Defender Initiatives in Indian Country

June 11, 2013 3-4:30 p.m. ET

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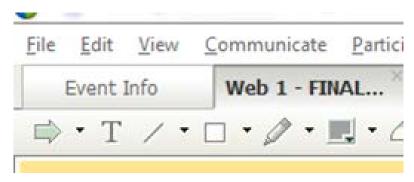
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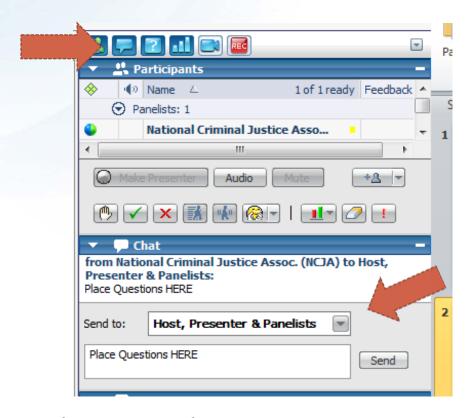
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Moderator

<u>Cabell Cropper</u> National Criminal Justice Association

Presenters

Maha Jweied
Senior Council
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Cody Nelson
Co-Executive Director of
Anishinabe Legal Services, Inc.

Alex Sierck
Project Director
Center for Holistic Defense, Bronx Defenders.

Ann Sherwood
Managing Attorney
Defenders Office of the Confederated Salish and Kootenai

DEFENDER INITIATIVES IN INDIAN COUNTRY

Access to Justice Initiative U.S. Department of Justice

June 11, 2013



Attorney General Eric Holder

"Let me assure you ... that this is not a passing issue for the Justice Department. I have asked the entire Department to focus on indigent defense issues with a sense of urgency and a commitment to developing and implementing the solutions we need. As many of you know, we recently took an historic step to make access to justice a permanent part of the Department's work, with a focused effort by our leadership offices to ensure that this issue gets the attention it deserves."

- June 19, 2010, Wilmington, North Carolina





http://www.justice.gov/atj/

Indian Civil Rights Act of 1968 25 U.S.C. § 1302(a)

(a) No Indian tribe in exercising powers of self-government shall—

. . .

(6) deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and **at his own expense** to have the assistance of counsel for his defense



- (c) In a criminal proceeding in which an Indian tribe, in exercising powers of self-government, imposes a total term of imprisonment of more than I year on a defendant, the Indian tribe shall—
- (I) provide effective assistance of counsel for defendants;
- (2) provide free, appointed, licensed attorneys for indigent defendants;
- (3) require that the judge presiding over the criminal proceeding is law-trained and licensed to practice law by any jurisdiction in the United States;
- (4) make publicly available the tribal criminal laws (including regulations and interpretative documents), rules of evidence, and rules of criminal procedure (including rules governing the recusal of judges in appropriate circumstances); and
- (5) Record the criminal proceeding.



- Further amends ICRA so that tribes will be able to exercise their sovereign power to investigate, prosecute, convict, and sentence both Indians and non-Indians who assault Indian spouses or dating partners or violate a protection order in Indian country.
- Requires all rights on the previous slides, plus:
 - Include Indians and non-Indians in jury pools.
 - Inform defendants ordered detained by a tribal court of their right to file Federal habeas corpus petitions.
- More Info and Fact Sheet: <u>http://www.justice.gov/tribal/vawa-tribal.html</u>



- Tribal public defenders employed by tribal government or court
- Contract counsel
 - e.g., Indian Legal Services Offices (25 programs across the US)
- Assigned counsel programs administered by the tribal court or bar
- Tribal bar members: private attorneys and lay advocates for fee, low bono, or pro bono
- Law school clinics

Anishinabe Legal Services and the Leech Lake Band of Ojibwe

Bamenim Anishinaabeg and Juvenile Justice Collaborations

Cody Nelson: Co-Executive Director
Anishinabe Legal Services
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(218) 335-2223

Anishinabe Legal Services

- Originally established in 1967 as the Leech Lake Reservation Project in Northern Minnesota.
- Expanded services to White Earth and Red Lake Indian Reservations in the 1970's.
- Began receiving federal funding under the Legal Services Corporation (LSC) and became Anishinabe Legal Services, Inc.

