

NATIONAL TRIBAL JUDICIAL CENTER
THE NATIONAL JUDICIAL COLLEGE

**Transformation of Conflict:
Demonstration of Peacemaking in Various Contexts**

by

The Hon. Robert Yazzie & James W. Zion

Learning Objectives

The goal of this session is to make you able to:

1. Identify the role of a peacemaker in “transforming” conflicts into consensus and agreement.
2. State key elements of Navajo peacemaking process and give examples of strategies peacemakers use.
3. Choose appropriate techniques to transform conflict into empathy and resulting agreement.

Transformation

What does “transformation” mean? What does “conflict” or “dispute” mean? To answer those questions, we need to use a little psychological theory.

One writer, attempting to identify the source of violence and conflict in humans, said that “Speaking allegorically, when a psychiatrist bids a patient to lie on the couch, he is asking him to stretch out alongside a horse and a crocodile.” That refers to the fact that humans have three brains — our conscious brain, mammal brain, and our inner reptile brain. It is the source of violence.

Put another way, one of the problems with violence is that it is caused by “shame,” and one view of what that means is that we learn how to handle situations in life in certain ways as children, and if we learn excessive ways of reacting (such as “hurt other,” “hurt self,” “withdrawal” or “avoidance”) then we can actually have a physiological (body) reaction that we call “seeing red.” That can lead to more extreme forms of behavior.

Aside from that, when people have a dispute, they often make assumptions about each other — that the other person is crazy, selfish, violent, uncaring, without boundaries, a psychopath, a sociopath, a “bad person,” etc.

Putting psychology aside, let's ask a basic philosophical question: Is dispute resolution about punishing the *person* or correcting a bad *action*? Most of the western corrective justice methods we see are about punishing or correcting individuals, and although there is a lot of emphasis on restitution in criminal law, we don't really get into identifying the impacts of actions upon others, what caused the problem in the first place, and trying to prevent misconduct or injuries in the future. Is that because we're so focused upon dealing with "bad" people that we don't examine the reasons for actions, what can be done to make up for them, or prevention?

What is "transformation"? One writer, talking about what we should do about violence, says that we should be doing "affect modulation." What is that? Trying to get people to respond to the things that challenge them in more peaceful ways. One writer on Navajo peacemaking says that the process causes an "affect shift," which is a fancy way of saying that it changes peoples' attitudes about one another. How can we help people change their attitudes?

Think of a "bad attitude" toward others as a barrier to communication and to having the kind of empathy for the other person as an individual entitled to be respected that is needed to "transform" conflict into consensus. There are specific barriers as well, including:

Denial, which is the inability of an individual to face up to reality as a defense mechanism and recognize what he or she did in terms of the "wrongness" of the act and its impact on others.

Minimalization, which is making light of the situation — "It ain't no big deal." We see minimalization by offenders who tell us that, and we also see it in individuals subjected to domestic abuse where they have a difficult time relating what happened to them. It isn't that what happened is "no big deal" — minimalization is often prompted by fear of future abuse.

Externalization is basically blaming — "It's *your* fault; It's *their* fault; It's *society's* fault; Oh, poor me!"

Note that all three are related to barriers caused by people not facing their situation in a realistic way, and those barriers can be addressed by processes to educate individuals to accept reality and the importance of good relationships with others.

What are the three basic forms of dispute resolution to get people to address such barriers or refrain from excessive conduct?:

Compliance, where the law uses power and force to correct behavior, such as police patrols, "get tough on crime" campaigns, and other efforts to use the threat of punishment to change behavior.

Identification, which means individuals looking to people whose judgment or opinion

they trust to correct inaccurate thinking or attitudes — a parent, relative, spiritual advisor, close friend, etc.

Internalization, which means tapping or bringing out the values that people learned as a child to apply them to the situation and recognize that what was done did not conform to what that person believes. (That is closely related to *guilt*, which is the difference between what someone thinks they should have done and what they actually did — guilt can be a positive force).

Traditional Indian processes also use elements of “healing.” There is a difference between “curing,” as in Western medicine, and “healing.” A cure can be a shot for a bug or a splint for a broken arm. Healing has to do with one’s soul or spirit, and some of the things that prompt healing can be:

- “Naming one’s illness” so that you can deal with it.
- “Taking out” the nature of the illness or problem in terms of what was done, who got hurt, and how it affected people.
- Illness can be a feeling of being alone, so giving individuals a sense that others are there for them can be healing.
- Navajos say of an offender, “He acts as if he had no relatives.” We need to re-establish relationships to deal with hurt.
- A sense of “one-ness” or “solidarity” with others can be healing.
- Helping individuals connect with their past, their history, their culture, and even their place can be healing.
- “Confession” or (better put), allowing people to tell their story, can be healing.
- Helping people feel that they have a sense of control over their “illness,” their life, and their destiny can help heal.

What is the role of a peacemaker in dealing with the excuses and barriers we see and in promoting healing? Peacemakers are not judges, so they do not declare people to be “bad guys.” Peacemaking is more concerned about correcting the action than correcting the actor. The process helps people clarify values, examine what happened, get out feelings (that may be incorrect), and undergo an “affect shift” to help people have empathy with others and guide them to a resolution of their dispute using consensus.

That is a tall order for a peacemaker.

Elements of the Process and Strategies

The place of peacemaking can help set a climate to break down barriers. Many peacemakers use courtrooms or court conference rooms for sessions to give an appearance of formality (and because those are often the only places that are available).

While prayer is not always used in peacemaking, it is important in Navajo culture for specific reasons, and it is important to many Indian cultures to commit people to a peaceful process. Who says the prayer? What kind of prayer should it be — traditional, Christian, Native American Church — or does it matter? Should it matter?

