

State-Tribal Collaboration Webinar Series

Tribal-State Court Collaboration Based on Native Justice Traditions

Cabell Cropper: Good afternoon, everyone. My name is Cabell Cropper. I'm the executive director of the National Criminal Justice Association. I'd like to welcome you to our webinar, Tribal-State Court Collaboration Based on Native Justice Traditions. Before we get into the webinar, I'd like to thank everyone in the audience for joining us and for BJA for making this webinar possible.

I'd like to cover a few logistical items. We will be recording today's session for future playback. The link to the recording will be posted on both the NCJA.org website and the TLOA.NCAI.org website. The links will be emailed to all of you and to the people on the waiting list for this webinar. Today's webinar is being audiocast via the speakers on your computer. If you do not have speakers or would prefer to use your phone, please use the number contained in your registration email or on the event tab located on the top left-hand side of the screen.

Given the number of people joining us today, we've muted participants to reduce background noise. If you have questions for the presenters, we encourage you to submit them using the chat feature on the right side of your screen. Please select Host and Presenter from the drop-down menu next to the text box. If you would like to communicate with NCJA staff during the webinar, please submit your comment using the chat feature to the National Criminal Justice Association or Host.

This session is scheduled for an hour and a half, and we will end no later than 4:30 p.m. Eastern time. If you have technical difficulties or get disconnected during the session, please note that you can reconnect to the session using the same link that you used to join the session initially. You can also call WebEx technical support at 1-866-229-3239. In the last five minutes of today's webinar, we will ask you to complete a short survey. The information you provide will help us plan and improve future webinars and meet our reporting requirements.

As you can see from the slide, we have a very impressive panel of speakers today covering three different state tribal court collaborations. Because all of them have a lot of good information to share, we're going to get right into it. We'll start off with Coleta Walker, a peacemaker associate from the Center for Court Innovation, and she's joined by Brett Taylor, the deputy director for technical assistance at the Center for Court Innovation.

Then, we'll move on to Judge William Parnall with the Second Judicial District Court in New Mexico, the Children's Court Division, joined by Judge William Bluehouse Johnson, chief justice of the Isleta Appellate Court. Then, Judge P.J. Herne, the chief judge at the Saint Regis Mohawk Tribal Court in New York. We'll talk about his program, and at the end, Heather Valdez Singleton, the program director from the Tribal Law and Policy Institute, another BJA-funded training and technical assistance provider. We'll talk about some of the resources available through their

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institute.

Without further delay, I'd like to call on Brett or Coleta to get us started.

Brett Taylor:

Thank you, Cabell. This is Brett speaking, and Coleta will be joining me in a minute as we're going through our PowerPoint. I just want to thank you for giving us an opportunity to talk about this program. We'll just start it. One thing I want to mention is you'll see some quotes in the PowerPoint that are unattributed, and that's because those quotes were said in sessions or in private moments, and I didn't want to attribute them without getting permission.

Going forward, the Tribal Justice Exchange Program for the Center for Court Innovation was started in 2008 to share problem solving, court expertise that we developed with tribal courts. Part of our mission of doing the Tribal Justice Exchange was also to develop, to seek out promising tribal court practices that could be tried in a state court system. Later that year in 2008, along with myself, Aaron Arnold, the director of our Tribal Justice Exchange team, we went to a conference where we first learned about peacemaking.

During that time period, we started asking a lot of questions about peacemaking, we started observing peacemaking, and in our work with the Navajo, they were coming to visit Red Hook, and we had them actually come and speak to our community members about peacemaking. After getting a grant, we were able to do some training and recruitment, and we launched our program this year.

On this slide, this is just some real basic concepts of peacemaking that we've been taught through different mentors of ours. I'm not going to read all the text here because people can obviously access this at their own leisure, but basically peacemaking is the Native American practice of trying to resolve disputes with an eye towards restoring relationships and healing the past behavior.

That's a picture of Stanley Nez and Ray Diel, who are two of our mentors, and that's Erika Sasson, who is our program director for the peacemaking program and is out on maternity leave. That quote there, I know it makes it look like we're trying to simplify things, but I really put it there to show the difference between peacemaking and state courts because as Stanley told us once, peacemaking was just talking things out, that that's really in his mind what the essence of peacemaking was. If you compare that with the state court system, where we try to limit talking through exclusions and objections and hearsay rules, it's really a lot different approach to how we try to resolve disputes.

This is a just a quick screen shot of when Stanley came in 2010 and talked to our community members about peacemaking, and we did a quick survey to gauge interest. Based on the interest of this survey generated is what motivated us to

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continue forward with our desire to start this program.

These are our goals of peacemaking as they fit our community here in Brooklyn. These are the goals we've also been taught through a lot of our mentors, and I think any community that starts a program like this will have similar goals and may add some goals as the needs of their community would show.

One of the things that really launched us forward on this is we got funding from the Bureau of Justice Assistance to launch a national roundtable of experts in the peacemaking field. We figured that roundtable was going to be our make-or-break of, "Should we go forward with this project?" We had national leaders from across the country as well as Canada that took part in this roundtable. We have two publications on our website at CourtInnovation.org that talk about the background of the roundtable and the results of that roundtable if anyone cares to access those.

We had two real big questions that came out of that roundtable that have helped motivate us. One is: can this kind of a practice actually be implemented in an inner city neighborhood? It was a non-tribal community. Everyone there in that picture said yes, that there's no doubt in their mind that this would work. We then asked if anyone there was offended or felt that we were trying to appropriate Native American practice and doing it in a way that would not honor them. Again, they said that they did not feel that and in fact felt proud that we were trying to take a practice of theirs and making it go into the state court system.

The one quote we did have that you'll see later on is they told us, "It's about time you guys tried learning something from us for a change." In 2012, we started our peacemaking planning. I'm going to let Coleta talk a little bit more about some of the planning and the recruitment here.

Coleta Walker: Hi, this is Coleta. I am the peacemaking program associate here in Red Hook, and just change the slide here. We went through recruitment. A lot of the recruitment that we did was here in Red Hook. The picture that we have here is actually National Night Out was one of the places that we did some of our recruitment.

