American Diagnosis Podcast

Season 4 Episode 8: Tribal Values, Tribal Justice
Air date: July 14, 2022

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TRANSCRIPT

[Minor bouncing instrumental music begins playing.]

Abby Abinanti: I just can't do it. I won't do it.

Céline Gounder: This is Judge Abby Abinanti, a member of the Yurok tribe.

Abby Abinanti: This 11-year-old boy had been arrested and charged with some fairly serious crimes for fighting on the schoolyard.

Céline Gounder: She's telling us about a juvenile delinquency case she presided over in San Francisco Superior Court.

The boy's father and uncles sat behind him in the courtroom. It was clear to Abby that they were involved and invested in the boy's life.

Abby Abinanti: You could see by the anguish on their face.

Céline Gounder: She instructed the lawyers to approach her bench. She asked the prosecutor ...

Abby Abinanti: And I said, "What in God's name do you think you're doing here? Let me just be really perfectly clear with you. If a child isn't old enough or tall enough to ride the teacup rides in Disneyland and doesn't have a weapon, it's not a felony. Step back."

Céline Gounder: Abby refused to hear the case against the 11-year-old boy. The prosecution was shocked.

Abby Abinanti: And they were arguing with me, and I said, "Well, that's what you have appellate courts for, but it's not happening here with me now." And the lawyers were a little "uh …" I said, "Well, you know, do whatever you're going to do. But I can't. I'm not going there."

Céline Gounder: Abby didn't think the courts needed to be involved.

Abby Abinanti: I said to the boy, "Stand up, sir." I said, "Look behind you. You have your father and your uncles — good men who are worried about you. I'm sending you home right now. I'm dismissing this matter. And I never ever want to see you again." And I never saw him again.

Céline Gounder: Working as a California state judge, Abby says she always felt tension between the punitive values of the court and her community-oriented values as a member of the Yurok tribe.

Abby Abinanti: We're not a rights-based culture; we're a responsibility-based culture. So, given those values, your practices are going to be much different.

Céline Gounder: Abby says in the Yurok community …

Abby Abinanti: There is no "out of the picture" here. You're in community, you're here together, and our culture is tied to the family staying in certain relationship to one another. And that's important to us.

[Instrumental music continues. A cymbal chimes.]

Céline Gounder: Native people are incarcerated at more than twice the rate of their white counterparts in the United States. That's according to an analysis of 2019 data from the Prison Policy Institute. Social scientists and therapists point to settler colonial violence as one of the root causes for that disparity.

The Indigenous population of California was decimated with the arrival of colonial settlers during the Gold Rush of the mid-1800s. California's first governor, Peter Burnett, called for a "war of extermination" against Native people. The introduction of disease, slavery, and state laws that encouraged the killing of Indigenous people took Native populations — including the Yurok — to the brink of extinction. In 2019, Gov. Gavin Newsom acknowledged what happened as genocide. Later, boarding schools forcibly separated families.

Abby Abinanti: Living through those instances created behaviors in the people who were primarily there and then who went on to have children, and then those children had children, without really tracking back where did that behavior come from.

Céline Gounder: Abby didn't think the California courts were doing a good job when it came to Indigenous defendants, so she left the state court system and founded the Yurok Tribal Court.

Abby Abinanti: The values of this court are reflected in returning us to a place where we live our lives according to our values and not other people's values.

Céline Gounder: Today, there are approximately 400 tribal court systems across the United States. These courts are an expression of tribal sovereignty. They aim to practice justice in a more culturally responsive, restorative, and effective manner than the state court system.

[A cymbal crashes quietly, and then the opening music fades.]

[American Diagnosis theme music begins playing.]

Céline Gounder: In this episode, we're exploring the connections between a legacy of family separation and the health of Indigenous people …

Ursula Running Bear: Those that attended boarding schools had over three times higher odds of having cancer than those that did not attend boarding schools.

Céline Gounder: How intergenerational traumas have shaped Yurok communities …

Blythe George: We have huge resilience, but we are left trying to parse through so much inequality and marginalization to try and access it.

Céline Gounder: And what the tribal court system is doing to support Yurok people to reconnect with their culture and end cycles of trauma.

Abby Abinanti: I don't think any human being is disposable. Our system is designed to help you return to the community and be an asset in the community.

Céline Gounder: I'm Dr. Céline Gounder. This is "American Diagnosis."

[Piano notes chime and then fade to silence.]

Céline Gounder: Born in 1947, Abby Abinanti grew up on ancestral Yurok lands located near the Klamath River in Northern California.

Abby Abinanti: It was a difficult period of time. It was a time when people felt perfectly able to be as racist as they wanted to be.

