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Highlights of a Roundtable Discussion Among Tribal and State  
Practitioners

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# PEACEMAKING TODAY: HIGHLIGHTS OF A ROUNDTABLE DISCUSSION AMONG TRIBAL AND STATE PRACTITIONERS

## I. INTRODUCTION

Over the last several decades, Native American tribes have increasingly embraced traditional peacemaking for resolving both criminal and civil issues.<sup>1</sup> Peacemaking presents a clear contrast to Anglo-Western courtrooms, having arisen over generations from each community's culture, religion, and collective life experience. Peacemaking emphasizes healing over guilt, restitution over punishment, community over the individual, the future over the past. Stanley L. Nez of the Navajo Nation calls peacemakers "healers" rather than judges and his colleague Raymond Deal describes a peacemaking session as a "ceremony" rather than a hearing or trial. Ultimately, "peacemaking is about relationships," says Barbara A. Smith, a justice of the Supreme Court of the Chickasaw Nation. As such, "it becomes ... a life tool, so that if you have some conflicts, family or otherwise, you learn how to talk and listen and learn from one another, how to respect whatever the other person is saying, even if you disagree."

In recent years, a number of non-Native programs have been inspired in part or in whole by the peacemaking approach, including victim-offender mediation, family group conferencing, community conferencing, restorative justice panels, and neighborhood accountability boards. Like peacemaking, these restorative justice strategies are less formal, support greater degrees of litigant control, and are, at least to some extent, concerned with repairing relationships. And yet few go as far as peacemaking in their emphasis on healing the community, their open-ended structure (e.g., in peacemaking, there are few or no time limits on speakers nor on the number of sessions necessary to resolve a case), or the unique role of peacemaker, who is often a respected community member adept at storytelling and other culturally appropriate methods of persuasion.

Motivated by the idea that the unique features of peacemaking might hold lessons for non-tribal justice systems, the U.S. Department of Justice's Bureau of Justice Assistance sponsored a roundtable conversation among

practitioners in December 2011. The conversation was co-sponsored by the Center for Court Innovation, which plans to use findings from the roundtable to guide the planning of a pilot peacemaking program in the New York State court system.

The roundtable did more than lay the foundation for a pilot program. It also highlighted key issues and promising practices that might be of interest to anyone seeking to explore peacemaking in tribal or non-tribal settings.

This report summarizes the roundtable discussion.

### Participants

The roundtable, which took place on Dec. 6, 2011, at the Fort McDowell Yavapai Nation in Scottsdale, Ariz., brought together 15 practitioners, including tribal and state court judges, court and program administrators, and peacemakers.

**Lauren B. Abramson**, Executive Director, Community Conferencing Center

**Aaron Arnold**, Director, Tribal Justice Exchange, Center for Court Innovation

**Justin A. Barry**, Chief Clerk, New York City Criminal Court

**Alex M. Calabrese**, Presiding Judge, Red Hook Community Justice Center

**Raymond Deal**, Peacemaker Liaison, Shiprock District Court, Navajo Nation

**Anna Jack**, Peacemaker Administrator, Colville Tribes

**Michael A. Jackson**, Keeper of the Circle, Village of Kake; Magistrate, Alaska District Court

**Julie Marthaler**, Circle Coordinator, Southwest Health and Human Services, Minnesota; formerly Restorative Justice Coordinator, Yellow Medicine County, Minnesota

**Stanley L. Nez**, Peacemaker Liaison, Aneth Judicial District, Navajo Nation

**Michael D. Petoskey**, Chief Judge, Pokagon Band of Potawatomi Indians

**David D. Raasch**, Associate Judge, Stockbridge-Munsee Tribal Court

**Erika Sasson**, Senior Associate, Tribal Justice Exchange, Center for Court Innovation

**Barbara A. Smith**, Supreme Court Justice, Chickasaw Nation

**Barry Stuart**, Chief Judge (retired), Yukon Territorial Court, Canada

**Brett Taylor** (moderator), Deputy Director, Tribal Justice Exchange, Center for Court Innovation

### The Roundtable

In an effort to foster the openness and shared purpose of an actual peacemaking session, organizers tried to draw on peacemaking traditions. For instance, on the afternoon prior to the roundtable, participants followed a peacemaking format by sitting in a circle to introduce themselves and were encouraged to share not only facts (their biographies) but their feelings (particularly, their expectations for the next day's conversation). The start of

both the introductory session and the roundtable was distinguished by another common peacemaking practice, a Native prayer.

The conversation was moderated by Brett Taylor, with assistance from Aaron Arnold and Erika Sasson, all of the Center for Court Innovation, and structured around four main questions: What is peacemaking? What does peacemaking look like in practice? How do you create a new peacemaking program? Can peacemaking work in a state justice system?

## II. WHAT IS PEACEMAKING?

At the top of the day's agenda was identifying the key ingredients of peacemaking. From the outset, it was clear that peacemaking is less rooted in rules and legal concepts than in human relationships.

"Peacemaking is all about *k'e*," said peacemaker liaison Stanley L. Nez, using a Navajo term that refers to relationships.<sup>2</sup> He said peacemakers are "like shamans. We are healers," and everything they do "comes from the heart."