With the training, we took very seriously. We had, in this picture you'll see two of my Navajo mentors from the Navajo Nation that came in to Red Hook in November. They stayed for two days. It was a two-day training with our peacemakers, and they were able to talk about all the procedures, and we were able to actually make sure that our peacemakers were trained and they knew the model that we were going for.

I want to talk a little bit more about the case referrals and the process with that. We take cases referred from the court system, and we also take cases referred

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from the community. Again, when we're taking referrals from the judge, it comes from either the DA's office or the legal aid or defense counsel. They actually let us know there's a case that they think would benefit from peacemaking. From that, I go, I sit down with the defendant, I do an intake with them to see if they are at a good place, if this case sounds like it's a good case for peacemaking.

Then, I have to reach out to the complaining witness in the case and see if they are also willing to also be a part of the program. A lot of times, it's difficult because we may have a defendant that wants to do peacemaking, but the complaining witness decides that they don't want to do it. Then, we have to refer the case back to the court if that happens. With that being said, we also have to make sure that the DA's office, the attorney defense counsel, and the judge are all onboard into having the defendant have the peacemaking in the beginning.

Then, once they get through the intake process, I also try to make sure that they're ready for peacemaking. We take this very seriously. It's something that our mentors from the Navajo Nation wanted to make sure that we emphasize. After the intake, they have to come back in, and I speak with them, and I tell them more about peacemaking. I make sure that I explain to them what is expected of them. In the peacemaking sessions, we do open the sessions with food. We do have a ceremony.

The ceremony is a little different in that a lot of the ceremonies that take place may have singing or drumming or things like that. Our ceremonies begin usually with a short description of the program and what's to be expected of them. We hold hands. Sometimes, we have a moment of silence to get everyone in a good place. We also have a talking piece. During sometimes in the beginning of the ceremonies, we explain how the talking piece is going to be used in the session.

After our session is about to come to a close, we all get together and we come to a consensus agreement on the healing steps that the defendant and the complaining witness will do before the next session. With the healing steps, it's something that the defendant is okay with, it's something that our peacemakers also are okay with, and we usually try to get the participant or the defendant to be a part of the healing step so that they have a say-so in what goes on.

Brett Taylor: That last picture was a picture of the Nez Perce Chief Joseph Longhouse, and that was at the Colville Reservation. Just wanted to point that out.

Coleta Walker: Okay. This is just some of our stats so far. I'll let you guys read that. We have had 46 case referrals as of July 1st, four of which were community referrals. It's a lot of intakes that we do because even though we have 46 case referrals, each case may have at least two people. That's the defendant and the complaining witness. Sometimes, there's more people also involved with that or support people that you

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come to find out they're actually part of the case, but they're not actually in the criminal system. We also do a intake on them, and we also prepare them for the circle.

I would like to give you a couple example of one of our cases. Our very first case was actually in Spanish. We had two female women that were in [inaudible 00:15:48], they lived in an apartment housing together. They stayed across the hallway from each other, and there was a dispute. One of the neighbors came out and was yelling at the other woman's son. She was very upset that the kid was outside playing basketball, and the husband of one of the wives was not able to sleep, so she took the ball from the son. It became, they later saw each other in the street, and they began to fight.

In that case, we, I think after the second session, the two women became friends. They actually asked for the order of protection to be dropped so that they could share a meal together. After the session, one of the neighbors women had went upstairs to use the restroom, and she comes back down, and she asked where her neighbor had went. I had told her that she left. She's like, "Oh my goodness," and she runs outside, and she gets her husband, who drives, and they actually rushed to the bus stop so that they could give her a ride home, which is a wonderful thing.

In one of our other cases, it was a very complex case, but we had one son that was actually a support person for a defendant in the case. The peacemakers asked him, because he was young, they wanted to know what his goals were. With that, we were able to help him go to a GED program. We helped him with his resume. He's actually working right now. He's working with an art gallery, where he's painting murals. He will start his GED program in the fall.

Again, you never know where a circle will go. We had another case where, this was I think our fourth case that we took, we had a mother that came in. She wasn't the actual defendant. Her son was, but within the process, she decided that she wanted to focus on herself more. She actually went back to school, and she's would work part-time jobs, and so she decided that she really wanted to get full-time employment.

Her son, who was the defendant in the case, he actually was asked in the circles his goals. In between circles, he had to write down all his goals and what he wanted to accomplish. With him doing that, it motivated him to go out to look for employment. He actually got a really good ... It's a job. They pay, but it's an apprenticeship, so when he finishes his training in carpentry, they will guarantee him a position with one of their unionized companies.

We still have ongoing training for our peacemakers. Here is a picture of Judge David Raasch and former Supreme Court Chief Justice Robbie Yazzie and some of our

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peacemakers here.

Okay, I'm going to hand it over to Brett.

Brett Taylor: I just want to point out some of the stories Coleta was telling would be considered not successful outcomes on the cases because the actual defendants weren't able to resolve their cases, and yet these were things we were taught by our mentors during our discovery phase of this peacemaking, which is you never where a circle goes. You never know who's going to end up helping. It's just showing that through this process and including more people instead of excluding and including the community and getting community input instead of strangers that are wearing a robe sitting on a bench that you can actually start prodding people to do good outcomes in their day-to-day lives.

These are just a couple real basic lessons learned. The main one that I would say is to stay true to the model as much as possible. A couple struggles that we did have in trying to implement a tribal practice into a state court system was, as Coleta mentioned, the ceremony part actually started becoming a big discussion point amongst our trainees. That showed they were taking this very seriously, but it also showed how we were struggling with trying to take this concept of ceremony, which is very important to the concept of peacemaking, but not also running afoul of church and state separation laws, since this is a state court.

Also we're in a culture that's very diverse here in Brooklyn, and you don't know if certain people would be offended by certain types of ceremony. Coleta, in her intake process, actually raises that question, and the participants are the ones that guide what type of ceremony will actually occur.

Going forward, this program will be evaluated, and we will definitely be releasing those results. We just are very proud of our successes so far. The judge here has been very supportive. The district attorney's office has been very supportive. They refer a lot of cases to us. They keep Coleta very busy. We've been keeping real two main principles as our guiding principles, and that is that we're always going to try to remain true to the spirit of the teachings that receive from our mentors and that no matter how much we learn about this process, we will never be the experts in this, and we will always rely on those who are to continue to train us and guide us in this process.