Céline Gounder: Throughout her life, Abby learned about the devastating impacts of colonialism on her community.

Abby Abinanti: We lived here for a very long time, in a very peaceful sort of way. And then came the invasion.

Céline Gounder: Abby says the arrival of settlers brought three major events.

Abby Abinanti: One was a series of massacres in our area. The second was the movement to indenture slaves, which involve kidnapping young children primarily. And the third was the boarding schools.

Céline Gounder: The forced removal of children from their families and their placement in boarding schools was a significant part of the effort — by settler colonialists — to eradicate Native people and their cultures.

Ursula Running Bear: "Let's reform them through boarding schools. Let's assimilate them into the population so that they can become good citizens of the United States."

Céline Gounder: This is Ursula Running Bear. She's an assistant professor of public health at the University of North Dakota

Ursula Running Bear: My name is Ursula Running Bear. I am Sicangu Lakota, which is also known as the Rosebud Sioux Tribe. What I study is the impacts that boarding schools have had on our physical health as American Indians.

[A low, resonant note rings. Instrumental music starts playing softly in the background.]

Céline Gounder: Beginning in the mid-late 1800s, the U.S. government operated Indian boarding schools, forcibly removing Native children from their communities.

Ursula Running Bear: In order to make parents send their children, they actually withheld food rations. There were some parents that did not do it and were arrested.

Céline Gounder: Native children were subject to dangerous conditions in boarding schools.

Ursula Running Bear: The children that attended had pretty harsh experiences — physical, sexual abuse, emotional abuse, forced assimilation, loss of identity.

Céline Gounder: And exposure to harmful chemicals. Upon entering the schools, children's bodies would be doused in the insecticide DDT.

Ursula Running Bear: Now if we look at the research associated with DDT, we find that it is associated with breast cancer. It is associated with mortality.

Céline Gounder: In addition to higher rates of cancers, Native people who were placed in boarding schools also experience …

Ursula Running Bear: … higher rates of mental health disorders, higher rates of physical health conditions. We see lower life expectancies.

Céline Gounder: Ursula says many boarding school survivors developed strategies that became harmful.

Ursula Running Bear: They might start using drugs. They might start using alcohol. They may not be able to cope with some of their anxiety, their depression. They may have suicidal thoughts, suicidal ideation, suicidal completion. All of these things, I believe, are related to boarding school experiences.

Céline Gounder: She says the impacts of boarding school are felt throughout communities as intergenerational trauma.

Ursula Running Bear: They continue on. You experience them as an individual, your family experiences them, and then they are reflected in the community by the community's health outcomes.

Céline Gounder: Today, Indigenous people on average experience higher rates of substance use than other ethnic groups in the United States. Native children are also four times as likely to be removed from their homes and placed in foster care as white children. In recent years, opioid dependency has increasingly been cited as a reason to remove Native children from their families. The cycle of family separation and trauma continues.

[Music fades to silence.]

Céline Gounder: The legacy of boarding schools touched Abby's life, too.

Abby Abinanti: My mom and her sisters, all three of them, went to boarding schools and they never spoke about it. I didn't know about it till I was 18, 19.

Céline Gounder: Even without her family members speaking openly about their time in boarding schools, Abby observed the impacts of those experiences on her mother.

Abby Abinanti: Her relationship to my education was certainly impacted. I mean, I was historically a pretty bad student. She did not want to go to the schools, when I had issues or when teachers were discriminating against me, and deal with it.

Céline Gounder: Despite Abby's academic struggles, she completed high school, then attended college and earned a degree in journalism. She wanted to become a reporter, but some members of her community had other plans for her.

[Bright string music begins.]

Abby Abinanti: These three old ladies, Indian ladies, invited me to go to coffee, which I should have known was a setup.

They said, "Oh, why don't you go to law school?" And I was like, "Why would I?" And they were like, "Well, because you're the only one graduating and we need a lawyer more than we need a journalist." And I lost the argument. [*Abby chuckles*]

Céline Gounder: Abby went to law school, and in 1974 she became the first Native woman to join the California Bar Association.

Abby Abinanti: The lesson in that is don't argue with old Yurok ladies, because you're never going to win. [*Abby chuckles.*]

Céline Gounder: As a lawyer, Abby realized that her roots in the Yurok community were a strength.

Abby Abinanti: When I was practicing law at one point, some other lawyer asked a state court judge, "How come he always let her people go without bail?" And the judge said, "Because she always drags them back." And the lawyer said to me outside, "How do you do that?" I said, "Well, I mostly represent Yuroks and a Yurok's idea of running away is his grandmother or his auntie's. So it's not that complicated." [*Abby chuckles.*]

[American Diagnosis theme music begins playing.]

