



Laying the Foundation:

Strengthening Court Practices

Under The Violence Against Women Act

March 4-5, 2026

Seven Feather Casino & Resort,
Canyonville, Oregon



Coming Up | UNIT 2

Bridging Tradition and Law: Cultural Considerations in Tribal Court Cases

Gina South

Juvenile Division Chief and Assistant Prosecuting Attorney,
Choctaw Nation of Oklahoma



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Bridging Tradition & Law: Cultural Considerations in Tribal Court Cases

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Objectives

1. Understand how tribal traditions, customs, and values influence legal processes and decision-making in Tribal Courts.
2. Identify key cultural considerations and protocols that impact advocacy, communication, and courtroom practice in Tribal Court cases.
3. Discuss culturally respectful legal strategies that bridge Western legal frameworks and tribal law.
4. Learn to identify common ethical dilemmas that arise in Tribal Courts that are reflective of the complex internal relationships inherent to working with Indian Nations.



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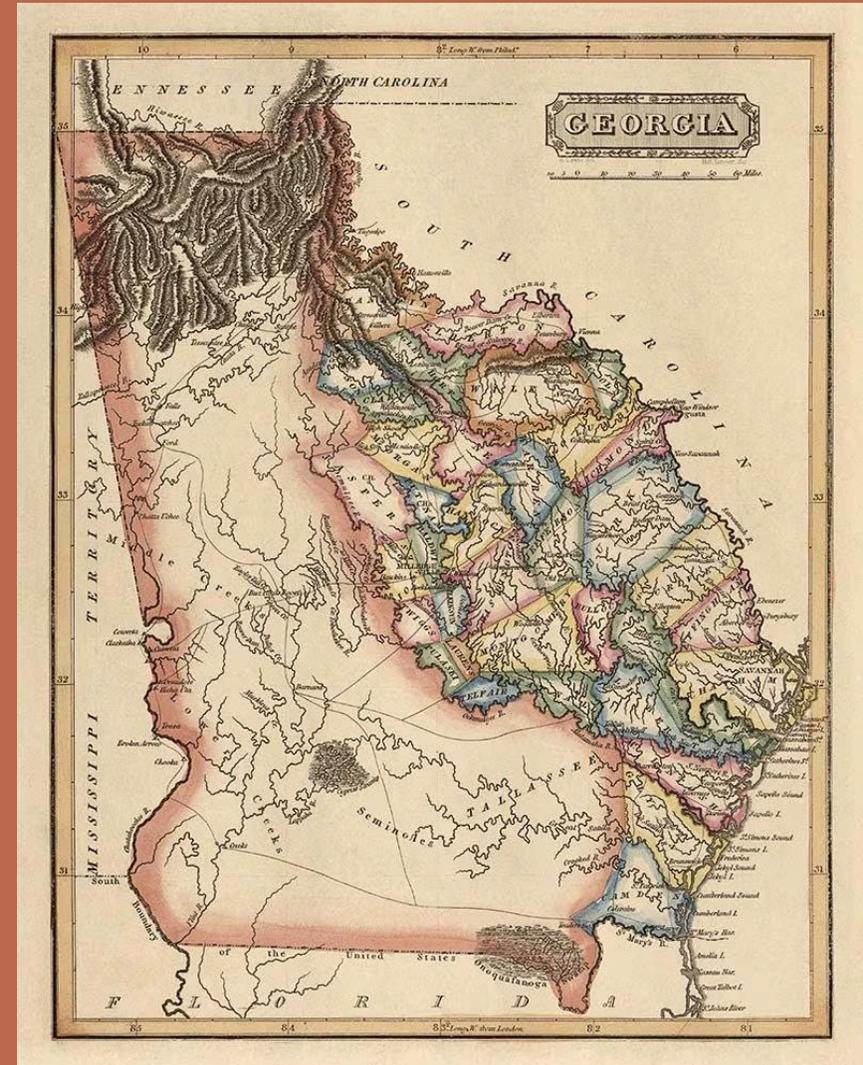
Integration of Spiritual and Cultural Values



Tribal Sovereignty

“The Cherokee Nation is a distinct community, occupying its own territory, which the citizens of Georgia have no right to enter but with the assent of the Cherokees themselves or in conformity with treaties and with the acts of Congress.” -John Marshall

Worcester v. Georgia, 315 U.S. 515 (1832)



Foundation of Legal Authority is Tribal Sovereignty

Tribal courts derive authority from tribal sovereignty, which has been affirmed in cases like **Worcester v. Georgia**. This decision recognized that tribes are distinct political communities with authority over their internal affairs.

Because of this sovereignty:

- Tribes can design court systems based on their own cultural frameworks.
- Customary law may carry equal or greater weight than written codes.
- Community values shape justice priorities.

Integration of Spiritual and Cultural Values

Establishing a tribal court is one of the most powerful demonstrations of tribal sovereignty

Tribal
Sovereignty

Customary
Law

Restoration
Over
Punishment

Elders and
Community
Participation

Customary Law as a Source of Law

Many tribal courts rely on:

- Oral traditions, Clan systems, Cultural teachings, Elders' interpretations of norms.

Instead of relying strictly on written statutes, judges may consider:

- Community harmony, historical practices, the tribe's worldview

For example:

- Some tribes use clan relationships to determine responsibility.
- Elders may advise judges in interpreting tradition.

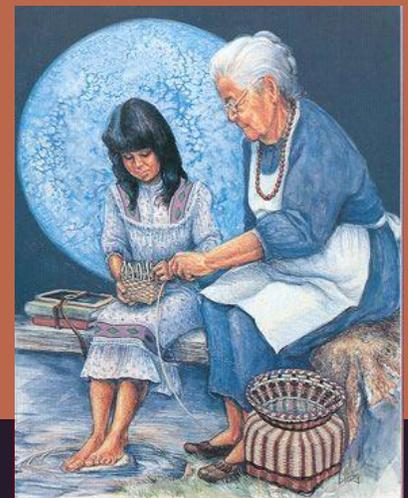
Customary law is not just symbolic—it can be binding authority.