A peacemaking session is less likely to rehash the facts of a conflict or crime and more likely to explore the crime's emotional impact. Lauren Abramson, executive director of the Community Conferencing Center in Baltimore, said that one of the things that makes her community conferencing program similar to peacemaking is that it creates "a space for people where they can be emotional":

*During a community conference, anybody can be as angry, as disgusted, as terrified as they are without attacking anybody else. Not that there aren't any restrictions to that, but they get to express the full impact of what they are feeling. I think that is a huge part of why this is so powerful. And it stands in great contrast to what the court system will allow.*

A typical peacemaking session begins with a prayer or ritual. Michael A. Jackson, the keeper of the circle in the Organized Village of Kake, said that he starts a session by burning wood, such as cedar, which "is the tree of life in our village, in our culture." Everyone gets a piece to throw in the fire, which absorbs the groups' problems, carrying them via smoke "into the spirit world."

Roundtable participants portrayed peacemaking not only as a tool for resolving a case but also as a tool that users can rely on down the road to improve communication and promote harmony. "It is not about the burglary," said Barry Stuart, retired chief judge of the Yukon Territorial Court in Canada. "It is about much bigger things than that." Those bigger things include "how to talk and ... listen and ... learn from one another, how to respect what the person is saying, even if you disagree," Smith said.

### Goals

Peacemaking is interested less in guilt and innocence and more in restoring victims and communities. It therefore pursues goals that sometimes differ from the goals of conventional case processing, including:

**'A poetic process'**

[Peacemaking] circles are tough. I have never been in a circle where I haven't cried... When you lay your heart out there and become vulnerable... It is a difficult process, but it is such a poetic process.

DAVID D. RAASCH  
Associate Judge  
Stockbridge-Munsee Tribal Court

*Healing Relationships*

Although people sometimes liken peacemaking to mediation, Smith said mediation is “about an issue” whereas “peacemaking is about relationships,” including the relationship between the offender and the community.

A peacemaking circle usually includes community members who “have nothing to do directly with the crime,” Stuart said, in order to show that “everybody has something to do with the crime.”

“You’ve never seen more powerful mending of relationships—not healing, but mending,” Jackson said. “It is being human to find out what you may have done, then to try to make things right.”

*Self-knowledge*

Smith said a cultural component was an important part of peacemaking, especially when working with juveniles. By imparting culture-based values, a peacemaking circle can help participants “learn who they are, where they come from,” she said. In troubled communities, such as many low-income urban neighborhoods, young people “may not even know who they are, just like a lot of Native people.... If we can show kids how to be proud of who they are, that there is something besides the court system that is going to help them out of this, and give them hope ... that is healing them on the inside and quieting the anger.”

*Harmony*

Stuart said that when he facilitates a peacemaking circle he asks himself: “What is the best process to respect and honor and get harmony?... You may start a case about a 16-year-old drinking, and while you’re spending time with that, you realize that there is a boyfriend who is abusive, so you start another circle about that.... I like the notion of harmony as opposed to justice. That is what we’re after. We are after harmony and balance. We are not after justice.”

*Long-term outcomes*

Roundtable participants said that unlike conventional processing of a criminal case—where the focus is largely on the offender and the goal is confined to determining guilt and sentence—a peacemaking circle affects every-

one who participates, and its impacts radiate far and wide over many years.

Even in circles that fail to reach consensus, “there has been a seed planted,” said David D. Raasch, associate judge with the Stockbridge-Munsee Tribal Court. It might be “five, 10, 15, 20 years from now, or it might be tomorrow,” said Anna Jack, peacemaker administrator with the Colville Tribes, when an offender remembers “what that elder said” and suddenly “understands it in that instant.”

Such a revelation, however long in coming, should be counted as a success, according to Stuart:

*Many of the peacemakers I know have stories where ... a parent comes up and says, ‘You know that circle you did three or five years ago? ... My kid wasn’t the offender, but he was in the circle, and I’ll tell you, he came home, and from that time on he has been into his culture, learning his language.’ As a peacemaker you never know that success. So how do you measure that to the bean counter?*

#### *Lasting change*

Participants said peacemaking circles promote lasting change. In Yellow Medicine County, Minnesota, which started a peacemaking program for juveniles 10 years ago, a circle convenes numerous times over a period of six to 18 months because the goal isn’t merely to determine and oversee a sentence but build “the capacity of the youth and their family to make lasting changes,” said Julie Marthaler, who helped start the Yellow Medicine County circle program before becoming circle coordinator for Southwest Health and Human Services in Minnesota.

The sentences devised by the circle are based on knowledge of the offender, including his/her needs, supports, and capacities. “In traditional systems there isn’t enough time to build relationships and to get acquainted,” Marthaler said. “The circle [takes the time to do] that, and I think that is what makes counseling more meaningful or somebody more ready to accept now how to treat their chemical dependency.... Ordering it without knowing someone, without building a relationship with them first has less benefit.”

#### **Key Elements**

Roundtable participants seemed to agree that peacemaking, despite variations among jurisdictions, shared a number of key elements, including:

#### *Voluntary participation*

Perhaps the most important feature is the voluntary nature of peacemaking. Stuart said the fact that peacemaking is voluntary “is the strength of the process.” Raymond Deal, a peacemaker liaison with the Navajo Nation, called it the “main” element of Navajo peacemaking.

Keeping peacemaking voluntary is both practical and symbolic. On a practical level, there is no point in forcing people to participate if they’re not ready, Jack said. “If the parties are not ready it is just not going to happen.

That is my experience. It doesn't matter how many people are sitting at the table. If they ... don't have the ears on, it is just not going to happen. But later on, who knows?"