Céline Gounder: Abby eventually became a California state judge. But over the years, she grew disillusioned with the state courts. When she could, she pushed back. Like when she dismissed the case of that 11-year-old boy facing felony charges. But, ultimately, influencing individual cases didn't get to the root of the issue. Abby wanted a new system. A system rooted in Yurok culture that could meet the needs of her community.

Abby returned to Klamath and, in 1996, helped found the Yurok Tribal Court. It started small.

Abby Abinanti: I think we had two people in the court, me and the clerk.

Céline Gounder: Abby had lofty goals.

Abby Abinanti: We can actually do a better job. You know, our approach, our helping the people are, and their responsiveness to us is going to make them more successful.

Céline Gounder: Abby saw the immense obstacles her community faced. But she also saw that they already had many of the necessary tools to address them.

After the break, we'll hear about how Abby threw out the rulebook and set to work building a uniquely Yurok justice system from the ground up.

["American Diagnosis" theme music ends.]

[Fast-paced music begins playing quietly in the background.]

Céline Gounder: As a tribal court judge, Abby has more freedom to approach cases creatively than she did in the state court system.

Abby Abinanti: We want to be seen as a member of their extended family. What do we do in this circumstance? "Here, let me figure it out. If I don't know, I think I can call somebody who might know."

Céline Gounder: Abby says you can see those values in action when a child support case comes before her.

Abby Abinanti: In some states they'll lock up people for not paying their child support.

Céline Gounder: Indigenous people are 50% more likely to experience unemployment than the average American. Abby takes things like this into consideration when she hears a child support case. If a parent doesn't have cash, Abby will find another way they can support their kid.

Abby Abinanti: I will go through the steps to make it acceptable to have in-kind support and value that, if the parties agree. So if they want wood, if they want regalia, if they want fish, if they want babysitting. If you both agree that's what you want, then this court's going to order it as your child support.

So we change how you solve the problem, but the problem is solved.

Céline Gounder: Abby says that in-kind child support keeps people involved. This is one aspect of the tribal court's work to keep communities together in the face of historical efforts to separate Native families.

Blythe George: We have been in the targets, in the crosshairs, of the settler colonial project since they came here.

My name is Dr. Blythe George. I'm an assistant professor of sociology at [University of California]-Merced. I'm a member of the Yurok Tribe.

Céline Gounder: Blythe works with the Yurok Tribal Court. She gathers data on its programs and studies the impacts of the criminal justice system on Native communities.

Blythe George: There was a time in history where the federal and states' governments were removing Indian children for the purpose of assimilation.

Céline Gounder: During the boarding school era and into the 1970s, over a quarter of all Native children were removed from their families. The vast majority were placed away from their tribes.

That changed in 1978. That's when the Indian Child Welfare Act was passed. The law granted Indigenous families and tribal governments more legal power to manage custody cases and keep families together.

Blythe George: And so Indian children have certain protections now that make sure that that is not the case. Increasingly, if their cases can be dealt with within the tribe's foster care system or through the tribal court, we are extending those opportunities.

Céline Gounder: The law has made strides to keep Native kids in their communities, but it's not perfect. Indigenous kids are still four times as likely to be removed and placed in foster care as white children. Judge Abby is working to change that.

Abby Abinanti: It's still a huge issue, frankly. We're probably going to be one of the first major tribal courts to transfer kids back from the state court into our court. I have 200 kids in care and I want to, I want to move them back.

[Instrumental music starts playing.]

Céline Gounder: One of the driving issues is substance use. Blythe has seen the impact firsthand.

Blythe George: You can throw a rock in any direction in my family tree and you're more likely to find someone who's struggled with some kind of substance use disorder.

Céline Gounder: Yurok tribal land overlaps with Humboldt County, where opioids are a problem. There are three times as many fatal drug overdoses there as in other California counties. The Yurok wanted to create a program that could help their citizens access treatment for substance use disorders without going to prison. They call it a wellness court.

Blythe George: Wellness court is extended to those who are suffering with substance use issues and have committed a crime. And for our tribal people, we did see that real strong overlap between drug crimes, you know, right alongside other crimes. So we know that the drug is a contributing factor.

Céline Gounder: Similar to the higher rates of incarceration we talked about earlier, many scholars attribute substance use to colonial violence experienced by Indigenous people. The wellness court aims to meet the community and cultural needs of these nonviolent offenders and break intergenerational cycles of trauma.

Abby Abinanti: "How are we going to do this? What's going to work for you? What kind of support do you need? How are we gonna make this better for you and for your kids and your family?"