Customary Law in Practice

What are your tribal values?

- In criminal court, will you charge tribal members for public intoxication?
- In child welfare cases, will you terminate parental rights?
- In juvenile delinquency cases, can you address child on child rape through restorative justice?



Integration of Spiritual and Cultural Values



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Tribal
Sovereignty

Customary
Law

What tribal practices and traditions will you incorporate into your codes?

Restoration
Over
Punishment

Elders and
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Participation

Restorative Justice: Restoration over Punishment

Unlike the adversarial model in state courts, many tribal courts practice true restorative justice. These courts emphasize:

- Healing relationships rather than punishing offenders
- Recognizing addiction as a substance use disorder (SUD) and treating the mental health condition instead of punishing the individual
- Repairing harm to victims and the community
- Reintegration instead of incarceration



Restorative Justice: Challenging in Practice

This will require significant buy-in from community stakeholders.

- Will the State's local law enforcement be cross-commissioned? If so, what is your plan to train the officers?
- What does your law enforcement structure look like? Is there a mental health crisis response team?
- Do you have a communications/PR team that can establish the appropriate messaging for the surrounding community?
- Will you continually educate your community about historical trauma, and its impact on tribal members?



Integration of Spiritual and Cultural Values



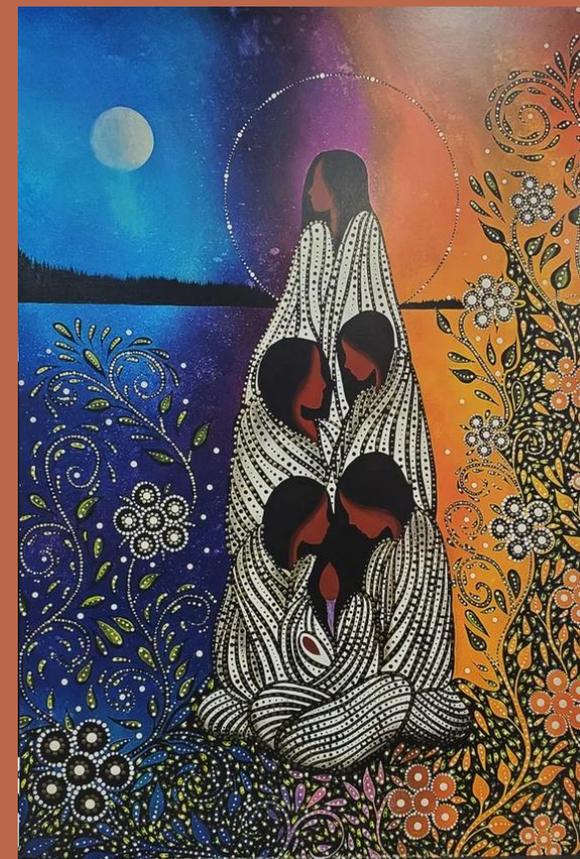
Elders & Community Participation

In many tribal systems:

- Elders serve as cultural authorities.
- Community members may participate in dispute resolution.
- Peacemakers Courts may be used for mediation.
- Community responsibility comes into focus over individual blame.

Decision making may reflect:

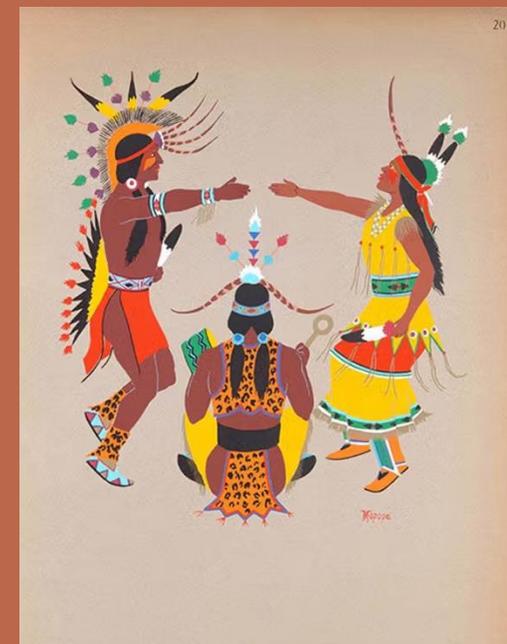
- Respect for ancestors
- Clan obligations
- 7 Generations concepts and long-term community impact



