



# THE SECOND NEW YORK LISTENING CONFERENCE REPORT

“Working Toward Solutions”



Co-Sponsored by  
The NY Federal-State-Tribal Courts & Indian Nations Justice Forum  
The New York State Judicial Institute and  
The Western Community Policing Institute





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## Preface

**D**ENISE E. O'DONNELL, THEN DIRECTOR, BUREAU OF JUSTICE Assistance, U.S. Department of Justice, was the keynote speaker at the dinner at the Second Listening Conference, which took place on Thursday and Friday, September 29 - 30, 2016. The following are a few short excerpts from her encouraging talk.

On Tuesday in his remarks at the Tribal Nations Conference, President Obama highlighted the progress that has been made in the last eight years by elevating Native American Affairs within the White House and across the Federal Government. In addressing Tribal leaders about the progress made in the justice area, he said this:

“Together, we’ve strengthened your sovereignty and reauthorized the Violence Against Women Act so that tribes can prosecute those who commit domestic violence against women in Indian Country, whether they are Native American or not. We worked to ensure your rights to equal justice under the law, and gave more power to tribal courts and police.”

The President’s words echo our belief at the Department of Justice, a belief I think that is shared by all of you at this summit, that public safety in Indian Country will improve once Native Nations and Tribes have greater freedom to build and maintain their own justice systems. And that requires collaboration among the state, federal and tribal judicial and justice system leaders in this room (judges, prosecutors, defenders, victim advocates, law enforcement, academics) working in a spirit of cooperation and mutual respect to find solutions to complex systems, problems and barriers.

I can’t applaud you enough for those efforts and on behalf of the Bureau of Justice Assistance we are proud to have had the honor to support your initial Summit ten years ago in 2006 which created this rich culture of collaboration, of listening and learning from one another, and this important Summit, ten years later, to build on your work and keep the dialog ongoing. And as I said earlier, I am so encouraged by the leadership and progress made by members of the judiciary, under the leadership of Judge Kahn and others, to promote understanding, respect and cooperation between state and tribal judiciaries, reduce jurisdictional conflicts, expand tribal court capacity, grant full faith and credit to each other’s judgments and orders, and improve the quality of justice for all.

As President Obama said at the Indian Nation’s Conference earlier this week: “We haven’t solved every issue. We haven’t righted every wrong. But together, we’ve made significant progress in almost every area”.

Thank you—each and every one of you, for your leadership and for caring so deeply about the work we are doing together.







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## The Second New York Listening Conference

Let's take away all the things we have learned,  
keep talking with one another, and keep looking  
for new ways to collaborate with one another.

HONORABLE MARCY L. KAHN,  
*Associate Justice, New York Supreme Court, Appellate Division, First Department*

## Introduction


ON SEPTEMBER 29 - 30, 2016, NEW YORK'S INDIAN TRIBES AND NATIONS and state and federal justice representatives gathered in Albany, New York, to discuss issues of common concern and listen to stories of successes. The Second Listening Conference of the New York Federal-State-Tribal Courts and Indian Nations Justice Forum (The Forum) brought together 100 participants over the course of two days. It provided an opportunity to review and discuss Forum accomplishments, promising local collaborations, and national reports and innovations that may be helpful to address issues related to federal-state-tribal collaborations in New York State. Topics covered included domestic violence, protection orders, enforcement of tribal court orders, the Indian Child Welfare Act (ICWA), Native American grave protection, law enforcement collaboration, re-entry, bail reform, and regional issues. The conference afforded participants the opportunity to reflect on how far the Forum has come over the last thirteen years of its existence with an eye toward emerging issues on the horizon that are ripe for Forum action.

### Background of the New York Federal-State-Tribal Court and Indian Nations Justice Forum

In 2002, then New York State Chief Judge Judith S. Kaye created the New York Tribal Courts Committee to study the possibility of establishing a federal-state-tribal courts forum for New York, following the lead taken by the Conference of Chief Justices to explore how different justice systems might collaborate to foster mutual understanding and minimize conflict. She appointed the Honorable Marcy L. Kahn, now Associate Justice of the New York Supreme Court, Appellate Division, to chair the Committee.

In May 2003, Judge Kahn met for the first time with members of New York's nine-recognized Indian Tribes and Nations to ascertain their interest in developing a federal-state-tribal courts forum. Following subsequent meetings, with support from Judge Kahn and the Tribal Courts Committee Co-Chair, the Honorable Edward M. Davidowitz, the group formalized the New York Federal-State-Tribal Courts Forum in 2004 with a six-pronged mission:

1. To develop educational programs for Judges and Tribal Chiefs and Indian Communities;
2. To exchange information among Tribes and Nations and agencies;
3. To coordinate the integration of ICWA training for child care professionals, attorneys, judges and law guardians;

- 
4. To develop mechanisms for resolution of jurisdictional conflicts and inter-jurisdictional recognition of judgments;
  5. To foster better cooperation and understanding among justice systems; and
  6. To enhance proper ICWA enforcement.

Together with the New York Tribal Courts Committee, the Forum sponsored the First New York Listening Conference in 2006. The First Listening Conference galvanized the Forum members to develop concrete steps to implement the mission. The First New York Listening Conference convened state and federal judges and court officials in sessions with tribal judges, chiefs, clan mothers, peacemakers, and other representatives from justice systems of New York's Indian Tribes and Nations to exchange information and learn from each other.

Ten years later, the Forum decided that the time had come to discuss the Forum's accomplishments and identify current issues that the Forum might address in the future, so it organized the Second New York Listening Conference, which is the subject of this report.

### Indian Nations' Justice Systems within the State of New York

New York State is home to nine state-recognized Indian Nations. Seven of the Indian Nations are from the Six Nations of the Haudenosaunee—the Cayuga Nation, the Saint Regis Mohawk Tribe, the Oneida Indian Nation, the Seneca Nation of Indians, the Tonawanda Band of Seneca, the Onondaga Nation, and the Tuscarora Nation. These Tribes and Nations have territory in five New York Judicial Districts covering thirteen counties in upstate New York. Additionally, the Unkechaug (Poospatuck) and the Shinnecock Nations are located on Long Island. All Nations except the Unkechaug are recognized by both the federal government and New York State. The Unkechaug nation is recognized by the State of New York.