The “venting” process is important. “Venting” means giving people space to say what happened and how they feel about it, but in a way that avoids blaming and lashing out in anger. Peacemakers establish the order of who can speak and when and set down injunctions against using accusing language and blaming. They require participants to speak in a respectful manner. Good peacemakers can get people to cry, because that provides a release for emotions and helps prompt empathy by others. People are encouraged to say how they *feel* about events.

Having relatives present often helps. When there are one-on-one sessions, there is no one present other than the peacemaker to prompt the process of *identification*. There was once a domestic violence case in the Tuba City judicial district where a man, accused of alcohol-related violence, denied it. His sister, who sat next to him, pointed out that he was in fact violent and that he was dependent on alcohol. Relatives will often clarify false values or misunderstandings in peacemaking when they are allowed to speak.

Peacemakers can use traditional teachings, creation and journey narratives, stories, and other teaching devices to prompt *internalization*. Traditionally, there was what is known as “the lecture” where a peacemaker would give his or her view of the situation—not by pointing fingers at anyone but by using teaching to help tap common internal values held by everyone (or almost everyone) present.

Peacemakers can also utilize healing values, such as helping people “name” their illness, confess or tell their story, recognize relationships and mutual support, and other devices (listed above) to attempt to transform the dispute.

Techniques

There will be individuals here who know mediation techniques or who are familiar with healing ways. What are some of the techniques you use?

How do they get at *identification* by involving individuals who the participants respect?

How can we correct incorrect attitudes, clarify values, do “reality therapy” and help people break down their own barriers?

How do they help individuals *internalize* the dispute in terms of the participant's individual and shared values?

What *healing* techniques are used?

Do those techniques get at our reptile brain? Do they modulate affect?

Many peacemakers already have the skills needed for transformation — affect shift. Some need to be taught how to do it (largely by other peacemakers).

One of the major techniques is to get people talking and to shift the nature of the talk from acting out false assumptions to finding common ground and the core values of the community and society to correct thinking.

Conclusion

We need to tap what we already know of tradition and we need to revive and utilize that which we do not know. We need to talk about this stuff with our “keepers of the tribal encyclopedia” so they can guide us.

What are some of the traditional ways of dealing with our attitudes and reptile brain? Sweat lodges? Pipe ceremonies? Interventions by elders? What fits your community?

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The Dynamics of Navajo Peacemaking

James W. Zion
Northern Arizona University

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This article explains the traditional Navajo justice process using social psychology and Navajo discourse. It identifies the *nayee* or monster (things that get in the way of a successful life) in disputes in light of cognitive dissonance or the state of tension when a person holds two inconsistent beliefs. It then describes an approach to the excuses people give as a result. The article identifies and discusses the excuses and shows how traditional Navajo process addresses them. It outlines the dynamics of traditional Navajo justice to show that it is a practical means to resolve conflict. It also illustrates how a traditional Indian legal method can be replicated in the new field of restorative justice to better deal with crime, violence, and conflict.

QUESTIONS ABOUT NAVAJO PEACEMAKING

In 1982, the judges of the courts of the Navajo Nation consciously revived and institutionalized the traditional Navajo justice system, *hozhooji naat'aanii* (Bluehouse & Zion, 1993; Zion, 1985). It is called "peacemaking" in English. Peacemaking is an indigenous Native American form of dispute resolution and a leading example of restorative justice. Restorative justice, unlike adjudication and the prevailing patterns of world criminal justice systems, views crime and offending as a conflict between individuals that results in injuries to victims, with a process that seeks to reconcile parties and repair the injury caused by a dispute through the active participation of victims, offenders, and communities to find solutions to conflict (Hudson & Galaway, 1996). Although American politicians are moving toward more mandatory sentencing, "truth in sentencing," "three strikes and you're out," charging juvenile offenders as adults, and other repressive measures, there is some hope for alternatives to punitive criminal law through restorative justice, "which views crime as an act against another person and the community" (Bazemore & Day, 1996; Wallace, 1996). The proponents of new alternatives, which Indian nation justice leaders point out are very old Indian ideas of justice, seek something more effective in place of retribution and punishment. In January 1996, the U.S. Justice Department's National Institute of Justice convened a conference to examine the possibilities of restorative justice across the United States as an alternative to the conventional retributive criminal justice (Wallace, 1996). We will see if there is a possibility that restorative justice will take hold in the repressive climate of American criminal justice--at least at the political level.

The Navajo Nation court system gets many visitors from across North America and around the world, and the Navajo justices and court staff have gone to the South Pacific, Bolivia, South Africa, Norway, and Canada to describe peacemaking. The questions they get are often the same: What is the recidivism rate in peacemaking? What happens if

someone does not agree with a decision reached during the process? What punishment does peacemaking have? What do you do with offenders who are amoral or sociopaths? For some reason, our British Commonwealth lawyer friends are fascinated with homicide and say, "Well, surely, you can't handle murder in peacemaking." When Chief Justice Robert Yazzie was at the Justice Department's Restorative Justice Conference in January 1996, he was asked, "How does peacemaking work?" (Wallace, 1996). He was also asked whether peacemaking is culturally specific to the Navajo culture or whether there are certain universals in the process.

This article attempts to answer those questions. It will examine the nature of offenders, some of the group dynamics or problems that are associated with crime, and individual psychological barriers or excuses usually offered by offenders; and will describe how Navajo peacemaking addresses those problems. This is not an article on social psychology, but it does address many of the common excuses offered by offenders, which can be described using the approaches of social psychology.

