has tried to enhance the degree of multi-jurisdictional cooperation through the FBI's Safe Trails Task Force model; and, (4) the Justice Department has developed an Indian Country Justice Initiative which involves a criminal justice partnership with the Laguna Pueblo and the Northern Cheyenne Tribe.

6. *Executive Order: Consultation and Coordination With Indian Tribal Governments (President Clinton - May 14, 1998)*

On May 14, 1998, President Bill Clinton took a significant step beyond his initial April 1994 Executive Order. This May 14, 1998 Executive Order sets forth a series of specific provisions designed "to establish regular and meaningful consultation and collaboration with Indian tribal governments in the development of regulatory practices on Federal matters that significantly or uniquely affect their communities; to reduce the imposition of unfunded mandates upon Indian tribal governments; and to streamline the application process for and increase the availability of waivers to Indian tribal governments." This Executive Order has the potential to significantly affect the relationship between Indian Nations, the federal government, and state governments.

**IV. *Potential Use of Cooperative Agreements in Improving the Relationship Between Indian Nations, the Federal Government, and State Governments***

One of the most important lessons from the recent efforts to improve the relationship between Indian Nations, the federal government, and state governments is the critical need for written cooperative agreements between these governments. Productive working relationships between governments and agencies are often based upon the personal relationships of individual officials. When those officials leave the agency, the productive working relationships can fall apart. A written cooperative agreement, however, formalizes the productive relationship. It ensures that the issues will continue to be handled in the same manner, regardless of the specific individuals involved. The written agreement provides a common basis for addressing issues and problems, and allows for accountability. Since the role of each agency is specifically outlined, it is clear what the role is of each government and agency. Consequently, the government or agency can be held accountable for their actions.

Cooperative agreements between Indian Nations, the federal government, and/or state governments can be identified by many different terms or titles. It may be called a Memorandum of Understanding

(MOU), a Memorandum of Agreement (MOA), a Protocol, a Tribal-State Compact, a Collaboration Agreement, or any number of other titles. Some titles may be needed for certain types of agreements due to the nature of the agreement, the law which authorizes the agreement, or the agencies involved in it.

The agreement can be as simple or complicated as necessary to meet the needs of the specific issue or problem and the agencies involved. It can provide only the basics or it can be very complex, outlining every possible step of the process in dealing with the issue.

The elements of the cooperative agreement may also vary depending upon the needs of the specific issue or problem and the agencies involved. There are, however, certain key elements which should be included in virtually all cooperative agreements - or Memorandums of Understanding - between Indian Nations, the federal government, and/or state governments. First, the agreement should clearly identify the issue or problem to be addressed by the cooperative agreement. Second, most cooperative agreements set out a brief history of the collaborative relationship between the parties and/or the underlying philosophy or purpose of the agreement. Third, the agreement should provide definitions of any terms used in the agreement which may be subject to confusion or differing interpretations. Fourth, the agreement should clearly state the roles and responsibilities of each of the agencies/governments involved in the agreement. Finally, and perhaps most importantly, the agreement must be signed and dated by officials with the authority to bind their agency/government to the agreement. This is this critical component (the binding agreement of all parties) which makes it a Memorandum of Understanding and not just a proposal, confirming letter, or some other form of non-binding agreement.

There are many issues or problems which could be the subject of a cooperative agreement or a Memorandum of Understanding between Indian Nations, the federal government, and/or state governments. There are many potential issues which could be addressed in a cooperative agreement, including the Indian Child Welfare Act, domestic relations matters, contracts, torts, repossessions, taxation, economic development, gaming, hunting and fishing, water rights, repatriation, and religious practice issues. The focus here, however, is on criminal justice issues. Possible criminal justice issues subject to cooperative agreements or Memorandums of Understanding include the following:

- Jurisdiction agreements - especially where there is concurrent jurisdiction (such as Public Law 280) or disputes concerning territorial jurisdiction
- Arrest and Detention agreements - or "Cross-Deputization" of Law Enforcement Officials
- Extradition agreements
- Agreements or Protocols concerning the Investigation and Prosecution of all cases or specific types of cases (such as child sexual abuse)
- Service of Process Agreements
- Cross Recognition of Judgments, Final Orders, and Laws (full faith and credit or comity)
- Mutual Recognition of Domestic Violence Protective Orders
- Roles and Responsibilities of Multidisciplinary Teams (such as Child Protection Teams or MDTs)
- Provision of Federal Declination Reports and Case Files
- Sharing of Child Abuse Information and Records
- Sharing of other Information, Reports, and Resources
- Assessment of Child Support and Facilitation of Collection Efforts
- Access to and Sharing of Criminal Records/Histories
- Traffic Enforcement
- Inter-Jurisdiction Management of Probationers/Parolees
- Sharing of Detention Facilities
- Sharing of Treatment Resources for Criminal Cases
- Sharing of Training Resources
- Facilitation of Restitution Assessment and Collection
- Community Service in Lieu of Fines for Work Completed in Other Jurisdictions