The justice systems of the Nations within New York State span a broad range of models. The Onondaga, Tuscarora, Cayuga, and Tonawanda Band of Seneca adhere to the oral tradition relating to laws and practices. Their justice systems involve community healing through consensus. These Nations have no judges, no courts, and no written laws. Each Nation's government centers around a clan system, and most are represented on the Haudenosaunee Council of Chiefs, which meets in the Longhouse in Onondaga territory on a regular basis.

The Oneida adopted a Western court structure and system in 1997 with written criminal and civil codes. They also have a more traditional Peacemaking Court.

The Saint Regis Mohawk Tribe has a Traffic and Civil Court, a Healing to Wellness Court that works with neighboring courts in providing supervision and cultural practices to aid in the rehabilitation and healing of the individuals, and currently has a plan for a family court under development.

The Seneca have a court system that consists of a Supreme Court, a Court of Appeals, a Peacemaking Court, and a Surrogate Court.

The Unkechaug and the Shinnecock rely primarily on state courts for criminal and civil matters.



## Listening Conference Program

The program at the Listening Conference balanced presentations on numerous collaborative efforts and projects within New York State with efforts occurring between Native Nations and the federal government, other states, and Canada. The primary topics of these presentations appear in this report. The conference also provided information on federal legislation impacting Native Nations within the state, such as the Violence Against Women's Act Reauthorization of 2013, the Tribal Law and Order Act and the Indian Child Welfare Act.

Panel discussions ensured the presentation of a variety of viewpoints, projects and ideas. A working breakfast, lunch, and dinner made the most of the time provided for the conference.

Regional breakout sessions provided opportunities to garner information on critical issues to each of the regions, as well as provide time for regional discussions. The four regional groups included:

- Long Island/New York City
- Northern Region
- Western Region
- Central Region

Each of these regions discussed issues that greatly impacted their areas, and the topics varied. Information from these breakout sessions was presented to all the participants during the final session of the conference. Reports from these four regional breakout sessions are meant to provide direction for the Forum's future work. The synopsis of these regional sessions appears in the conclusion of this report.

Conference materials and videos of sessions can be found at <http://www.nyfedstatetribalcourtsforum.org/forumConf.shtml>

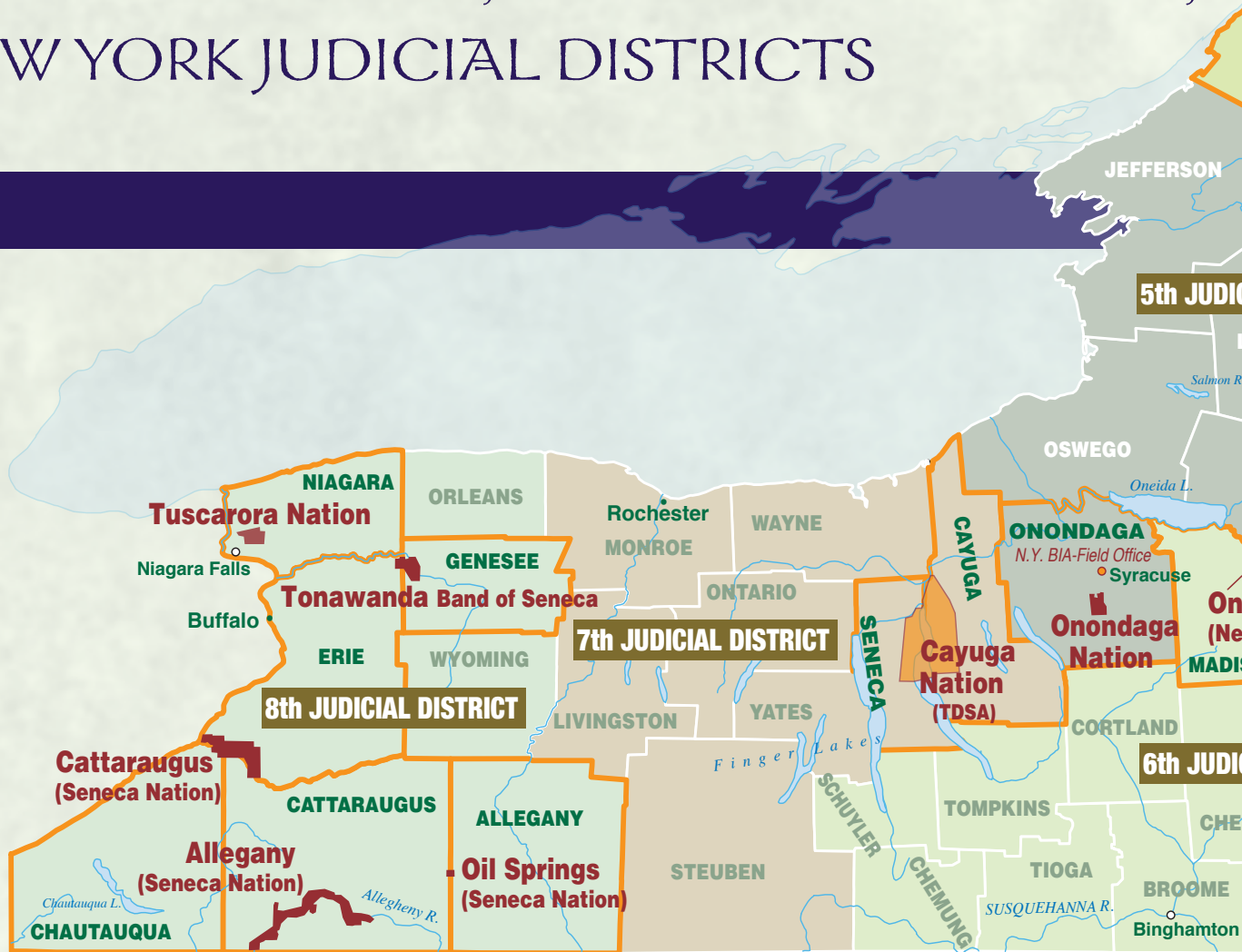
Other materials including history and current work of the Forum is available at: <http://www.nyfedstatetribalcourtsforum.org/index.shtml>