Elders & Community Participation: In Practice

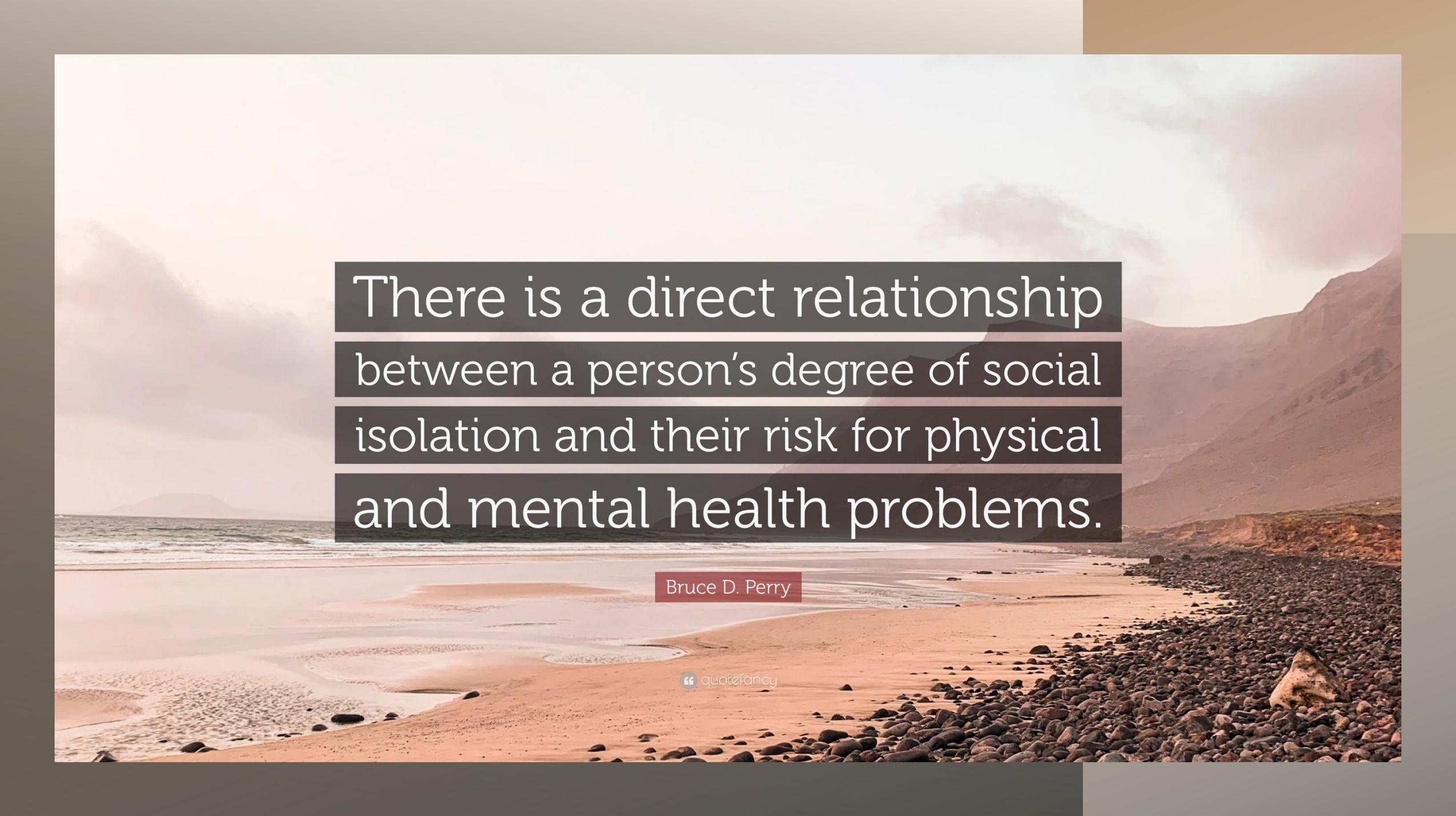
Considerations:

- Volunteers or compensated community members?
- Do you have the adequate manpower to establish a program?
- What innovative ways can you utilize your elders?
- Building community support requires safety protocols.
- If you use an MDT approach for the investigatory side, consider also using an MDT approach for the post-conviction side of the case.



Integration of Spiritual and Cultural Values





There is a direct relationship
between a person's degree of social
isolation and their risk for physical
and mental health problems.

Bruce D. Perry

“ quote fancy

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Cultural Considerations & Protocols

Culture serves a purpose in the courtroom: it maintains the integrity of who we are as native people and provides a backdrop for the justice system we work in.

It directly affects the advocacy, the communication, and the courtroom practice.

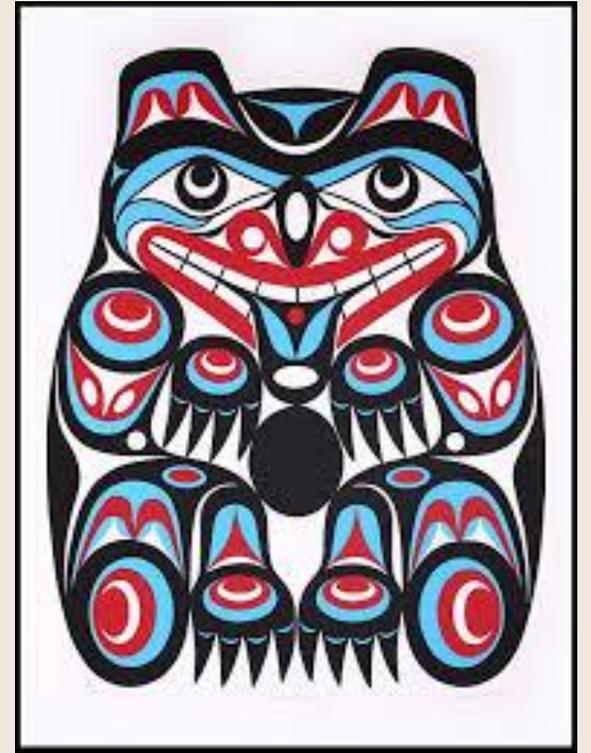
- **Ceremony** will set the tone – ceremony (specific to each tribe) can be used to start docket days, jury trials, installation of new judges or courtroom officials, adoptions, successful reunifications, etc.
- **Language preservation** – include the tribal language in portions of your codes, in naming programs, titles, and in any other relevant manner.
- **Art** – Tribal art is both healing to engage in, reassuring to tribal members, and a reminder of our sense of history and belonging to the culture. It should be part of the surroundings in the court room and adjoining spaces.