Abramson and Marthaler spoke about the symbolism. "I feel like what we are saying to people is that we believe that you all have the capacity to address this in a very good way yourselves," but that idea is contradicted when we add, "but you don't have a choice of whether or not you get to participate in it or not," Abramson said.

Marthaler said that forcing "people to do things is what the traditional [Anglo-western] system is trying to do, so I don't think that peacemaking can align that way."

### *Transparency*

The circle process needs to be clearly explained before it begins. Organizers need to be, as Abramson put it,

*really clear about how it is going to work ... so nobody is surprised that they are going to sit in a circle with no table, and everybody knows that first we are going to hear what happened from the people who were involved in doing it. And then everybody in the circle is going to get a chance to speak about how they were affected by it. Then the group is going to get a chance to decide how to fix it, and prevent it from happening again.*

### *Flexibility*

Under the influence of law, code, and decorum, conventional courts tend to be nearly uniform in their practices. In a state or provincial court "we all do it the same," is how Stuart put it. In a circle, however, participants set the pace, bring their stories to the table, and shape the outcome. "One of the things about any crime is it is a huge mess, right?" Stuart said. "What the courts do is they sort out the mess and just go after what they are interested in. They redesign the conflict ... whereas in circles, you fit the process to the mess."

And messy is not necessarily a bad thing, he said. "The bigger the mess, the better the outcome," the idea being that "in all of that mess, you're going to find many different ways to build a strong outcome," Stuart explained.

## **Justice vs. Harmony**

BARBARA SMITH, *Supreme Court Justice, Chickasaw Nation*: Justice is usually in the eye of the winner.

BARRY STUART, *Chief Judge (retired), Yukon Territorial Court*: Yes, that's right. If you win you got justice; if you get justice, you may not get harmony.



Several likened a circle to opening floodgates. “That water is going to go where it needs to go,” Raasch said. Michael D. Petoskey, chief judge of the Pokagon Band of Potawatomi Indians, said “things need to be fluid so that they can adapt to whatever situation you are dealing with.... It needs to be adaptable to the community.”

A circle convened to address one incident or issue sometimes leads to the creation of new circles to address related questions. “Many times you have to have multiple circles,” Smith said. “You have to look beyond that one-size-fits-all notion.”

Added Marthaler: “There is no template.... It always looks different. I have never done a circle that was the same.”

Or as Stuart put it, “The circle is not an event, it is a process.”

#### *Focus on the victim*

There is usually little formal role for victims in conventional proceedings, except as witnesses who supply their version of the facts. “In our judicial system now, the victim is the one left out in the cold. The state steps in the victim’s shoes and they take the case,” Smith said.

In a peacemaking circle, however, “The victim is the most important part of it,” according to Jackson.

The victim’s point of view is represented either by the victim him or herself (often with the support of family and friends) or by community members who represent the victim. “The magic of the circle is keeping the victim at the center,” Marthaler said. It’s therefore crucial “that the harm that was done not be lost [even] if a victim is not going to be a part of the circle.” She said that bringing the perspective of an absent victim to the table “is probably one of my most difficult challenges as a facilitator.”

### **III. IMPLEMENTING A PEACEMAKING PROGRAM**

Participants explained how they have established and run peacemaking programs. What follows is a distillation of how their programs work and some of the lessons they’ve learned along the way.

#### **Cases**

Participants said they’ve used peacemaking to handle a wide range of cases. “After years of searching for a case that wasn’t appropriate, I haven’t found one yet,” Raasch said. “I think even in the most heinous of crimes, there is some element of peacemaking that is beneficial to the victims, the families, the offender’s family, maybe even the community, especially in a tribal community.”

This is not to say that peacemaking is equipped to handle every aspect of a case. In a homicide, for example, “the state court system would have to handle the crime and the sentencing,” Raasch said. But the victim and larger community could still benefit from peacemaking. Peacemaking allows the community to “take a good hard look at itself,” Raasch said, encouraging participants to ask, “What role, what responsibility do we have as a community?”

Several said that peacemaking works well with offenders returning to the community from incarceration. And a number of people suggested that peacemaking circles work particularly well with juveniles.

### **Working with young people**

Peacemaking allows juveniles to avoid the traditional system and remain in—or return to—the community sooner. “From my experience, the least amount a child can be involved in a traditional court system the better,” Marthaler said. “Why would we over-expose them?”

Jackson said police officers in his community often refer young people to peacemaking circles. “They confront these youths a lot more than anybody else, and they have a really good hunch for which youth is going to be good for the circle,” Jackson said.

Because families are invited to participate in the circle, peacemaking can grapple with the roots of the problem. “Consuming [of alcohol], bullying—these are symptoms of the family, their parents.... Some dysfunction is going on there. It is great to have them in a circle,” Jackson said.

In Kake, the judge or prosecutor often participates in the circle, presenting the youth with a clear picture of the alternative for non-compliance. As Jackson explained: “The judge says ... ‘If it comes around to me, this is what will happen in the court if you are found guilty. These are the maximums and minimums that you will be sentenced to, and I have to follow that.’”

A peacemaking circle teaches juveniles empathy and a chance to “understand the harm” their actions have caused, according to Marthaler.

Stuart said he has trained young people to serve as peacemakers, noting that juvenile offenders appear to respond better to their peers than to adults. “When we switched to youth [circle]keepers, ... the success rate went right through the roof,” Stuart said.

In Yellow Medicine County, Minnesota, a single circle often works with multiple young offenders. “We have more than one child in the circle at a time. There could be Michael, who has been in circle for a year and a half for burglary, and then you bring in Lauren, who is just applying to the circle tonight, for theft.... We are checking in every two weeks, and we establish a social contract early, and then we build on it,” Marthaler said.