OFFENDERS AND THEIR EXCUSES

The courts of the Navajo Nation handle many kinds of offenses in a misdemeanor criminal justice system. The most common in numbers are (a) driving while intoxicated, (b) assaults and batteries, and (c) offenses against the public order (most often disorderly conduct). There are large numbers of domestic violence cases in the criminal justice system and in civil restraining order proceedings. Most crimes are associated with alcohol use, and most violent offenses involve people who are related by a family or Navajo clan relationship (Reiss & Roth, 1993). Ron Zimmerman, a clerk of court from Austin, Texas, offered a summary of offenders that are found in his court (Zimmerman, 1996). They are also the kinds of offenders found in most state and Indian nation courts. They include the following:

- **The Norman Rockwellians:** These individuals are straight off the canvas of the vaunted chronicler of America. They have jobs, families, cars, and cats, and they roast a turkey on Thanksgiving Day. Generally, when a judgment is entered against them, they pay.
- **The down-and-outers:** This group runs the gamut from casualties of corporate downsizing to homelessness at the extreme. The jobs and cars are gone, the turkey is unaffordable, and the fate of the cat is--well--unknown. They would dearly love to pay, but cannot.
- **The institutional refugees:** Since 1986, we have purged our mental health facilities of large numbers of hapless persons who have gone to the streets. They are a dismal underclass who shuffle, unwashed and forlorn, from the jail, to arraignment, to the street, and back to jail in a perpetual cycle of despair broken only by death.

- The truly mean: Our socioeconomic structure produces, quite predictably, a growing polity of permanently alienated sociopathic personalities who commit regular, episodic, or one-time violence of some sort. They are contemptuous of sanctions.
- The anesthetized: Nothing is more important before consuming a quart of liquor and nothing is painful afterwards. Booze and other drugs are the shields that deflect any hope of changing their behavior. Jail simply defines the greater or lesser periods of lucidity in their lives.
- The stupidly obstinate: This small group consists of people who never once obeyed a teacher and who take perverse delight in power failures.

Although that is perhaps a flippant overview of what courts see, it summarizes a gross psychological makeup of many offenders in all American legal systems, including those of America's Indian nations. We can argue over their numbers in the criminal justice system, but they are there. They are present in the Navajo Nation. The "truly mean" of the Navajo Nation are repeat offenders who drink and fight, and they are also the spouse and child abusers (Hauswald, 1988). The Navajo Nation courts see many of the "anesthetized," who are primarily dependent on alcohol. The "stupidly obstinate" are generally brought before the court in criminal or civil domestic violence cases. The nature of offenders in their reaction to judicial process is one element in the picture of peacemaking and restorative justice.

Another element of any discussion of how peacemaking works is the rise in the various defenses to criminal charges, which are most often based on the specific intent required for a criminal conviction or mitigating factors (Winkelman, 1996). Modern sentencing trends, which tend to be increasingly punitive, drive criminal defense attorneys to offer new excuses for criminal behavior: involuntariness, reasonable deficiency, and nonresponsibility in defenses such as brainwashing, "rotten social background," the battered spouse defense, the Vietnam veterans defense (i.e., post-traumatic stress disorder [PTSD]), and the cultural defense. The cultural or culture defense

exempts an accused person from criminal liability when it is shown that the reason for the criminal act was that it was required to be done by the norms of a culture to which the accused belonged, that is, by a folk law to which the accused was subject. (Woodman, 1993, p. 46)

Such defenses make us uncomfortable because they seem to run against common sense and our feelings of outrage when there is a victim--particularly of acts of violence. Defendants offer excuses for their conduct--more often alcoholism or drug dependency--and we cannot adequately deal with them in adjudication. The self-incrimination privilege (although it is vital to civil liberties in an authority-based system), high caseloads, and formalized court procedures make it difficult to confront offenders, elicit their explanations for behavior, and deal with the underlying causes of their conduct.

Whether such defenses are asserted by criminal defense counsel, the Navajo Nation judges recognize them: The Honorable Irene Toledo of the Ramah Judicial District had her probation officer look for the existence of PTSD in Vietnam veterans and found that PTSD is in fact largely associated with assault offenses among adult offenders. She also found that adults with PTSD are teaching its suspicious and violent behaviors to their children (Holm, 1996). The growing concept of restorative justice gives an opportunity to deal with the dynamics that underlie those kinds of offenders, hear their excuses, and deal with them in context. That is why Navajo peacemaking works.

GROUP DYNAMICS

American Indian crimes rates are generally higher than average American crime and violence incidence. Bachman (1992) places a great deal of confidence in crime statistics in painting her picture of Indian nation crime, but given the lack of decent data bases in Indian Country (due to a lack of federal support), her figures cannot be viewed with confidence. Despite, that, Indian Country crime rates are high (Silverman, 1996). Why? An important (and ignored) report of the National Minority Advisory Council on Criminal Justice (1982) sums up the causes well.

The displacement of Indian sovereignty by the encroaching Anglo-European system of laws and values has had pernicious, debilitating effects to the present. The legacy of this dispossession is graphically revealed in current criminal justice statistics. American Indians have, by far, the highest arrest rate of any ethnic group. Their arrest rate is consistently three times that of blacks and ten times that of whites. As many as 80 percent of Indian prisoners are incarcerated for alcohol-related offenses, a rate twelve times greater than the national average. The major crime rate is 50 percent higher on reservations than in rural America. The violent crime rate is eight times the rural rate, murder is three times the rural rate, and assault is nine times as high. Furthermore, the percentage of unreported crime on reservations is higher than anywhere else; thus, the situation is actually worse than the statistics portray, according to a 1975 Task Force Report on Indian Matters by the Department of Justice. (p. 13)

The crime picture is the product of the internal colonialism of American Indian policy, which produced social disorganization, culture conflict, a subculture of violence, economic deprivation, and alcohol dependence (Bachman, 1992). Such pressures on distinct peoples create anomie, or the lawlessness that is the product of extreme stress and the disruption of traditional life. One study of Navajo crime patterns concluded that anomie does not explain the crime rate (which was low compared to general American crime) (Levy & Kunitz, 1971), but past comparisons based on inadequate criminal arrest and prosecution data are unreliable, and the contemporary pattern may indeed be described as anomie. Another way to say it is that Indian nations and their members suffer from mass post-traumatic stress disorder, also described as intergenerational post-traumatic stress (Duran, Guillory, & Tingley, 1995).