With that, I'm going to turn it over. I do see there's some chat questions, but I believe we're supposed to answer those at the end of the session, so I'm going to pass this over to our friends up in Upstate New York with the Saint Regis Mohawk.

P.J. Herne: Are we there? Do we still have a moderator?

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Cabell Cropper: Yes. Judge Herne, you can go ahead with your presentation.

P.J. Herne: Good afternoon, everyone. Thanks for joining us. If I can push together to our slides. We are probably one of the more unique tribal nations in the country because in fact when the U.S.-Canada border was finally agreed upon, it actually bisected our community, which had settled prior to there being a Canada and the United States, and it basically set up what you see here on the first slide. That would be the province of Ontario, which is in Canada, and the province of Quebec, and then our Saint Regis Mohawk Tribe, which would be on the south side of the line.

It created a very unique dynamics, and there's daily travel between those districts by our members here at the tribe and what would be considered members of the northern portion of the territory. It has caused some jurisdictional nightmares for a lot of the governments involved, as you could imagine, provincial governments, state governments, and can lead to a lot of issues regarding criminal justice matters and how you address those.

Our community, our tribal government here, which again would be the southern portion, the Saint Regis Mohawk Tribe, is involved in a lot of litigation with our state, which can make some of the collaboration difficult, as political considerations can sometimes get in the way. I don't think we're unique in that regards with many tribal nations that we have taxation issues, land claims issues, and gaming issues that still get a majority of the headlines in the local paper here for us.

We are very similar to a PL 280 state. Those of you that are located in a 280 state probably don't me explaining what that is regarding the civil and criminal jurisdiction, but here in New York, they actually had their own separate statutes, and those are the ones I cite there: 232, which was the criminal side; 233, which is the civil side. We are unique in that we do have our own police department, and they do have stand-alone legislation, arrest non-Natives and Natives. We've been in probably in the last 15 years a development model for our tribal court, but each year, we seem to be growing a little bit, which is a good sign as we try to get a lot of those matters that were going off the territory and trying to being settled in state courts to come back here to our own tribal court.

We've actually implemented a vehicle in traffic court. We have some more laws coming online giving us general civil jurisdiction. Land disputes for us is a big part of our docket. We are now in the process of trying to get a child support unit going and having those cases return here. Numerically, there's about 300 cases currently in state court that originate from here in our territory.

Today, we're here to talk about the drug court and what we've been able to do there. The one thing, I noticed one of the preliminary questions was regarding

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revenue. Like I put there, we are actually a mixed-revenue style tribe. We do have some gaming establishments here. We are nowhere near the size and scope of what you might've heard of in Connecticut. We are considerably smaller. Although we do attain some good revenue, we still maintain some tribal fees on cigarettes and gas, and that is the primary revenues for our tribal government.

The jurisdiction with the tribe can very complicated, and when you remember where we are located, it can get even more complicated with the international aspect of it, but staying on just our side, on the American side, what we run into is that you have these three sovereigns predominating the jurisdictional space, because again, like I said, we actually have a tribal police department. For a good majority of the time, since passage of that law until we got our drug court, we basically didn't do a lot of criminal jurisdiction-style work. It was primarily left to the state, and then there was federal jurisdiction. Obviously, the federal jurisdiction, as we're going over this, is actually being redone with the Tribal Law and Order Act.

During that time, most cases were handled at the local level for us in the town court in Bombay. Felony cases, which were higher than misdemeanor under New York law, were handled by the county court. Then, the cases were prosecuted by the Franklin County District Attorney. Federal role was minimal, as they usually just concentrated on certain key cases, and then they would basically come in, scoop those up, and those would head to the Northern District in New York for us. That would mean you were either in Albany or Syracuse, New York.

Modern government for our tribal governments is both governments [inaudible 00:27:15] here in Akwesasne, you have the Saint Regis Mohawk Tribe. They do handle a lot of federal monies, a lot of federal grant monies. We do have an IHS Clinic. We are very unique for being on the east side of the Mississippi in that we have a actually inpatient drug and alcohol center. The other unique thing is our counterparts to the north, the Mohawk Council of Akwesasne, also have many similar programs.

What we've been able to do here by collaborating with them through our drug court is we've actually been able to leverage resources on both sides, because we've had participants who, although live on the northern portion of the territory, many would consider to be Canadian. We've actually been able to get services through our American side and vice versa. We've had some of our participants we've actually been able to leverage Mohawk Council of Akwesasne resources.

Again, that can be complicated by the provincial border, and you look at funding requirements. What we found when we finally got collaboration by everybody that we'll go through here in a little while as to who sits at the table with us, we were able to work through a lot of those issues.

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Again, the tribal government, which would be the American side. You have the Health Services, which includes the substance abuse treatment providers. We have Human Services. That's what they're called, but I think most would commonly see them as being like a DSS. Police, we've seen an expansion of our police force. We have both a uniform and an investigative branch now. Again, our tribal court Mohawk Council of Akwesasne, which again is the northern portion, has Health Services, Human Services. They have a police, and they have a court.

The interesting thing with the MCA model and their court system is they actually work and have a peacemaker-style system that's operating primarily in Ontario right now. Because of their location, they do also have to deal with Quebec courts. The Quebec court is probably the more problematic because it is about 40 minutes from the reserve.

Again, for crossing the border up here, and this has been a recent issue for us on the reserve, has been getting more and more complicated, and now I think, especially since almost everybody knows, since 9/11 and everything has gone on there, there's a constant friction regarding when you have to report, when you don't have to report, what documents you have to have. Then, the flow of information is not always going smoothly because of those issues. We found that collaboration, especially internally for us, was very important for especially when we work together to try to target not only criminal activity but the participants we're dealing with in our drug court.

Our Healing to Wellness Court, what we did was we modeled pretty heavily from the Bureau of Justice Assistance monograms that you can through the internet on some of the key provisions that should be included in any Healing to Wellness Court that you go forward with. Based on our jurisdiction, we had to come up with some unique aspects on our own, and we'll work through some of those, again recalling that we are located on what was considered the American portion.