Sentences can include things like writing a letter of apology or doing better in school. “They will say they want to earn the trust back of their parents, do a good deed every day. These kids are setting these goals themselves,” Marthaler said.

### **Social Services**

Alex M. Calabrese, the presiding judge of the Red Hook Community Justice Center in Brooklyn, N.Y., asked about the role of professionals in peacemaking. “I have [cases involving] kids who need so much individual, professional help.... I don’t think that a peacemaking circle is going to get to that kid’s issue,” he said.

Smith agreed that offenders often need counseling and that peacemaking by itself is not always the answer. Jackson said that in the Organized Village of Kake, young people are assessed at the outset; and if it's felt that the youth might benefit from professional help, the appropriate professionals are invited to participate in the circle.

Smith cautioned, however, that a young person might feel intimidated if there are too many authority figures in the room. "When I represented people—the kid or the parent or both—I can tell you that having you guys [judges and professionals] on one side, even in a circle, ... is intimidating," she said.

Marthaler said that in Minnesota youths and their parents/guardians must sign a consent giving up rights of privacy and agreeing to allow criminal histories, evaluations, and other assessments to be shared within the circle.

Abramson said it was important not to underestimate the capacity of community members to tackle difficult problems. "I think we also have to really appreciate the power and wisdom in the community. I don't think that we are ever going to have enough mental health services to deal with the depth of what is going on with our young people. And to build a system based around mental health professionals is not viable and probably not what we need," she said. She has found that in Baltimore, community conferencing fosters access to "a whole lot of resources that we usually don't get to tap into."

### Timing

Peacemaking circles can take place anywhere along the timeline of a case. Stuart said he has found youth cases are most successful when peacemaking takes place before a case is fully processed in a courtroom. That way, the judge can make clear what consequences the youth will face if the peacemaking process fails:

*The judge can say to the youth, "The community is out there, and I am going to be the guy who is going to catch you if you don't work with the community. You aren't going to fall back onto the street, you're going to fall back into my hands. So I really ... am looking forward to hearing from the community on how well you have done."*

Similarly in Baltimore, juvenile cases are sent to community conferencing before adjudication. "The state's attorney, public defender, and the juvenile judges all agree at arraignment there will be a mutual postponement, and it will be referred to conferencing. So we will get a certain amount of time to give the people a chance to deal with it. And if we need more time, they are very amenable to provide it," Abramson said.

In Canada, a peacemaking circle can address the issue within months whereas a court case can drag on for a year, Stuart said. Thanks to the rapid convening of the circle, "the kid immediately gets to start doing something," Stuart said.

Often criminal cases handled through peacemaking are ultimately dismissed if participants in the circle reach consensus and are satisfied with the outcome. Marthaler said that in Yellow Medicine County, a youth must plead guilty in court before entering the circle, a requirement imposed by prosecutors who "didn't want to have

to come back and do a trial when their witnesses are gone.” But if the youth satisfies the peacemaking circle’s requirements, the case is sealed.

### Peacemakers

Native tribes often tap elders to serve as peacemakers.

Elders are informal leaders who are “very knowledgeable, very much known throughout their community,” Deal said. They usually receive no or little pay. Deal said “people respect that” Navajo peacemakers aren’t paid while Smith said she is a fervent believer in paying peacemakers for their work.

“In a system or process where everyone is being paid, to not compensate the peacemakers is disrespectful to the value and importance of their work. If peacemaking truly has the potential to heal a community, the value of the healers is without limitations,” Smith said.

Jack’s program pays elders an honorarium. “Just because they are retired doesn’t mean that they have time and money to travel back and forth,” she said.

What makes elders so valuable, Jackson said, is that they can “talk about our culture.” They are expected to share their life experience and actively participate in the conversation. They are therefore less neutral than a judge or mediator. “I have stories that may help others in the circle, and if I restrict myself because I have a particular role or function, that doesn’t seem fair to my community,” Raasch said.

Peacemakers also need to practice a degree of humility. “In our area, the keeper or the peacemaker should not be in any more of a position of power than anybody else. It is all about equality in the circle. That is why it is a circle,” Marthaler said.

In tribal communities, which are often small and tight-knit, peacemakers may know participants personally, which many seemed to consider an asset. “You step back and let the community solve the problem. So it doesn’t matter if you know the participants who are there, or the eyewitness who knows what happened, because it is not about pointing fingers, but it is about building a relationship and healing,” Stuart said. “There is this misconception that judges aren’t biased, and that judges have no bias. The most dangerous judge is a judge who doesn’t think he has a bias.”

Brett Taylor, deputy director of the Tribal Justice Exchange at the Center for Court Innovation, asked participants to list the qualifications of the ideal peacemaker, particularly those qualities that transcend the unique notion of “elder,” since many non-tribal communities lack residents of equivalent experience or stature.

Marthaler, who has started peacemaking circles in non-tribal communities, said “leaders will emerge naturally.” Stuart agreed, citing a study of circles he conducted in Minnesota in the 1980’s, which found that most successful programs used peacemakers who were self-selected rather than hired.

Nez said that in the Navajo Nation, the community generally picks its own peacemakers, and they represent a variety of backgrounds and religious denominations. One respected Navajo peacemaker, for example, has a limited education and works as a horse trainer. But “his own community picked him as a peacemaker” because what he lacks in formal learning he makes up for in common sense, Nez said.