## Report Organization

This report - a publication of the New York Federal-State-Tribal Courts and Indian Nations Justice Forum - is topically organized to provide educational value and convey a narrative of the Forum's accomplishments and future work to be done. The topics were discussed in some detail at the Listening Conference, and frequently were discussed in more than one session. The topics are divided into two primary sections: (1) New York Federal-State-Tribal Courts and Indian Nations Justice Forum Accomplishments and Promising Collaborations; and (2) National Perspectives Helpful to New York Strategies. The first section describes New York specific successes and strategies that were highlighted at the conference. The second section reviews new federal laws and programs successful elsewhere, which may prove helpful to New York. Each of the two sections is divided into topical discussions which highlight key points presented on the topic at the conference.

The final section, the Conclusion, provides a look towards future work. It highlights common issues-

# MAP OF NEW YORK SHOWING NATIVE TERRITORIES, NEW YORK COUNTIES, & NEW YORK JUDICIAL DISTRICTS

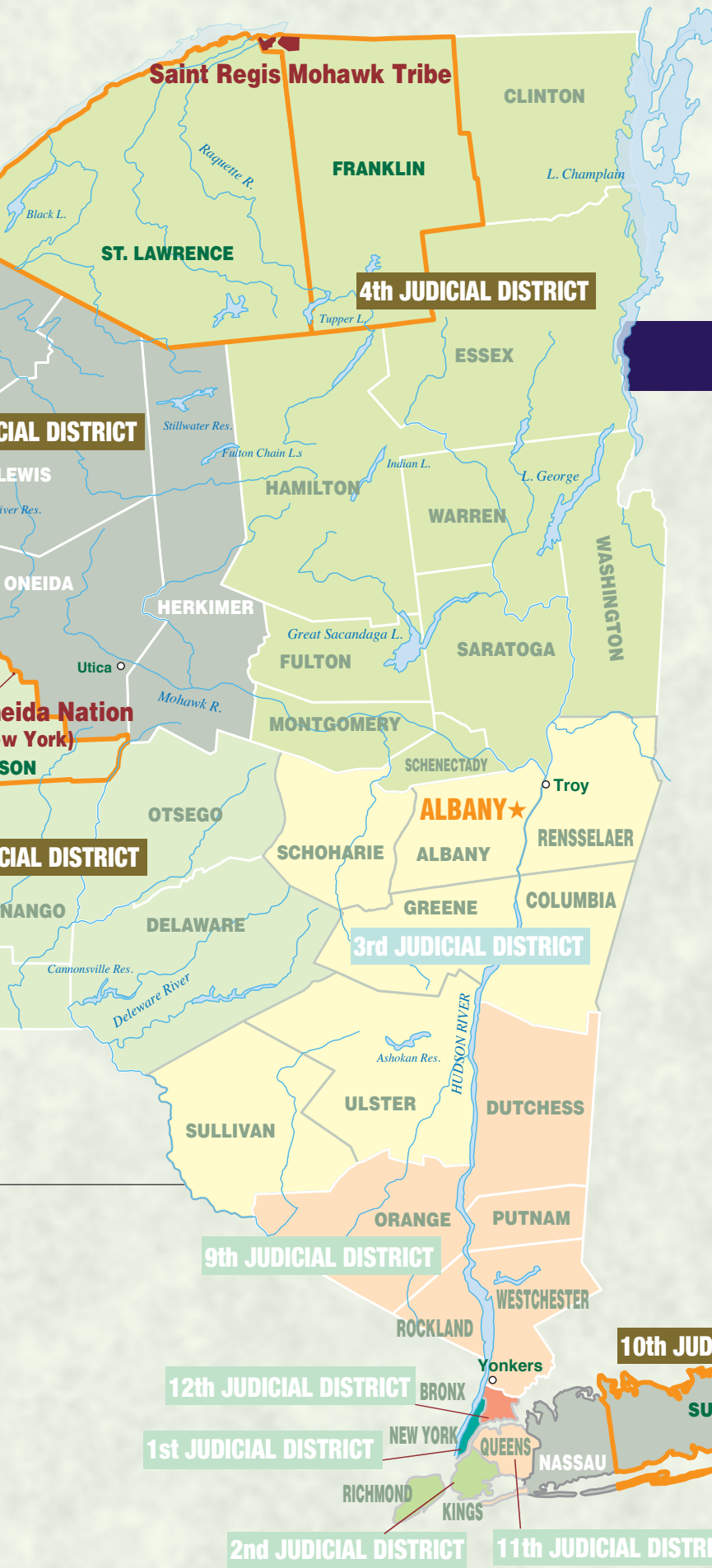


## Indian Entities

## New York Counties

## N.Y. Judicial Districts

Cayuga Nation	Cayuga, Seneca	8th
Oneida Indian Nation	Madison	6th
Onondaga Nation	Onondaga	5th
Saint Regis Mohawk Tribe	Franklin, St. Lawrence	4th
Seneca Nation of Indians – Allegany Reservation	Cattaraugus	8th
Seneca Nation of Indians – Cattaraugus Reservation	Cattaraugus, Chautauqua, Erie	7th, 8th
Seneca Nation of Indians – Oil Springs Reservation	Allegany, Cattaraugus	8th
Shinnecock Indian Nation	Suffolk	10th
Tonawanda Band of Seneca Indians	Erie, Genesee	8th
Tuscarora Nation	Niagara	8th
Unkechaug Indian Nation	Suffolk	10th



- American Indian Reservations**  
 (AIRs) are legal entities having boundaries established by treaty, statutes, and/or executive or court order. They are identified by the Bureau of Indian Affairs (BIA) as Federal Reservations. An AIR recognized by the Federal Government may be located in more than one state.
  
