Strengthening and Rebuilding Tribal Justice Systems: Learning from History and Looking Towards the Future

A Participatory Process Evaluation of the Comprehensive Indian Resources for Community and Law Enforcement (CIRCLE) Project

Executive Summary*

The CIRCLE Project

In 1998, several agencies within the U.S. Department of Justice (USDOJ) initiated a partnership with the Northern Cheyenne Tribe, Oglala Sioux Tribe, and Pueblo of Zuni to strengthen those tribes' justice systems. Through this initiative, called the Comprehensive Indian Resources for Community and Law Enforcement (CIRCLE) Project, USDOJ provided incentives and opportunities (in particular, streamlined and coordinated federal funding for justice functions) that helped the tribes consider how their justice systems' individual components might better work together to address pressing crime and social problems. With this assistance, the tribes' challenge shifted away from how they might fund specific justice programs to how they might leverage an array of justice (and related program) resources to address tribe-specific, crime-related goals.

Evaluation of the CIRCLE Project occurred two phases – a first, 18-month "process" phase, reported on here, and a second, 30-month "outcomes" phase, which will generate a separate report. This was a participatory evaluation. It engaged the tribal and federal partners in a number of core design and data collection tasks, including identifying the focus, goals, and end products of the evaluation, and the outcomes and indicators regarding program and system performance. An important goal of the evaluation was to understand whether the design of CIRCLE was useful to tribes in their justice system-strengthening efforts; it asked, what design features seemed most helpful and why? In answer, the first phase of the evaluation shed light on the following:

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- The promise of federal cross-agency (and, potentially, cross-department) cooperation and coordination as a means of maximizing the value of federal investments in building strong and resourceful tribal communities

- The strategic importance of addressing crime problems through system-level (rather than program-level) thinking

- The powerful, intertwined influence of nation building, culture, and context on change efforts in Indian Country

- The role sustainability goals should play in the design of such initiatives

The dynamics surrounding these factors over the course of the Project were complicated and presented difficult challenges for the participating federal agencies and for the participating tribes. Even so, CIRCLE made an important contribution to the tribes' efforts to design and build stronger justice systems, and thus, we present our discussion of the bulleted points above as opportunities for increasing the value of future federal investments in building strong and resourceful tribal communities.

Opportunity 1: Build on the Federal Partners' Efforts to Support Comprehensive Justice System Planning

The considerable challenge the federal CIRCLE partners faced was to craft a set of tools and opportunities that tribes could use in building and/or strengthening their justice systems, and to do so despite the fact that their efforts were greatly inhibited by, among other things, the sheer size and complexity of the relevant federal partner agencies, numerous federal guidelines and legislative restrictions that govern relationships with grantees, and inevitable shifts and conflicts in values and priorities in changing political climates. In the face of these barriers, the federal partners forged a strong inter-agency working group that succeeded in creating a significant set of opportunities for the tribes. Our site-based interviews and observations point particularly to two working group products that provided valuable support to the tribal partners' efforts:

- The federal partners' work toward streamlining and coordinating funding, and

- Improved communication and cooperation among the federal partners themselves and between the federal partners and tribes

These products provided the participating tribes with a mix of "system change" tools and opportunities (for example, preferential access to selected program resources) in exchange for local efforts to strengthen justice systems and local commitments to performance accountability. Viewed thusly, the context for CIRCLE includes not only comprehensive tribal justice initiatives but also similar comprehensive initiatives by the federal and state governments in the health, social service, and justice arenas.

This broader array of reform initiatives is producing evidence that comprehensive system change *can* help communities make progress toward important social goals (improved safety, improved health outcomes, etc.), and it is generating a valuable set of lessons learned about how to

accomplish such change. Based on these findings and our analysis of CIRCLE, we recommend that USDOJ build on the approach it took to the Project in future initiatives. Formalizing the CIRCLE working group (and, over time, vesting it with increased authority and resources) could be an effective means of sustaining the opportunities and incentives the Project provided. Further, we note that there are existing federal models for improving and institutionalizing the type of funding CIRCLE offered tribes. The most flexible model is block grants; the federal Local Law Enforcement Block Grant and Juvenile Accountability Incentive Block Grant are examples of two such USDOJ programs. They provide substantial funds to cities and counties with limited restrictions on their use. Progressive communities have used the grants as "innovation funds" and invested the money in improvements to overall system performance.