### Diffusing finger-pointing

The husband grabs the child out of the mother's arms, hops in the van, and drives to South Dakota from Wisconsin. They call the County Sheriff and they get everybody, all the law enforcement involved, and they can't get the child back, ... so they go to the tribal court and they get some sort of an order from the tribal judge.... So I called one of the peacemakers ... [who got] a circle together to find out what was the root cause, what started this.... It re-focused the situation and got rid of all that negative energy, so now we can talk about the real problems. It diffused the finger-pointing and frustration.

DAVID D. RAASCH  
*Associate Judge*  
*Stockbridge-Munsee Tribal Court*

In the Chickasaw Nation, seven peacemakers were chosen from among a group of volunteers who attended training sessions. Smith said four of the six current peacemakers are Chickasaws. The other two—one a citizen of the Absentee-Shawnee Tribe and the other a non-native—are married to Chickasaw peacemakers. They find it helpful to have two peacemakers in the circle at each session, making the married couples a particularly positive addition to the program, Smith said.

Abramson said her program seeks volunteer facilitators—or circle keepers—who are “authentic.” And she noted that because Baltimore is a city with 350 neighborhoods, circle keepers are unlikely to know the people in their group.

Smith said the peacemaker must first find peace within him or herself before being able to bring it to others. “You have to find quiet within yourself, and bring that to the peacemaking,” she said. Raasch agreed: “I think the primary qualification of a peacemaker and circle keeper is that they should be at peace with themselves. I don't know how you could come in with a chaotic heart and expect the circle—expect the dust to settle down in calmness unless you bring the essence of peace yourself with it.”

Smith recruited peacemakers for the Chickasaw Nation through an announcement in the newspaper. “I called them gatherings, peacemaking gatherings, and anyone who wanted could come,” she said, adding that the meetings eventually evolved into a training program that lasted nine months. “You can't have a curriculum for this. That's the thing that many people don't like about peacemaking. It must be fluid and you have to let it happen.”

### Conducting a Session

While each peacemaker brings her or his own style to a session, practitioners said successful peacemaking tended to follow a few simple guidelines:

*Let the participant own the conflict*

For many participants, the process is eye-opening because it's so different from a conventional court.

"Community people are used to a court system where someone is the judge. 'Well, you decide judge.'... But in the end they love it when they become a part of the circle," Smith said.

"The wisdom is in a circle; it's not really with a facilitator," Abramson said. Or put another way: "Trust the circle.... You can't outsmart a circle. Nobody going into a good circle can ever figure out what the outcome is going to be," according to Stuart.

Participation in a circle is itself a learning process, Smith said. "You have to learn how to be a part of the circle. Every circle that I have been in goes its own way. It makes its own path."

*Prepare participants*

Potential problems can often be avoided by preparing participants in advance. Preparation includes explaining the circle process. Sometimes practitioners conduct mini-circles with a victim or offender and their support group to acclimate them to the circle process. "The peacemaker is really busy outside the circle, and not so busy inside the circle. If you prepare it properly, you sit back and let the circle happen, and you don't try to be the problem-solver," Stuart said.

Stuart said a successful peacemaking process often consists of three kinds of circles. First, a "suitability circle" brings together the offender and their immediate support group (and the victim and their immediate support group in a different suitability circle) "to try to determine whether or not the circle is appropriate for them.... You shouldn't force circles on anybody. They have to make a conscious choice." As part of the suitability circle, the facilitator can explain exactly how the peacemaking circle will work, including the use of a "talking stick"<sup>3</sup> and the role of the peacemaker.

Second, a "preparation circle" addresses questions like "What do we need to do to make the offender accountable?" Options like counseling, tutoring, or other supports might be discussed "so that by the time he comes to the actual circle, he has already begun to do things," Stuart said. "Because we have already talked in the preparation circle, the kid who used to have the baseball hat on and was looking down all the time now has the baseball hat off and is looking up and talking. And when the talking piece comes, he speaks."

The third circle is attended by everyone. "That is where the larger community is. It takes away the finger pointing because the kid is going to surprise them by saying, 'I have taken responsibility, I have gone down to see counseling already, and I have done this and I am doing that.'"

*Treat everyone with respect (no shaming)*

Everyone at the table agreed that it's important not to use coercion or shame to promote consensus. "It is counterproductive to treat anyone other than the way that you would want to be treated yourself," Petoskey said.

Outside of peacemaking circles, some Native American communities in the past have used shaming or shunning, but Raasch said such tactics are no longer effective. "I think the shaming probably was really effective years

ago, when we had to be a part of the community to survive. And it was fearful to be shunned or shamed, or to be excluded from the community because it was a step towards banishment. But quite frankly, I think we have been shamed enough by the non-Indian society over the years so we don't need to hear that anymore," he said.

### *Include food*

Recruitment and training of volunteers is easier when food is involved. "Food is a great way of bringing people in," Stuart said. "In Tlingit country, you can't have a meeting unless you have food.... What food does is it creates a capacity for people to begin to be human beings together, and they begin to talk, and it all starts there."

Jackson said food is an essential ingredient of getting acquainted. "We have what is called 'warming of the hands.' We don't know you from jack, but when we sit down and have food with you, we share what we have," he said.

### **The Community**

The community is an essential partner in any peacemaking program.