- Tribal Designated Statistical Area**  
 (TDSAs) are statistical entities identified and delineated for the U.S. Census Bureau by federally recognized American Indian tribes that do not currently have a federally recognized land base (reservation or off-reservation trust land). A TDSA generally encompasses a compact and contiguous area that contains a concentration of people who identify with a federally recognized American Indian tribe and in which there is structured or organized tribal activity. A TDSA may be located in more than one state, and it may not include area within an American Indian reservation, off-reservation trust land, or state designated American Indian statistical area.
  
- Counties with Indian Entities**  
 New York State Counties with Indian Entities are outlined in orange with the county name in dark green.
  
- JD** New York State Judicial District with Indian Entities



and obstacles in the four regions of New York, as well as strategies that work, and regional successes. It is a synopsis of the regional breakout sessions.

Please note that technical report writing assistance was provided by the Tribal Law and Policy Institute (Tribal Advocacy Legal Specialist Maureen White Eagle and Program Director Heather Valdez Freedman) under Grant No. 2016-IC-BX-K001 awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the Department of Justice’s Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the Office for Victims of Crime, and the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking. Points of view or opinions in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice.

I am here to remind you that we can all do better, each one of us. When we come together and we listen to each other; when we truly listen to each other, some magic happens. We have traditional words for that magic. There is no English word for it, but when we listen, when we gather, and when we understand people who are not us, or don't have privilege, then we can truly change the laws.

DEBORAH PARKER,  
*Former Vice Chair, Tulalip Tribe, Keynote Speaker*


## New York Federal-State-Tribal Courts and Indian Nations Justice Forum Accomplishments and Promising Collaborations

SINCE ITS BEGINNING IN 2004, THE FORUM HAS SEEN ACCOMPLISHMENTS on many fronts, including recognition of tribal orders and judgments, Indian Child Welfare Act collaborations, wellness court success stories, and innovations in Native bail reform. These accomplishments were highlighted at the Listening Conference to disseminate these best practices to a wider audience and to talk through the ongoing work involved in sustaining these collaborative successful strategies.

### Recognition of Indian Nations' Judgments, Orders, Decrees and Official Action

A recent major accomplishment of the Forum was the passage of a court rule that provides a simplified process for the recognition of tribal court judgments. Honoring tribal court orders has been a continuing problem; it was even a discussion at Judge Kahn's first meeting with the Tribes and Nations in 2003. Finding a method to ensure recognition of valid tribal court orders has been a key project of the Forum and the adoption of Rule 202.71 of the Uniform Civil Rules of the Supreme and County Courts relating to the recognition of tribal court orders was a significant achievement.

The panel discussion of the recently passed court rule highlighted the need for the administrative rule, the administrative process leading to its adoption by the Administrative Board of the New York courts, content of the rule, impact of the rule, and continued work necessary on this issue.



Panel members discussed the following complications, for tribal members especially, resulting from the failure of the state to recognize tribal court orders: The Honorable Esther Maybee, Seneca Indian Nation Surrogate Judge, noted the problems that members of the Seneca Nation experienced when administrators and executors attempted to sell vehicles in an estate of a deceased. The New York State Department of Motor Vehicles (DMV) had refused to honor tribal surrogate court orders and allow transfer of the deceased's vehicle, something the DMV routinely does with New York State Surrogates' orders. Honorable Patricia Maxwell, former family court judge, in Erie County, discussed the problems with name changes in tribal divorce actions. In both situations, the individuals, who presented valid tribal court orders, were advised by the county that they needed a state court order to obtain the relief desired. Additionally, social services and the DMV refused to recognize name changes in tribal orders. Banks would not recognize tribal court estate administrations and required an administrator of an estate to file in state court. State court filing was expensive and time consuming. The new rule should address these problems.

The new rule is rooted in principles of comity. The state court has the authority to exercise comity to recognize a tribal court order, in the same way it may use comity to recognize an order from any another nation. Adopting a rule specific to tribal court orders simplifies and expedites this process.

#### **Section 202.71. Recognition of Tribal Court Judgments, Decrees, and Orders**

Any person seeking recognition of a judgment, decree or order rendered by a court duly established under tribal or federal law by any Indian tribe, band or nation recognized by the State of New York or by the United States may commence a special proceeding in Supreme Court pursuant to Article 4 of the CPLR by filing a notice of petition and a petition with a copy of the tribal court judgment, decree or order appended thereto in the County Clerk's office in any appropriate county of the state. If the court finds that the judgment, decree or order is entitled to recognition under principles of the common law of comity, it shall direct entry of the tribal judgment, decree or order as a judgment, decree or order of the Supreme Court of the State of New York. This procedure shall not supplant or diminish other available procedures for the recognition of judgments, decrees and orders under the law.

In addition to providing a simplified and clean process for the courts to follow in recognizing tribal court orders, the adoption of Rule 202.71 resulted in governmental agencies and banks recognizing tribal orders without the requirement that the tribal order go through the formal comity process. Banks that had previously not recognized tribal orders, now honor them. The New York Motor Vehicle Department has now issued the following directive to all Department of Motor Vehicle offices.



### **Recognition of Tribal Court Orders, Decrees, and Judgments**

Effective immediately, all issuing offices must recognize orders, decrees and judgments issued by Indian tribal courts. Examples include orders related to divorces, name changes, and Letters of Administration issued by a tribal Surrogate's Court.

You should honor all orders, decrees and judgments issued by the following New York State tribes: Cayuga Nation, Oneida Nation of New York, Onondaga Nation of New York, Saint Regis Mohawk Tribe, Seneca Nation of Indians, Tonawanda Band of Seneca, Tuscarora Nation, Shinnecock Indian Nation and Unkechaug Nation. In addition, you should also honor orders, decrees and judgments issued by tribes from non-NY states recognized by the federal Bureau of Indian Affairs. A list of recognized tribes can be found at the Bureau of Indian Affairs. If you have any questions regarding the authenticity of a document when it is presented, please contact the IOCU for assistance.

