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## Indian Restorative Healing

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From a session presented at "Dreaming of a New Reality," the Third International Conference on Conferencing, Circles and other Restorative Practices  
August 8-10, 2002, Minneapolis, Minnesota

## INTRODUCTION AND ROAD MAP

It was probably in 1992—20 years ago—when Chief Justice Robert Yazzie of the Navajo Nation and I made a trip to Washington, D.C. and I first learned about restorative justice. Someone gave me a chapter on it from a book by Dan Van Ness, probably the 1997 first edition of *Restoring Justice*. I read it, recognized the parallels between restorative justice and Navajo Peacemaking, and told Chief Justice Yazzie that restorative justice would be “hot” in the future. We attended the First International Conference on Conferencing, Circles and other Restorative Practices in Minneapolis in 1998, and went to Eastern Mennonite University for a one-day work session on whether the traditional Palestinian justice method of *sulha* could be replicated for use by others.

One day, Chief Justice Yazzie and I had lunch in Window Rock, Navajo Nation (Arizona) with Donna Coker, an anti-domestic violence advocate who visited us to begin a study of Navajo Peacemaking and its use in dealing with domestic violence cases.[1] We discussed restorative justice and peacemaking, and Professor Coker asked, “Do you really want to compare Navajo peacemaking to restorative justice?” That was a provocative question that remains valid. That is, when you put a name on something in English, that gives rise to a lot of connotations that miss what traditional Indian justice is about. Is peacemaking the same as restorative justice? Are there many separate paths to justice? That is probably so, but the important point is that traditional Indian justice has something to contribute to the restorative justice movement, and its adherents can learn something from indigenous peoples.

Some people disagree. Professor Carole Goldberg of U.C.L.A. thinks that non-Indian societies cannot use the traditional Navajo peacemaking because of its religious and spiritual foundations.[2] I’m not so sure about that. I attempted to study Navajo peacemaking using a social psychology approach, and I found some underlying dynamics of how it works that hint that it can be replicated in other societies if the same dynamics can be found in those societies.[3] The continuing question is, what do indigenous societies have to teach non-indigenous peoples about healing justice methods for the benefit of all?

When Chief Justice Yazzie and I attended restorative justice gatherings, we made certain that non-Indians understood that they were actually appropriating Indian justice methods. There was a 1997 restorative justice conference sponsored by the US Justice Department in Albuquerque, New Mexico[4] where Indians in attendance were angry that the Indian contribution was not acknowledged.[5] As Indians began to participate in the restorative justice movement, its

grandfathers, founders and leaders began to give recognition to indigenous contributions. They include John Braithwaite, Howard Zehr, Gordon Bazemore, Paul McCold, Dennis Sullivan, Larry Tifft, Kay Pranis, and others.

The US State Department sent me to South Africa in 1995 to talk about Navajo peacemaking and traditional Indian law to discuss a constitution for South Africa that included indigenous justice methods and recognition of traditional leadership. My discussions with indigenous leaders—who immediately recognized peacemaking and said it was much the same as their traditional methods—made me realize that indigenous justice methods are, as Chief Justice Yazzie has said, “ODR” or “original dispute resolution”—not alternative dispute resolution. In other words, we are talking about pre-state forms of dispute resolution that have continued into present times.[6] It is the form of justice that the United States Bureau of Indian Affairs attempted to destroy when the first Indian court code was issued in 1883, and the kind of justice that the Canadian government has tried to destroy. The policy decision to attack the principles and institutions of traditional Indian law has borne bitter fruit in the United States and Canada, and while traditional Indian societies were not “lawless,” national governmental policy assured that they would be—national legal systems have done little for Indian nations but colonize them. The western world thought it was bestowing “civilization” on Indians, but instead, it created the foundations for anomie and institutionalized legal systems that do not work well.[7]

This paper is part of my continuing 21+ year quest to understand traditional Indian law. My latest attempt was a presentation on Navajo Restorative Justice to the Second International Conference on Therapeutic Jurisprudence in 2001.[8] “TJ” (therapeutic jurisprudence) is related to “RJ” (restorative justice) in many ways. Both seek to use the psychological sciences and arts to restore relationships and promote healing. TJ seems to be largely a judges’ movement, prompted by experience with drug courts, while RJ (the first such movement) seems to be a practitioner’s and academics’ discipline. There is a third movement, “OJ” or “original justice” (coining a term) that arises from our human origins in kinship societies. It is based upon relationships and tolerance (which I will explore more below).