Yellow Medicine County draws upon a standing group of community volunteers who participate in circles, Marthaler said. "I am always telling people to bring a friend.... This isn't a secret, you don't need a password to get in," she said, adding:

*I always say, "You know what? Rather than me telling you about this, why don't you come?" It is a "show me, don't tell me" kind of world.... I have never had anybody just come once. They can't. It's like, "When is the next meeting?"*

### **Family and support**

Both the offender and the victim are encouraged to bring their supports—family, friends, neighbors, and other associates. Smith said it's important to keep the sides balanced. If, for instance, a young offender and his supporters are vastly outnumbered by other participants, the peacemaker should keep that in mind and make sure the young person isn't overwhelmed or intimidated.

Jack said it's important to have representatives of both sexes in the circle as well. "I always make sure that you have at least one man and one woman, and in that way, you know that you [symbolically] have your mother and father, your grandmother and your grandfather there for you. I think that is very important."

### **Location**

Practitioners said a peacemaking circle can take place almost anywhere. "I have a key to half the churches in my county," Marthaler said.

Deal said the Navajo conduct peacemaking “any place that is not like a courtroom setting. Courtroom settings are very traumatizing to some people.” Nez said some of the courts have a traditional octagonal house, which contain facilities set aside for peacemaking sessions.

### **Duration**

Typically, peacemaking takes more than one session. In Yellow Medicine County, a peacemaking circle, which works with a number of young offenders simultaneously, lasts from six months to two years, Marthaler said.

In the Chickasaw Nation, the length of a particular peacemaking process “is up to the circle, and they can come back any time,” Smith said.

Stuart said that because peacemaking is so emotional, it’s hard to predict how long a case will take. “We never try to conclude anything in one circle because people will emotionally get ahead of where they are mentally. The courtroom is all a mental process; this is an emotional/spiritual process, so we have to give people a chance to catch up mentally from where they moved to emotionally,” he said.

### **Victims**

Deal said he is careful not to “bring the perpetrator or the victim together” until he feels it’s safe. “I might do a circle for the perpetrator and see what he gets through, what he agrees to do, and then a separate circle with the victim, until further down the line, I might bring them together if I feel it is safe and comfortable.”

Everyone agreed that a victim must be willing to participate—the voluntary nature of peacemaking applies to them as well. In the state-operated circles in Minnesota, victims are provided with support and counseling but “maybe they never have a face-to-face with the offender.... It is about being flexible and meeting people where they are at,” Marthaler said.

Smith said practitioners shouldn’t focus on bringing the offender and victim together. “That’s not your goal.... Maybe it will happen, and maybe it won’t.”

Stuart agreed, saying “the circle is not an event, it is a process. It has a whole bunch of different stages, and you need to start with small circles that merge into big ones.”

But even when the victim isn’t present, the victim’s point of view must be represented during peacemaking. “The magic of the circle is keeping the victim at the center and that the harm that was done not be lost,” even if the victim chooses not to participate, Marthaler said.

### **Confidentiality**

Peacemaking programs require participants to sign confidentiality agreements. “My experience so far has been that if the people who are in the circle respect the circle, and if the circle is growing as it should, where the relationships have been built, that confidentiality pact, the bond is pretty strong, and we have not had any problems,” Smith said.



Stuart said courts and prosecutors must agree that nothing said or discovered during peacemaking will be used “in any subsequent case” with an exemption for mandatory reporting requirements.

Abramson explained that while the specifics of community conference agreements are not shared with referral agencies—they’re told only whether or not the case was resolved—the participants can add a proviso in the final agreement that gives circle members permission to talk about the conference with others.

#### **IV. PEACEMAKING IN A NON-TRIBAL SETTING**

Justin A. Barry, chief clerk of the New York City Criminal Court, said that peacemaking “sounded very good” on paper but conceded it was “very foreign” to a court system like New York’s. “We don’t have the cultural context for this in New York City. It sounds very New Age. There would have to be a whole lot of education, an education process for everybody involved in this sort of thing,” he said.

His concern went to the heart one of the day’s foremost tasks: to outline the key components of peacemaking with an eye toward developing a program in a non-tribal setting. With that in mind, Taylor asked participants if they thought a peacemaking program would meet with success in an urban, non-Native community.

The consensus answer was summed up succinctly by Abramson when she responded, “Definitely.”

Stuart said that peacemaking circles work “better in big cities than they do in small cities... because big cities have much more resources.” Raasch said big cities are particularly well suited to peacemaking circles that work with ex-offenders returning home from incarceration. “The biggest two obstacles upon re-entry are housing and employment,” Raasch said. In tribal communities, ex-offenders often find that they “go back home and home doesn’t embrace them. They won’t even hire them. You can’t get into housing projects because you have a felony conviction, under the Indian housing rules. So they sofa surf, and eventually revert back to the ways they know how to make money, stealing and drugs, so forth,” Raasch said.

Stuart said peacemaking “works for all cultures. This is an ancient idea whose time has come again. Every single culture at one time did something like this.”

Raasch said that ironically—and frustratingly—many non-Native communities are adopting tribal practices more rapidly than many Native communities. “We see a lot of what I consider some of our indigenous concepts being used more in non-Indian communities than we our using them ourselves, and that bothers me. I get requested in Green Bay to go to these Neighborhood Watch groups and establish community circles, and we are not doing it in our own reservation.”

#### **Culture and spirituality**

Because tribal peacemakers often draw upon the shared culture of participants to frame the discussion, Taylor asked “How do we do this in a diverse community?”

Stuart said that communities and cultures are fluid concepts and that everyone belongs to not just one but many. “Your work place, your family, your recreation. Those are all cultures. So when you have a circle, those several cultures can come together,” he said.