The panel expressed the need for the Forum to provide education about this new rule and continue to monitor and support the mutual recognition of valid orders by state and Indian Nations. Local attorneys, bankers, and courts need education on this issue.


### **Saint Regis Mohawk Tribe's Healing to Wellness Court**

Aaron Arnold, then Director of the Treatment Court Programs and Tribal Justice Exchange for the Center for Court Innovation, and Micaelee Horn, Coordinator for the Saint Regis Mohawk Tribe's Healing to Wellness Court, discussed healing to wellness courts, specifically describing the Saint Regis Mohawk Tribe's Healing to Wellness Court. Healing to wellness courts use the drug court model, where the court brings together all support that offenders may have in the community, and works collaboratively to provide the offender every opportunity to succeed in achieving wellness. The collaborative generally has dedicated court staff to coordinate and provide case management. Wellness courts provide traditional or cultural-based services. Research has shown that in such cases the judge is the most influential factor in determining the offender's success.

The Saint Regis Mohawk Tribe does not exercise criminal jurisdiction, so their wellness court partners with the surrounding county courts. Cases handled by the wellness court are misdemeanor cases. This type of jurisdiction-sharing between state and Native Nation was modeled after the Leech Lake wellness court, but remains one of the few cross-jurisdictional courts in the country.<sup>1</sup>

The Saint Regis Mohawk Tribe territory is unique in that an international border runs through the community. A member can literally walk across the street to visit his or her grandmother, and enter Canada. The tribal wellness court accesses resources from the Mohawk Council of Akwesasne in Quebec and Ontario, in addition to services available in the United States. An offender may be charged in the United States, but live in Canada. The wellness court team includes representatives from both sides of the international border and includes Elizabeth Horsman, Assistant U.S. Attorney, Northern District of New York, who is the designated Tribal Liaison for the Office of the United States Attorney for the Northern District of New York. The wellness court has experimented with handling federal as well as state cases.

<sup>1</sup> More information regarding the Leech Lake Court can be found on their website (<http://www.llojibwe.org/court/tcAwards.html>)



It is hoped that this successful model will be adopted by other Indian Nations and counties in New York State. Horn recommended that any Native Nation interested in developing a wellness court contact the Tribal Law and Policy Institute or the Center for Court Innovation for technical assistance.<sup>2</sup>

### **Indian Child Welfare Act and Suffolk County—Unkechaug Nation Cooperation**

The Forum has been very active in providing and assisting with basic and advanced education on ICWA. The panel discussion on ICWA at the Listening Conference focused on a few primary interpretations of ICWA, model state-tribal relationships, and a few highlights of the new federal ICWA guidelines. The panel primarily focused on the unique program existing between Suffolk County and the Unkechaug Nation.

Veronica Treadwell (Unkechaug Nation),<sup>3</sup> Foster Care Family Team Conference Facilitator for Suffolk County Office of Family Services, highlighted the importance of a Nation’s involvement on first contact with social services. Treadwell indicated that in Suffolk County, she or the Chief of the Unkechaug Nation are notified immediately if a child identified as Unkechaug could be involved with family services. Once contacted, Treadwell does a quick safety assessment, sets up a meeting with family, and gets services in place, and either she or the chief appears in court. This has proven to be a very effective community model, as strong relationships have developed.

Suffolk County includes the Nation at the table every step of the way. Treadwell stressed the importance when looking at the best interest of the Indian child of considering not only the effect on a child presently, but also the effect on the child fifty years from now. Cultural identity and tribal and family connection are so important to a child. She indicated that when keeping the family together is not possible, placements are not always possible with Native families, and each case needs to be individually evaluated. She provided an example of a case in which a non-Indian family adopted several children from one family, but the family kept the children connected to their culture, their tribe, and each other.

### **Child Support Enforcement in the Saint Regis Mohawk Tribe**


The Saint Regis Mohawk Tribe is the first Indian nation in New York State to establish a IV-D<sup>4</sup> Agency with the goal of establishing paternity and holding parents accountable for supporting their children. Sandra Rourke, the Child Support Enforcement Unit (CSEU) Administrator for the Saint Regis Mohawk Tribe, explained that since establishing the agency in 2014, their agency has focused on family centered services. Historically, child support enforcement on Indian territory was handled by the state through counties. The Saint Regis IV-D operation has some significant differences from the state operation. It looks at the whole family and works closely with other tribal and nontribal programs to help meet the needs of each family member. This includes working across the Canadian

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2 Information and contact information for Tribal Law and Policy Institute is available at <http://www.home.tlpi.org/>. Information and contact information for Center for Court Innovation is available at <http://www.courtinnovation.org/>.

3 The Unkechaug Nation is a New York State recognized Nation on Long Island. ICWA applies to the Nation, even though it is not federally recognized.

4 IV-D refers to Title IV, Part D of the Social Security Act that provides federal direction in the establishment and enforcement of child support.



boundary because part of their territory is in Canada. This might include working with the Three Sisters Program (domestic violence program) if the family has experienced domestic violence or Tribal Vocational Rehabilitation to assist in training and securing employment. The parties are not required to go to court, and mediation services are encouraged. The Saint Regis Mohawk Tribe allows noncash support, such as providing auto repair and fuel, provided the parties agree.

A current objective for the Saint Regis Mohawk Tribe is to develop a memorandum of understanding (MOU) with the state on the “repatriation”<sup>5</sup> of child support cases currently in the county courts. The Forum was encouraged to discuss and review this further. Rourke mentioned that processes for repatriation could be done by an MOU, and consideration should be given to adopting court rules. She provided the California Court Rules as an example. Judge Townsend, New York Supreme Court, Erie County indicated that if more of the Indian Nations established IV-D agencies, the establishment of court rules would be even more important.

Eileen Stack, Deputy Commissioner, Office of Temporary and Disability Assistance, indicated that her agency is working with the Saint Regis Mohawk Tribe on developing an MOU and had met with the counties primarily affected and with tribal staff to discuss the details. Once the MOU and resulting forms are developed, the Forum could assist in providing feedback and training.

