

# INTENTIONAL CONVERSATIONS ACROSS CULTURES: UTILIZING TRIBAL-STATE RELATIONS TRAINING TO STRENGTHEN THE GOVERNMENTAL SERVICES TO INDIAN AND NON-INDIAN MINNESOTANS

*Tadd Johnson, Rebecca St. George, and Joseph Bauerkemper<sup>1</sup>*

There are eleven tribal sovereign governments in Minnesota. They have the right to govern themselves, to govern their lands, their boundaries, businesses and taxes, so they have all the rights and responsibilities of any government. I worked with one district engineer who said, ‘We didn’t understand how to work with tribes – so we just didn’t.’  
*Linda Aitken, Minnesota Department of Transportation (MNDOT) Tribal Liaison and Leech Lake Band of Ojibwe Band member.*

## **The Training**

An old saying in Indian country was: “You can tell where the reservation begins, because that’s where the paved road ends.” In 2013, Linda Aitken, Minnesota Department of Transportation (MNDOT) Tribal Liaison and Leech Lake Band of Ojibwe Band member, decided to do something about the disconnect between the Indian tribes of Minnesota and the agencies of the State of Minnesota. Aitken organized other Tribal-State Liaisons, mainly Indian people who worked for the State, along with academics, state employees and tribal leaders and made recommendations to the Governor on a new Executive Order on Tribal-State Relations.<sup>2</sup> Simultaneously, Aitken worked with the Department of American Indian Studies at the University of Minnesota Duluth (UMD) to develop a pilot course in Tribal-State Relations. The pilot course, which took place in June 2013, included forty-six state employees. The faculty and the training specialists from the State took note of the participant comments and by the fall the course was changed significantly.

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<sup>1</sup> **Professor Tadd M. Johnson, Esq.** is the Senior Director of American Indian Tribal Nations Relations for the University of Minnesota System; the Director of Graduate Studies for the University of Minnesota Duluth for the American Indian Studies Department; and the Director of the UMD Tribal Sovereignty Institute. Johnson is on the Boards of the Udall Foundation and the Native Governance Center. **Rebecca St. George** is the staff attorney for the Fond du Lac Band of Lake Superior Chippewa. Rebecca is also a member of the Duluth Citizen Review Board, an advisory body to the Duluth Police Department, and Minnesota’s 6th Judicial District Equal Justice Committee. **Joseph Bauerkemper** is an Associate Professor of American Indian Studies at the University of Minnesota Duluth where his scholarship, outreach, and teaching emphasize governance, literature, and law. Since 2016 he has served as the lead facilitator for the State of Minnesota’s Tribal-State Relations Training program.

<sup>2</sup> <https://mn.gov/gov-stat/images/EO-13-10.pdf>

Some of the valuable lessons included:

- While it was important for state employees to hear the history of the policies between federal, state, and tribal governments, it was just as important that they hear the personal stories from Indian people as to how the policies impacted them directly.
- Rather than holding the course at a University campus, all future courses should be held on Indian reservations — in order for state employees to experience the sights and sounds of reservations — and encounter Indian people directly.
- State employees needed to be exposed to the Dakota and Ojibwe languages.
- The tribes should be allowed to provide their perspectives on state, federal, and tribal policies.
- The “Why Treaties Matter” exhibit should be on display at each training. The exhibit is a collaboration between the Minnesota Indian Affairs Council, the Minnesota Humanities Center, and the Smithsonian’s National Museum of the American Indian, and it includes treaties, contexts, and comments from all eleven Minnesota tribes.
- Each session should begin and end in accordance with the host tribe’s protocol for beginning and ending their own meetings — with an invocation, a flag ceremony, a drum group, and a travel song at the closing.

The Minnesota Department of Transportation (MNDOT) provides extensive staffing subsidy for the training because of its belief in the value of the training and desire to see the implementation of the training. The implementation team includes the training staff of MNDOT; Tribal-State Liaisons from several state agencies; the University of Minnesota Duluth American Indian Studies Department; the Minnesota Indian Affairs Council; and all eleven tribes of Minnesota.

The certificates awarded at the close of the two-day training come from the University of Minnesota Duluth’s Tribal Sovereignty Institute (which is housed within the Department of American Indian Studies) and the Minnesota Indian Affairs Council. To date more than 3,500 people have earned the certificate.