We actually started out by concentrating on that side of the line, and that was more I think because due to my work experience, if you've seen my basically a bio that was provided, I invite you to take a quick look there because one of the key things I was able to bring to the table was that I was a criminal defense attorney from the reserve and that I had also for a short time been an assistant district attorney prosecuting crime. Through that, you get to make a lot of contacts, and you get to create a lot of relationships, a lot of relationships that can serve you in the future, and that's what we've been trying to leverage here at the tribal court.

Through that, we were able to leverage it further because myself being a community member and residing here, I'm very familiar with MCA and their programs, and we were able to finally start working on them to bring them to the

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table as well while maintaining these prior relationships. It can get a little confusing to the person that has to look in from the outside, but when you're living here, it becomes almost like second nature, and a lot of people who have visited us, and there's been many, are always overwhelmed by the number of people we know. I think it's more out of necessity because of the jurisdictional climate we're working in.

One of the factors that we talked about ... Before I get into the collaboration piece of it in developing a drug court is some of the things that we like talking about is the Healing to Wellness Court model. When we first proposed this to our tribal counsel and to some of our community members, as we highlighted that, it is probably more akin to what we as a tribal nation expect from a criminal justice process versus what happens in the normal U.S. systems today, because what you are actually having for us, our big day is Thursday, which was today, we had our drug court staffing.

Normally at our drug court staffing, we have myself. I have a drug court coordinator that we were able to obtain grant funding for. Then, we have our tribal entities. We have our alcohol and chemical dependency people, who is a local person. She's been very great because she actually sits also at the county level drug court, so we were able to get her to participate. We have a mental health counselor from our tribal health services comes in.

Then, we also have a tribal police officer. It's been very enlightening to see them grow and to understand the drug court model, because most uniform officers tend to be very conservative in their outlook of the world. We've actually been able to take them by the hand and watch them grow to see how a drug court model actually works and how you're trying to intervene and step into that's person's life to get change versus the arrest, prosecute, and incarcerate model.

We're also able, because of my prior contacts, is be able to get the district attorney onboard. He jokes with me now, he says, "You know, this idea was kind of born in an afternoon, and we've been able to pursue it." Getting him onboard, and that was because of my prior relationships with him was key. Then, we went about recruiting the local town court judges, and, again, having appeared in front of them both as a defense attorney and a prosecutor, that became much easier to do.

Now, if you can imagine, that is just the American side. Then, we concentrated on the north side. To do that, we started meetings with the Mohawk Counsel of Akwesasne and all of their programs. It took a little while, I would say probably an estimate of four to six months to get them to agree to come over and participate in our staffings. Before that, we were able to get not as much as we would like, but we do get some of their police officers come in and sit with us, but they also have a representative from their justice department come and sit with us.

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That's been very beneficial for our program and everybody in the program, because through that, if one can imagine, people tend not to get in trouble on just one side of the line. We found a lot of our participants who had criminal issues here in the U.S. portion also had criminal issues on the northern portion. Having that justice person was key because it allows them to actually work through issues on the Canadian side as well.

If that was not confusing enough, when the Tribal Law and Order Act change went through, we finally saw in our U.S. Attorney General's office for the Northern District of New York finally get a full-time tribal liaison. Because of our location and the straddling of the border, we have always seemed to have this role our place with the U.S. AG's office, and so we were fortunate to watch the TLO get implemented for the Northern District. As soon as they had the liaison, we invited them up, and the person is Betsy Horsman. If anybody's from Montana, they might recognize her name. That's where she came from. She did a lot of work with the Blackfeet. We were able to get her to come and sit now on our staffing.

The interesting thing with the staffing, if you're unfamiliar with, is what we do is we take this participant's case on Thursday morning, and we bring it in, and we talk about that participant as to how they're doing in treatment and whether incentives should be used to continue good conduct on their part or whether they should receive a sanction. The most interesting thing I think about this is having practiced this, for once you see a lot of community members from Akwesasne participating in a system that's going to affect a Akwesasne community member. They're getting a voice, and the great thing is, following the staffing, those of you familiar with the drug court model, we go right into court after, and I myself as the chief judge get to engage the participant.

For many years, my former boss at the district attorney's office would say, "If you have the non-Native county judge, he [inaudible 00:36:52] from Mars trying to address somebody from your community." What I think it does is it gives not only the person an opportunity to engage with their own community elected judge, but the judge himself also gets to engage the participant. That is all the collaboration behind the scenes that goes on, and that's how we brought everything together. I know it can be a little confusing.

On some other presentations we've made, we've provided that list, and that list can probably take up multiple slides, as you can imagine, but I would like to mention that as we go forward and we talk now about some of the collaboration things that are not really in your BJA materials but I think anybody listening to this should probably definitely know.

The first one is what we talk about is look for and retain experience. Like I said, one

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of the convenient things I was able to do was actually bring some of that work-related experience to the table. One of the beneficial things was knowing that one of our alcohol and substance abuse counselors was [inaudible 00:37:57] sitting on a county-level drug court. I can assure you she was the second person I called when I said we were going to do a drug court here. She was able to say "yes," well, she was more than willing to say "yes" and to jump onboard with us getting our court going.

The other thing is familiarize yourself with what criminal justice system you are already dealing with. Like I said, for us, we're a non-PL 280 state, but that doesn't mean we don't have that jurisdictional split that goes on because of the other federal laws that we've cited, so anybody involved in that process should get acquainted with that rather quickly.

A big thing is be willing to go in depth. By "in depth," I actually know who the stakeholders are and what their roles are and to not only that but determine how they became a stakeholder. One of the things that probably everyone should remind themselves is, and having sat on a bench for a little while now, is no judge wants to go that far out on a limb where you can't even see the trunk anymore, and so I think it's only through relations and trust and building that, is that you'll probably finally see yourself sitting in the same spot as the judge.

The judge is always going to be concerned as if this person does something, and he or she is the one who's released them into the community. That is a legitimate concern, and that is something we always work through with our judges. Now that they're familiar with the program, what we're finding is that some of those judges now are directly calling us and saying, "Would you consider this person to come into the program?"

A big thing I think for our Tribal Nation communities, which has been always difficult, and the feds I think are finally recognizing this through their grant funding through the [CTAS 00:39:43] is to know your numbers, not only know your numbers, but know currently where the resources that are being allocated, where are they going, so you know where that money trail starts and stops. To me, I think that is one of the things that for one reason or the other, where we've been lacking is to see where the numbers take us. I think in a couple slides, we'll talk about some of our numbers here in Akwesasne.