Cultural Considerations & Protocols

Consider taking a “Culture Audit” of your justice system, and ask how your tribal culture is reflected in each of the following:

- Codes
- Investigations
- Orders
- Polices/Procedures
- Physical Spaces
- Emails and communications between departments
- The start of a trial
- The conclusion of a case
- Conflict



Example

Choctaw Nation Jurisdiction

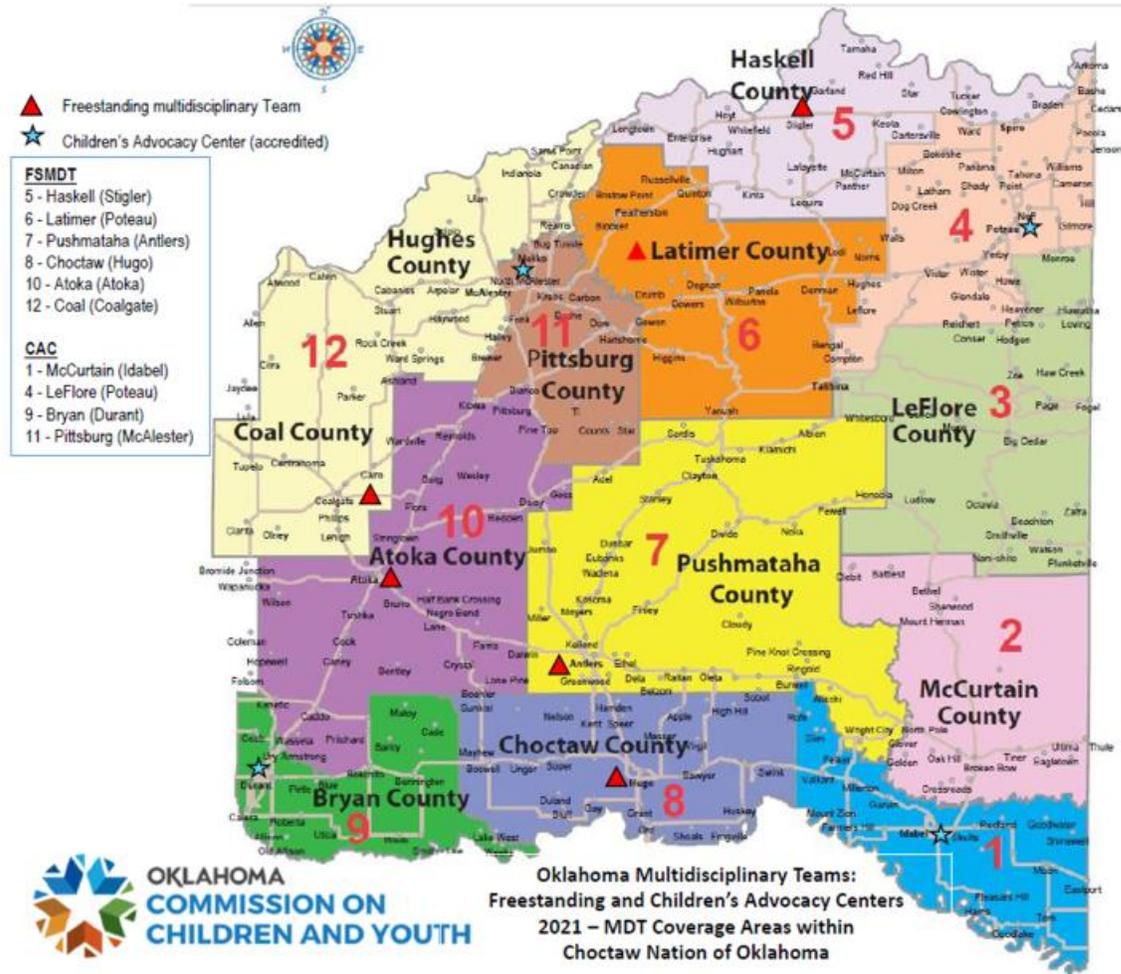


Image retrieved 12/14/20 from https://commons.wikimedia.org/wiki/File:LeChoctaw_Nation_District_map.png

Cultural Considerations & Protocols

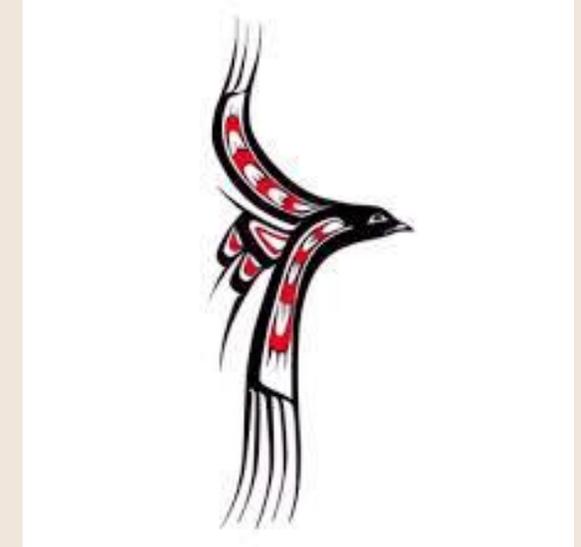
When creating protocols and establishing policies, remember to incorporate the most important cultural principles:

- Respect
- Honor
- Generosity
- Compassion
- Strength
- Courage
- Kindness



Cultural Considerations & Protocols in Practice

- Justice will look different from tribe to tribe, and should also look different from justice in a state court.
- Justice may be viewed as restoring balance between individuals, families, nature, and the spiritual world.
- Tribes should generally be taking a more holistic approach with mental health issues, substance abuse, family dynamics, and historical trauma.
- Healing-to-Wellness courts generally incorporate cultural teachings into rehabilitation.



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Bridging Western Law and Tribal Law



Bridging Western Law and Tribal Law



It is imperative to fill your offices with people who have a rich understanding of Federal Indian Law. This knowledge will give you 3 things:

- The understanding that we can be creative, innovative, and expansive in the directions we want to go with our courts;
- The ability to not feel constrained by state laws and policies; and
- The knowledge of what the actual parameters are under Federal law, namely:
 1. ICRA – Indian Civil Rights Act, which imposes constitutional-like protections on Tribal Courts, and
 2. VAWA – Violence Against Women Act, which expands tribal criminal jurisdiction in certain cases.