Anishinabe Legal Services

- Wide array of civil services: CHIPS (child protection) defense, eviction defense, family law and other services for victims of domestic violence, government benefit appeals, collections, estate planning, and much more.
- Select criminal services: including public defense services to Leech Lake youth before the Tribal Court and prosecution services to the Bois Forte Band.

Anishinabe Legal Services

- 3 full time attorneys, 3 full time paralegals/tribal court advocates, full time office manager and full time legal secretary. 2 part time volunteers.
- Program funding secured through LSC and Minnesota State Legislative funding along with additional funding from:
- Tribal Civil and Criminal Legal Assistance (TCCLA) Program Grants through BJA/OJP/DOJ
- Older Americans Act Grant for Elder Services
- Contracts with the White Earth and Leech Lake Band for client services before the Tribal Courts, including CHIPS representation and eviction defense
- Additional funding through the Northwest Minnesota Foundation, Minnesota Justice Foundation, Minnesota Council on Crime and Justice, among others.

Public Law 280 and ALS Client Communities

- Leech Lake and White Earth Reservations are subject to Public Law 280.
- Red Lake Reservation has never been subject to Public Law 280.
- Bois Forte was once subject to Public Law 280, but accomplished retrocession in 1975.
- 4 widely varying tribal justice systems within our own Program service area in Northern Minnesota.

Leech Lake Reservation

- One of six bands comprising the Minnesota Chippewa Tribe.
- 1050 square miles, located within Cass, Beltrami, Itasca and Hubbard Counties.
- 46% unemployment rate. 70% of employed Tribal Members still living below poverty guidelines.
- 60% reported serious drug and/or alcohol problems. By 12th grade, 84% of females and 81% of males have reported drinking alcohol.

Bamenim Anishinaabeg

- Ojibwe meaning "Care for the People"
- Early Intervention.
- Holistic Wraparound Services.
- Cultural Focus, Trauma Informed.
- Individually tailored caseplans, flexible and fluid.
- Strong emphasis on recognizing and incorporating both juvenile and family feedback into caseplanning and throughout case development.
- Heavy program involvement required. Review hearings bi-monthly, mandated frequent contacts and meetings with case manager, cultural coordinator, and mandated compliance with other Program services (i.e. outpatient chemical dependency treatment, counseling and therapy, etc.).
- Services focused on serving the most at-risk youth on the Leech Lake Reservation, often serving children with multiple issues, including substance abuse, mental health, delinquency and truancy. Most children in program also live outside of the immediate family structure.

Positive and Uplifting Methods

- Strong emphasis on recognizing and praising positive progress.
- Recognizing each child's strengths, abilities, natural assets, and both identifying and encouraging utilization strategies.
- Raising self-esteem, self-worth, fostering belief in self and optimism for future.
- Program only works when the kids (and usually also their parents/families) buy into it. It is counterproductive for kids to be compelled into such heavy program requirements and close supervision when all they hear through these constant contacts and communications is what they are doing wrong. That doesn't encourage kids to put in the tremendous amount of sustained work, effort and strength necessary to change and improve their lives, it often does the opposite.

Positive Inducements

- Negative repercussions for non-compliance are a necessary part of any criminal justice system. For juveniles, this can include community service, fines, inpatient treatment, lock down school facilities, detention facilities for criminal behavior.
- Positive Inducements are an often overlooked compliance tool, one that can be especially
 motivating for juveniles. With brains overdeveloped for impulsivity and underdeveloped for
 long term planning and reasoning, positive inducements stimulate the former, potential
 negative consequences at some indeterminate time down the road for non-compliance, the
 latter.
- Creative win-win positive inducements for compliance and progress all the better, and Bamenim has a few that have been amazing motivators for my clients.
- Cell phones and minutes for the phone
- Clothing vouchers: Shopping trips often accomplished with casemanager and juvenile together. Bonding!
- Individually tailored inducements: New mattress for juvenile struggling with significant sleep issues and getting up for school in the morning, computer and tutorial software for a juvenile missed by school/child find and in great immediate need to catch up on reading skills, invitation to participate at major local area events for networking and other benefits (i.e. the recent National Association of Women's Judges Conference held in Bemidji Fall 2012).