Another big factor is know what happens in your jurisdiction with respect to penalties. That was a big training tool for us. Then, we still have to do what I call brush-up trainings at our staffing because when we have our staffing, a lot of them are non-lawyers, and God bless them, thankful that we have them, so when the lawyers take over, you get into talking this lingo regarding sentences and what's permissible and not permissible, but I think it's more helpful when you have community members from your own community leading that discussion so

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everybody gets on the same page and be willing to explain that to the people at the staffing.

Another big key factor, I think, for us was doing an honest assessment [inaudible 00:41:02] your own tribal nation's relationship with the persons involved in the current process. If there's a strained relationship, let's say with your local criminal court judge, then acknowledge that and see what you can do to make that better. Same thing with your prosecutors, what is the relationship currently with your prosecutors? How can that be improved? Will this program help improvement? That's one of the things that we found is that our district attorney was willing to participate in this program because he felt it would make his job easier, and to some extent, I agree with that 100% because I think we're taking some of the most difficult cases in our community then trying to make a change.

A reminder to everybody who's considering this, governments like problem-solving courts as they are effective and they are also very cost-efficient. When you look at it ... I think I've included that in a slide later on. Yeah, we'll talk about that in a little while. Some other odd factors to consider for sure, though, is definitely if you can get your hands on some experience is to definitely try to retain that experience and utilize it. Like I said, there's myself, and I think another big one for us was our alcohol, chemical dependency person who had already served on the county drug court, because she also had relationships already built up.

Our statistics for our tribal government here. This is, again, only in the south portion, and we have a population of about 5,500. According to a district attorney's report, there was 670 pending criminal cases in the Town of Bombay Court. We have at any given point over 150 people on county-level probation, and those are stemming from a criminal case. We have about 50-plus people on federal supervision, and in 2012, we had 282 arrests. What I like to say to a lot of people who are working with us in our drug court and to remind even our tribal police and the prosecutors [inaudible 00:42:59] is these numbers are a little high for our community and that, no, you cannot arrest your way out of a problem. You have to think outside the box and try to get new ways to address those issues that are going on in the community.

Like I said, what the problem-solving courts, what we like to stress, and this is proved by I think anybody from the Center for Court Innovation can definitely vouch, is that they are definitely cheaper. They are more cost-efficient. Even when you talk about penalty phases, one of the things that we ended up investing heavily in is that for us, a sanction, when we first opened up was to look at the county jail, to send somebody to county jail, but one of the things that we discovered was we were actually able to do the anklets on participants and get monitoring through their anklets.

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Then, by doing that, you can actually use house arrest as an available sanction. The cost for that anklet and the unit was only \$5 per day, but the unit itself will cost you about 3,500. That's versus if you were to try and contract with a local facility, a local jail, and those rates will run you anywhere from \$75 to \$110 a day.

What we've done with our participants is when there's a sanction ... They know it, and because our anklets have GPS monitoring on them, we can actually see where they're going all the time, and they don't like that because when they come back to report, I'll actually sit on the bench with a map, and I'll be asking questions, "Why did you go here at 9 p.m.? Why did you go there at 10 p.m.? You're getting close to your curfew." It's far more effective and more cost-efficient than to just look at the county jail.

I think, for our participants, and again getting that community responsibility involved, getting a community decision making on how a participant's life is ... This is one of the speeches I actually give them when they first come to us and we do our intake, right in court, right in front of everybody, is I tell them all the time ... When you get a participant in a drug court, a lot of times they have burned nearly every bridge in their life. Family members don't want them. Police are sick of dealing with them. They've probably gone through counseling a couple times, and it hasn't worked. I tell them all the time, "I'm sure there's a lot of people in your life that have quit on you, but I'm here to assure you we are going to be the one thing that doesn't quit, and chances are pretty high you will quit long before we do."

I know that was a little rushed. I hope it addresses what everybody was looking for, and I will hopefully refer the time to the end for any questions.

Cabell Cropper: Thank you, Judge Herne. Now, we'd like to turn to the New Mexico Tribal State Judicial Consortium, Judge Johnson and Judge Parnall.

William Johnson: Hello, everybody. Judge Johnson here.

William Parnall: I'm William Parnall. I'm the Children's Court judge here in Bernalillo County, Second Judicial District Court.

William Johnson: First slide, of course, is the title and the date. This next slide is the location of the Pueblos and Nations, the Indian Nations. There are 22 tribes concerned here: two Apache tribes, one Navajo tribe, and 19 Pueblos. The red marks are where the Pueblos are located. Down below, in Otero County, is the Mescalero Reservation, and in up in San Juan, actually in Rio Arriba County, up at the top there, that's the Jicarilla Apache Reservation. Then, to the left in the corner is the Navajo Reservation.

There's approximately 10 years ago, around 10% of the population of New Mexico

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is Native American. Creation of the consortium started out actually in the '90s, the early '90s, when the Court Improvement program was interested in meeting with tribal courts and judges. That's how the effort began. There was a statewide assessment regarding child abuse and neglect cases and how they were being handled, including the involvement of tribal courts. As you know, many Native American people live off the reservations in state jurisdictions like Albuquerque, Gallup, Farmington, Santa Fe, and they get involved in the non-Indian court system the state of New Mexico.

We were interested in first in the children's issues, so tribal state agreements came up. Assessments were developed to include tribal courts and then to try to provide training for state court judges. We held three regional forums in 1997 focusing on training and just getting to know each other, a sort of peacemaking between the state and tribal courts. In 1998, the Judicial Consortium was formed, seven members representing ... This is the document that created the court, again. Even though we had already created it in '98, seven members from the state are represented on the consortium, and seven tribal court judges are also represented on the courts.

Our purpose of course is to improve and facilitate communication, collaboration between state and tribal courts on common issues regarding jurisdiction over domestic violence, child custody, child abuse, neglect, domestic relations and child support, and juvenile justice.

Again, this is the membership, state court membership, the tribes, who's involved. Those are the names of the tribes, as I mentioned earlier. The tribal judges who are the seven representatives are supported financially in terms of allowing travel costs, and we also are able to obtain state scholarships to attend state training for judges as well. For example, we do attend the annual New Mexico State Judicial Conclave, which is a gathering of all the state judges to discuss state law pertinent to the New Mexico courts, and the tribal judges have been invited for several years now to participate, and it's a great education tool.