Opportunity 2: Use the Concept of Nation Building to Guide the Initiative's Goals, Plans, and Implementation

"Nation building" refers to the process, undertaken by indigenous nations themselves, of constructing effective institutions of self-government that can provide a foundation for sustainable development, community health, and successful political action. In other words, it is the process of promoting Indian nations' self-determination, self-governance, and sovereignty – and, ultimately, of improving tribal citizens' social and economic situations – through the creation of more capable, culturally legitimate institutions of governance. Our observations suggest there are two reasons why the nation-building process is important to CIRCLE. The first might be called a "frame of reference" problem, the second a missed opportunity.

Using Nation Building as a Frame of Reference Will Improve Communication and Project Design

As a frame of reference, the leaders, governmental personnel, and citizens of tribes generally think of their tribes as nations and, hence, make decisions and undertake initiatives based on this understanding. Committed tribal nation builders add an additional layer to this viewpoint. They realize that their nations participate in federally funded projects like CIRCLE by choice; the federal government cannot tell them to take the money, they can opt not to, and they can take action to accept federal support on their own terms.

Initial documents describing CIRCLE reflect USDOJ's appreciation of tribes' nationhood. It is less clear that the USDOJ grant managers and technical assistance providers participating in CIRCLE consistently embraced this orientation. Unfortunately, any time federal CIRCLE partners failed to recognize tribal partners' "national" orientation, a functional mismatch arose, with tribal partners thinking and acting as national representatives and federal partners treating them in a more conventional manner (as typical "grantees," "programs," or "local governments") – with generally detrimental results. This "frame of reference problem" generated disjunctions between the options tribal partners believed they ought to have and the options the federal partners believed were available. The results were stymied negotiations, frustration on both sides, forced "compromise," and lower productivity.

Critically, the point is not that tribes' requests must always be honored. Rather, the federal government *and tribes* must work harder to share the "tribes as nations" frame of reference. If tribes' nationhood is a consistent focus, federal and tribal representatives may find more fruitful

ways to negotiate and compromise, and tribes may gain increased control of their futures by exercising greater choice over the types of funding they accept and programs they develop.

As noted, an important consideration for tribes is that the nation building perspective obligates them to think strategically about the role grant opportunities play in nation building. For tribes that recognize the importance of nation building, the question is difficult: does this initiative offer the opportunity to make a sound investment in more capable tribal institutions, or does it commit us to yet another three-year cycle of short-term jobs and unrealistic expectations for improvements in social conditions? When tribal leaders and grant seekers have answered this question honestly, their priorities may necessarily shift; for example, a tribe may request the opportunity to think more fundamentally about strategies that move the tribe forward along the path of nation-building, and might request not "program support," but a very different set of resources (such as technical assistance and support for thorough planning and assessment). There is, of course, tremendous pressure on tribes with limited funds to pursue new grant opportunities regardless of their long-term value. We propose, however, that there may be substantial untapped value in communicating to funders that piece-meal, categorical, and culturally inappropriate grant initiatives are of little use – and that one powerful way of communicating this would be for tribes to refuse participation in such initiatives.

Identifying Nation Building as a Shared Goal Will Improve Focus and Productivity

Well-understood, deeply shared goals are valuable because they serve as organizing principles and ultimate objectives. Our sense is that the tribes and USDOJ agencies participating in CIRCLE lacked such a goal. Further, we believe that identifying "nation building" as CIRCLE's overarching goal would have served the purpose – and that not identifying it as the explicit goal for CIRCLE was a missed opportunity, which ultimately prevented funds from being used in the most productive manner possible.