In the Spring of 1995, the Native Law Centre of the University of Saskatchewan started publishing a new journal, *Justice as Healing*, promoting the idea that Indian justice had to do with healing rather than punishment.[9] This paper attempts to address that concept.

I will try to build upon research into Navajo restorative justice and expand the findings of that research. However, before I reach the subject of Indian healing, I need to address some relationship issues. How is it that a non-Indian like myself can understand anything about Indian healing? Am I treading on sacred ground where I do not belong? Another question is, where do we go from here? How can we learn more about Indian healing?

Accordingly, this paper will address (1) cross-cultural understandings and approaches to healing traditions, (2) eight major Indian healing concepts, and (3) unresolved questions surrounding indigenous approaches to relationships and the language of such approaches.

## CROSS-CULTURAL UNDERSTANDINGS

I have studied Navajo common law—traditional Navajo law—for about 21 years, and I started learning traditional Indian law in 1974 when I got a grassroots Montana Cree group as a client. My view of traditional Indian law isn't an "Indian" one. That is, I speak no Indian language and I was introduced to Indian ways as an adult. Once, after making a presentation on cross-cultural Anglo and Indian approaches to probation in Toronto, a First Nations woman came up to me, smiled, and said, "You almost understand us." I recognized that she was teasing me—a subtle Indian way of telling me, "Be careful about what you're saying and be sincere." I have been at conferences in Canada and the United States where Indians in the audience have been quite angry at the idea of non-Indians talking about traditional Indian law, and I was at a conference of the National American Indian Court Judges Association a few years ago where Judge Stanley Bird of the San Juan Pueblo angrily told the audience that he does not use traditional San Juan law in his court because it is sacred.

Justices, judges, and court staffers of the Courts of the Navajo Nation regularly talk about traditional Navajo law. It too has sacred origins, and one of the topics of heated discussion within the Navajo Nation courts is over what is sacred and what is not, and traditional restrictions on the use of Navajo tradition as articulated law. I taught a course on Navajo common law at the University of New Mexico-Gallup Branch twice, and each time I asked the students, "What is wrong with this picture? There are two things wrong here—what are they?" Both times, Navajo students picked up immediately, "What's a white guy doing teaching this course?" I laughed and said, "You got one of the things—we'll talk about it." Students didn't get the second "what's wrong with this picture" item—the room arrangement. There was a desk in front where someone who supposedly possessed the wisdom stood and poured it out for the students, sitting in lines of chairs. The room should have been a circle, where everyone in the room shared their own personal wisdom with each other.

Philmer Bluehouse of the Peacemaker Division of the Courts of the Navajo Nation and I have talked about this at length. Phil agrees with the Navajo concept that levels of knowledge and understanding can be compared with a Navajo basket. It has twelve coils in a clock- or sunwise direction, and each level of a coil represents a level of knowledge. The most superficial knowledge is at the outside of the basket, and the wisdom becomes deeper, more esoteric, and more sacred as the coils approach the center.[10] I can only know the knowledge or wisdom toward the edge, and I am not entitled to, nor can I understand, the sacred knowledge further in. It must stay in its own sacred place, available to only those who are worthy of it and who will use it in a good way.

Therefore, I hope that I will not offend if I discuss traditional healing ways—or at least concepts that can be abstracted from them. I have been fortunate enough to have had several traditional teachers who have attempted to explain traditional ways to me. I once asked Geneva Stump, a Montana Cree woman who introduced me to Indian law in 1974, what I could or could not write down of the sacred wisdom I learned. I asked, "How will I know when it's O.K. to write about what I've seen and heard?" She gave a very Indian answer— "You'll know." I hope I know now.