We also were involved in these things we were calling cross-court cultural exchanges, where we were inviting state judges onto the reservations numerous sites where we'd host them and have education and training and just a greet and meet. We'd feed, we'd get to know each other. We'd take them on tribal court little tours of our facilities, meet the staff, familiarize them with our procedures and rules and customs and traditions, which we thought was very important to get to know each other.

We have regional trainings, as the next one says, to begin identifying common issues. One of the major efforts we worked on together with the state courts was the use of a common protection order form between the states and the tribes. That

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was through Project Passport, a national effort to alleviate the problems of full faith and credit as required by the Violence Against Women Act. We have all the state courts now use a common form by their rules, and we have about half of the tribes right now in New Mexico are using the form as well.

In terms of SORNA, the Sexual Offenders Registration Act, we also had cross-training on that in order to understand that both the state and the tribe had common issues in tracking and registering sex offenders because we have many sex offenders that live on and off the reservations, both Native and non-Native. We were also interested in assisting with the rights of incarcerated parents, and we had some training on that. The other effort that we're working on is educating each other about the use of the Indian Child Welfare Act.

Actually, it's more educating the state courts. As you know, they're the ones that have to implement the Indian Child Welfare Act, but it also involves the tribes in terms of their right to know when these matters are being heard in state courts, and so we worked on an effort to find a way to educate the state court judges. There's another slide a little further up here. These are the things that we've done. We've met in small groups. We've moved to, again, like I said, having meetings in Indian Country so that we can meet and learn together.

This is the Project Passport that I just mentioned, the domestic violence court orders. This is a copy of the state-generated court order that everyone that's involved, the states and the tribes that were mentioned, are using this same form to alleviate the issue of a lack of full faith and credit and recognition of our protection orders both on and off the reservation or between any state or any tribe.

I mentioned that a while ago. Like I said, we're working on an ICWA effort, full faith and credit and communications. The Indian Child Welfare Act effort has resulted in a judicial bench card, and we're working presently also in a best-practices bulletin to assist the state court judges who are hearing Indian Child Welfare Act cases to make sure that they are able to meet all the federal requirements. Here's a copy of the judicial bench card page one, and there's a page two. As you can see in the left there, there's the provisions of the Indian Child Welfare Act that all state courts must follow and recognize and understand so that they can enforce the act in state court.

This is page two. This bench card is eight by 11, and it's on hard paper. It's been given to all the state court judges, and tribal court judges also have requested some. We're also working on a full-faith-and-credit effort. That was one of the issues that came up early on in our discussions between the tribes and the state judges, which was, "What is full faith and credit? What is comity? When does a tribal court order be given full faith and credit or recognition in the state court and

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for what reason and how are we going to do that?"

We discovered that of course that there is case law through New Mexico, there are two cases that have found and determined that tribal court orders can get full faith and credit. Both of these cases were involved the Navajo tribe, and the Navajo Tribal Court Orders were then afforded full faith and credit by the Supreme Court, one in 1975 and 1998, as you can see. Those cases, though they say there's full faith and credit, we've discovered don't necessarily mean that every court order from all the tribes in New Mexico will obtain full faith and credit.

What we were concerned about, too, was orders that came out seeking to obtain state services for children, and so there were efforts to find out how we could enhance the use of this full faith and credit. [inaudible 00:57:10] also, on this next slide, it's also true that New Mexico does have other mechanisms for giving full faith and credit to tribal court orders, for example the New Mexico Foreign Judgments Act. There are also other specific full-faith-and-credit provisions, for example one for tribal court orders that concern commitments to mental health facilities within the state can also be given full faith and credit. There's full faith and credit given to tribal court orders in children's court cases if and when there are incremental agreements between the tribe and the states.

The other thing, though, that we discover early on was, in regards to full faith and credit, was we attempted to design and propose state rules [inaudible 00:58:15] it was the Supreme Court. We did that, and there was a lot of work in that early on but has not been completed. We're still attempting to do so, and we're doing that right now. What we're going to try to do is decide whether or not there needs to be a rule. As you know, some other states have done that. For example, Arizona has a full-faith-and-credit rule that subjects the state courts in Arizona to give full faith and credit to all tribal court orders. We don't have that yet here, but we are working on it.

We have a website that you can look at online. It's right here in the next slide. Are there any questions? Of course we're willing to do our best, everybody. Thank you.

Cabell Cropper: Thank you, Judge. Before we turn to Heather from the Tribal Law and Policy Institute, I wanted to mention that NCJA will be presenting an award to the New Mexico Tribal State Consortium as our 2013 outstanding tribal justice program at our national forum in Chicago. We're very pleased to be able to recognize this program for its excellence and feel that it's a great model for people to look at to increase the collaboration among state and tribal courts, so looking forward to meeting you all in Chicago. With that, I'll move on to Heather Singleton.

William Johnson: [crosstalk 00:59:50] ... Excuse me, David?

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Cabell Cropper: Yes.

William Johnson: Judge Johnson again. I just wanted to ... There was a question posed about how many other states have state tribal consortiums or judicial forums with the states. There are 10 altogether in the nation including the one here in New Mexico. They include Arizona, California, Idaho, Michigan, New York State, North Dakota, South Dakota, Washington State, and Wisconsin. Those are states that do have efforts going to have state and tribal judges work together. Thank you.

Cabell Cropper: Great, thank you. Heather, could you give us a short summary of the kinds of training and technical assistance you have available?

Heather Singlet: Sure. Hi, this is Heather Valdez Singleton from the Tribal Law and Policy Institute. The Tribal Law and Policy Institute has been working for the past few years on a grant under the Bureau of Justice Assistance that focuses specifically on tribal state collaborations. There are just a few things I want to quickly highlight today.

First of all, let me see if I can move this slide forward here. As this slide shows, we have redesigned and re-envisioned the Walking on Common Ground website. What used to be primarily a place where you could find information on tribal state collaboration conferences and events, it's now a fully-developed resource that includes that event-based information, but it also includes resources for both tribes and states and promising strategies in tribal state collaboration.