### **Native Bail Reform in Town of Bombay Court and Saint Regis Mohawk Tribe**


The purpose of bail is to allow a defendant’s release from pretrial incarceration, but assure reappearance in court on a criminal matter. The New York Court of Appeals has struck down cash-only bail, due to disparate impact on the indigent. Residents of Native American territories in New York are faced with an unequal opportunity to secure pretrial release from incarceration as procuring a commercial bail/bond (using land owned on the reservation as collateral) is not possible, because federal and tribal laws make lands in Indian territory inalienable. Thus, a Native accused of a crime is frequently left with only the cash bond option. Because of this inequity, a proposed pretrial bail/bond alternative pilot program, to be spearheaded by the Saint Regis Mohawk Tribal Court and the Town of Bombay Court, is planned. This is the first known tribal and state collaboration on a bail reform initiative. The New York State Office of Court Administration approved the planning of a pilot project, with committee members consisting of state and tribal court judges, Forum representatives, and Office of Court Administration officials.

The Town of Bombay is a town of approximately 1,400, just ten miles south of the Saint Regis Mohawk Tribe’s territory. More than 80 percent of the defendants appearing in Bombay Town Court are Native American. State criminal laws apply on Indian territory in New York. The Bombay Town Court has jurisdiction over crimes that take place on or off the territory and the arresting officer could be state, town or tribal police.

The pilot program would provide an alternative for the Town of Bombay Court to divert defendants who would normally have bail imposed or be released under the supervision of the Franklin County Probation Department to be released to the supervision of the pilot program and its tribal coordinator in the territory.

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<sup>5</sup> Repatriation—One tribal leader stated that rematriation might be a more culturally sensitive word for the matrilineal Mohawks and reference to Mother Earth, although not currently in the dictionary.



Key stakeholders developed a basic outline of the proposed Native Bail Program operations. Key components of the proposed pilot program are as follows:

- The Town of Bombay Court provides an immediate notification to the Native Bail Reform Program Coordinator in the Saint Regis Mohawk Tribal Court, once it determines that the defendant is Native American and that either bail/bond or release under supervision are considerations.
- Upon notification by the Town of Bombay Court, the program coordinator performs an evaluation of the suitability of the individual for the program with a screening tool that is currently being developed. The screening tool is being designed to be culturally appropriate with respect to Native Americans from a current evidence-based risk assessment tool used generally in the United States.
- The results of the screening assessment are provided to the town court for consideration in determining pretrial release.
- Acceptance into the pilot program means supervision conducted by a tribal entity that can be more responsive and culturally sensitive to the Native defendant. The supervision envisioned is similar to the tribal court's supervision in wellness court.
- The Town of Bombay Court is promptly notified of problems with compliance with release conditions and provided potential response recommendations. The town court then makes a new release determination.

The Saint Regis Mohawk Tribal Court submitted a U.S. Department of Justice Coordinated Tribal Assistance Solicitation Grant Application to obtain funding for a three-year period in which to get the Native Bail Reform Initiative Pilot Program off the ground. The grant was not approved. The project is not yet launched and other funding sources are being explored.

Subsequent to the Second Listening Conference, the Saint Regis Mohawk Tribe was awarded the full three year United States Department of Justice Coordinated Tribal Assistance Solicitation Grant. The pilot program is currently underway in both the Saint Regis Mohawk Tribal Court and the Bombay Town Court.

Nurture affects nature.

BEVERLY COOK

*Chief, Saint Regis Mohawk Tribe, Opening Speaker*

In my opinion the number one threat to our tribal nations is unresolved trauma.

SARAH DEER,

*Muscogee (Creek) Nation of Oklahoma, 2014 MacArthur Fellow and Co-Director, Indian Law Program, Mitchell Hamline School of Law, Session Speaker*

## National Perspectives Helpful to New York Strategies

AS THE NEW YORK FEDERAL-STATE-TRIBAL COURTS AND INDIAN NATIONS Justice Forum continues to evolve and tackle new issues, there is a need to stay informed of the latest research and emerging issues in Indian country. The Listening Conference provided an opportunity for participants to hear from experts in the field on the impacts of child abuse on Native children, violence against Native women, and relevant state and federal initiatives.

### The Adverse Childhood Experiences Study

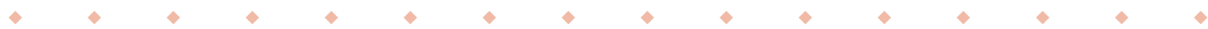
Beverly Cook, Chief, Saint Regis Mohawk Tribe, and a Family Nurse Practitioner, discussed the results of the Adverse Childhood Experiences Study. Adverse child experiences are the most basic and long-lasting cause of health risk behaviors, mental illness, social malfunction, disease, disability, death, and health care costs. People with multiple adverse childhood experiences are:

- 1.4–1.6× risk for severe obesity;
- 2× as likely to smoke;
- 7× as likely to be alcoholics;
- 6× as likely to have had sex before age fifteen; and
- 12× more likely to have attempted suicide.<sup>6</sup>

Chief Cook also explained the scientific evidence showing that adverse childhood experiences also affect future generations: “Nurture affects nature.” Adverse childhood experiences change the gene expression. These kinds of effects are called epigenetic. Cook stated, “Epigenetic mechanisms can provide a potential pathway by which early experience can have lasting effects on behavior.”<sup>7</sup> A clear message throughout the conference was that the high incidence of violence directed at Indian people is directly related to trauma experienced by Indian people and the resulting negative consequences of the trauma.

<sup>6</sup> Beverly Cook, Second New York Listening Conference from Adverse Childhood Experiences Study, Center for Disease Control and Prevention, available at <https://www.cdc.gov/violenceprevention/acesstudy/> (accessed March 3, 2017).

<sup>7</sup> Gluckman, Peter, et al., “Effect of In Utero and Early-Life Conditions on Adult Life and Disease,” *New England Journal of Medicine* 359: 61-73, 2008.