Bridging Western Law and Tribal Law



NATIONAL
NATIVE AMERICAN
BAR ASSOCIATION

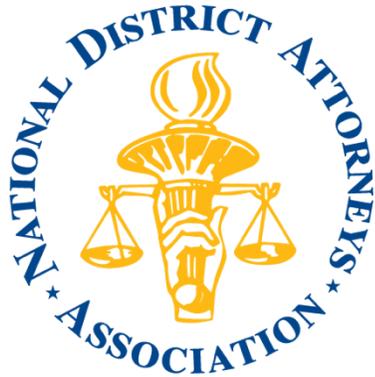
- Tribal Counsel's intention for your Tribal Court needs to be in your onboarding documents for all new hires
- New hires need to be acclimated to your office culture and their first responsibility should be to read all tribal codes, and complete a review of tribal court policies, as well as learn about the tribe's history and culture.
- Exercise Indian Preference in Hiring
- Be Intentional in Hiring – use the 7th Generation Principles – if you want your court to mirror the state system, then hire people with no training in FIL
- Offer Competitive Pay
- Create and nurture a positive work environment that is inclusive for non-natives, but also centers native voices.

Bridging Western Law and Tribal Law



- Plan for Office Turnover
- Establish Externships with FIL
- Create Summer Legal Internship Opportunities
- Targeted Job Postings at Law Schools with FIL Programs
- Affiliate with Regional Tribal Organizations
- Attend National Native Conferences
- Join National Native Associations
- Visit Other Tribes & Network in Tribal Circles
- Establish Legal Scholarships for Tribal Members

Bridging Western Law and Tribal Law



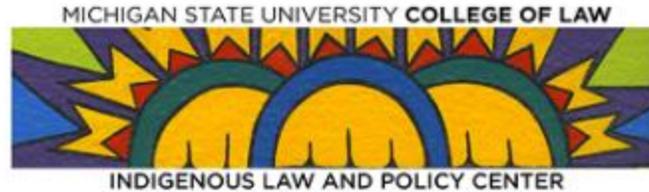
- Utilize the law schools to assist with creating and amending Tribal Codes
- Get Tribal Member/Stakeholder input on Code Changes
- Apply for CTAS grant funding for your Tribal infrastructure, and all other available Federal funding.
- Prosecution Office should establish a Child Abuse MDT and Sexual Assault Response Team
- Consider joining the National District Attorney's Association
- Build in a budget or get grant funding for an ongoing training budget for attorney CLE's

Bridging Western Law and Tribal Law

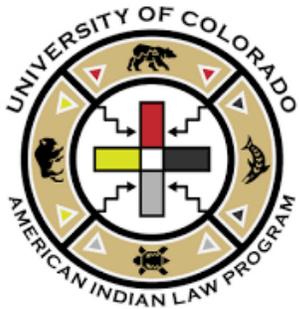
Law Schools & Associations



The University of New Mexico®



Berkeley Law



Bridging Western Law and Tribal Law Conferences

- **2026 FBA Indian Law Conference (Apr 9–10, 2026, Scottsdale, AZ):** Known as the signature program on American Indian law, this event covers crucial topics like tribal sovereignty, natural resources, and economic development.
- **National American Indian Court Judges Association (NAICJA) Conference (Oct 13–16, 2025, Phoenix, AZ):** Focuses on tribal judicial and court personnel.
- **Native Law Symposium (Nov 14, 2025, St. Paul, MN):** Hosted by the Mitchell Hamline School of Law, this symposium offers 2.75 CLE credits and covers tribal sovereignty.
- **Tribal Law & Government Conference (Annual, KU Law):** Focuses on the evolution of tribal common law, modern governments, and indigenous law.
- **Indigenous Law Conference (Annual, TICA):** Targeted toward in-house counsel, providing opportunities for new scholars and professionals.
- DOJ Websites have other annual conferences as well that are also good to attend for training and networking purposes

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Common Ethical Dilemmas in Tribal Courts

Conflicts of Interest

In many tribes:

- Judges may be related to parties through clan or family ties.
- Attorneys may have grown up with clients or opposing parties.
- Court staff may have social or political relationships with litigants.

In communities where kinship networks are central, avoiding conflicts entirely can be impossible. The dilemma becomes:

- When is recusal required?
- When does recusal undermine the court's ability to function?
- How does one balance impartiality with community obligations?
- This is particularly complex in tribal systems where clan relationships carry legal and cultural meaning.

Common Ethical Dilemmas in Tribal Courts

Custom vs. Code

Tribal courts often apply:

- Tribal constitutions.
- Statutory codes.
- Oral traditions and customary law.

Judges and Attorneys may face dilemmas when:

- Written law conflicts with tradition.
- Elders' interpretations differ from statutory language.
- Custom supports collective responsibility while federal law emphasizes individual rights.

Common Ethical Dilemmas in Tribal Courts

Tribal Politics

Unlike state courts, tribal courts may be:

- Funded directly by tribal councils.
- Subject to appointment or removal by elected leadership.

This can create ethical tension when:

- The court must rule against tribal leadership.
- Political pressures influence high-profile cases.
- Employment security depends on political bodies.

The dilemma is preserving judicial independence while respecting tribal governance structures.

Common Ethical Dilemmas in Tribal Courts

Community vs. Individual

Many tribal justice systems emphasize:

- Restoration
- Community harmony
- Reintegration

But ethical tensions arise when:

- A victim wants incarceration, but tradition favors reconciliation.
- Domestic violence cases conflict with pressures to maintain family unity.
- Confidentiality clashes with communal knowledge-sharing norms.

Common Ethical Dilemmas in Tribal Courts

Dual Roles & Professional Boundaries

In Indian country, professionals often wear multiple hats:

- An attorney may also serve on a tribal committee.
- A judge may be a community elder.
- A prosecutor may be related to a defendant's family.

These overlapping roles can create:

- Perceptions of favoritism.
- Pressure to prioritize relationships over legal principles.
- Difficulty maintaining confidentiality.