The real heart of the website is the interactive map that you see there at the bottom of the picture. When you click on any state within the map, you'll get a listing summarizing the tribal state agreements, MOUs, MOAs, resources, and a lot of other information all arranged by topic. If you were to click on Law Enforcement, for instance, you'd get a list summarizing all the tribal state law enforcement agreements that we've found and in most cases a link to the agreement itself.

You can also find information on just what we were just talking about, which is the tribal state collaborations nationwide. This can be a real valuable resource for both tribes and states that are interested in developing agreements. We also have a listing of Indian country jurisdiction by state, as well as a mailing list of all tribal courts.

As the next slide shows, as part of this project, we developed two promising strategy publications: "Promising Strategies and Tribal State Court Relations" and "Promising Strategies in Public Law 280 Jurisdictions." Both of these publications highlight at least 10 sites or programs that have been particularly successful in these two areas. They can serve as an inspiration for others, but they can also be really instructional.

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We've listed contact information for each site, so if you're interested in learning more and possibly trying to replicate the program in your community, you can talk with someone who helped set it up. As a matter of fact, one of the programs we highlighted in the tribal state publication was the New Mexico Consortium that we just heard of. You can see the really good things these promising programs are doing. Both of those publications are available on the Walking on Common Ground website under the Promising Strategies tab.

I just want to quickly highlight one other piece of our project. We are able to provide training and technical assistance to tribal state collaborations, particularly in the judicial area, and we have a TA request form on our Walking on Common Ground website. It's a little button to the right that just says "Request TA" on the homepage. I really encourage you to contact us if you have any questions, or if you're interested in TA, I can be reached at heather@tlpi.org. I'll send it back to the moderator.

Cabell Cropper: Thanks, Heather. Appreciate that. We have some time for questions and answers. I think all participants have been able to see the chat that's been going on about the use of the peacemaking program in domestic violence cases. It's one of those issues that seems to be well-thought-out and fairly complex. We had some questions come in as part of the registration process, and I'm going to pose those to the panel that have joined us.

One of them is, "We'd like to hear some of the challenges that some of you have experienced in integrated tribal traditions into state court procedures, policies, and practices." Judge Herne, I believe that you and, as you mentioned, the town court in Bombay, New York, work together. What are some of the challenges you've experienced in using some of the traditional methods in dealing with the court-involved people in the town of Bombay?

P.J. Herne: Yeah, one of the interesting things that we ran across was when you do a Healing to Wellness Court is the treatment models that one is going to employ. Prior to us coming online, there was a lot of deference usually given to agencies that would be located in the county, usually at the county seat up in Malone, New York. What we've been able to do is actually bring our own treatment people to the table. For a lot of these issues, I actually leave it to the treatment team to tell us what treatment model should be employed for the individual.

It allows for case tailoring, I guess you could call it, and so we rely heavily on our treatment providers, who, with our health clinic in addition to the normal what you would consider an inpatient treatment center, a 12-step program, they also have a holistic healing. They have a holistic health. That's what a lot of people would consider to be more traditional to us. By having our own drug court now, we can actually access that and require that of the participants. Before that, you wouldn't

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have that.

Was there a little trepidation? I would say probably, but I think once they see it working, and they see the treatment model that we're using, we've had individuals where we'll count everything from a sweat to going back and attending ceremonies at our longhouses. Then, you have other people who that model might not work, who do need a more 12-step-style program. That's one of the things we've been able to do.

Cabell Cropper: Thank you. Judge Johnson, in New Mexico, as a result of the consortium, have you seen any specific examples of where traditional methods have been integrated into the state courts?

William Parnall: I'm Bill Parnall. Go ahead, Justice Johnson.

William Johnson: Go ahead, Judge.

William Parnall: I am a children's court-

William Johnson: I haven't seen anything specific, but I do know what a lot of the judges have made telephone calls between jurisdictions to alleviate certain issues, and I'm sure some of them have been possibly access to tribal traditional recovery, so go ahead, Judge Parnall.

William Parnall: What I was going to say was we're trying to start a family drug court in abuse and neglect cases. As a children's court judge, I deal not only with the Indian Child Welfare Act, and in terms of potentially needing to communicate with tribal judges on an individual case, but also my hope is that we'll be able to communicate about treatment and the advisable and the helpful treatment for any individual who is a Native American who's in my court where I have jurisdiction. If that answers your question.

Cabell Cropper: Thanks. We just got another question in. It says, "What are some cultural issues or sensibilities for those of us judging in state and local courts to be aware of or address in dealing with tribal members appearing in our courts?" Judge Herne, do you want to take that?

P.J. Herne: Yeah, I was just thinking of a response. I think the difficulty is each tribal nation has their own local mores and customs, especially when it comes to dealing with non-Native institutions, and I think the only way to probably appropriately address that is to become very familiar with those customs and traditions. There's small nuances we see almost daily.

For our own members, there's a reluctance to engage with the non-Native judge.

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There's a reluctance to even look at them in the eye. I know for some judges, they've taken offense at that. I think that is more to avoid confrontation, and it became the perception from the judge didn't receive it that way, and it caused friction in cases. I think it's getting to know those local customs and mores. One of the great things with us being so local we know all that. When we come into the courtroom, we're familiar with that, and we get to bring that to the table.

Cabell Cropper: Thanks. Judge Parnall, being a state judge, what's been your experience?

William Parnall: In my personal experience, the Hispanic population here has a great deal of differing cultural, I guess, procedures and ways to communicate. In my criminal or delinquency court, I've noticed exactly that is that the same thing. I was going to comment that when the idea in the Spanish culture of lowering your eyes when somebody's talking to you, where they say [Spanish 01:10:26], is [Spanish 01:10:29], "Don't be bold with me. You should lower your eyes." I had to explain to a judge once when I was a lawyer that that was respectful.

The judge at the same time was saying, "Look at me when you're talking to me or when I'm talking to you." I'm sure that in the Native American culture, it's similar, and we all as judges have to be very careful. That's a very, very personal miscommunication in a particular case can result in a very serious sentence when the judge thinks somebody's being disrespectful. Maybe, Justice Johnson, do you have any examples of how that might come up with a Native American defendant who has a good attitude but apparently is not being respectful to a district judge?