## INDIAN HEALING CONCEPTS

It is one thing to be cured and yet another to be healed. Curing has to do with the body as a machine, and Western medicine deals with it by fixing a broken bone or giving a pill for a disease. Healing, on the other hand, has to do with the mind, the spirit, and the inner being. It is possible to cure someone of an injury or a disease, but that does not necessarily heal. How do Indian healing processes work? Without going into any particular ceremony, and leaving ceremonial knowledge to those who are privileged to know it, my research shows several ways Indian healing works:

### Prayer

Sadly, the Western world is not comfortable with the concept of prayer. Most recently, the Ninth Circuit Court of appeals ruled that the words “under God” in the American pledge of allegiance (to the flag) violated the prohibition in the US Bill of Rights that requires the separation of church and state.[11] Half of Europe merrily attempted to murder the other half over religion during the Thirty Years War (1618-1648), and the United States is still sorting out religious animosities. That is sad.

In contrast, the Indian world is quite comfortable with prayer. I used to be uneasy with functions that started with a prayer, but now I am quite accustomed to that and welcome it. Why? When I learned to suppress my education as a Catholic[12] and accept prayer with respect for the person saying it, that made a great change. Now, whether the prayer is a traditional Indian one, a Native American Church prayer, or a prayer said by someone who belongs to a Christian denomination, I feel a sense of shared peace with the group.

Why is prayer important? It is a unifying force. It is something that reminds us as humans that we are not alone. In contrast to Western thought, where humans are said to be the be-all and end-all of creation, Indian prayer seeks the participation and assistance of many kinds of holy beings. It also expresses the unity of the universe or all of reality. It is a means to commit minds and hearts to processes that heal, and it is a healing tool in itself.

### Naming the Illness

In Navajo thinking, when things are not right, they are “things that get in the way of living a good life.” The Navajo word for that is nayee or “monster.” It relates to the monsters of Navajo creation and journey narratives, who were destroying Navajos, and who were slain or tamed by hero twins. It means things such as marital strife, depression, or family dysfunction. It can be used to describe today’s social problems—alcohol and drug abuse; family violence; the disruption of marriages; child physical and sexual abuse; child neglect; and other forms of illness.

There is a popular myth that people hurt other people because they drink. I don’t think drinking has that much to do with it—although alcohol and drug abuse are something we must deal with in the healing process.[13] Something is wrong. Something causes people to lash out against others or abuse themselves. What is it? What drives that behavior? What is the name of the monster lurking within?

One of the first approaches to healing is to identify the illness by naming it. There are traditional methods of diagnosis to do that, where medicine people can help a patient identify

the source of his or illness. That is part of the process of naming the illness so you know what it is and how to deal with it. You identify the monster or malignant (evil) force you're dealing with, know what it has done and how it has done it, and take steps to deal with it.

### Confession

English is not an adequate language for the translation of many Indian words. First, it tends to state things in abstract rather than concrete ways, and English words tend to relate to the reason rather than the spirit or feelings. Indian languages tend to communicate emotions, feelings, positive attitudes, and relationships. Another problem with English is that many words carry connotations that are just not right to explain something in an Indian context. "Confession" has the connotation of relating one's sins to a cleric or a congregation, and that's not quite "it."

However, confession is an important first step to healing—where one is able to "name" the ailment and confess personal fault. I have seen "confession" in sweatlodges, other ceremonies, and even everyday life. It is an opportunity for someone to relate past or present hurts and to express one's feelings about it.[14] There is a stereotype of the "stoic" Indian, who never expresses emotions. That is far from the truth, and I have seen "confessions" in terms of someone emotionally blurting out sorrow. That is a good way of healing. It is "baring one's soul" and having an audience to listen.

### Talking Things Out

When you are ill, you are alone. You are in pain, and you feel that no one else understands that pain. You feel like you have no relatives, and you feel abandoned. We talk about the "support group" in English. That can be a family member, relatives, clergy, or someone else the person who is ill can identify with. A support group member is sympathetic, non-judgmental, knows how to listen well, and is supportive of the person who is ill.

We need to think about our attitudes in restorative justice. A conferencing or peacemaking session can be abusive if the healing component is left out. That refers to the attitudes and the manner of those who guide talking things out. A few years ago, I watched a drug court session in Reno, Nevada where I felt that the judge was abusive and making fun of participants for his own amusement. A woman who was in the program said that she didn't know what she was getting into when entered the drug court program, and while she didn't say so out loud, I sensed that she felt abused rather than supported in her path to healing. On the other hand, I recently watched a form of drug court, the "Youth Wellness Court," in the Hopi Tribal Court, saw that the judge was sincere and supportive when he worked with Hopi or Tewa teens and their parents and relatives, and I saw the healing in their faces. My wife and I spoke with the director of the Youth Wellness Court program, and when she described the kind of counseling all participants must receive, the elements of Indian healing leapt out immediately.