Whether we use the terminology of "anomie" or "mass PTSD" to summarize the effects of centuries of oppressor behavior and internal colonization in Indian Country, its effects are obvious: Indians of North America fall at the bottom of every indicator of socioeconomic well-being (Zion, 1992), and those conditions create group dynamics that underlie crime and social disruption. Individual Indians, as members of the affected group, are conditioned to individual behaviors of disruption and conflict, with associated individual rationales or excuses for their conduct.

DESCRIBING INDIVIDUAL EXCUSES

Navajos have particular ways of looking at the world, including excuses for behavior (discussed below), but the Western world has important insights too. One Western elder, Aristotle, said this in his *Politics* (328 B.C.):

Man is by nature a social animal; an individual who is unsocial naturally and not accidentally is either beneath our notice or more than human. Society is something in nature that precedes the individual. Anyone who either cannot lead the common life or is so self-sufficient as not to need to, and therefore does not partake of society, is either a beast or a god.
(Aronson, 1995, p. xvix)

Humans are not beasts; nor are they gods. Each human has a tendency to believe that he or she is "good," but when someone does an act that hurts another, there must be some way to live with what was done. The mental mechanism to deal with that conflict is called "cognitive dissonance."

Basically, cognitive dissonance is a state of tension that occurs whenever an individual simultaneously holds two cognitions (ideas, attitudes, beliefs, opinions) that are psychologically inconsistent. Stated differently, two cognitions are dissonant if, considering these two cognitions alone, the opposite of one follows from the other. Because the occurrence of cognitive dissonance is unpleasant, people are motivated to reduce it; this is highly analogous to the processes involved in the induction and reduction of such drives as hunger or thirst--except that, here, the driving force arises from cognitive discomfort rather than physiological needs.
(Aronson, 1995, p. 178)

When someone hurts another--performs a "bad" act--cognitive dissonance results. That is where an individual must rationalize his or her behavior--to self and to community. It leads to many kinds of excuses or explanations for behavior. They may include denial, minimalization, or externalization. Denial is one of the most frequent excuses offered by offenders: Judges often complain about the defendant who pleads guilty but who refuses, when prompted, to explain or justify conduct. Minimalization often exploits stereotypes of age or gender; that "boys will be boys" or "it's just a man thing." That is where machismo seeks recognition as a justification (Shepardson, 1982). Externalization also

uses stereotypes: That it was the woman's fault that she was beaten or raped, that men "just can't help themselves," or "he's just a poor drunk."

Cognitive dissonance appears in other forms: the ignorant person who needs value clarification because he or she did not think the conduct was wrong, those who are supposedly amoral or have no values because they were never taught them or were taught false values, those with antisocial attitudes, and sociopaths. Finally, there is "hooliganism," which is a popular term used to describe young men who act out, such as vandals, fighting drunks at public events, and others who use their age (and alcohol) as an excuse for acting out

Another reaction to cognitive dissonance is shame, and the emotion of shame is the primary or ultimate cause of all violence, whether toward others or toward self. Violence is designed to diminish the intensity of and replace it with pride, to prevent the individual from being overwhelmed by the feeling of shame. Thus, violence itself can be a result of the conflict between what one believes and what one does: When an individual feels shame, one reaction can be violent conduct toward others.

One classic study of prejudice found that the suffering it induces through the frustration caused by discrimination and disparagement can lead to positive and negative personality reactions: If an individual is basically intro-punitive, that can lead to behaviors such as obsessive concern and suspicion, slyness and cunning, strengthening in-group ties, prejudice against other groups, aggression and revolt, stealing, competitiveness, rebellion, or enhanced striving. The results for those who are basically intro-punitive can include denial of membership in own group, withdrawal and passivity, clowning, self-hate, in-group aggression, sympathy with all victims, symbolic status striving, or neuroticism. Prejudice that is directed against a group, such as Indians, can fuel both positive and negative behaviors--severely enhanced by alcohol or other mind-changing drugs. Indians, as the target of a great deal of prejudice over the centuries, are forced to cope with both positive and negative behaviors, many of which they seek to discover (and thus the popularity of contemporary Indian movements, primary among women, to "retraditionalize" for strength and identity of self and the group).

Those are individual reactions. They are expressed in the modern excuse defenses and sometimes by individual defendants at the time of sentencing, when asked to explain their behavior. Most often, judges hear, "I was drunk," or some other justification. Sometimes, defendants get away with it, and some individual Indians do rely on stereotypes to get a lighter sentence. More often, however, the excuses are used to complicate adjudication or the sentence, and the privilege against self-incrimination allows a defendant to escape confrontation over personal responsibility. A criminal defendant can go through the system without once having to confront his or her conduct or be called on to explain it. The excuses may come out when there is such an opportunity for explanation in peacemaking, and the actors in that process know how to deal with it.

THE EXCUSES IN PEACEMAKING

Navajo peacemaking is a forum that not only permits expression of those excuses but also encourages them. The phenomenon of cognitive dissonance is a part of the process because traditional Navajo legal procedure recognizes it. Traditional Navajo thought uses cognitive dissonance in a way that permits people in communities to confront it and make it part of the dispute resolution process.