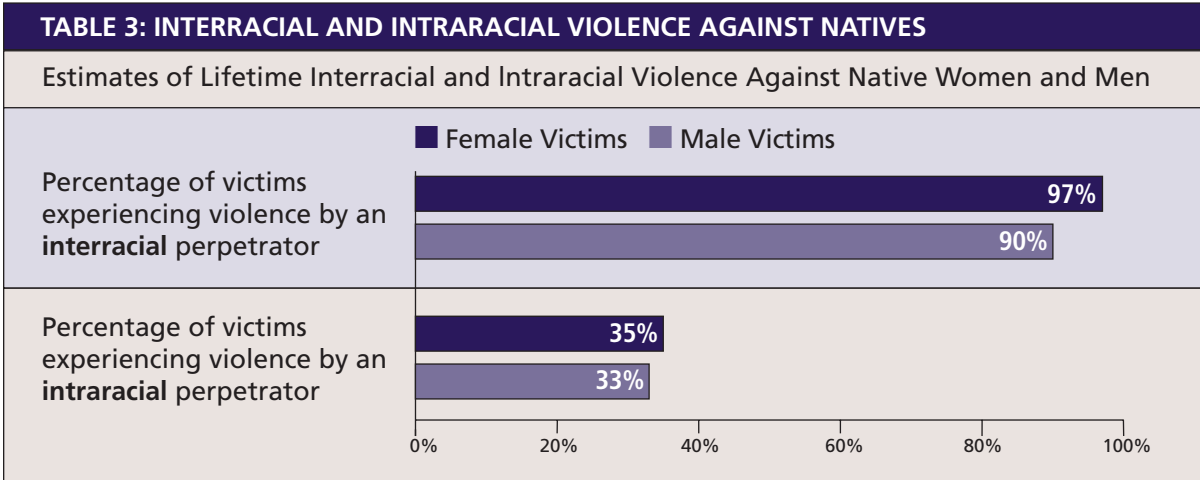


**TABLE 1. VIOLENCE AGAINST WOMEN**

Type of Violence	American Indian or Alaska Native, %	Non-Hispanic White Only,* %
Any Lifetime Violence	84.3	71.0
Sexual Violence	56.1	49.7
Physical Violence by Intimate Partner	55.5	34.5
Stalking	48.8	26.8
Psychological Aggression by Intimate Partner	66.4	52.0

**TABLE 2. VIOLENCE AGAINST MEN**

Type of Violence	American Indian or Alaska Native, %	Non-Hispanic White Only,* %
Any Lifetime Violence	81.6	64.0
Sexual Violence	27.5	20.9
Physical Violence by Intimate Partner	43.2	30.5
Stalking	18.6	13.4
Psychological Aggression by Intimate Partner	73.0	52.7





## The Violence Against American Indian and Alaskan Women and Men Study

Sarah Deer in her presentation stated “It is normal in many parts of Indian country to be a victim of abuse. This does not mean it is acceptable, but it is so prevalent that is more likely than not, that a Native is a victim of abuse.” Deer cited the recent study, *Violence Against American Indian and Alaska Native Women and Men*, completed in May 2016, which provided the statistical information in Tables 1-3.<sup>8</sup> In Deer’s opinion, the number one threat to Indian Nations is unresolved trauma. Widespread trauma is a result of violence. A Native is 4.4 times more likely to suffer from posttraumatic stress disorder than another individual in the United States.<sup>9</sup>

Who is committing these crimes? If you are Indian, most of the perpetrators are from a different race. This is very unusual, and does not exist with any other ethnicity. It becomes very important when we review and discuss criminal jurisdiction and the restrictions on sovereignty.<sup>10</sup>

### A Personal Story

Deborah Parker shared her moving personal story of surviving multiple episodes of violence as a child and young woman and the failure of the system to hold the perpetrators accountable. She discussed her efforts to secure passage of the Violence Against Women’s Act, Reauthorization of 2013: “If we don’t speak up, we don’t have a voice. There is no way we can find justice.” She encouraged the participants in the listening session to connect. “Connect to something much greater than yourselves: Let’s connect in such a way that we change the way we are moving in this world.”

### Full Faith and Credit of Tribal Protection Orders

Native victims of crime continue to encounter barriers with enforcement of tribal protection orders off reservation in the state of New York. In most regional breakout discussions, the enforcement of protection orders was discussed. There is no clear way of quickly entering tribal protection orders into the New York system. This results in victims of domestic violence being placed at great risk during the most dangerous time—24 to 48 hours after a protection order has been issued. Additionally, issues of enforcement of Canadian tribal protection orders exist with Akwesasne because it is divided by the Canadian boundary. Representatives of the Forum agreed to work on these issues in coming months.

Sarah Deer’s presentation provided some strategies used in other states that may be helpful in New York. Any protection order (ordering perpetrator to stay away and refrain from violence), where the court had jurisdiction over the subject matter and parties, and where reasonable notice and an opportunity to be heard was provided to the respondent, is entitled to full faith and credit.<sup>11</sup>


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8 Andre R. Rosay, “Violence Against American Indian and Alaska Native Women and Men,” National Institute of Justice, May 2016. The information in the three charts were taken from the Rosay report, which were included as slides in her presentation, Second New York Listening Conference, 2016.

9 Deborah Bassett, Dedra Buchwald, and Spero Manson, “Posttraumatic Stress Disorder and Symptoms among American Indians and Alaska Natives: A Review of the Literature,” *Social Psychiatry Psychiatric Epidemiology*, 2014 Mar; 49(3): 417–433.

10 Rosay, “Violence Against American Indian and Alaska Native Women and Men.” The information in the three charts were taken from the Rosay report, but the charts were slides in Sarah Deer’s presentation, Second New York Listening Conference, 2016.

11 18 USC 2265(a).



However, law enforcement officers too frequently do not enforce tribal protection orders, in violation of federal law. This is frequently due to a lack of training. Tribal court orders may look different or the officer may simply not understand what authority the tribal court might have.