William Johnson: Actually, I don't, but I do know that Native American defendants tend to not understand English as well, and so a lot of times when a Native American is in any court, whether it's a tribal court or a state court, they'll just agree with everything that the judge asks them. For example, after the advisement of rights, "Do you understand your rights?" they'll say, "Yes," even though they don't. They'll waive a lot of their rights through that ignorance of the English language. Then also, they tend to want to admit guilt without thinking about it, without thinking they might have defenses, and those pleas are accepted, and that's the end of it.

Cabell Cropper: Thanks. Turning to a question that we had about funding available for implementing peacemaking courts, Coleta or Brett, could you talk about how, I believe you said that this initially was funded by a BJA grant, what's the plan for sustaining this probably once there's no more funding available through BJA?

Brett Taylor: So far, we've been fortunate that we had a grant renewal just recently come through for this, and so in addition to us being able to continue funding this for another year, we're also able to provide training and technical assistance to state or tribal courts that want to launch a peacemaking program. I just want to be clear that when we do that, we use our mentors as the experts, and we just come in as

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the group that knows how to launch programs and do the needs assessment, that type of stuff.

We also think that under the CTAS grants, under Purpose Area Three and Purpose Area Nine possibly, that tribes could apply under that for funding to actually launch a program themselves. In terms of for our program, we're just hoping that once our evaluation comes through and shows how the community is accepting this and how the court players and the defendants and participants all are reacting to this that we'll be able to sustain funding through either through state court support or some other type of support that would support this type of successful program.

Cabell Cropper: Thanks. Are you aware of this program being replicated, or are similar programs being implemented in other parts of the country?

Brett Taylor: So far, not in state courts that we have seen that have stayed as true to the model as possible. There are state courts that are using circle sentencing, things like that, like aspects of peacemaking. We really try to try and stay as true to the model as possible, such as having the ceremony and using talking pieces and things like that, as well as making sure that you're including the support people, things like that.

We have had a few state court judges reach out to us already, and so we are hoping ... I know Judge [Connors 01:15:01] up there in Michigan, if he's happen to listening, we're hoping to be working with him soon. We've had a couple other judges inquire about it, and once our funding comes through, we're looking forward to providing TTA on that, and we will definitely be letting people know how that is going on our website.

Cabell Cropper: Great. Thank you, Brett. Returning to the New Mexico Consortium, we talked quite a bit about co-training and communication and a higher level of collaboration. Can you give a specific example of changes in either a court process or how cases are handled as a result of this co-training, either Justice Johnson or Judge Parnall?

William Parnall: This is Bill Parnall. What we're trying to do is figure that out at this point. I came on the consortium a year ago and am still in the learning process, but what we're trying to do in relation to the Indian Child Welfare Act is transfer cases as soon as possible to the tribal court where there is concurrent jurisdiction. What I'm considering doing is bringing tribal judges into my court, even sitting with me on a case if we need to make decisions together, but at least staying in contact with each other.

Where my fear is that a lot of tribal judges are not taking jurisdiction in cases where they could because of a couple reasons. One is they're afraid they don't have the funding to implement services because of the lack of an intergovernmental agreement, maybe having been signed with the state or the inability to obtain 4E

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money for foster care. Where I want that implemented, there's so many things that have to be put into motion at the same time in order to accomplish it, but eventually what I want is the tribal judges to feel that they can call me on the phone if they know that I've got a case and simply communicate about taking jurisdiction and not having fear of doing that.

Cabell Cropper: Thanks. Justice Johnson, do you have anything to add?

William Johnson: Yes, just that bench card that I mentioned earlier. That was a collaboration [inaudible 01:17:34] the tribal judges and state, and I think that's a valuable instrument that will assist the state courts in implementing to its full provision the Indian Child Welfare Act, which again should enhance the rights of tribal nations to have a say so in what happens with their children.

Cabell Cropper: Thanks. We've got one more question to go. It'll be the last question. We're going to be opening the poll, and we'd really invite you all to respond to that poll because it helps us out tremendously. Last question goes back to the peacemaking court in New York, and the question is, "What does a community referral look like? How does that happen? What kinds of cases come as a community referral case?" Brett?

Brett Taylor: Forgot to click off my icon.

Male: [crosstalk 01:18:34]-

Brett Taylor: Community referrals so far, I think two of them have come from schools, and the Red Hook community has a large public housing complex, and so we're getting some referrals from the housing managers, and we're trying to sort out how to best manage those so that they can sort through some of the issues for us before we take on those cases in peacemaking, but we have found that by having four community referrals so far has shown to us that the community is hearing about this approach, is liking this approach, and is supporting this approach.

It's on a walk-in basis, as are any of the services at the Red Hook Community Justice Center. You can just walk in and request services. With that kind of culture that's already been ingrained in this community, once they heard this program and some of the successes we're having, they're asking for this type of input. We've also had what's interesting is some of the people who've been here as support members have asked to be part of the peacemaking training, which is, again, showing us that people are supporting this program.

Cabell Cropper: What kind of cases generally are coming into the peacemaking program? What offenses?

Brett Taylor: We're not really focusing on case types as much as relationships. What we've tried

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to focus on are either cases that are going to have ongoing relationships, whether it's such as the two people living in an apartment or brothers fighting over a video game-type of thing. We're also looking for cases where it's young people that seem to not have any true guidance going on in their life, and we're finding that the young people are really doing well with the peacemaking approach, where they're getting some good guidance from community members.

On that point, I would stress to anyone doing a program like this, reach out to young people in your community to be peacemakers so that when you have young people in your circle as a respondent that they have someone of their peer group there so that they don't feel like it's all the old people talking down on them. That was something that was suggested to us by our mentors, and we're really glad we took their advice on that.

Cabell Cropper: Thanks, Brett, and thanks to all our speakers. We really appreciate the time you took to prepare these presentations, the tremendous amount of good information here. As I said at the beginning, we will post the webinar and the slides on our website, and we'll send out a notification to all of you so that you can access those presentations and share them with your colleagues. We look forward to having you join us for future webinars in this series. The next one is tentatively planned for August 27th, and we'll be dealing with the Community Relations Services from the Department of Justice.

Until then, thanks again for joining us, and if there's anything we can do to help you along, please let us know.

Male: Thank you, everybody.

Cabell Cropper: Thanks.