Objectives of Today’s Presentation

Discuss:

History of jurisdiction and Tribal court development in California
The rise of Tribal Healing to Wellness Courts
Restorative justice as a reincorporation of traditional jurisprudence
How culturally-based services can promote healing and wellness
How culturally-based services are incorporated into Healing to Wellness Courts
Examples of Healing to Wellness Courts in California
Origin of Tribal Judiciaries

Divergence of Values:
Tradition leadership models emphasize dispute resolution, rather than executive or legislative duties
  ◦ Goal was consensus as opposed to ascertaining guilt
  ◦ Facilitator as opposed to decision-maker

1883
  ◦ *Ex Parte Crow Dog*
  ◦ Designed to mimic western models
  ◦ Heightened need for inter-tribal/Indian-non-Indian dispute resolution
Modern Tribal Courts

1934 – Indian Reorganization Act
- "Permits" tribes to organize and draft constitutions
- Many tribes assumed judicial functions, replacing CFR courts

Opportunity
- For a system that is more responsive to tribal needs and under tribal control
- To resurrect traditions and customs

Many courts apply large bodies of written law, as well as custom and tradition.
California

Contact: genocide – missions, gold rush

1850- An Act for the Government and Protection of Indians

1953 - Public Law 280 – federal law imposed on tribes and California
- Increased role for state criminal justice systems
- Virtual elimination of the special federal criminal justice role,
- Numerous obstacles to individual Nations in their development of justice systems, and
- An increased and confusing state role in civil related matters
  - Not civil/regulatory
  - Civil/Adjudicatory

1956-1964 – California Rancheria Termination Acts
California Tribal Courts

- 22 Tribal Courts serving 39 Nations
- Varying stages of "development"
- Various models often depending on services available in community
Modern Challenges

CRIMINAL JURISDICTION
- ICRA
- Oliphant
- VAWA
- TLOA

RESTRICTIONS ON FUNDING
- Los Coyotes
Rise of Healing to Wellness Courts
Needs

Ability to communicate between silos
Warm hand-off
Motivation
Inclusion of the family on the case plan and status
Recognition of children and their needs
Expression that we care about this
  ◦ individual,
  ◦ their well-being,
  ◦ the well-being of the children, and
  ◦ the well-being of the family unit
The term “Healing to Wellness Courts” was adopted to

1. incorporate two important Indigenous concepts - Healing and Wellness; and
2. promote wellness as an on-going journey.
Decolonized Justice

• Not a new method
  • Crime and conflict were traditionally addressed through non-adversarial and consensus methods

• Holistic healing
  • Western methods individualize
    • criminal justice and
    • healing
  • Community vision is what guides Native people
<table>
<thead>
<tr>
<th>Adversarial Court vs. Wellness Court</th>
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<tr>
<td>Event-oriented</td>
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<td>Case-specific</td>
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<td>Sentence is uniform</td>
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<td>Service providers interact via referral</td>
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<td>Offender is removed from the community</td>
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<td>Post-sentencing supervision is punitive intended to “catch” violations</td>
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<td>Neutral judge</td>
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Healing to Wellness Court
Key Components

1. Team, Community, & Nation Building
2. Entry
3. Eligibility
4. Healing and Treatment
5. Support & Supervision
6. Discipline & Encouragement
7. Respectful Communication
8. Keeping & Telling Stories
9. Enduring Knowledge
10. Sustained Team, Community, & Nation Building
Tribal Key Components recognize:

- Community involvement
- Family relationships and involvement
- Culture and Tradition
- Exercise of Tribal Sovereignty
Family court docket → dependency cases where parental substance abuse is a primary factor

Promotes long-term stabilized recovery to enhance the possibility of family reunification

Tension: Goal is reunification, but focus is on children
Family Wellness Court Outcomes

- Higher Treatment Completion Rates
- Shorter Time in Foster Care
- Higher Family Reunification Rates
- Lower Termination of Parental Rights
- Fewer New Child Welfare Petitions after Reunification
- Lower Criminal Justice Recidivism
- Cost Savings per Family
Timely access to assessment and treatment services

How is the individual referred for assessment?

How long does it take to go from referral to assessment?

Who conducts the assessment and what tools are used?

How is information communicated to the parent? To the child welfare staff? To the courts? Are the appropriate consents in place and consistently signed?