Céline Gounder: The court takes a community approach to drug dependency. Teams of social workers, mental health providers, and community leaders all work together.

Blythe George: So the wellness court is one arm of this larger infrastructure to try and reclaim our people who are involved with the criminal justice system. To walk with them and allow them to have access to resources that are culturally appropriate.

Céline Gounder: This includes everything from providing Suboxone to lessen withdrawal symptoms, to helping people find a job and retain custody of their children.

The program is intensive. It requires a lot of resources. But Blythe says the effort is worth it.

Blythe George: We only have so many Yuroks. The health of each and every person matters to the health and well-being of our tribe.

[Music fades to silence.]

Céline Gounder: That commitment to the community can be seen in the tribe's domestic violence court. One of the first things people have to do is have a conversation with their elders to identify how their families had experienced violence.

Abby Abinanti: And you need to know where it came from so you understand yourselves, because you need to say to yourself, "I'm going to be the last one. We're done now. We're done with that."

Céline Gounder: Abby was happy with the results, but not everything was going smoothly. Some of the Yurok weren't completing the assignments and they ended up in jail.

Abby Abinanti: I said, “I'm going to spend the weekend trying to figure this out.”

Céline Gounder: In the state court system, sending someone to jail may have been the end of a judge’s involvement. But for Abby, having members of her community in jail is not a solution. It's a problem to solve.

Abby Abinanti: I looked at all the data and everything. And finally on Sunday afternoon, I called my probation officer and I said, “Go up there and ask those knuckleheads if they can read and write.” And she said, “What do you mean?” I said, “I think that's why they're not doing their homework. Because they can't read and write and they'd rather go to jail than tell me.”

Céline Gounder: Abby’s relationships in the community were an asset.

Abby Abinanti: I could go, “Wait a second, I know these guys.” And so she went up there and she called me from the jail, and she said, “You're right. That's what happened. They never went far enough in school to learn and they don't want to say.” And I said, “Well, lovely. You know, that's made me mad enough to want to go up there and smack them. And then I can be in jail with them and I can give them oral lessons.”

Céline Gounder: Once Abby identified the problem, she was able to solve it.

Abby Abinanti: And we changed it so that we could … they could all work their phones, which obviously I can't work, which we don't need to go into. But we taught them how to dictate, and then we read them stuff so that they could do their lessons.

[Hopeful instrumental music begins.]

Céline Gounder: State leaders are taking notice of the tribal court’s approach. In May of 2022, California Gov. Gavin Newsom proposed investing $15 million in a tribally controlled Yurok wellness center. It would provide culturally informed substance and mental health care in the region.

Abby Abinanti: We are better able to do that. And we're also better able to show other people, look, you can do this in your community and maybe you want to. Because it really works. It's different and it works. And when somebody slips, they'll often come back to me and tell me, “I have a problem now again, can I come back for a while?” “Sure.” Or, you know, I'll see them in the community ’cause I'm out and about.

Céline Gounder: One day, when Abby was out for a walk, she saw a young man who had missed his court appearance.

Abby Abinanti: He had not come to court and we had issued a requirement that he come and I saw him on the street. So I went up to him and I just went, you know, "Why didn't you come to court?"

Céline Gounder: In the state court, failing to show up could result in punishment as serious as jail time. In the Yurok Tribal Court system, you have to answer to Judge Abby.

Abby Abinanti: And he started to turn around. I, like, slapped him on the shoulder. And I said, "Oh, I probably shouldn't slap you like that." I said, "But you're probably used to getting hit by old Yurok ladies." And he just busted out laughing. And he said, "Yeah, my gran has a cane." I said, "Oh god. Now there is a law that really needs to be passed because my old gran had a cane too." I said, "I don't think they even need them. They just use them to whack us with."

Céline Gounder: Abby doesn't have a cane, but she carries her sense of humor, her Yurok values, and her community connections to her work as a judge.

Abby Abinanti: And so then we turned around and walked back to the courthouse. [*Abby chuckles.*]

I see the court as a member of the community, not somebody overlooking the community. "What can we do to help you?" Because there's very few human beings who make it through life without a need for help.

["American Diagnosis" theme music plays.]

Céline Gounder: This season of "American Diagnosis" is a co-production of Kaiser Health News and Just Human Productions. Additional support provided by the Burroughs Wellcome Fund and Open Society Foundations.

This episode of "American Diagnosis" was produced by Zach Dyer, Taylor Cook, and me. It was engineered by Ameeta Ganatra.

Special thanks to Laura Woods and Lori Nesbitt.

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I'm Dr. Céline Gounder. Thanks for listening to "American Diagnosis."

[Music fades to silence.]