Anishinabe Legal Services Program Involvement

 While Program has overall positive focus and many potential positive inducements, the Program is geared towards the most at-risk juveniles on the Leech Lake Reservation, and penalties for severe non-compliance can include placements in secured treatment facilities, secured school facilities, and/or juvenile detention centers. Penalties also can include a discharge from the Program, usually resulting in one of the placements above. Attorney representation for juveniles very important.

ALS Involvement (cont.)

- Hallmark of Program: Every client I've represented under the Bamenim Anishinaabeg Program has progressed, some more than others, but every client is better off than when they first entered the Program.
- But, kids progress at their own rates, and often, the road will become bumpy at times for a variety of reasons. Especially true during the first few months of Program involvement.
- Contested Hearings occur on a fairly regular basis.
 With secure detention recommendations, there have been some pretty epic battles along the way.

ALS Involvement (cont.)

- While case managers often take on a mentoring role and keep a positive focus, they are also the ones to bring out of home secured placement recommendations, and it is important for kids to know that they have someone in their corner, fighting for their rights and desires, and ensuring that they have a voice in their caseplan and future, no matter what happens along the way.
- While the Bamenim team and juvenile clients/myself have had many disagreements along the way, and some intense contested hearings, there is always the recognition that we share the same overall goals, aspirations and hopes for our shared clients, we just don't always agree on how to get there....and on the whole, that's a very good thing.

Leveraging ALS Resources

- Additional benefit to ALS involvement: existing infrastructure in place to provide no-cost legal services for a wide variety of civil matters.
- Wraparound Services: Juveniles and/or their families often have many barriers to overcome during program involvement. When one of these barriers involves civil legal issues, ALS is often able to step in and leverage alternative funding sources to provide additional services to further assist program progress.

Leveraging ALS Resources (cont.)

- Examples of leveraged resources can include
- Helping the client's guardian obtain an Order for Protection for themselves and/or their child(ren) to ensure family safety.
- Helping the family facing eviction with defense services to prevent homelessness.
- Working with the child and family at the school to ensure IEPs are being properly updated and followed. Assisting program clients facing suspension or expulsions from their school.
- Government benefit appeals to help ensure basic needs are being met.
- Obtaining and/or transferring custody for relatives when the juvenile expresses this preference.
- Other civil legal assistance identified as a compelling need for juvenile progress under program plans.

ALS Funding through TCCLA

- Began receiving funding for project through BJA for 2010-2012 Tribal Civil and Criminal Legal Assistance Program grant cycle. Received continued funding under 2011-2013 and 2012-2014 grant awards and are awaiting a determination on our 2013-2015 funding application.
- See https://www.bja.gov/Publications/TCCLA Overview.pdf for a great overview of the TCCLA grant program.
- TCCLA funding is received by ALS as a subgrantee member of the National Association of Indian Legal Services (NAILS), with the Native American Rights Fund (NARF) serving as the primary applicant and contractor.

Collaboration

- Began in 2010, when then ALS Executive Director Paul Day (now Chief Judge of the Leech Lake Tribal Court) submitted an application for TCCLA funding through NARF.
- Major statewide legal aid needs assessment study through Minnesota Access to Justice was going on at that time, identifying services for juveniles in the Northwest as one of the biggest unmet needs in the State.
- Judge Day submitted an application proposing to serve juveniles before the Tribal Court with TCCLA criminal grant funding. This request was approved for funding.
- As an ALS staff attorney, had previously represented kids in Cass County
 District Court with delinquency and truancy offenses and Judge Day asked
 if I could help plan the criminal grant work.
- I agreed, but had no prior experience in grant or program planning or collaborations, and decided to start by going to the person in our area that I believed was best known for starting and overseeing successful collaborative projects, the Honorable Judge Korey Wahwassuck of the Leech Lake Tribal Court.