In the future, USDOJ ought to adopt nation building as its overarching goal for projects in Indian Country. The goal would better coordinate federal partners' actions by requiring them to pass their plans and activities through this filter: *do the plans and activities of our organization support tribes in the process of constructing effective institutions of self governance that can provide a foundation for sustainable development, community health, and successful political action?* The filter for Indian nations is similar: *does the strategy we propose for strengthening our justice system fit with our long-term efforts to become a stronger, more resourceful community?*

Opportunity 3: Take Context and Culture Seriously – Generate More Tailored Tribal Strategies

The CIRCLE tribes display great variation in terms of culture, political systems and stability, demographics, criminal justice system organization, available social services, proximity to urban areas, etc. Understanding of these factors is essential, as they create the local context for change. Done well, assessment honestly portrays this context, revealing the challenges and resources present within the community. By clarifying and highlighting local constraints and opportunities, good assessment results in good strategy, or in *practical* expectations of how and how much change will be achieved. Indeed, research and experience with similar community initiatives

recommend a structured and intensive period of assessment and planning. Yet this connection between context, assessment, and strategy was not evident in the development and initiation of CIRCLE, as the Project moved straight to a strategizing phase.

The tight connection between assessment, planning, and strategy suggests that because contexts differ, strategies ought to differ. Here we focus on a particular aspect of that point: the partner tribes' highly distinct cultures increase the probability that different strategies will be needed within each community in order to generate substantive justice system change. Significantly, there is growing evidence on the connection between culture, institutional and strategic design, and organizational or programmatic success. One body of evidence concerns the success of governing institutions in Indian country. Research has found that better-performing tribal governments are in the development "driver's seat" and possess constitutional-level institutions that pass the twin tests of cultural legitimacy and capability. In other words, effective tribal government institutions distribute power and authority in ways that make sense to their citizens (where "what makes sense" is based on a Native nation's living culture) and are capable of getting things done in the contemporary world. The critical cultural variable has been called "cultural match": if a nation's institutional rules and processes are culturally legitimate, they underwrite socioeconomic progress; if not, progress is difficult.

This research on constitutional-level institutions is complemented by emerging evidence that culturally appropriate strategies increase the success of a wide variety programs and processes. For instance, culturally appropriate strategies appear key to the progress some Native nations are making against hard problems such as community infrastructure development, healing for victims of sexual abuse, and diabetes. Criminal justice programs and institutions with cultural match also may generate improved outcomes; for example, they may reduce recidivism. Especially when combined with strong signals from the tribal CIRCLE partners, the research indicates that success is more likely if strategies vary appropriately with tribal settings.

Nonetheless, the architects of CIRCLE and the ongoing federal working group did not adequately define and support the role culture might play in tribal programs and strategies, in the design of the individual agencies and institutions that make up tribal justice systems, and in the overall design and administration of the systems themselves. The challenge here is an important one. For any given Indian nation, the systems that animate and guide criminal justice functions (policing, prosecution, corrections, etc.) – including the organizational structures of individual agencies and the criminal justice system overall, tribal personnel and training systems, local management information and control systems, and tribal agencies that conduct strategic planning – ought to be linked to a vision of these criminal justice functions that is shaped by the nation's beliefs, needs, priorities, and resources. As a result, the agencies charged with administering justice would become more indigenous (or self-determined), more likely to build upon and reinforce important cultural norms and values, and more valuable to the community.