Consistent with lessons learned from the pilot trainings and through ongoing consultation and collaboration with tribes, the current training agenda opens with a ceremony including the presentation of the colors, flag and honors songs, an invocation by a spiritual leader selected by the host tribes, and words of welcome from an elected official from the host tribe. More recent training sessions also include either an in-person greeting or a video message from Governor Tim Walz and Lieutenant Governor Peggy Flanagan.

Dr. Joseph Bauerkemper from the UMD Department of American Indian Studies serves as facilitator of the training and follows the opening ceremony and welcome with an overview of what is ahead. He explains, among other matters, tribal locations, population statistics, data showing that Minnesota tribes are among the twenty largest employers in the State, and that tribal jurisdiction impacts thousands of acres of land both within and beyond reservation boundaries. Bauerkemper goes on to explain the core of Governor Walz’s Executive Order 19-24<sup>3</sup> on tribal consultation, which serves as the primary mandate for the training. Bauerkemper

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<sup>3</sup> <https://www.leg.state.mn.us/archive/execorders/19-24.pdf>

then delineates the primary program objectives: enhanced understanding of American Indian tribal sovereignty, increased awareness of tribal, state, and federal intergovernmental relations, familiarity with the ongoing impacts of historical policy, expanded understanding of American Indian history and cultures, applicable insight into collaborating and building partnerships with tribes, and improved effectiveness and efficiencies in state government.

In order to address common anxieties about word choices and so that participants can develop a shared vocabulary, Bauerkemper covers key terminology for the training including governance-oriented definitions of “Indigenous,” “Native American,” “Indian tribe,” “Indian country,” and who is considered an Indian. He emphasizes that being Indian is not a racial classification, but rather a political classification under federal law. These remarks are followed by a language lesson in either Dakota or Ojibwe language, depending on the host tribe. A language instructor or elder designated by the host community discusses the importance of Native languages and teaches participants how to greet one another, how to say the name of the tribal homelands where we have gathered, and how to articulate gratitude. Participants in more recent sessions have also been provided with notecards sharing either Dakota language or Ojibwe language affirmations and values. These include, among several others, *Gidapiitenimin* (“I value you” in Ojibwe) and *Ohóda pi/po* (“Be respectful” in Dakota).

At this point Tadd Johnson presents a deep dive into “Federal Indian Policy and the Legal Background Between the Tribes and the State.” Using a “River of Time” as a visual organizing metaphor, the presentation moves through the major periods of federal Indian policy: International Relations (1770-1830), Removal (1800-1870), Reservation (1850-1890), Allotment and Attempted Assimilation (1870-1930) Reorganization (1930-1950), Termination (1940-1970), and Self-Determination (1970-present). The explanation of these eras includes policy details and impacts on tribes. It takes four to five hours during the afternoon of Day One. It is interspersed with relevant activities and focused sub-presentations. For example, during consideration of the Reservation Era, Bauerkemper facilitates a discussion activity focused on the previously mentioned “Why Treaties Matter” exhibit. Participants have an opportunity to engage with the exhibit and then talk with one another at their tables about particularly striking takeaways and specific connections they can make between exhibit information and their work within their respective state agencies. During consideration of the Allotment and Attempted Assimilation Era, a guest speaker provides insight into experiences and impacts associated with Indian boarding schools. This has included a moving first-hand account from Grace Smith, a tribal elder and boarding school survivor from Alaska. She explains in heartbreaking detail how she was taken from her family, beaten several times, and how she lost her tribal roots. Listeners often shed tears during and after her poignant presentation. More recent training sessions have featured a presentation from Mary Otto, tribal liaison for the Minnesota Department of Commerce. Otto shares family stories and photographs that connect various members of the training planning team to boarding schools, and she also illuminates the broader community impacts that boarding schools continue to have on Indian people and nations.

Day Two of the training begins with a breakfast Question and Answer period guided by questions submitted by participants and continues with three rotating breakout sessions fo-

cused on Tribal History and Culture, State Agency Tribal Liaisons, and Tribal Staff Members. The plenary session in the late morning features “A Closer Look at Tribal Lands” presented by Levi Brown, Minnesota Department of Transportation Tribal Affairs Director, in collaboration with land program experts from the host tribe. The afternoon of Day Two includes a Tribal Leadership Panel during which top-level elected tribal leaders engage in direct conversation with participants, answering audience questions and emphasizing the “dos and don’ts” of approaching tribal leaders and building partnerships with Indian people.