Collaboration (cont.)

- At that time, Judge Wahwassuck and I sat down to discuss the grant and ideas for project planning. That was when I first learned about the newly established Juvenile Justice Project through Bamenim Anishinaabeg.
- The Juvenile Project had been formed through a number of grants through the federal government and State of Minnesota, and involved a large number of collaborators, Tribal and State.
- The one thing that seemed to be missing was funding to provide legal defense for juveniles under the Program before the Tribal Court. It was expected that the vast majority, if not all, juveniles before the Tribal Court would be unrepresented due to lack of funding for attorney representation, the likely income levels of juveniles and families selected for Program involvement, and small number of private attorneys licensed before the Court and corresponding difficulty in securing pro bono attorney involvement for juvenile matters before the Tribal Court.

Collaboration (cont.)

- It felt like Leech Lake had this amazing, beautiful puzzle, near complete but missing one significant piece, and we just happened to be holding that piece, looking to find a place to fit it in. Just like that, the collaboration was formed.
- ALS has served over 50 juveniles before the Tribal Court with TCCLA funding since that time and witnessed truly inspiring and incredible juvenile outcomes.

Tips for Grant Applications and Program Planning

- Collaborate, Collaborate, Collaborate. Like people, no organization is an island.
- Almost every grant, federal and state (in MN) I come across either requires collaborations and multiple partners, or strongly encourages them.
- Preserves precious resources, draws upon a potential multitude of wisdom, experience, input, and positive influence. Almost always serves to increase likelihood of funding approval; whether through federal, state, government, foundation, collaboration is compelling to funders.

- Choose collaborators closely; you will be tied to them, and program success or failure will not rest on your shoulders alone. There must be effective communication, trust and at times, diplomacy and willingness to compromise.
- If you are looking to collaborate and do not know where to begin, I stumbled upon a good tip back in 2010, begin by locating those identified as the most successful collaborators in your area and ask for their advice. By virtue of being good collaborators, they are likely to be generous with their time and input, will help identify additional collaboration champions to consider, and you never know, they may even have a project in mind for your organization.

- Do not fear rejection. Do not take rejection personally. And never burn bridges.
- For funding requests, understand how competitive things have become, and don't get discouraged by denials for funding, they are inevitable. If you never receive denials, you're probably not putting enough application requests out there.
- For instance, say on average, 90% of funding requests are denied.
 When you receive a denial, try to think of it as meaning that you are
 likely to only get more 8 denials before your next approval. Getting
 this denial has now given you the chance to check an additional
 denial off that list, leaving you with fewer denials remaining before
 you get that next approval for funding.

- Momentum builds. The more you put out there, the more you reach out to, and the more you learn and grow from the process, the more success you will have. Both in securing collaborative partners, and with funding application request determinations.
- You will see other organizations coming directly to you with their own projects in mind looking to collaborate, most often willing to take the lead on the application process.
- Continued and sustained efforts, determination, patience and faith will pay great dividends for your program and community.

- Most grant application submission requirements are numerous. It often takes a significant amount of time to line up and create everything necessary for submission.
- Making things more difficult, a significant number of grants have very short windows between solicitation release and submission deadlines.
- It is of critical importance to get an early start, and avoid procrastination, be especially on the lookout to avoid task procrastination (e.g. prioritizing job duties and requirements of lesser importance to avoid dealing with the application at hand). Getting everything together for submission is likely to take longer than you initially assume.
- Sign up for an email subscription to http://tlpi.wordpress.com/, the single greatest free resource for Indian Country grant solicitations that I have found.