We acknowledge that it is not easy to hearken to this call for more tailored, culturally appropriate strategies. Federal players may find it difficult to work within their institutional and legislative constraints to help tribes craft such strategies, and tribes may lean toward the path of least resistance and return to the procedures and policies of the past, despite the probable success of new approaches. However, federal agencies have well-developed roadmaps for instituting funding streams that provide greater flexibility to localities, including tribes. We again cite Local

Law Enforcement Block Grants and Byrne discretionary grants, which afford cities and counties substantial discretion in how they are invested, as well as the self-governance amendments to Public Law 93-638, which provide substantial discretion to tribes in how they are invested. As emphasized under Opportunity 1, our point is not that the right funding mechanisms presently exist, but that there is precedent for them in current government practice. With appropriate legislative changes, the development of corresponding support functions within USDOJ, and knowledge about these opportunities in Indian country, similar programs could promote the more effective use of USDOJ resources for tribal justice system enhancement.

Opportunity 4: Introduce a Focus on Sustainability from the Start

For the purposes of this evaluation, we think it is useful to define sustainability in two ways. First, those changes in institutional and system design and operation that are most able to weather fiscal, political, and other challenges over an extended period of time may be defined as "sustainable." Sustainable change may arise from investments in infrastructure, training, and technology, but more precise identification of the contributing factors also necessitates, as we suggest under Opportunity 3, careful consideration of the local context. Guiding questions must be: given this particular cultural, social, and political setting, do investments in (for example) institutional re-design, government structures, staff development, or technology make sense as a means of promoting project sustainability? What makes programs live on in this nation? Second, sustainability is related to the specific investments that maximize local actors' effectiveness both during and after the period for which the initiative is funded. The tribal CIRCLE partners are managing change within and across sectors in complicated political, cultural, and social settings, with limited resources. What kinds of support and professional development opportunities will optimize their contributions over time?

High Quality Technical Assistance Plays a Key Role in Sustainability

A critical investment is in good technical assistance (TA). High quality TA promotes both types of project sustainability, and thereby increases the odds that a project will result in system change. At the least, it leaves behind human capital, data, or procedural tools; even if a program or initiative withers after the withdrawal of external funding, these are bases on which an individual or community can later build. At best, TA promotes the creation of sufficient capacity for the initiative to carry on and meet its goals.

Across the sites, CIRCLE affiliates who received on-site, program-specific technical assistance told us how much they learned from and enjoyed the trainings and other TA opportunities provided through CIRCLE. Unfortunately, CIRCLE coordinators, steering committees, partner program directors, and partner program staff also reported that there was too little TA, that the time gap between the request for and provision of TA was too large, and that the TA needed often extended beyond USDOJ's traditional areas of expertise. For example, USDOJ fruitfully provided training in community policing and to court-appointed special advocates and provided technology assessment TA, but tribal-level implementers' needs extended to TA on evaluation, institution building (and cultural match), strategic planning, political communication and strategy, leadership development, incorporating the community in decision making, and financial management and budgeting, among others. For an agency like USDOJ to provide or even fund such TA may be a challenge, but evaluation findings argue that it would be a challenge well met.

Intriguingly, providing better TA may provide the means for offering more TA. The key is recognizing the TA-increasing implications of two facts: 1) that good technical assistance can reduce or even replace the need to monitor compliance; and 2) that meetings (cluster meetings, for example) and other already-funded project-related events offer opportunities for peer TA.

Expanding on the first point, we note that many non-federal government funders (especially foundation actors) have made, or are making, a gradual shift away from intensive monitoring and toward intensive, well-rounded technical assistance. There are several reasons for this shift. Certainly, it creates a better sense of partnership. Joint involvement in TA would create situations in which the federal government and tribes truly partnered in problem solving, where by contrast, monitoring visits leave the impression that federal actors are interested only in overseeing tribal efforts. But it is also cost-effective. Good TA, that which is targeted at specific site needs and addresses problems in a way that is useful to implementers, provides essentially the same information as monitoring. If grantmakers are actively involved in the delivery of such TA, it becomes a "twofer" and makes for a better use of funds.

Investments in Local Leadership Play a Key Role in Sustainability

Cross-site study underlines the importance of quality local leadership to the effectiveness and sustainability of the CIRCLE Project. The site coordinators appear to be particularly important local leaders: when we asked questions at the sites about sustainability, we invariably were told that sustainability depended on the Project's coordinators (the role, not necessarily the person), in that the coordinators promoted an overall vision for the Project within the community and helped ensure that the entire effort continued to move forward.