Each training session concludes with a debrief and dialogue activity in which agency-based participant groups discuss consultation and building partnerships. These conversations seek to identify common ground with tribal governments and build traction toward constructive steps each respective agency could take to improve tribal-state relations. Finally, the session closes with the retiring of colors, a departing invocation, and a traveling song from the drum group.

### **Why Consultation is Important**

In the summer of 2012, Duluth, Minnesota, suffered severe storms and flooding. As a result, a bridge that crosses Mission Creek on Highway 23 in the Fond du Lac neighborhood of Duluth, was severely damaged and the city was devastated.

It took four years of planning and coordinating before federal and state agencies began work to fix the bridge. The planning and coordinating by the United States Army Corps of Engineers (ACE) included a historical analysis of the history of the bridge itself, and nothing else.

As part of the bridge repair, MNDOT needed to dig up part of Highway 23 and move it. Normally, when MNDOT does road work they are at least partly funded with money from the U.S. Department of Transportation, and thus must comply with federal requirements for such things as a cultural survey/analysis of the area to be impacted by the construction. In this case, the work was funded only using money from the State, so there were no federal requirements. Governor Dayton’s Executive Order 13-10<sup>4</sup> required tribal consultation, but that order had no teeth and was regularly ignored — as it was in this case.

Had either the Corps or MNDOT done even a cursory survey of the area surrounding the bridge, they would have found rich data about a cemetery that dates back hundreds of years. They would have learned that the cemetery was disturbed when the railroad came through in the 1800s, and that when Highway 23 was built in the 1930s, several graves were moved to other areas, while many, many more were left in place. They would have found historical photographs of spirit houses in the exact spot where their road work was to take place. They might even have learned about living Fond du Lac Band of Lake Superior Chippewa elders who remember traveling to that area as children with the sole purpose of leaving tobacco for their relatives who were buried there.

But neither the Corps or MNDOT did any research or survey. They simply dug in and started moving tons of earth.

During the first week of June 2017, some Band members walked by the construction site and asked some of the road crew working there if they were aware of the presence of the historical

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<sup>4</sup> *Supra* note 2

cemetery. They were not. Wayne Dupuis, Environmental Program Manager for the Band, was contacted. Dupuis called the Minnesota State Archaeologist, Amanda Gronhovd, who came to the site. Within minutes of walking over the disturbed ground she saw fragments of human bone. The road work was immediately halted.

### **MNDOT Response**

Duane Hill, MNDOT's District Engineer for the region, was in Washington, DC, when the desecration was discovered. He spent the following days emailing various MNDOT staff to do as much damage control as he could. Upon reviewing those emails later on, Mr. Hill noted that he could tell, with complete clarity, which staff had attended the Tribal State Relations Training, and which had not. Staff who had attended the training responded to the crisis with a high level of sensitivity as to why, in the tribal community, this was a crisis, and why MNDOT's response to the tribe needed to be handled respectfully and delicately. Those who had not attended the training were much more likely to respond with frustration and a desire to gloss over the problems and get on with the job of fixing the bridge and building the road.

On June 14, 2017, MNDOT's Commissioner, Charlie Zelle, traveled to the Fond du Lac Reservation where he met with tribal leadership. At that meeting, Commissioner Zelle accepted full responsibility for what had happened, and expressed deep and meaningful remorse for the damage caused to the Band and its members. The Commissioner took time to visit the desecrated cemetery along with tribal leadership, and he held a meeting for the community in the Fond du Lac neighborhood. At that meeting, Commissioner Zelle continued to accept responsibility for what had happened, refusing to get defensive or to downplay the suffering caused by the desecration. When community members spoke angrily about what had happened, Commissioner Zelle, along with District Engineer Duane Hill, Project Manager Roberta Hill, and Tribal Liaison Ed Fairbanks all validated that anger and agreed that it was up to MNDOT to try to fix what had happened. All of the MNDOT staff in attendance had previously attended the Tribal-State Relations Training.