## **V. Tips for the Development and Implementation of Cooperative Agreements**

Unfortunately, cooperative agreements or Memorandums of Understanding are not usually created quickly or easily. They usually involve a great deal of time, effort, and cooperation. There is no one sure way to develop and implement a cooperative agreement. There are, however, a number of tips set forth below which can be gleaned from prior successful efforts involving the development and implementation of cooperative agreements between Indian Nations, the federal government, and state governments. Many of these tips draw upon the successful efforts of the tribal/state/federal court forums, especially the three resources on the tribal court-state court forums listed previously. *Furthermore, Exhibit #1 provides specific Dos and Don'ts from the Arizona Tribal/State Court Forum.*

### **1. The Primary Work is Done by a Group of "Problem Solvers"**

The effort will not succeed if it simply becomes a process of finger-pointing and blaming someone else for whatever problems are identified. As Judge William Thorne stated in analyzing the success of the tribal-state forum process:<sup>12</sup>

Instead, the approach must be one of attempt to circumnavigate the obstacles, to seek cooperative ventures. Not everything needs to be solved definitively. Sometimes it is best to leapfrog the barriers that others have set up and continue to the goal. When viewing the differences between tribal and state courts, the gulf may appear insurmountable. Much like the starving man who is overwhelmed at the prospect of making a meal of an elephant, the solution is one bite at a time. It is not necessary to create a comprehensive and universal solution to the problems that are created from parallel systems not working well together. Rather, the short-term goal should be to create an ever expanding series of small agreements.

### **2. There is Equal Representation from the Applicable Governments**

A critical component of the development process is equal representation from each government involved in the process; Indian Nations, the federal government, and/or state governments. This balance is important to ensure that the cooperative agreement process is not perceived as the property of any one system (It should be noted that the tribal-state court forum project which failed had only minimal tribal representation).

### **3. The Work is Completed in an Atmosphere of Mutual Respect**

It is also critical that the process is completed in an atmosphere of mutual respect. The setting should be a safe environment in which to share, learn, and explore. It is alright to acknowledge differences between systems, but not in a stereotypical or judgmental manner. The unique sovereign status of Indian Nations must be respected. Mutual respect is also shown by a willingness to alternate the site of the meetings - state and federal representatives must be willing to travel to reservations for meetings.

### **4. The Agenda is Focused upon Areas of Mutual Concern or Shared Interest**

It is vital to focus upon identifying areas of commonality instead of the differences. The process should focus upon areas where cooperation can be achieved rather than a litany of insurmountable problems. Focusing upon areas of mutual concern or shared interest creates confidence and trust which will smooth the path when genuine disagreements are encountered down the road.

### **5. The Participants are Willing to Examine not just the Way Things Have Been, but are Willing to Explore New Ways of Improving the Working Relationships**

Each system has much to learn from the other systems. The cooperative agreement must be developed in an atmosphere which goes beyond the prior relationship between the participants. Instead, all participants must be willing to explore new ways to improve the working relationships.

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<sup>12</sup> *Partnership: Bringing Together Tribal and State Court Jurisdictions* by Hon. William Thorne (*The Tribal Court Record*, Volume 9, Number 1, Spring/Summer 1996, pages 21-22).

**6. The Participants are Willing to be Creative and Persistent**

For the process to succeed, the participants must be willing to be creative and persistent. The process will undoubtedly have frustrations and difficult times. The participants must be willing to try creative solutions such as the provision of food at meetings, changing the location of the meetings to meet at the office of problem participants, starting meetings with an invocation from a tribal elder, etc.

**7. The Participants are Willing to Share the Burden**

The participants must also be willing to share the burden by sharing resources, training, technical assistance, and the limited available funding.

**8. All Agencies are Allowed Input into Agreement Drafts Prior to Finalization**

There are many ways to develop a cooperative agreement. It may not be necessary to have every agency involved in all steps of the process. Some work may be more effectively developed by task forces or working groups. However, all agencies must be allowed input into the agreement drafts prior to finalization of the agreement.

**9. The Development Process Anticipates Periodic Review and Modification**

The cooperative agreement will be much more difficult to develop if the final product is viewed as written in stone. Instead, it should be viewed as a dynamic and flexible document which will require periodic review and modification. The review and modification process can even be formally incorporated into the document itself.

**Exhibit #1**

**Tribal/State Court Forum Dos and Don'ts**

*(Based on the experience of the members of the Arizona Court Forum  
as reported by the National Center for State Courts)*

**Membership**

DO select forum members from diverse perspectives who have demonstrated interest, expertise, or experience in addressing Indian law issues.

DON'T select forum members based only on their position within the judiciary or elsewhere.

**Mutual Respect**

DO acknowledge differences between tribal and state court systems and seek ways of cooperating consistent with those differences.

DON'T characterize either system as better or worse or more or less sophisticated than the other.