This finding argues that investments that support the site coordinators – and other local leaders and stakeholders – or build their capacity to do their jobs well are likewise investments in sustainability. In future initiatives, federal and tribal actors should consider providing these local leaders with carefully designed support and capacity enhancements.

A Closer Look at the Federal Process

We have noted that the federal partners produced two extremely important products in the implementation of CIRCLE – a streamlined and coordinated approach to funding and better inter-agency and federal-tribal communication. While we were critical of the lack of an overarching goal to focus CIRCLE work, the many "sub goals" the federal partners set for themselves offer another evaluation opportunity: analysis of the federal partners' progress against their goals provides a more nuanced understanding of Project accomplishments and failures. A summary of this progress is presented below.

> *Goal: to accelerate and coordinate USDOJ programs and grants at CIRCLE demonstration sites to guide general implementation of the Indian Country Law Enforcement Initiative*

In general, CIRCLE succeeded in accelerating the participating tribes' receipt of an overall set of program funds from the U.S. Department of Justice, which allowed them to begin implementation quickly. But this is not to say that acceleration is necessarily a good thing. The Northern

Cheyenne Tribe and the Pueblo of Zuni were administratively prepared for the Department's rapid grant award, but the Oglala Sioux Tribe was not. The Department's subsequent decision to freeze Oglala Sioux's receipt of CIRCLE funds suggests that acceleration is desirable as long as a tribe's financial management infrastructure is adequate and accountable. Furthermore, acceleration of funding forced the tribes to bypass early-stage assessment and follow-on strategic planning.

On the positive side and as noted earlier in this summary, the federal CIRCLE partners also succeeded in coordinating funding and, to a large extent, grant management, accomplishments that provided valuable support to the tribal partners' efforts.

> *Goal: to promote the inter-tribal exchange of ideas and experiences in law enforcement, community development, and federal-tribal relations*

Cluster meetings were the right first step toward achieving this goal. They were a deliberate attempt to gather together tribal-level change agents, program directors, and leaders who were working on similar issues and striving toward related goals. Yet the meetings fell short of their potential. They might have been more useful had the participant tribes been given more latitude in meeting planning. But funding realities also mean that this freer hand must be accompanied by an upfront, explicit, and *mutually understood* explanation of the kinds of activities that can legitimately be supported. (We add emphasis to "mutually understood" as we were told that the federal partners believed they had informed the tribal partners about the limitations on the use of federal funds. This suggests that a still more explicit and affirmed understanding is necessary in the future.) With this understanding, tribal partners are savvy enough and creative enough to work within constraints or to seek non-federal sources of funding (tribal funds, foundation funds, private donations, etc.) to support more innovative and productive meetings.

> *Goals: i) to develop a comprehensive planning and development process for safe and healthy tribal communities, and ii) to foster true strategic planning and to increase the partnership between tribes and USDOJ*

These related goals link comprehensive and strategic planning to two very different but desirable outcomes – safer communities and improved government-to-government relations. While outcomes data to lend credibility to the first point is not yet available, several factors suggest that CIRCLE has at least partially met these goals.

The tribes' CIRCLE Project applications are one piece of evidence that CIRCLE assists tribes with comprehensive and strategic planning. Especially for years two and three, the application process served as a tool and opportunity for strategic planning; the applications that emerged for Northern Cheyenne and Zuni in 2000, and all three tribes in 2001, reflected significant improvement in the development of strategic and comprehensive plans. But USDOJ did less than it could have to develop and foster sound planning processes. As has been noted, goal one (accelerated funding) is itself a barrier to improved planning, since good strategic and comprehensive planning takes time and should be preliminary to program implementation. In general, sound planning processes also require site-specific, problem-targeted technical assistance, especially in the form of baseline assessment, which was not really part of CIRCLE.