Common Ethical Dilemmas in Tribal Courts

Confidentiality

Indian country communities are often small, tightly knit communities, in which:

- Information travels quickly.
- Office staff may be related to parties or may be fact witnesses to criminal cases.
- Public knowledge of disputes may affect family standing.

Maintaining attorney-client privilege and judicial confidentiality can be especially challenging.

Common Ethical Dilemmas in Tribal Courts

“We’re All Relatives”

Tribal court ethics are challenging due to the relational complexity and inherent interconnectedness:

- Family ties, Clan systems
- Political governance
- Cultural authority
- Federal constraints

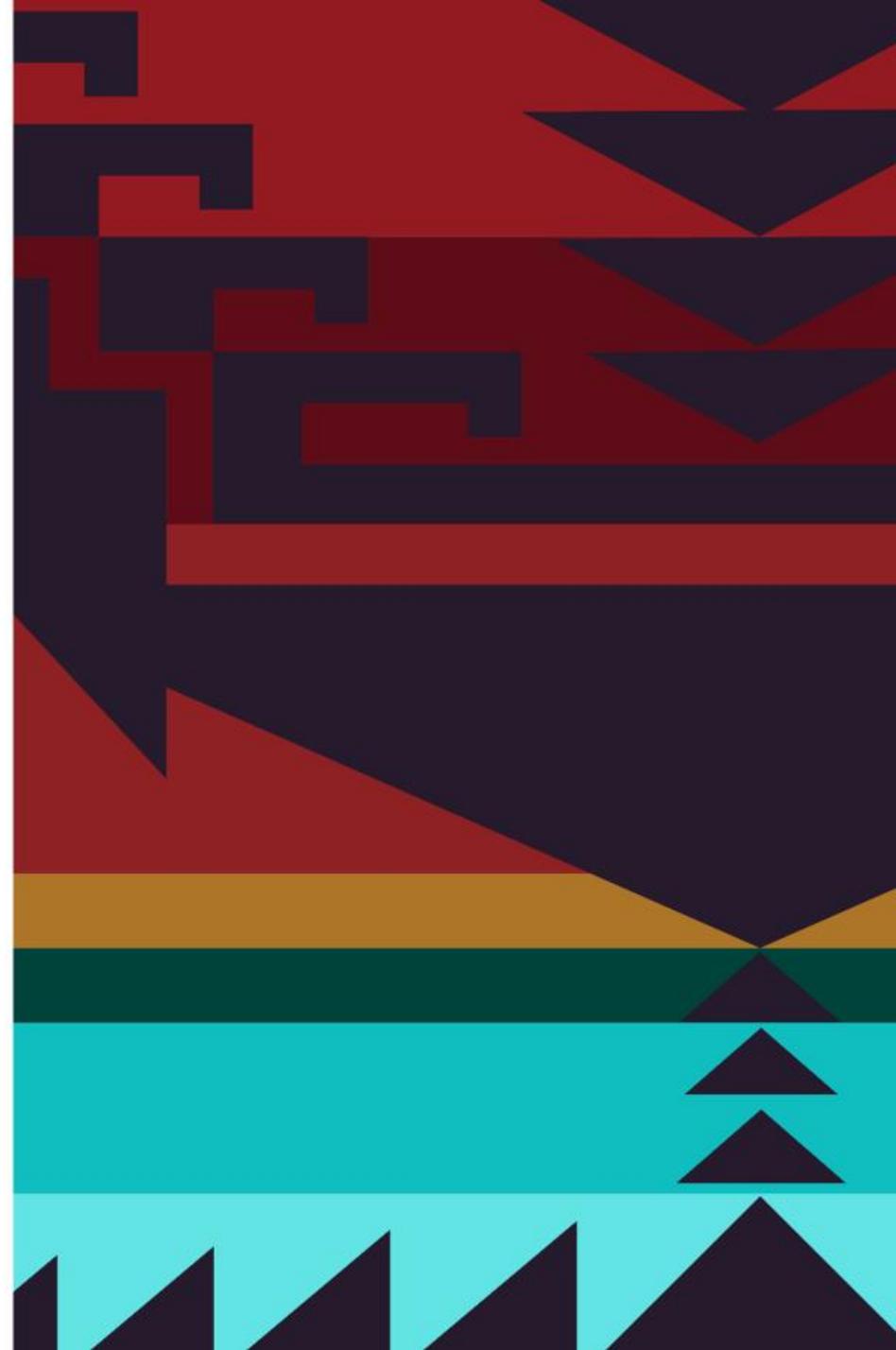
Unlike large state systems built on anonymity and separation, tribal justice systems operate in environments where relationships are central and unavoidable. Ethical decision-making therefore requires balancing:

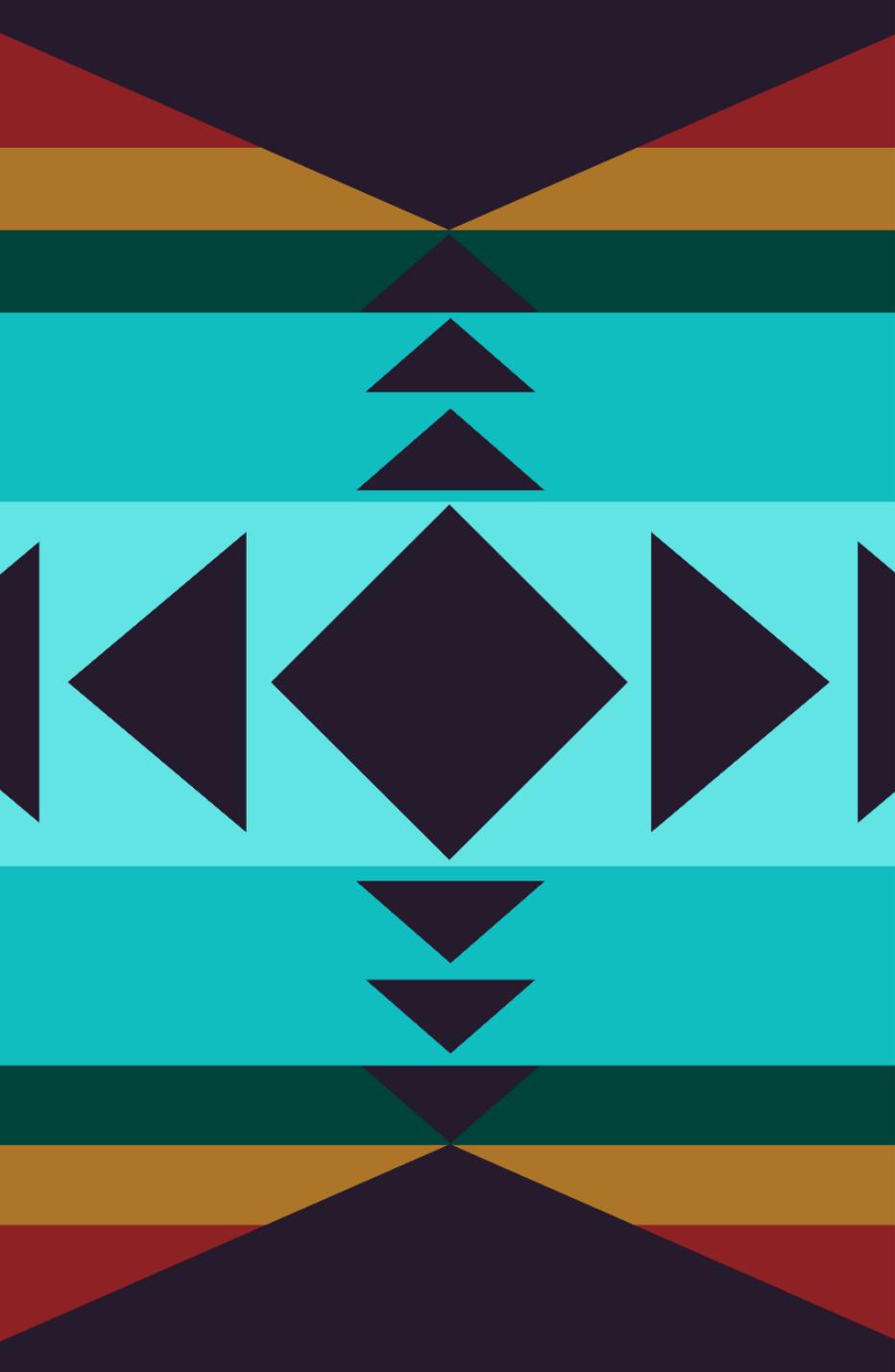
- Impartiality & Sovereignty
- Cultural integrity & Community Survival

As a solution, consider partnering with neighboring tribes or conflict counsel

*Let us put our minds together
and see what life we can make
for our children.*

-Sitting Bull





Small Group Projects

Use the scenarios at your table to discuss the problem and come to a solution.

Goals for Juvenile Delinquency Cases, Part 1

Issues	Goals	Notes
Safety	Ensure the juvenile's safety, the public's safety, and the safety for the household.	Low risk? Moderate? High?
Poverty	Cannot be a factor in detention or charging decisions.	No other safe place
Crime	Do not detain for status offenses. Do not charge status offenses.	Illegal for minors but not adults: Runaways, truancy, curfew, underage drinking
Victim Services	VA should initiate contact within 24 hours of receipt of the case. Assign a VA in every SA case. Encourage therapy for the victim and family.	

Goals for Juvenile Delinquency Cases, Part 2

Issues	Goals	Notes
Service Plan	Offer as many services as possible. Encourage therapy for the family.	Rehabilitative, not punitive
Case Outcomes	Diversion. Reduced stays in detention. Low recidivism. Rehabilitation.	Privacy
Membership & Culture	Obtain tribal membership for every child. Connect to as many tribal services as possible.	Connect to community

Goals for Juvenile Delinquency Cases, Part 3

Issues	Goals	Notes
Legal Representation	<p>Children will always meet with their attorney, who will explain their options and the process.</p> <p>Children will appear in person as much as possible.</p>	
Internal Excellence	<p>All documents are timely filed.</p> <p>Increased collaboration within the team and with agency partners.</p> <p>Everyone knows their job and is confidently able to perform their job, and knows who to ask for help</p> <p>Everyone on the team knows and feels as though they are a valued member of the team.</p> <p>Provide victims with 2 weeks' notice of hearings.</p>	

The Importance of Collaboration

Planning and implementation of unique programs requires thoughtful and intentional gathering of the stakeholders for multiple collaborative sessions.

MBCI STAKEHOLDERS:

1. OFFICE OF COURT SERVICES
2. CHOCTAW YOUTH JUSTICE CENTER
3. CHOCTAW DETENTION FACILITY
4. OFFICE OF THE ATTORNEY GENERAL
5. CHOCTAW POLICE DEPARTMENT
6. JUVENILE PROBATION OFFICE
7. DIVERSION COORDINATOR
8. CHOCTAW LEGAL DEFENSE
9. CHOCTAW CHILDREN & FAMILY SERVICES
10. CHOCTAW BEHAVIORAL HEALTH
11. DEPARTMENT OF NATURAL RESOURCES
12. ELDERS
13. DEPARTMENT OF CHAHTA IMMI
14. TRIBAL COUNCIL MEMBERS
15. CHOCTAW SCHOOL SYSTEM
16. CHOCTAW BOYS & GIRLS CLUB