Navajos are empiricists. Many of their values are based on centuries of tradition and experience, which are preserved in chants, stories, and, most important, creation scripture. Associated with that experience is the belief that " 'talking it over' is the way to 'straighten out troubles' " (disputes of one type or another). "Way back there, the Navajo people didn't have any kind of law. They used to just talking it together, and the things straightened up by talking together--maybe three or four people talking together" (Ladd, 1957, p. 204). That methodology is reflected in Navajo tradition, and the spoken word is a form of compulsiveness that dissuades a person from doing something wrong (Ladd, 1957). The experiences of the ancient creator beings and spirit forces, taught in the creation scripture, create the context for Navajo dispute resolution.

One of the major Navajo justice concepts that applies to cognitive dissonance is that of *nayee* or monster. *Nayee* is "anything that gets in the way of a person living his life" (Yazzie & Zion, 1995, p. 69). "Things which get in the way of a person living his life" include "depression, poverty, physical illness, worry, a bad marital relationship, and old age" (Yazzie & Zion, 1995, p. 69). "The 'monsters' are ... merely the objectification of these relatively intangible entities so as to make them manageable or exorcisable" (Yazzie & Zion, 1995, p. 69). Navajo thought is very pragmatic. It recognizes the fact that you can take an abstraction, give it a name to make it concrete, then deal with it. Words are powerful, and it is possible to use the forces of solidarity and kinship in the "talking out" process described above to deal with the excuses. The non-Indian theory that explains the process is socialization, a learning and conditioning process that places the individual within the context of his or her society and establishes relational frameworks for interaction.

Navajo Nation judges see the excuses daily when imposing sentence or entering a domestic abuse restraining order. Adjudication is not suited to full communication. In it, parties communicate with the court through their counsel, and that is the message path back to the offender from the judge. The process does not allow full communication. Associate Navajo Nation Justice Wayne Cadman Sr. tells of the day he was hearing a criminal case in which an elderly woman at the back of the courtroom kept raising her hand. Finally, Judge Cadman recognized her and asked what she wanted. She said she had an opinion she wanted to express about the case before him. Cadman had to reply that the rules of evidence and procedure did not permit her to express her views, and she could not speak. Peacemaking permits individuals to express their points of view, feelings, and reactions to the comments of others. It allows an offender to present his or her excuses for examination by other participants and by the peacemaker.

PEACEMAKING PROCESS AND THE EXCUSES

Navajo peacemaking is unique and it is not mediation as practiced in the United States. That is, the person who presides is not neutral in the sense of a "mediator neutral." Navajo peacemakers are *naat'aanii* in Navajo tradition, a term sometimes inaccurately translated as "peace chief" Instead, a *naat'aanii* is a community leader whose leadership depends on respect and persuasion and not a position of power and authority. As was pointed out above, words are powerful in the Navajo language, and the dispute resolution procedure is "talking things out." The word *naat'aanii* has a word root that relates to speaking. A *naat'aanii* is someone who speaks wisely and well, with the content of the speech being based in Navajo tradition, often the creation of scripture and associated songs and stories. A *naat'aanii* has an opinion about the dispute, but it is not expressed as a command. A *naat'aanii* peacemaker is a teacher whom participants in peacemaking respect, because the person is chosen by the community based on his or her reputation. The Navajo process is also unique because of the participants: They are not only the immediate disputants but their relatives as well. The relatives include persons who are related by clan affiliation as well as by blood. They participate in the process of "talking things out" and have significant input in the form of expressing an opinion about both the facts and the effects of the dispute, the parties' conformity to Navajo values, and the proper outcome of the dispute.

One way of looking at peacemaking is the notion that the people make the law. In peacemaking, the participants enter the process with all the values and attitudes that are the product of their rearing and socialization. Values are norms, which are the foundation of law, and attitudes are emotional ways of expressing norms. The "talking out" process permits the group to decide what the applicable law happens to be. In most instances, people will not express their values and attitudes to discuss law as the Western world knows it. There are no discussions of rules or "principles of law" to be applied to the dispute, but an interactive discussion of the problem and what the group feels about how it should be resolved.

One of the most important studies of Navajo peacemaking to date was done by Laurie Melchin Grohowski (1995), who visited the Navajo Nation courts to study peacemaking. She had extensive discussions of the process with Philmer Bluehouse (director of the Peacemaker division), court-attached peacemaker liaisons, and peacemakers. She did participant observation of peacemaking. The product of her visit was a master's thesis that reviews mediation literature to find its approaches and theories of process and outcome, the literature of social psychology as applied to disputes, and theories of a cognitive-affective model of reconciliation applied to peacemaking. The thesis suggests a research model to confirm her conclusions (Grohowski, 1995).

The goal of mediation and of Navajo peacemaking is reconciliation of the parties in dispute (and their relatives in the Navajo context), which is

a process of social interaction that generates a cognitive and affective synergy for the participants. Reconciliation as a process results in the participants co-creating a new shared reality or perception about the

conflict and each other that allows them to move forward in their lives.
(Grohowski, 1995, p. 1)

Grohowski sees peacemaking as a system "where mediation techniques during this social interaction can lead to perceptual shifts or a cognitive-affective (head to heart) transition that clears the path to reconciliation" (Grohowski, 1995, p. 8). A key to the process is social cognition, which (as is shown above) is important in understanding the excuses offered by offenders, with the important addition that the perceptions of all who are a part of or affected by the dispute are important (Grohowski, 1995).