What happens if the parent doesn’t show for assessment?

What are the next steps if treatment is indicated? If treatment is not indicated?

If the persons/systems/agencies conducting the assessments are not the same as the ones providing treatment, is there a warm hand-off?
Improved family-centered services and parent-child relationships

Recognizes that addiction is a family disease and that recovery and well-being occurs in the context of families

Parent Recovery
Focusing on parent’s recovery and parenting are essential for reunification and stabilizing families

Child Well-Being
Focusing on safety and permanency are essential for child well-being
Customs and Traditions in Healing to Wellness Courts
Cultural Identity

What does it mean to be Native?

Ancestry; Citizenship

Kinship; Community; Belonging; Collective Responsibility

Multi-Cultural – Two-Worlds
Loss of Connection

Generations of intentional, systemic cultural destruction

- War, disease, enslavement, and genocide
- Removal and large-scale loss of land; loss of economy
  - Reservation system
  - Allotment
- Assimilation policies
  - Criminalization of religion and cultural practices
- Boarding schools
- Termination
- Relocation
- Large-scale, disproportionate removal of Native children
Loss of Connection

The nature of substance addiction is anti-social

For many tribal communities, this also means anti-community

For many of our participants, this loss of connection is generations-deep
Culturally-Based Treatment

Regain a practical ethnic identity

Gain a healthy social network committed to the participants’ recovery

Make a religious, spiritual, or moral recommitment to themselves and their community

Reengage in recreational/volunteer or vocational activities

Gain a social role in the community

Strengths-based!
Key Component 1: Individual and Community Healing

Little Traverse Bay Bands of Odawa Indians’ White Feather story
Key Component 4: Treatment and Rehabilitation

Wellness Courts utilize clinical best practices, including

◦ phased treatment,
◦ individual counseling,
◦ group counseling,
◦ cognitive behavioral therapies,
◦ support groups,
◦ family therapies
◦ residential treatment
Key Component 4: Incorporating Culture and Tradition

Formal native healing treatments, such as

- White Bison/Wellbreity
- Cultural Advisor on staff
- Fatherhood/Motherhood is Sacred
- Positive Indian Parenting
Key Component 4: Incorporating Culture and Tradition

Smudging

Traditional gifts

Feasts

Name ceremony

Native language

Genealogy assignment

Craft classes

Cultural class/activity attendance requirement
Key Component 5: Intensive Supervision

Service projects for elders

Service projects for cultural centers, language programs

Building the sweat lodge

Meal preparation

Community event clean-up
Graduation Honoring

Feast
Family engagement
Community engagement
Blanket ceremony
Traditional gift
Key Component 7: Judicial Interaction
Inter-Jurisdictional Collaboration
Shingle Springs Band of Miwok Indians and El Dorado County, CA
Shingle Springs Joint Jurisdiction
Family Wellness Court

- Hears: juvenile justice, child welfare, domestic violence (as part of a dependency, child custody, protective order petition, and criminal cases)
- Judges preside over all cases jointly
- One unified proceeding
  - Avoid conflicting orders
  - Address the entirety of the families’ issues in a holistic fashion
- Emphasize culturally-appropriate restorative justice practices
- Wrap-around continuum of care
Hoopa/Humboldt
Yurok/Humboldt
Yurok/Del Norte
• Joint jurisdiction family wellness courts

• Focus addressing families affected by pre-natal exposure

• Why Created?
  • Recognition that current child welfare system was failing families
  • Commitment to do better
Yurok/Humboldt
Yurok/Del Norte
Hoopa/Humboldt

• Written Infrastructure
• Tribal Resolution
• Joint powers agreement
• Manual
  • Forms
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- Courts and legal community
- Primary, Obstetric and Gynecological Care, Pediatricians
- Prevention and Treatment of Mental Health and Substance Use Conditions
- Parenting and Family Support
- Infant Health and Safety
- Infant and Child Development
- Spiritual and Cultural Services
- Child Welfare
Integrating Values and Traditions

- **Courts**
  - Relations and obligations

- **Doctors**
  - Ceremony

- **Parenting and Family Support**
  - Gatherings and Events

- **Treatment Providers**
  - World view based on balance and harmony
The Tribal Law and Policy Institute

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WellnessCourts.org
www.Home.TLPI.org
Bibliography