Closing Considerations

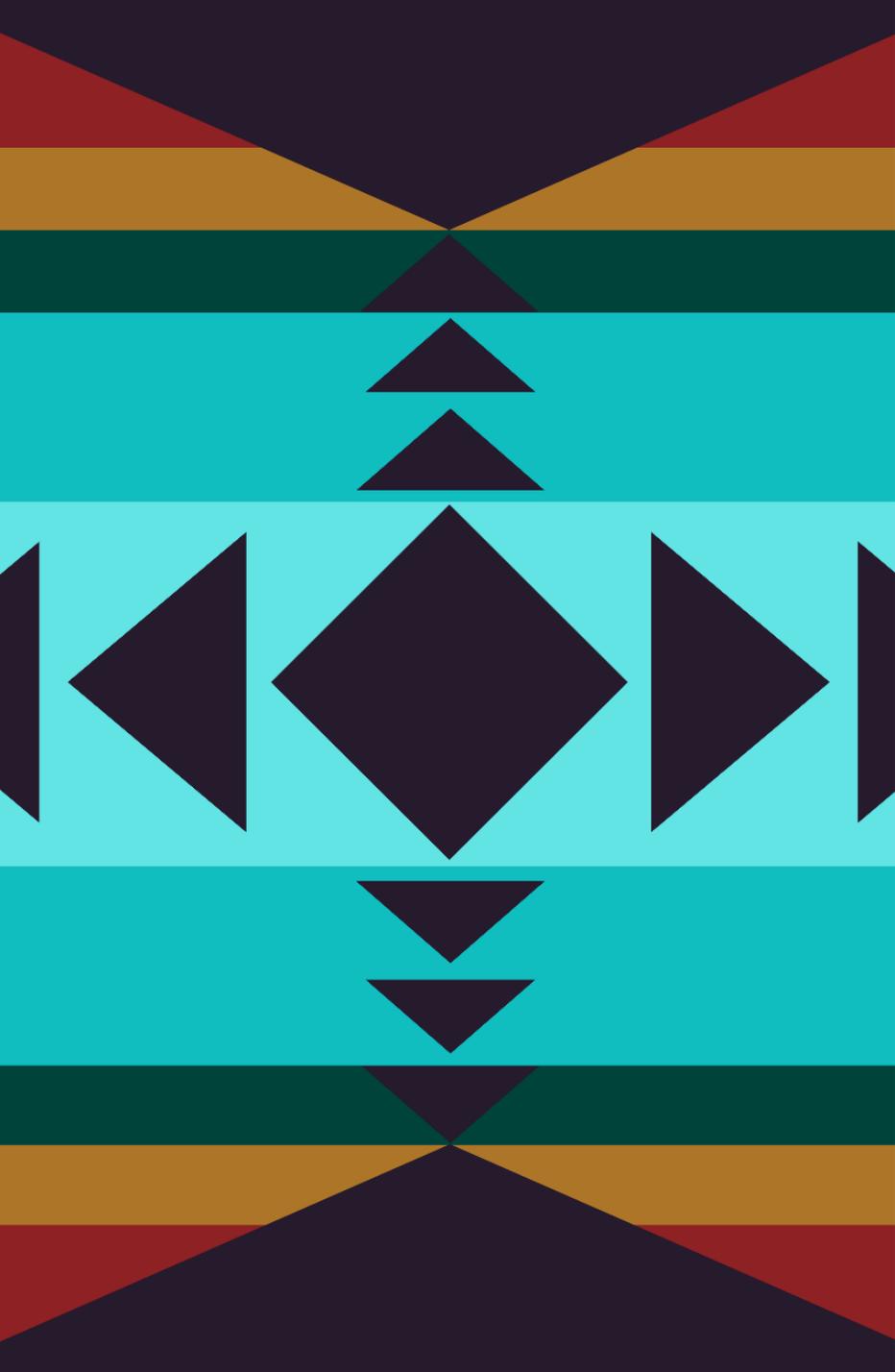
Making decisions about the families in your community requires ongoing team discussions and education. How would you respond to the following questions?

- Have you set goals or done strategic planning with your team?
- Have you identified agency partners and community stakeholders that need further education on your subject area?
- Do you or members of your team regularly attend diverse training topics designed for native communities across the nation?
- Does your team meet regularly with agency partners to discuss recurring issues?
- Does your team engage in team building activities with your agency partners?
- Has your team been trained in bias, historical trauma, and cultural humility?
- Would you feel comfortable attending public community cultural events?



Questions & Answers





Resources

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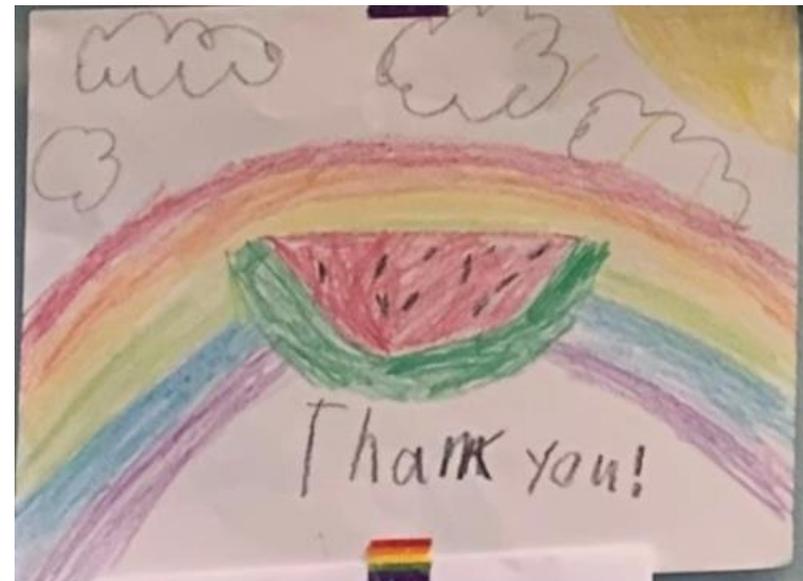
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Yakoke!

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Coming Up | UNIT 3

How to Advocate for Tribal Children in the State
Juvenile Justice System and/or Start Doing it Yourself

Addie Smith

Senior Consultant, The Whitener Group