Individual attitudes are important too. Too often, there is conflict and hurt when we make assumptions about others. If I am hurt or insulted, I am certain that the person who did it is immature, disrespectful, ill-mannered, etc. One of the personal tendencies I have is popping off when I get offended. It has taken a great deal of experience and having to remove my foot from my mouth many times to learn that talking things out in patience often shows me I was wrong

in my assumptions. Too often, I use head-thinking assumptions about others rather than heart-thinking and the sharing of feelings.

## Solidarity

“Solidarity” is another funny word in English that attempts to describe indigenous thinking. Malinowski used it when he attempted to describe customary law in the South Pacific.[15] One big difference between Western thought and Indian thinking is our notion of relationship to society. Western thought promotes individualism, where there are no strict or implicit duties to one’s family, and the concept of extended family is largely absent. Western thought also rejects the spiritual thinking that “we are all related” and there are spirit beings. Why should one make an offering before picking a plant, cutting a tree, or hunting an animal? Why should we apologize to the spirit of a rock or say a prayer to the Earth when we use a resource?

Increasingly, I feel that I need to feel comfortable with giving up my sense of self and ego and surrender myself to others and to spirit helpers and beings. Individualism is deeply ingrained in modern western thought. It is a basic part of Indian thought too, but in a different way. I can be comfortable and feel safe surrendering my individuality to others if I have the confidence and patience to do so. I am who I am only within the context of relationships of those around me.

It is difficult to contrast Western individualism with Indian concepts of allegiance to the group. There is an affective or emotional bond, where there is an unspoken and unthought relationship with the group—and with all of reality.

If being ill means you are alone, being well means a healthy relationship with those around you. There are traditional communities, and there are modern ones. Indians who live in urban areas often go home and form their own urban communities. That is an exercise of solidarity. It is the phrase, “What is good for me is good for everyone else, but what is good for everyone else is also good for me.”[16] Yes, the individual is important, but he or she is important only in relations with others, and it is those relations that define us as individuals.

## Respect

I have often been told that the Navajo word for solidarity, relationships, and other feelings of being part of a whole—k’e—is translated as “respect.” I doubt if that is a good enough translation (and I will raise that again later), but it is a good beginning. Do we talk “at” people in restorative justice or do we talk “with” them? Unfortunately, when restorative justice first came to light several years ago, many people picked up on the “shaming” aspect and approved of it—yet a new and subtle way of abusing “offenders.” There was an issue of Newsweek with a photo of a shamed little girl wearing a dunce cap and looking very sad.[17]

There is a rule that when you go into a ceremony, you must leave your anger and resentment outside. You must focus on the prayers and participate in a good way. At the same time, problems are talked about in ceremonies. A “confession” in a ceremony can raise problems and feelings, but they are addressed in a respectful way.

Respect is also about attitudes. It is likely that the cause of most disputes among people is the attitudes they hold toward each other. We have family violence, because men feel women are inferior or ignorant. Both men and women use anger and violence as a method of controlling

the other. The ceremonial process of talking things out in respect leads people from attitudes in “head thinking” to empathy in “heart thinking.” That is a healing way.

### Connecting With Who You Are and Being Comfortable With Who You Are

Another healing path is knowing who you are. Many Indians have sacred mountains or other sacred places they connect with. That gives a sense of place. Another basic question for healing is, “Who am I?” It raises sub-questions of “Why do I hurt?” or “Why do I do wrong?”

Without doing a survey of the literature in this informal paper, there is an emerging agreement that crime and violence have to do with shame. Take, for example, the July 4, 2002 killing of two El Al Airlines passengers at the Los Angeles International Airport—the preliminary indications are that Hesham Mohamed Hadayet felt he was targeted for ridicule by neighbors, and it is likely that his acts are a classic example of shame and resulting rage.