Moving from cognition theory to Native American practice, Grohowski identifies traditional "consensus processes," which implement the shift from cognitive or "head thinking" to affective or "heart thinking" among parties, and the efficacy of storytelling and prayer in traditional processes (Grohowski, 1995). Traditional justice methods work because they move people away from "head thinking" so that they can identify attributional errors to overcome them and get to causes of conflict caused by assumptions about the other party (Grohowski, 1995). A *naat'aanii* facilitates the process by guiding the parties in a move from the head to the heart to achieve reconciliation (Grohowski, 1995). "Reconciliation is the product of a mutually sculpted reality where skepticism and rejection are replaced with acceptance" (Grohowski, 1995, p. 34).

Traditional Navajo peacemaking procedure and cognitive-affective process are very close. They use different language to describe what is going on, but the general dynamics are the same. The question of the cultural specificity or universality of Navajo peacemaking may be resolved in matching linguistics and perceptions in deep cross-cultural discussion and examination.

In Navajo, where there is a dispute, there is *hoxho*. The concept eludes accurate translation into English, but it refers to a state of conflict in which people are not in right relations with their surroundings or environment (the universe). The situation is one of *anahoti'*, which is a state of conflict and the opposite of *hozho*, an ideal situation where everyone and everything relates to each other as they and it should. Given the state of conflict, the process always begins with prayer.

Navajos view their justice method as a ceremony (Bluehouse & Zion, 1993). Prayer is very powerful in Navajo thinking, because it summons supernatural beings to take part in the process. It actually summons and brings them to the gathering, to participate and to help with the outcome. Put in a more secular way, prayer helps focus the attitudes of the participants to get them to commit to the process. Another way to describe it is "priming," where the peacemaker starts "the process of bringing certain things, typically behaviors or personal characteristics to mind, activating them" (Grohowski, 1995, p. 35). As has been discussed, Navajos tend to be empiricists, and their empiricism recognizes the role of prayer. It is a cement that commits even those with cognitive dissonance to the process. Prayer prepares the parties for the "talking out" to come, commits them to engage in that process sincerely and "in a good way," and starts them on the beginning of the process of reconciliation to achieve *hozho* through consensus.¹

The next stage is the actual process of "talking things out," and that is where the excuses become important. The peacemaker may acknowledge the victim or the person who wishes to relate what happened. The victim has an opportunity to relate the event and how he or she feels about it. Sometimes, the person will be a concerned relative, as with a mother of a child in an abusive relationship with a spouse, or a parent who is concerned about drinking or acting out.² Venting is encouraged, where the parties relate not only what happened but also its effects. They express their feelings about the event and how it affected them.³

An offender has the opportunity to listen to the charges and the impact of conduct on the person complaining. He or she will most likely have the benefit of the victim's family's reactions before speaking. When the accused offender has had the opportunity to hear those things and the feelings associated with them, then he or she has an opportunity to respond. That is the point at which the excuses are likely to come out: "It was *her* fault," "It's no big deal," "I couldn't help it--I'm just a hopeless alcoholic," "I was drunk," and so on. One of the difficulties with the excuses, which are cognitive dissonance, is that they are often not grounded in reality. An offender believes the excuses, because they are what helps reconcile conduct with feelings toward them. An offender may not listen to an authority figure such as a judge, probation officer, or social worker. Often, Navajos perceive those representatives of state power as simply "powerful beings." A powerful being is an external force that controls or punishes another, often without regard for the individual; that is, powerful beings do not respect individuality. Navajos know the "them versus us" of authority in court systems and do not allow them to overcome the internal barrier of cognitive dissonance.⁴

In peacemaking, in contrast, the people who hear the excuses are relatives, community members, and a peacemaker chosen for the respect of the community. They are people whose message is likely to overcome the barrier of the excuse and have their observations sink in. They are the people who know the offender best and who are able to deal with excuses such as "I don't really have a drinking problem." In one peacemaking case, a batterer laid out the usual domestic violence excuses of "I don't have a drinking problem," "It's her fault, etc." His sister listened to his story and confronted him. This is the process of internalization, where the relationship of the speaker to the person giving the excuses may be more important than the content of the message.

Another advantage of the process of communication is that it deals with the emotional barriers held by everyone present. That is, although an offender may have internal barriers that are unrealistic and the product of cognitive dissonance, others have them as well. Victims have barriers too, and many in the field of domestic violence are puzzled about the seeming ignorance or unreality of a victim of family violence. Victims have many defense mechanisms, which are also a product of cognitive dissonance. The same holds true for groups such as families, whose denial of the misdeeds or problems of a loved offender often reinforces bad behavior.

This "talking out" to expose the excuses, respond to them and clarify values is perception sharing, where people are called on to reflect on their own behavior and to see its impact

on others (Grohowski, 1995). The process of "talking things out" then leads to verification of who did what to whom and why and clarification of attributional errors (Grohowski, 1995).

The next phase of peacemaking is called "the lecture" in English. It is another unfortunate translation of a Navajo concept into English, because the lecture is not some abstract sermon but a form of teaching. A *naat'aanii* peacemaker knows the traditional Navajo values and will most often express them by relating what happened in creation times to the problem at hand. The teaching is in fact a kind of case law in which the *naat'aanii* can point to similar disputes or problems in the past, relate who went through them, and show how the situation was resolved. Often, Navajo precedent speaks to mutual respect or the well-being of the group and community. What takes place is called "attribution reassignment" (Grohowski, 1995). This is the phase in which people move from "head thinking" to "heart thinking" to have empathy for others. It is a process of communication whereby an offender learns the inaccuracy of the given excuse and begins to change attitudes toward others. It is also a process whereby others learn more about the offender's motivations and why the excuses are offered. The same holds true of the other participants who also hold false attributions about what motivated the offender. The process is guided by traditional teachings that tap the internal learned values of everyone in the group.