Taylor agreed that “every community does have its own cultural norms and every community does have its community leaders and teachers, football coaches, judges, court officers,” who can support a peacemaking initiative.

Several underscored that Native American communities aren’t immune to cultural diversity. Jack said the Colville Tribes encompass 12 tribes with diverse languages and cultures. Jackson noted that there are 256 First Nation tribes in Alaska and that even within the Village of Kake, the population is diverse. “Some people have lived out of town their whole life and came back. They are the most Native people there are because they want to learn everything ... and then there are some who are very apathetic.”

Petoskey said that his community is also diverse. “We have some people who are very traditional, some Catholics, some Methodists, and you can go on down the list.” The key, he said, isn’t a common religion or cultural tradition but having “some basic human things we agree on cross-culturally. Building upon those basic human values is what we use, and how we articulate what we’re trying to accomplish.”

Stuart predicted that for anyone creating a peacemaking program in a diverse urban setting “the least of your worries” will be about community or culture. “Do not worry about the culture. Do not worry about the community,” he said. “The circle itself creates its own community, and it is one of those little building blocks, that little invisible thread that begins to weave a larger community together in many different ways.”

No one suggested that adapting peacemaking to a non-tribal setting would be easy, and yet no one suggested that the potential obstacles were insurmountable. In fact, non-tribal participants suggested ways to translate tribal tools to a state court setting. Calabrese, for example, suggested that instead of opening a circle with a religious ceremony—as happens often in Native peacemaking—a circle could “do something to honor harmony.”

Stuart agreed, noting that there are numerous ways to “create a safe space,” which is ultimately the purpose of a ceremonial beginning. A simple start could involve a round of introductions or a welcome statement from a community member, Stuart said. “The keepers might ask everyone, ‘What will make this a safe place? What is it that we need to do here?’” Stuart said. In essence, “you talk about how you’re going to talk before you start talking.”

Similarly at the end, the circle keeper can combine the practical with the ceremonial, first providing a summary of what occurred during the circle, reviewing next steps, and allowing participants to ask questions, Stuart suggested. Then the peacemaker can incorporate something that takes participants beyond the practical. “Usually somebody will read a poem, or take you to silence, or tell you a story,” Stuart said.

Added Abramson: “In some sense every community conference is an opportunity for that community of people to determine what their expectations are, how to treat each other.”

## Outcomes

The topic of outcomes raised a number of concerns, including reporting requirements, compliance with peacemaking agreements, and measuring impact.

### When Cultures Clash

We had a conference where a family moved from Croatia into a predominantly African-American neighborhood. The Croatian kid's bike was stolen. And there was just this incredible moment at the conference where it was clear that the mother of the Croatian kid [had] norms [that] were very different from the families in Baltimore. And this African-American woman gave her a very explicit look. She just said, "This is how we do it here." It was hysterical. Everybody was on the floor laughing because she had kind of characterized her own cultural norms, but did it in a very disarming way to sort of acculturate this woman from Croatia. Every conference is a chance for that group to figure out how to treat each other. Sometimes they are re-establishing norms and sometimes they are creating new ones.

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In some jurisdictions, agreements reached in the circle can be sent to court for a final, binding order. The circle "may come to a consensus and put it down on paper and then take it back to the court and ask a judge to put it in an order," Smith said. However, court involvement in the Chickasaw Nation is optional. Generally, agreements are among the parties, and enforcement by a court is unnecessary, although parties may request another circle if needed, Smith explained. "Not knowing the outcome is sometimes frustrating for the peacemakers. If the parties don't come back to the court, we consider that a good outcome," she said.

In the Navajo Nation, only court-referred cases are returned to the judge. Otherwise, the agreements stop with the peacemakers, who put the agreements in writing and make sure all the parties sign them.

Although agreements that lack the support of the court are not legally enforceable, Jackson said the participants themselves serve as enforcers. "We like to say, 'All of the people sitting in the circle are now probation officers.' They can call another circle if they see you doing something wrong," he said.

Participants acknowledged that in a time of increasing fiscal pressure, funders are insisting that programs measure their impact and efficiency. Unfortunately, compliance with peacemaking has proven hard to measure. The Native American Rights Fund attempted to get a handle on the topic in its survey of tribal peacemaking practices, the results of which Raasch presented during the roundtable. The survey asked "Do members of your Tribe/Village/Community honor the decisions made by a peacemaking session held outside of any formal government structure (e.g., a formal court process)?" Forty-five percent answered "yes."

Abramson suggested circles discuss not only the past offense but the potential for it to re-occur. “Have a discussion in the circle about ‘when this happens again, what are you going to do differently?’... You’ll have everybody talking about how to do it differently, and very specifically so it’s not just a vague ‘I just won’t do this thing again,’” she said.

After the roundtable, Abramson pointed to a study of community conferencing in Baltimore that found re-offending rates to be 60 percent lower among young people who went through conferencing compared to those who went to court.<sup>4</sup>

Generally speaking, however, impacts on recidivism can be hard to measure.

It’s likely that for a peacemaking program to succeed in a state court system, practitioners will need to demonstrate concrete results, which raises some interesting questions. For instance, are there other ways, besides recidivism data, to measure success? And will a state court, especially a busy urban system, be willing to implement and sustain an open-ended process like peacemaking, one with hard-to-measure impacts?