Criminal Defense • Civil Action • Family Defense

THE Bronx Defenders

Policy & Community Development • Social Work

Holistic Defense, Defined

Criminal defense
Related civil representation
Social work support
Community engagement

Center for Holistic Defense

THE 4 PILLARS OF HOLISTIC DEFENSE

- Seamless access to services that meet clients' legal and social needs
- Dynamic, interdisciplinary communication
- Advocates with interdisciplinary skill set
- Robust understanding of and connection to, the community served

Center for Holistic Defense

Grant awarded to The Bronx Defenders by
The Department of Justice, Bureau of Justice
Assistance

 Purpose: To provide Technical Assistance to Public Defender Offices around the country who are striving to be more holistic in their representation

Center for Holistic Defense

TECHNICAL ASSISTANCE

- Site Visits
 - To The Bronx Defenders
 - To the recipient's office
- Creation of a 8 month plan
 - Focus on one aspect of Holistic Defense to develop
 - Creation of a Needs Assessment Instrument
 - Collection of Data
- Ongoing Advice & Assistance

Criminal Defense • Civil Action • Family Defense



Policy & Community Development • Social Work

360 East 161st Street • Bronx, New York 10451 • (718) 838-7878 www.bronxdefenders.org • www.holisticdefense.org

Tribal Defenders for the Confederated Salish and Kootenai Tribes





High Recidivism



- 1600 criminal cases in 2012
- Each attorney/advocate carries 150 200 open cases
- 7% of Montanans are Native American
- 20% of male prison population is Native American
- 36% of female prison population is Native American
- Second highest number comes from the Flathead Reservation

Addressing Recidivism with Holistic Defense

- 43
- 2009: Received BJA funding for a Mental Health Collaboration Program
- 2011: Received technical assistance from the Center for Holistic Defense
- Redefined positions allowing each staff person to contribute to client services by utilizing their particular knowledge and strengths

Intake

(44)

Walk-in clinic

Pro se assistance

Information referral

Assistance with Collateral Consequences



- Eviction due to criminal charges
- Licensing issues
- Employment
- Reentry
- Outreach to inmates
- Child protection issues
- Eligibility for financial assistance

Mental Health and Case Management

46

Assessment

Counseling

Case Management

Cultural Mentoring

47

Volunteer tribal elders mediate and counsel

Dispute resolution

Promote connection to the tribal community

Divert criminal cases

Community Outreach

Know your rights

Financial management

Consumer protection

How to deal child protective services

Collaborations

49

- Tribal behavioral health
- Tribal police
- State public defenders
- University of Montana
 - Social work
 - Clinical psychology
 - Law school

Diversions

(50)

Driver's licenses

Cultural mentoring

Mediation

Mental health intervention

Holistic Defense in Indian Country

(51)

Tribal defenders know their clients

Accessible

Client centered

Credibility

Informal resources

What You Can Do



- You are an extension of your community
- Exploit the knowledge and strengths of your staff
- Utilize the wealth of resources among your people
- Be part of the solution in your criminal justice system
 - Take ownership of diversions to best serve your clients
 - The best interventions come from defenders who take a client centered approach
- Apply for grants your clients are entitled to the money too
- Apply for assistance from the Center for Holistic Defense

Contact

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Confederated Salish and Kootenai Tribes

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DOJ & DOI Funding & Programs that Support Tribal Defense Related Activities

Funding Programs

Tribal Criminal and Civil Legal Assistance Program (TCCLA)

https://www.bja.gov/ProgramDetails.aspx?Program ID=102

Tribal Courts Assistance Program (TCAP)

https://www.bja.gov/ProgramDetails.aspx?Program_ID=89

John R. Justice Student Loan Repayment Program

https://www.bja.gov/ProgramDetails.aspx?Program_ID=65

BIA Funding of 184 Tribal Courts through PL 638 Contracts

BIA One-Time Funding to Tribal Courts

BIA Specific Funding post Tribal Court Review Process (if corrective action plan details defender deficiencies

BIA Tribal Court Trial Advocacy Training Program

http://www.bia.gov/WhoWeAre/BIA/OJS/ojs-services/ojs-tjs/index.htm

DOJ Grants for which Allocating Funds for Indigent Defense is a Priority or Stated Purpose