The next and final phase is that of reconciliation (Grohowski, 1995). If the parties have committed themselves in prayer, vented their perceptions, and feelings, talked out the problem and relationships, and received the guidance of the *naat'aanii*, it is the final phase in which people have moved to the end of the cognitive-affective, head to heart, process. At this stage, parties in peacemaking reach consensus on what should be done to resolve the problem. The primary consensus is about relationships--where people stand with each other at the end of the process. There may also be consensus about restitution or reparation to a victim (which can be symbolic only, often in the form of a payment of cattle or jewelry) or what needs to be done to correct past bad actions in the future. In the traditional context, that can mean that a family will watch over an offender or make certain that person keeps his or her promises. In more modern contexts, it can commit people to Western therapy, counseling, or treatment, or other kinds of action to follow up on the realization that cognitive dissonance has led to false thinking. Sometimes, Navajo curing ceremonies can be a plan reached by consensus. A plan is a major Navajo justice concept. It is associated with *naat'aah*, or planning, which is a practical process of turning intuition reached through prayer and reflection into talk, and the "talking out" of peacemaking into a concrete plan of action.

At the end of the process, *hozho* should be achieved, and people will describe it with the phrase *hozho nahasdli*. The translation is to the effect that now that the process has been completed, the individuals involved in it are in good relations and, indeed, all reality is in good relationship, with everything in its proper place and relating well with each other in *hozho*. This shows that Navajo dispute resolution is process oriented and that the process is important of itself. That builds on relationships and what is known as solidarity. The parties make their commitment to the process in the opening prayer, and if successful, it

concludes with new relationships of respect in which the excuses are exposed as being false and there is a new commitment to an ongoing relationship. The process does not involve coercion or punishment. Navajo thought rejects force and ordering others around. Navajo thought is highly individualistic, with great respect for individual integrity and freedom, yet the process guides people to realize that freedom is exercised in the context of the group and relationships with others. The Navajo maxim is as follows: "He acts as if he had no relatives." At the end of the process, the value of relatives and relationships leads both victim and offender to leave off seeing the world with the head and to instead see it with the heart. One of the biggest misunderstandings of Indian thought is that Indians are stoic and have no emotions. The opposite is true, and justice process uses human emotions, along with all other faculties, to adjust relationships.

CONCLUSION

This review attempts to answer some of the questions posed at the beginning. Peacemaking depends on consensus and will not work without it, so if someone does not agree with the group's decision, that person need not go along with it, and peacemaking will fail. In the Navajo Nation justice system, the courts are available as a backup in the event of failure.

The question of what to do about people who are amoral or sociopaths is too often put in a snide or a flip way. No one is completely amoral. As long as someone is a member of a community, that person will adhere to its values to some extent. Internalization, which relies on respect for the group and socialization, will always take place to some extent. In traditional Navajo lore, an individual who refuses to work with the group would be ostracized after attempts to get an offender to comply. The term *sociopath* assumes that someone is outside the group's common values. Peacemaking will either lead the person to comply through group teaching and the wisdom of a *naat'aanii* or, again, the individual may be locked out of the community. In the Navajo way of thinking, the most horrible punishment or thing that could happen would be to be excluded from relationships with relatives.

Can you handle murder in peacemaking? It is done. Just as offenses such as rape or other sexual insults can be and are dealt with in peacemaking, a wide variety of disputes can be resolved in peacemaking. Rather than attempt to establish categories of the kinds of cases that can or cannot be handled, proposed peacemaker rule revisions assume that anything can be dealt with in peacemaking, and if it does not work, the usual adjudication methods are available.

A great deal of peacemaking may be cultural specific to Navajos. However, to the extent that social psychology literature and analysis has been used to attempt to explain the dynamics of peacemaking and the Grohowski (1995) analysis shows common patterns in mediation, Navajo peacemaking should be translatable. It is a matter of context, where the individuals who exhibit excuses (and believe them) can be moved, depending on individual socialization and the lingering authority of the group, to help people internalize the values of the group.

At the end, the success of peacemaking is not in its concrete result or the actual remedy given. It is in an adjustment of the attitudes of the parties. Both offenders and victims begin with cognitive dissonance or related emotions that are based on assumptions and unreality, and the process leads them to common understandings. The parties frame the understandings themselves; they are not guided by abstract rules in the law, which are imposed by outsiders. The parties talk out their problem and how they feel about it to gain empathy and, at the end, consensus on how to realign their relationships in a meaningful way.

NOTES

1. The Navajo Nation Judicial Branch is in the process of revising the peacemaker rules to incorporate more Navajo traditional values. This process of committing the parties or starting them down the path to reconciliation and hozho is, according to Philmer Bluehouse, called *Hozho Nahodoodleel* or the beginning of the path. This is a place where it is difficult to reconcile Navajo understandings with English discourse. In preparing this article, I spoke with Dan Vicenti of the court staff, who is an experienced educator and wise adviser. Dan stressed the importance of Navajo spirituality as a key to peacemaking. That is genuinely a Navajo perspective, but it is a difficult one to relate in secular discourse. One of the communications barriers we have in American society is the inability to discuss spirituality without the clouds of suspicion, distrust, and even hostility toward religion and spirituality getting in the way. We must find a way for things such as religion, spirituality, and morality to be discussed without the lens of distrust, hostility, insecurity, and perhaps even guilt getting in the way of understanding. That is the whole point of Grohowski's (1995) thesis, where she states that cognitive attitudes are often the cause of conflict.

2. In the experience of the Peacemaker division, many cases brought to peacemaking involve relatives who are concerned about poor marital relationships in a common home or the drinking and acting out of children or other relatives. There are many land dispute cases, which come to a head because of violent confrontations or arguments that trigger strong pride or self-esteem emotions. Vincent Craig, the Navajo Nation Judicial Branch chief probation officer and a noted Navajo humorist, identifies the problem in a very Navajo way: A woman says, "Officer, arrest that man! He's looking at me somehow." Many Navajo disputes are framed in very vague ways, and accusers have a difficult time expressing the wrong. Outsiders are often confused by the vague way in which a dispute is expressed, with minimal description. That is part of the Navajo discourse in which emotional reactions to harm are vented, but details are missing.