When MNDOT personnel responded to the tribal community with compassion and understanding, it was clear that they had a foundational understanding of exactly *why* the community was upset. They clearly understood that the historic trauma that the cemetery desecration had unearthed was real and personal, and they appeared to understand why. The Commissioner said that attending the Tribal-State Relations Training provided him with some background and understanding of historical trauma and the profound pain that MNDOT's actions had caused the community. Zelle attended several of the Tribal-State Relations courses and it appears that he internalized the course messages. As a result, while many community members came to the meeting ready to fight for accountability, they found that they had no need to fight: they were heard, and MNDOT was ready to take meaningful action to try to right the wrong that they had committed. Kevin Dupuis, Chairman of the Fond du Lac Band of Superior Chippewa, was so impressed with the impact of the Tribal-State Relations Training that, at one point, he suggested that any companies (such as pipeline companies or power companies) doing work on the reservation or in the ceded territories should be required to attend that training.

On June 22, 2017, a working group organized by the Band and the State met for the first of many meetings to navigate the pending work at the cemetery. The working group included representatives from the Band, MNDOT, the Army Corps of Engineers, Minnesota Office of the State Archaeologist, Minnesota State Historic Preservation Office, and the Minnesota Indian Affairs Council. Later meetings included representatives from the City of Duluth. MNDOT made it clear from the beginning that decisions about how to handle materials at the site of the cemetery would need the approval of Band leadership. They further agreed to hire and train as many Band members as they could for various tasks, and ultimately contracted with the Band for much of the work that needed to be completed, including providing 24-hour security at the site and serving as cultural resource technicians. Because the harm had been perpetrated by MNDOT, they agreed that any involvement, at any level, of Band staff or resources would be compensated by MNDOT, and MNDOT backed their promises up with three major contracts with the Band.

From June of 2017 until the fall of 2019, there were weekly, or biweekly meetings of that same group. Those meetings started again in the winter of 2020. The group has worked collaboratively to determine how to delineate the cemetery borders, where other cultural resources exist nearby, how to handle the remains of the ancestors and other grave goods found, and how to maintain a sense of safety and security at the site. The leadership at MNDOT has met over a dozen times with the Band's Reservation Business Committee both to keep tribal leadership updated on the project and to get direction as the project progresses.

The meetings and the communications have not always been smooth, and not everyone has always been happy with the results. However, even when conditions cause frustration from all parties, MNDOT has maintained clarity that the needs and the wishes of the Band are paramount. They defer to the Band and to Band leadership, and have made clear that they continue to understand the importance of working with the Band and respecting the Band's leadership. None of that would likely be true without the Tribal-State Relations Training.

## Conclusion

The complexity is you have to have the state and the tribe...working together to protect the health and welfare of all Minnesota. Without that you're going to continue to have controversy and conflict which is going to cost everybody money, resources, and unfortunately – lives. Ed Fairbanks, *Tribal Liaison, MNDOT and Leech Lake Band of Ojibwe Member*.

Governor Dayton's term ended in January of 2019 and his successor Governor Tim Walz has renewed and strengthened tribal-state relations through Executive Order 19-24.<sup>5</sup> (See Appendix) While this is indeed very good news both for tribes and the state, there is no guarantee that future governors will continue to mandate and support the Tribal-State Relations Training program. The best solution would be to institutionalize the training by making it a permanent part

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<sup>5</sup> *Supra* note 3

of the Minnesota Statutes, rather than an Executive Order which exists at the whim of subsequent Governors. The only solution to future misunderstandings and avoiding future conflicts is a better understanding of tribal governance, jurisdiction, and American Indian culture.

The true winners in educating other government entities on the status of Indian tribes are the citizens of Minnesota and the members of Indian tribes. Indian tribes bring federal and tribal resources to the bargaining table. In the past, waste-water treatment facilities, roadways, and law enforcement services have been the result of tribal-state cooperation. A future wherein tribes, states, and counties cooperate on public safety, public health, and infrastructure projects can only be achieved with training which involves the education of employees at all levels of government — state, county, and municipal. Since the ultimate goal of government is the best possible provision of services to all citizens, the education of all governments on all possible partnerships can benefit Indian and non-Indian citizens alike.