Grants

Byrne/ Justice Assistance Grant

https://www.bja.gov/ProgramDetails.aspx?Program_ID=59

NCJA Webinars: Strengthening Indigent Defense: Understanding State and Federal

Resources (Jan. 22, 2013) http://www.ncja.org/webinars-events/ncjabja-webinar-

series/webinar-archives#strengthening

Expanding Stakeholder Involvement: Promoting Inclusive System Planning

http://www.ncja.org/webinars-events/ncjabja-webinar-series/webinar-archives#expanding

Juvenile Accountability Block Grant

http://www.ojjdp.gov/programs/ProgSummary.asp?pi=1

Juvenile Title II Formula Grant Program

http://www.ojjdp.gov/programs/ProgSummary.asp?pi=16&ti=&si=&kw=&PreviousPage=ProgResults

Coordinated Tribal Assistance Solicitation

http://www.justice.gov/tribal/ctas2013/solicitation-document.pdf

For More Information:

Resources

- •DOJ Courts and Indigent Defense Resource Guide http://www.justice.gov/atj/resource-publication-4-17-12-rev.pdf
- Bureau of Justice Assistance Overview of TCCLA Program
 https://www.bja.gov/Publications/TCCLA_Overview.pdf
- Grant Information from the Access to Justice Initiative http://www.justice.gov/atj/grant-info.html
- •DOJ Funded Indigent Defense Publications http://www.justice.gov/atj/idp/
- Bureau of Justice Statistics:
 2012 National Survey of Tribal Court Systems
 https://www.tribalcourtsurvey.org/





For More Information:

Additional Resources

- •Bronx Defenders' Center for Holistic Defense http://www.bronxdefenders.org/our-work/center-holistic-defense
- •NIJ/ATJ Expert Working Group Report: International Perspectives on Indigent Defense https://ncjrs.gov/pdffiles1/nij/236022.pdf
- •GAO Report on Indigent Defense (2012) http://www.gao.gov/assets/600/590736.pdf
- •GAO Report, Tribal Law and Order Act: None of the Surveyed Tribes Reported Exercising the New Sentencing Authority, and the Department of Justice Could Clarify Tribal Eligibility for Certain Grant Funds GAO-12-658R, May 30, 2012 http://gao.gov/assets/600/591213.pdf
- •OJJDP Newsletter Innovative Approaches to Juvenile Indigent Defense https://www.ncjrs.gov/pdffiles/171151.pdf

For More Information:

ATJ Selected Blogs

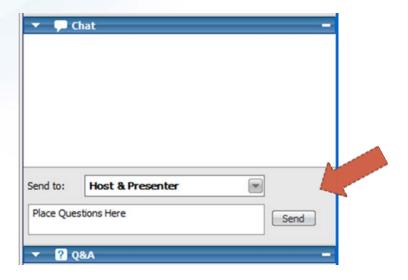
- •Bringing All Criminal Justice Stakeholders to the Table http://blogs.justice.gov/main/archives/2055
- •Addressing Juvenile Justice Concerns in Response to Shelby County http://blogs.justice.gov/main/archives/2423
- •Department of Justice Prioritizes Improving Legal Representation for Indigent Defense http://blogs.justice.gov/main/archives/1822
- Public Service Careers & Student Loan Debt: What You Should Know http://blogs.justice.gov/main/archives/2189
- Adoption of First International Principles and Guidelines on Indigent Defense http://blogs.justice.gov/main/archives/2236
- •Constructive Alternatives to Criminalization http://blogs.justice.gov/main/archives/1822





To submit questions for the presenters please use the chat feature on the right hand side of your screen.

Please select Host and Presenter



Q&A



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Si



THANK YOU FOR JOINING US

Today's slides and a recording of this webinar will be available at:

http://www.ncja.org/webinars-events/state-tribal-collaboration-webinar-series

and

http://tloa.ncai.org/

Upcoming Webinar

Tribal Access to Federal Criminal Justice Databases June 25 3:00-4:30 p.m. ET

This webinar series is supported by Grant No. 2010-DB-BX-K086 awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the SMART Office, and the Office for Victims of Crime. Points of view or opinions are those of the speakers.