Registration or filing the order in the new jurisdiction is not required for a tribal protection order to be enforced outside the Indian nation. If the order is valid on its face, nationwide protection is required. The law is also clear that a tribe may issue and enforce protection orders civilly against “any person.”<sup>12</sup> Neither the victim nor the perpetrator needs to be Native. Enforcement against non-Indians can be through civil contempt proceedings or other civil proceedings.

One strategy used outside New York is Project Passport, which started with an effort to ensure enforcement of protection orders from state to state and created a common cover sheet for all the states involved. The law enforcement officer could then recognize the common cover sheet and be more likely to enforce a valid tribal order. Some tribes have used this as well. Thirty-eight states and several tribes have adopted this method to decrease enforcement problems across jurisdictions.

Another strategy that has been helpful in ensuring enforcement of tribal court protection orders is the Hope Card. The Hope Card was a brainchild of a Bureau of Indian Affairs law enforcement officer in Montana. It is a laminated card with essential information about the protection order, like a driver’s license. On the front of the card is the victim’s information and on the back is the perpetrator’s information. Idaho, Montana, and Indiana have implemented the Hope Card.

## Federal Responses to Domestic Violence

There are several federal laws that apply to all of Indian country that relate to domestic violence:

- Interstate travel to commit domestic violence
  - 18 U.S.C. 2261(a)1—Specific intent required
  - 18 U.S.C. 2261(a)2—Specific intent not required
- Interstate stalking, 18 U.S.C. 2261A
- Firearms prohibition 18 U.S.C. 922(g)(8) (while subject to protection order)
- Firearms prohibitions 18 U.S.C. 922(g)(9) (lifetime ban with domestic violence conviction)
- Habitual offender, 18 U.S.C. 117

The habitual offender law allows any person to be charged with domestic assault in federal court, if he or she has previously been convicted on two or more separate occasions in state, federal, or tribal court. Because Indian Nations’ criminal sentencing authority is generally limited to one year (unless the Tribal Law and Order Act has been implemented), this federal law is an effective tool for tribes seeking to effectively deal with the habitual offender in domestic violence cases. A perpetrator could be fined and imprisoned for up to five years or up to ten years if there has been serious injury. This law was challenged in the United States Supreme Court in *United States v. Bryant*.<sup>13</sup> The defendant was a repeat offender in the Northern Cheyenne Nation, where he had pled guilty five times. He argued that because he was not afforded a right to counsel in the Northern Cheyenne Nation, the federal court could not consider the convictions as valid convictions in establishing a crime under the habitual offender statute. The Supreme Court ruled that the convictions in tribal court were valid, as they complied with the Indian Civil Rights Act.

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<sup>12</sup> 18 USC 2265(e).

<sup>13</sup> *United States v. Bryant*, 136 S. Ct. 1954 (2016).





## Grave Protection and Repatriation

The Long Island and New York City Region raised serious concerns over the destruction of burial sites of ancestors. Melanie O'Brien, Program Manager, Native American Grave Protection and Repatriation Act (NAGPRA) Program, was invited to discuss the application of NAGPRA. Unfortunately, there are many situations in which this act provides no protection to ancestor's graves. The need for a state law, which would cover private and state lands, was discussed. A representative from Florida discussed Florida's state law on grave protection, which predates NAGPRA. Florida's law appeared to be an example of an effective state law that is far more comprehensive than NAGPRA and could be helpful in developing a law for New York State. The Forum's support in addressing this issue was requested and a sub-committee was formed to address concerns and develop solutions.

### NAGPRA Resources

<https://www.nps.gov/nagpra>

<http://dos.myflorida.com/historical/archaeology/human-remains/abandoned-cemeteries/what-is-nagpra-and-when-does-it-apply/>


This is our opportunity to have some new concepts and some new ideas and start to formulate. Ideas are good when they change because that means everyone has had input into the process.

HONORABLE HUGH GILBERT

*Justice, New York Supreme Court, Jefferson County.*

## Conclusion

THE FINAL PANEL OF THE SECOND LISTENING CONFERENCE DISCUSSED matters and ideas generated from the regional breakout sessions. The panel brought together some common threads from the regional discussions, important strategies in moving forward and local successes, and highlighted obstacles that require focus and possible Forum assistance in the future. The panel provided some helpful and directive information for the Forum to consider as it moves forward.



Some common threads in regional discussions:

- Relationships and communication across boundaries and programs are so important to success.
- Continued education about sovereignty and culture is required to address the turnover of personnel and relationship building.
- Continued education and communication about each other's systems and programs is vital, as unclear policies and procedures cause problems.
- Drug trafficking and drug abuse is a problem for many of the Indian Nations.

Strategies that are important in moving forward:

- Collaborations are required among Indian Nations and state and federal programs.
- Incorporating culture into programs and collaborations is vital to success.
- Developing and implementing tribal laws is necessary for community safety.

Success happens when local projects are tribal specific and tribally driven. Regional discussion raised the following regional successes, including growth in relationships between state and Indian Nations

- Effective collaboration with county regarding exclusion orders.
- Child advocacy center working well with the county.
- Increased dialogue between the tribe and police.

Current obstacles that impede community and individual safety are issues that may need to be addressed by the Forum in the future. Regional discussions raised the following obstacles:

- Failure to enforce protection orders.
- Funding restrictions impede responding comprehensively to problems.
- Insufficient cultural sensitivity training and dialogue between tribal law enforcement and nonnative law enforcement.
- Inadequate protection of ancestor's graves and insufficient notifications of NAGPRA.
- Inadequate protection of Indian Nations from pollution of water and land.
- Inadequate prosecution of environmental and drug crimes in Indian territory.

The Second Listening Conference, through the presentations and regional discussions, raised participants' awareness of many problems and issues that may need the support of the Forum. Clearly there is much to be done in the future. The response of participants to the Second Listening Conference was overwhelmingly positive. The conference also energized the Forum members. Plans to address issues raised at the conference will be further addressed at the Forum's annual April and October meetings.