3. Philmer Bluehouse explains that the most important piece of paper in peacemaking is the tissue. Peacemakers keep boxes of tissue on hand, which again reinforces the importance of emotions in Navajo thought. A further illustration of the difference in thinking is the fact that Chief Justice Robert Yazzie will often react to the author's analysis of a problem by saying, "Chicago, Illinois!" That is a pun on shi cago (phonetic spelling), which means "over my head" or "Huh?" He will also sometimes rag the author (as do other Navajos) about relying too heavily on "paper knowledge." As Mary Shirley,

a Navajo lawyer, once put it, "You Anglos always have reasons for everything. Don't you know that some things just are?"

4. There are three kinds of responses to social influence: compliance, identification, and internalization. Compliance is the force of sanctions--of police and other authority figures--on behavior where compliance is the product of the threat of force. When the force is not present, it does not compel behavior. Identification is listening to a respected figure, such as a parent or loved relative, where the response is geared to respect for that person. Such is not the case with authority figures--strangers--who act on people. The third response, internalization, is where the person wants to listen to the speaker and responds out of respect for that person or the desire to listen to and acknowledge what is said. That is why authority figure lectures to offenders do not work, particularly when they are simply authoritarian and cannot "reach" the offender. See Aronson (1995, pp. 34-40, note 30).

REFERENCES

- Aronson, E. (1995). *The social animal xvix* (7th ed.). New York: Freeman.
- Bachman, R. (1992). *Death and violence on the reservation*. New York: Auburn House.
- Bazemore, G., & Day, S. E. (1996). *Juvenile Justice*, 3, 3.
- Bluehouse, P., & Zion, J. W. (1993). Hozhooji Naat'aanii: The Navajo justice and harmony ceremony. *Mediation Quarterly*, 10(4), 327-337.
- Duran, E., Guillory, B., & Tingley, P. (1995). *Domestic violence in Native American communities: The effects of intergenerational post traumatic stress*. Unpublished manuscript.
- Grohowski, L. M. (1995). *Cognitive-affective model of reconciliation (CAMR)*. Unpublished master's thesis, Antioch University of Ohio.
- Hauswald, L. (1988). Child abuse and child neglect: Navajo families in crisis. *Dine Be'iina'*, 1(2), 37.
- Holm, T. (1996). *Strong hearts wounded souls: Native American veterans of the Vietnam War*. Austin: University of Texas Press.
- Hudson, J., & Galaway, B. (1996). Introduction. *Restorative Justice: International Perspectives*, 1, 3.
- Ladd, J. (1957). *The Structure of moral code. A philosophical analysis of ethical discourse applied to the ethics of the Navajo*. Cambridge, MA: Harvard University Press.

Levy, J. E., & Kunitz, S. J. (1971). Indian reservations, anomie, and social pathologies. *Southwestern Journal of Anthropology*, 27, 27.

National Minority Advisory Council on Criminal Justice. (1992, January). *The inequality of justice: A report on crime and the administration of justice in the minority community*. Washington, DC: Government Printing Office.

Reiss, A. J., & Roth, J. A. (1993). The National Research Council's panel on the understanding and control of violent behavior concluded: Intoxicated Navajo fight almost exclusively with family members. *Understanding and Preventing Violence*, 198.

Shepardson, M. (1982). The status of Navajo women. *American Indian Quarterly*, 6, 149,163.

Silverman, R. A. (1996). Patterns of Native American crime. In M. O. Nielsen & R. A. Silverman (Eds.), *Native Americans, crime, and justice* (pp. 58-74). Boulder, CO: Westview.

Wallace, S. (1996). Alternative sentencing goes mainstream. *NLADA Cornerstone*, 1(18),3.

Winkelman, M. (1996). Cultural factors in criminal defense proceedings. *Human Organization*, 55(2), 154.

Woodman, G. (1993, October). Culture and culpability: the potential of the cultural defence. *Commission on Folk Law and Legal Pluralism Newsletter*, 23, 46.

Yazzie, R., & Zion, J. W. (1995). Slay the monsters: Peacemaker court and violence control plans for the Navajo Nation. In K.N. Hazelhurst (Ed.) *Popular justice and community regeneration: Pathways of indigenous reform* (pp. 67, 69). Westport, CT Praeger.

Zimmerman, R. (1996). The sanction paradox. *Center Court*, 1(2), 3.

Zion, J. W. (1985). The Navajo Peacemaker court: Deference to the old and accommodation to the new. *American Indian Law Review*, 11, 89.

Zion, J. W. (1992). North American perspectives on human rights. In A. A. An Na'im (Ed.), *Human rights in cross-cultural perspectives*. Philadelphia: University of Pennsylvania Press.

James W. Zion is a graduate of the University of Saint Thomas (BA, 1966) and the Columbus School of Law, Catholic University of America (JD, 1969). He is the solicitor to the courts of the Navajo Nation and resides at Fort Defiance, Navajo Nation. In 1995,

he was a professional in residence with the United States Information Agency for discussions of the role of traditional law and leadership in the 1996 Constitution of South Africa. He is an adjunct professor at the Department of Criminal Justice at Northern Arizona University and a member of the Commission on Folk Law and Legal Pluralism. He has written extensively on traditional Indian law and the human rights of indigenous peoples. He has traveled to Australia, Bolivia, Canada, Cuba, New Zealand, Norway and South Africa to discuss indigenous justice and human rights