One such impact could be improved confidence in justice. Abramson noted that circle participants who’ve had a positive experience will likely end up telling others about it. “Our culture is created by the stories we tell,” she said. “Sometimes we want people to go out and tell good stories about how fair justice happened.”

Ultimately, practitioners may have to accept that some outcomes are impossible to measure, such as changes in relationships. “How do you measure the relationship change?” Marthaler asked. “That is what I always get frustrated with, because we have these kids that completed the circle sentencing process, and they are so profoundly more connected to their community, which makes them less likely to commit crime in their community.”

### **Building program support**

Educating the public and the justice community about peacemaking is a necessary first step to building a program.

In Michigan, tribes held community forums and invited “politicians, law enforcement, judges, elders, to focus on strengths in the community, and then build on those strengths,” Petoskey said.

Stuart said it’s crucial to earn the support of judges and the police, who will be relied upon to make referrals. He suggested inviting those “most opposed” to the approach to peacemaking trainings, especially when a new program is being created, because they usually change their minds by the end.

People can often be persuaded to try something new if they understand that the current system isn’t working well, according to Raasch. “Educating people and getting them to believe in it, to commit to it” is easier if it is contrasted with “these terrible statistics of the rates of incarceration and the rates of recidivism, and all of the other negative impacts” of the conventional approach, he said.

Barry pointed out that a public education process took place in New York with the development of drug courts in the mid-1990’s. Since “everybody is tough on drugs,” many in the justice community were afraid that drug courts were too soft, he said. “This was something new and different. This was people hugging and clapping and crying,” he said. But over nearly two decades, drug courts have become widely accepted.

## V. CONCLUSION

There was unanimity among participants that peacemaking offers promise for non-tribal communities looking for alternatives to conventional justice. The tribal practitioners encouraged their state counterparts to embrace peacemaking.

“I think it is exciting and I think that the only hope for the system is to move to a different way of doing things, a community-based process, a process based on values, and processes based on trying to do this,” Stuart said.

Roundtable participants felt that it wasn’t necessary for those involved in a peacemaking circle to share a common culture, noting (in Stuart’s words) that “the circle creates its own community.” What is necessary, however, is planning.

A peacemaking program is not necessarily a natural fit with a state court system. As Justin Barry, chief clerk of the New York City courts, pointed out, peacemaking can sound “very New Age” to the uninitiated. “There would have to be a whole lot of education ... for everybody involved,” he noted.

Clearly, a state court will have to answer many challenging questions to create a peacemaking program, among them: Who needs to participate in the planning process? What types of cases are most appropriate? At what stage in a case will peacemaking be most useful? Who will make referrals and how? How will compliance be monitored? How will peacemakers be selected and trained? What consequences for non-compliance are suitable? What outcomes are most desirable and how can they be measured?

Planners with the Center for Court Innovation will attempt with local collaborators to answer some of these questions as they explore the possibility of creating a pilot peacemaking program in the New York State court system. The answers will reflect local needs, expectations, and resources in an effort to improve outcomes for the participants, the justice system, and the community.

In addition to offering a new tool for the New York City courts, however, the pilot program will also hopefully achieve a number of broader goals, including strengthening the court’s capacity to solve problems, increasing public confidence in justice, and underscoring the value of communication among state and tribal practitioners.

## NOTES

1. Among the tribes practicing peacemaking are the Navajo in the American Southwest, the Nez Perce in Idaho, the Mille Lacs Band of Ojibwe in Minnesota, the Eastern Shoshone and Northern Arapaho in Wyoming, the White Mountain Apache in Arizona, the Cheyenne-Arapaho and Kiowa Nations in Oklahoma, the Skokomish, Swinomish, and Sauk-Suiattle Nations of Washington, the Tlingit Indians of the Yukon region of southeastern Alaska (particularly the Organized Village of Kake), the Chickasaw Nation in Oklahoma, the Grand Traverse Band of Ottawa and Chippewa in Michigan's Upper Peninsula, the Little River Band of Ottawa Indians in Michigan, and the Alabama-Coushatta Tribe of Texas.
2. In Robert Yazzie, "'Hozho Nahasdlii'—We are Now in Good Relations: Navajo Restorative Justice," 9 *St. Thomas L. Rev.* 117 (Fall 1996), the author explains that *k'e* "is difficult to translate into English because it has no corresponding term. *K'e* describes many emotions: respect, good relationships, love, and group solidarity. It is feelings, it is good relationships. *K'e* promotes and prompts trust."
3. In a traditional peacemaking circle, a "talking stick" is passed from participant to participant. Whoever holds the stick has the right to speak without interruption. It does not literally have to be a stick. Sometimes it is a feather. At the conclusion of the roundtable conversation, the moderator rolled up the briefing paper, which was handed as a talking stick from speaker to speaker as everyone shared their final thoughts on the day.
4. Irvine, J. & Iyengar, L. (2005). *Match-controlled study of young offenders: Community conferencing vs. juvenile services*. Report of the Maryland Department of Juvenile Services.

### **Center for Court Innovation**

The winner of the Peter F. Drucker Award for Non-profit Innovation, the Center for Court Innovation is a unique public-private partnership that promotes new thinking about how the justice system can solve difficult problems like addiction, quality-of-life crime, domestic violence, and child neglect. The Center functions as the New York State court system's independent research and development arm, creating demonstration projects that test new approaches to problems that have resisted conventional solutions. The Center's demonstration projects include the nation's first community court (Midtown Community Court), as well as drug courts, domestic violence courts, youth courts, mental health courts, reentry courts, and others.

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