We return yet again to the concept of individualism. Who am I? I am my long resume of “achievements,” learning, and experience, but that is only a small part of me. I exist within the context of my immediate family—consisting of my wife, daughter and wonderful step-children. I add my aging parents, who live two doors from me and are walking their last path in advanced old age. I include my colleagues and friends in the Indian justice community. I also include my wife’s extended family, that has become very dear to me. I am an American, and despite my horror or disgust with politicians, I have a sense that most Americans are decent people. I also feel a sense of solidarity with other peoples and nations of the world, as I return from trips to Europe with a sense that it is going to teach us a lot about how people can live together, and I follow events in South Africa, also in hopes that it will give us many good lessons.

I struggle with my own little demons, and the intergenerational trauma of failed homesteaders in Montana at the beginning of the 20[th] century. I find solace in reflecting upon my relationships with others, because they give me a context as an individual.

### A Sense of Control

Indian ceremonies are a means of giving an individual a sense of control over his or her life. They connect individuals with others and with the spirit world. I feel the most frustrated when things get out of control. I do not mean control in the popular contemporary sense of the “control freak,” although I am one. I mean control in the sense of relationships with others, knowing that they are there for me and they are my support group when things get out of control. Indian healing gives a means of grounding; an appreciation of relationships; and a comfortable feeling that I am not alone when things go wrong. Surrendering oneself using spiritual approaches, or even surrendering to the group in confession, talking things out, and recognizing that you are not alone when you feel solidarity, gives a sense of control to deal with illness.

### UNRESOLVED QUESTIONS

Language is important, because we use it to communicate our values and our ways of seeing the world. I have noticed that there are three related terms that express basic indigenous legal thinking: Navajo k’e, Lakota tiyospaye, and Xhosa-Zulu ubuntu. K’e remains an elusive term to

me. It has a lot to do with right relationships and dealing with others with respect. Tiyospaye translates as “Ti (where we live) ospaye (apart but not separated completely).”[18] One of the most popular translations of ubuntu is “I am because you are.”[19] What do these terms have in common? They are affective—they express emotions and relationships. Justice Yvonne Mokgoro of the Constitutional Court of South Africa says that ubuntu (“like many African concepts”) “is not easily definable.”[20] She says that “To define an African notion in a foreign language and from an abstract as opposed to a concrete approach is to defy the very essence of the African world-view and can also be particularly elusive.”[21] She attempted a definition, again saying that it means “a person can only be a person through others.”[22] “Group solidarity, conformity, compassion, respect, human dignity, humanistic orientation and collective unity have, among others been defined as key social values of ubuntu.”[23] In sum, it is a way of looking at relationships.

Moyisi S. Majeke, a South African academic, talks about “African custom” as a means for African indigenous communities to do business, and says that “The reason is found in ...[a] quaint little term called ubuntu that embodies standards for egalitarian and horizontal relationships among members of society in indigenous African communities.”[24] He says that, at end, tolerance and respect are keys to African custom, that “it is also this element [tolerance] that separates Western systems of belief from those found among indigenous communities all over the world.”[25] In reaching that conclusion, he discusses African family consciousness, national or political consciousness, status consciousness, and religious consciousness—the same kinds of elements we read and hear from Indian perspectives.

Carole Goldberg was correct that traditional Indian dispute resolution methods such as Navajo peacemaking cannot be directly transplanted. To the extent there are certain human universals (such as those identified by Paul McCold in his statement of “generic restorative process”), there are basic principles. However, the one principle (or life-view) that is difficult to translate and copy—and which should be translated and copied—is summed up in k’e, tiyospaye, and ubuntu. Are indigenous peoples willing to attempt translations to make this a better world? Is the western world prepared to listen? I suggest it is. There are students of criminal justice who say that our world is changing from a “vertical one,” based on power and force, to a “horizontal” one, based on respect for the individual and using respectful approaches—sounding very much like what indigenous thinkers are saying.[26]

## CONCLUSION

Traditional Indian justice differs from Western models because it recognizes the healing component. Indian justice is not simply indigenous methods of resolving disputes, but a philosophy of life based upon respect and relationships. We can abstract a few principles from ceremonial healing that show us how very practical and human it is. We see that healing is done in a context of relationships with things spiritual, and with others and community. It has to do with respect, tolerance, and community.