With regard to the connection between strategic planning and federal-tribal partnership, both federal and tribal commentators suggested that CIRCLE's short time horizons and limited investments in strategic planning stood in the way of a long-term sense of partnership. A government-to-government relationship isn't "here today and gone tomorrow"; tribes need to sense that the federal government is working with them over the long haul. Critically, substantial funding transfers are only one indicator of a positive long-term relationship. Personnel availability, technical assistance, support for assessment and planning efforts, and institutionalized training within USDOJ on Native issues are other means of building enduring partnerships.

> *Goal: to address (or at least draw attention to) the baseline roadblock that tribes have in developing comprehensive programs – serious gaps in their criminal justice systems*

While it is not clear that this understanding has broadly permeated USDOJ, the six Offices and Bureaus collaborating on CIRCLE Project funding were forced, time and again, to recognize the limitations on action posed by system gaps. For example, increasing the size of a tribe's police force has a limited impact on tribal law enforcement if there are too few prosecutors, judges, jail spaces, and/or probation officers to make police officers' citations have bite. Given that they faced these problems, the federal partners also worked with the tribal partners to fill the gaps.

> *Goal: to highlight the need for additional and more consistent resources for tribal law enforcement projects (and to remedy the problem, at least for a little while, for the three participating tribes)*

For the three years of CIRCLE, it seems clear that the Pueblo of Zuni and the Northern Cheyenne Tribe (neither of which experienced a CIRCLE funding freeze or uncertainty around the third year of corrections construction funding, as did the Oglala Sioux Tribe) did receive funding from USDOJ in a more consistent manner than they would have without CIRCLE. Again, it was the guarantee of funds from the federal partners that generated this consistency. When looking beyond the three years of Project funding, however, the guarantee is gone and any strong sense of "consistency" in funding is gone too. At best, there is a weaker version of "more consistent funding" in play once the Project ends: the federal partners are now much better informed about each other's programs and can better direct tribal applicants to appropriate and additional funding sources when questions arise. Of course, this benefit lasts only as long as the federal personnel who worked on CIRCLE remain in their positions and the current grant program structure lasts.

Summary and Conclusion: What Was Accomplished

In every instance, evidence from the preceding review of the federal government's involvement with the CIRCLE Project suggests that CIRCLE helped USDOJ move in the direction of its goals. Sometimes the movement was not far, but it was progress nonetheless. Sometimes the progress was made in the face of difficult tensions – between "policymakers" and "grantmakers," between the tribes and USDOJ, and perhaps even among grantmakers themselves. But the progress suggests that the undertaking was productive, and with that result, USDOJ ought to think seriously about how to build on and move forward from the CIRCLE Project.

This recommendation is further supported by the fact that the CIRCLE Project helped strengthen the justice system at each of the tribal sites:

- It enabled the Pueblo of Zuni to make substantial progress toward the development of a functioning criminal justice *system* by: (1) strengthening the performance of agencies such as domestic violence service providers, the police department, corrections, etc.; (2) building a management information system capable of providing timely information on the performance of individual agencies and the system as a whole; and (3) developing a logic model that has helped the tribe craft a strategic approach to "breaking the cycle of violence."

- It has helped a set of key Northern Cheyenne leaders and community members consider the importance of developing a tribal Department of Justice; allowed the creation and expansion of programs that support a better tribal court (probation programs, victims assistance programs, and court clerk positions); and enabled an ongoing focus on the problems of the nation's youth and the development of a youth rehabilitation center to complement other youth outreach efforts.

- It has provided citizens of the Oglala Sioux nation an opportunity to identify how their culture and other important features of the local context should influence the design of their criminal justice institutions. This has, in turn, provided reformers with a framework for rethinking the design of current institutions and agencies charged with addressing crime and crime-related problems.

Taken together, these accomplishments and the valuable new knowledge produced by the CIRCLE Project suggest that the federal investment in CIRCLE was a worthy one.