**Scope**

DO proceed in phases with predetermined timeframes, including a study phase in which issues are identified, before implementing recommendations.

DON'T devote resources to implementation until a consensus is reached concerning priority issues and recommendations.

**Persistence**

DO design a process that invites broad-based participation in identifying issues and making recommendations.

DON'T be discouraged by lack of participation or lack of progress.

**Performance**

DO assign manageable tasks to forum members or subcommittees to be accomplished within established time frames.

DON'T delay too long before dividing the work of the forum into tasks that can be accomplished within the time frames established.

**Solutions**

DO emphasize creative solutions to jurisdictional issues that avoid litigation and are consistent with the rights of the parties, sovereignty, and judicial independence.

DON'T emphasize jurisdictional limitations.

**Communications**

DO emphasize person-to-person communication and education to address jurisdictional issues.

DON'T seek to address jurisdictional issues solely through large-scale change in the law or legal systems.

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**RESOURCES**

**Office for Victims of Crime**

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**Office for Victims of Crime Resource Center**

Box 6000  
Rockville, MD 20849-6000  
800-627-6872  
<http://www.ncjrs.org>

**Center on Child Abuse and Neglect**

CHO 3B-3406  
940 NE 13th Street  
P.O. Box 26901  
Oklahoma City, OK 73109  
<http://pediatrics.ouhsc.edu/ccan>

**Bureau of Indian Affairs**

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<http://www.doi.gov/bia>

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(202) 616-3205

**Tribal Law and Policy Institute**

P.O. Box 460370  
San Francisco, CA 94146  
(415) 647-1755  
<http://www.tribal-institute.org>

**U.S. Department of Justice**

Office of Tribal Justice  
10<sup>th</sup> and Constitution Ave., NW, Room 1509  
Washington, DC 20530  
(202) 514-8812

**American Indian Development Associates**

Ms. Ada Pecos Melton  
7301 Rosewood Court, NW  
Albuquerque, NM 87120  
(505) 842-1122

**National Congress of American Indians**

1301 Connecticut Avenue NW, Suite 200  
Washington, DC 20036  
(202) 466-7767  
<http://www.ncai.org>

**National American Indian Court Judges Association**

1301 Connecticut Avenue, NW  
Washington, D.C. 20036  
(509) 422-6267  
<http://www.naicja.org>

**Native American Rights Fund**

1506 Broadway  
Boulder, CO 80302  
(303) 447-8760  
<http://www.narf.org>

**National CASA Association**

100 W. Harrison St., North Tower #500  
Seattle WA 98119  
1-800-628-3233  
<http://www.casenet.org>

**National Children's Alliance**

1319 F Street, NW, #1001  
Washington, DC 20004  
(800) 239-9950  
<http://www.nncac.org>

**Colorado State University**

Tri-Ethnic Center  
C138 Andrews G. Clark  
Ft. Collins, CO 80523  
(970) 491-0251

**Northern Plains Tribal Judicial Institute**

University of North Dakota Law School  
Box 9000  
Grand Forks, ND 58202  
(701) 777-6176  
<http://www.law.und.nodak.edu/lawweb>

## Native American Topic Specific Monograph Project Titles

- Abusers Who Were Abused: Myths and Misunderstandings**  
Dewey J. Ertz, Ph.D.
- Community Readiness: A Promising Model for Community Healing**  
Pam J. Thurman, Ph.D.
- Confidentiality Issues in Victim Advocacy in Indian Country**  
Eidell Wasserman, Ph.D.
- Dealing with Disclosure of Child Sexual Abuse**  
Eidell Wasserman, Ph.D.
- The Differences Between Forensic Interviews & Clinical Interviews**  
Jane F. Silovsky, Ph.D.
- Guidelines for Child Advocacy Centers in Indian Country**  
Eidell Wasserman, Ph.D.  
Roe Bubar, Esq.  
Teresa Cain
- History of Victimization in Native Communities**  
D. Subia BigFoot, Ph.D.
- Interviewing Native Children in Sexual Abuse Cases**  
Roe Bubar, Esq.
- Memorandums of Understanding Between Indian Nations, Federal, and State Governments**  
Jerry Gardner, Esq.
- Native Americans and HIV/AIDS**  
Irene Vernon, Ph.D.
- An Overview of Elder Abuse in Indian Country**  
Dave Baldrige  
Arnold Brown, Ph.D.
- Psychological Evaluations**  
Eidell Wasserman, Ph.D.  
Paul Dauphinais, Ph.D.
- Public Law 280: Issues and Concerns**  
Ada P. Melton, Esq.  
Jerry Gardner, Esq.
- The Role of the Child Protection Team**  
Eidell Wasserman, Ph.D.
- The Role of Indian Tribal Courts in the Justice System**  
B.J. Jones, Esq.
- The Roles of Multidisciplinary Teams and Child Protection Teams**  
Eidell Wasserman, Ph.D.