The New Agers get it wrong, and Indians are mad about that for good reasons. It isn’t a matter of appropriating drums, costumes, chants, or otherwise trying to mimic Indian ways. What is “right” about the fact that Indians are attending this conference is that they have not only come to learn, but to teach. The challenge for those participants is how to teach what they know

without violating traditions. The challenge non-Indians is really quite simple—to listen—in a respectful and uncritical way, and perhaps learn something.

I have a friend who is an interpreter and who writes about leading Navajo interpreters of the past as not only being interpreters of language, but of culture.[27] They have tried to explain Navajos to Bilagaanaas (Anglos), and in turn to explain Bilagaanaas to Navajos. I am an interpreter as well, trying to explain Navajo and Indian thinking to myself and to others. Why? Because, about 28 years ago, some very patient Cree people thought I was worthy enough to be taught some of their ways, and as I learned (as a very difficult student indeed!), my respect for Indian ways grew. Over 20 years of service to Navajos gave me some little inkling of Navajo ways.

I usually explain what little I know about traditional Indian law as something like the tip of an iceberg—the part that can be seen on the surface of an ocean is only a very small part of the whole. However, I recognize that what little I am able to see, given language and culture differences, is valuable. It is not only valuable to understand in its own right, but vital that we understand it for the common survival of humankind. This morning's news tells of a report about to be released by the World Wildlife Fund that will say that we will exhaust the world's resources in about 48 years, and we will have to move to other planets to survive.[28]

That warns the west that it has to start thinking in new ways, and that means having respect for indigenous thought. A British rhyme said what the West had when it comes to indigenous peoples:

Whatever happens, we have got

The Maxim gun and they have not.[29]

The “Maxim gun” was the first automatic machine gun, and it was used only on indigenous peoples (with some exceptions—Mexican strikers in Colorado) through World War One.[30] What did “they” (the indigenous peoples upon whom the machine gun was used) “got”? The will to survive. The tools to survive—a sense of place in the universe and a sense of solidarity. I was awake at 4:00 a.m. this morning, and thinking of this paper, I struggled to understand another Navajo phrase. I read for a while, and went out on my back patio before dawn to try to think out what I had read. It was really rather simple—I am not alone. I am connected to family, fellow workers, an extended family and a wider world. The Navajo phrase I studied has to do with restoration, and meditating on it, recalling that I am not alone but part of a whole, I was restored.

#### ENDNOTES

[1] See, Donna Coker, *Enhancing Autonomy For Battered Women: Lessons From Navajo Peacemaking*, 47(1) U.C.L.A. L. REV. 1 (1999).

[2] Carole Goldberg, *Overextended Borrowing: Tribal Peacemaking Applied in Non-Indian Disputes*, 72 WASH. L. REV. 1003 (1997).

[3] James W. Zion, *The Dynamics of Navajo Peacemaking*, 14(1) *J. CONTEMP. CRIM. JUST.* 58 (1998).

[4] UNITED STATES DEPARTMENT OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, *RESTORATIVE JUSTICE REGIONAL SYMPOSIUM* (Albuquerque, New Mexico, October 26-28, 1997) (conference materials).

[5] In December of 1998, the Office of Juvenile Justice and Delinquency Prevention (“OJJDP”) put out a guide on restorative justice that made scant mention of Indian contributions. OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, *GUIDE FOR IMPLEMENTING THE BALANCED AND RESTORATIVE JUSTICE MODEL: REPORT* (1998). The “principle writer” of the work took a great deal from Indian thinking, *Id.* at v, so there may have been a committee decision to ignore Indian thought and its contributions to restorative justice.

[6] See, JOHN BRAITHWAITE, *RESTORATIVE JUSTICE AND RESPONSIVE REGULATION 5-8* (2002) (stating that restorative justice was an almost universal underpinning to justice systems prior to the rise of the state). I studied the pre-state comparisons in *How the Infidels Can Save Civilization: Traditional Irish and American Indian Law* (Brehon Law Project Symposium, King’s Inns, Dublin, January 12, 2002).

[7] They do not work well because sometimes, Western justice methods are not acceptable, or good Indian courts are not supported by the federal government. There are many dedicated Indian judges who do a good job.

[8] James W. Zion, *Navajo Therapeutic Jurisprudence* (in publication, *TOURO L. REV.* 2002).

[9] Sadly, when Kathleen Makela, the editor, moved to the Native Studies Department of the University, the last issue was published in 2001.

[10] See, MAUREEN TRUELLE SCHWARZ, *MOLDED IN THE IMAGE OF CHANGING WOMAN: NAVAJO VIEWS OF THE HUMAN BODY AND PERSONHOOD* 39 (1997) (the coils represent “twelve layers or levels of knowledge”). Another concept related to the basket is that it has an opening in the design that is a “way out.” *Id.*, at 40. One of the things we hope to do with traditional Indian justice is offer people who hurt others or who are hurt a “way out” of their situation.

[11] *Newdow v. US Congress*, No. 00-16423 (9[th] Cir. June 26, 2002). I agree with the decision, because the pledge was imposed by law, and government has no business telling people how they must pledge allegiance to a government—or force them to make such a pledge at all. In addition, the words, “indivisible, with liberty and justice for all” are an historical lie, given the divisive “English-only” movement, anti-immigrant sentiments, and the treatment of American Indians and other distinct groups.

[12] I was taught that I must not participate in non-Catholic religious functions.

[13] Literature on drinking indicates that one’s behavior while drinking is not associated with alcohol as such, but the individual’s attitude and predisposition before drinking. While alcohol

may lower inhibitions, most people obey normal social norms when drinking. It is too often a handy excuse for a “time out” from the rules.

[14] I think that Paul McCold’s statement of “generic restorative process” is correct when it stresses “right relationships” that arise from a process of discussing facts, expressing feelings, negotiating reparation for a wrong, and implementing reform. Paul McCold, *Overview of Mediation, Conferencing and Circles 2* (Tenth United Nations Congress on Crime Prevention and the Treatment of Offenders, 2000). McCold also gives respectful recognition of Navajo peacemaking in this paper.

[15] See, The Hon. Robert Yazzie, “Life Comes From It”: Navajo Justice Concepts, 24(2) N.M.L.R. 175, 181 n. 32 (1994) (quoting a law dictionary definition of solidarity citing Malinowski).

[16] See, MARTHA BLUE, *INDIAN TRADER: THE LIFE & TIMES OF J. L. HUBBELL* 236 (2000) (citing Gary Witherspoon’s statement of “the Navajo moral code” as ““what is good for the individual is good for everyone else, and what is good for everybody is good for the individual””).

[17] NEWSWEEK cover with the title, Shame: How Do We Bring Back a Sense of Right and Wrong (February 6, 1995). One of the problems of the restorative justice movement is “selling” it to politicians who survive on sound bites of punishment and morality (an example of the latter being the “under God” controversy).

[18] *THE SIXTH GRANDFATHER: BLACK ELK’S TEACHINGS GIVEN TO JOHN G. NEIHARDT* 321 (Raymond J. DeMaille, ed. 1984).

[19] Another statement of it is “‘Ubuntu ugamntu ngabayne abantu’—People are people through other people.” Allistar Sparks, *MGMT460s* (February 14, 2000).

[20] Justice Yvonne Mokgoro, *Ubuntu and the Law in South Africa* 1 (1998).

[21] *Id.*, at 1-2.

[22] *Id.*, at 2.

[23] *Id.*, at 3.

[24] Moyisi S. Majeke, *The Element of Tolerance in African Custom*, in *POLITICS OF IDENTITY AND EXCLUSION IN AFRICA* 127 (Konrad Adenauer Stiftung, ed. 2000) (conference proceedings, July 2000).

[25] *Id.*, at 135.

[26] See, Lawrence W. Sherman, *Trust and Confidence in Criminal Justice*, 248 *NIJ JOURNAL* 23, 25-26 (2002). This is an important article, because although it doesn’t discuss Indian thinking, it shows that Indian thinking about respectful relationships is emerging in the fields of law enforcement and criminal justice.

[27] Esther Yazzie-Lewis of the United States District Court, Albuquerque, New Mexico.

[28] Mark Townsend & Jason Burke, The world's ticking timebomb: Earth Will Expire by 2050, Observer of London (Sunday, July 7, 2002).

[29] JOHN ELLIS, THE SOCIAL HISTORY OF THE MACHINE GUN 94 (1987).

[30] Id. .