

# The 7th National Indian Nations Conference

September 28, 29, 30, 1999 • Tulsa, Oklahoma



189421

**Old Medicine/New Voices of the 7th Generation:**  
Reconnecting Partnerships and Reclaiming Traditions



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**THE OFFICE FOR VICTIMS OF CRIME  
OFFICE OF JUSTICE PROGRAMS  
US DEPARTMENT OF JUSTICE**

**AND**

**THE CENTER ON CHILD ABUSE AND NEGLECT  
Department of Pediatrics  
University of Oklahoma Health Sciences Center**

**Presents:**

**THE SEVENTH NATIONAL  
INDIAN NATIONS CONFERENCE**

**September 28-30, 1999  
Adams Mark Hotel  
Tulsa, OK**

PROPERTY OF  
National Criminal Justice Reference Service (NCJRS)  
Box 6000  
Rockville, MD 20849-6000

**NAME:** \_\_\_\_\_







U.S. Department of Justice

Office of Justice Programs

*Office for Victims of Crime*

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Washington, D.C. 20531

September 27, 1999

Dear Indian Nations Conference Participants:

The Office for Victims of Crime (OVC) welcomes you to the Seventh National Indian Nations Conference. The University of Oklahoma Health Sciences Center has worked hard with OVC in planning and organizing this conference. We thank the members of the advisory committee for identifying emerging issues that will be addressed here. We also thank all of the conference attendees for their dedicated service to victims of crime in Indian country.

This conference provides training and technical assistance to victim service providers, criminal and tribal justice personnel, victims, victim advocates, volunteers, and other allied professionals that serve the needs of victims in Indian country. The conference is expanded this year to include other Office of Justice Programs (OJP) bureaus and offices in an effort to address general criminal justice issues affecting American Indian communities. OJP-wide participation affords Department of Justice entities the opportunity to exhibit the products of their projects and to network with criminal justice personnel throughout the tribal, state, and federal systems. State Victims of Crime Act (VOCA) Administrators and federal Victim Witness Coordinators are also here to learn about the dynamics that shape victim services in Indian country. We trust you will gain new skills and information at this conference to improve service delivery to American Indian crime victims throughout the United States.

OVC staff will be in attendance throughout the conference. Please be sure to introduce yourselves to us and share your thoughts, ideas, and promising practices on victim issues.

Thank you for your participation at this conference and best wishes for your continued work on behalf of victims of crime.

Sincerely,

Kathryn M. Turman  
Acting Director

Carolyn Hightower  
Deputy Director



# **SEVENTH NATIONAL INDIAN NATIONS CONFERENCE**

Conducted by  
Center on Child Abuse and Neglect – University of Oklahoma Health Sciences Center

## **CO-SPONSORS**

Corrections Program Office, U.S. Dept. of Justice  
Office of Juvenile Justice and Delinquency Prevention, U.S. Dept. of Justice  
Drug Courts Program Office, U.S. Dept. of Justice  
Violence Against Women Office, U.S. Dept. of Justice  
Bureau of Justice Assistance, U.S. Dept. of Justice  
U.S. Attorney's Office, Eastern Division, Muskogee, Oklahoma  
U.S. Attorney's Office, Western Division, Oklahoma City, Oklahoma  
U.S. Attorney's Office, Northern Division, Tulsa, Oklahoma  
U.S. Attorney's Office, District of Kansas  
National Children's Alliance  
The Institute for Continuing Education  
National Indian Child Welfare Association  
Citizen Band Potawatomi Nation of Oklahoma  
State of Oklahoma Child Protection Team  
Ponca Tribe of Oklahoma  
Kialegee Tribal Town of Oklahoma  
Apache Tribe of Oklahoma  
Caddo Nation of Oklahoma  
Wyandotte Nation of Oklahoma  
Oklahoma Bar Association - Indian Law Division  
Cheyenne and Arapaho Tribes of Oklahoma  
Northern Cheyenne Nation  
Osage Tribe of Oklahoma



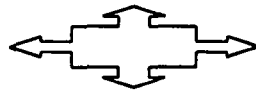
## ACKNOWLEDGEMENT

The Center on Child Abuse and Neglect wishes to thank the ceremonial consultants for their invaluable time and information they contributed plus their preparation for the 7<sup>th</sup> National Indian Nations Conference. Their contribution includes the opening and closing ceremonies, blessings, teachings, example, and clarification of traditions and teachings. They have consented to be present for the duration of the conference to share their knowledge and understanding of Cheyenne traditions and teachings. They arranged for the songs, prayers, ceremonies, drum group, and procession.

John L. Sipes, Jr.  
Northern Cheyenne Chief and Cheyenne Historian

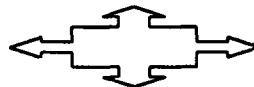
Clifford Long Sioux  
Headsman, Elk Horn Scrapper Warrior Society  
Cheyenne Language Consultant

James BlackBear  
Cheyenne Sundance Priest  
Ceremonial Teacher



The Center on Child Abuse and Neglect wishes to thank our technical consultant. His skill, knowledge, and patience allowed us to have greater computer flexibility with our database and allowed our staff to have access to information with techniques we still do not understand. We only know they work. Thank you.

Carlie D. Denton  
Norman, Oklahoma





## **WELCOME**

**WELCOME** to the **SEVENTH NATIONAL INDIAN NATIONS CONFERENCE, 1999**, and to the State of Oklahoma.

## **PURPOSE**

The purpose of the 7<sup>th</sup> National Indian Nations Conference is to bring together Native American victims, victim advocates, volunteers, prosecutors, judicial and law enforcement personnel, family violence and sexual assault specialists, social services and mental health professionals, corrections, crime and justice and juvenile justice personnel as well as tribal leaders to share their knowledge, experiences and ideas for developing programs that serve the unique needs of crime victims in Indian Country.

## **TRADITIONAL OPENING AND TRIBAL FLAG PROCESSION**

A Cheyenne ceremony by the traditional Cheyenne Chiefs, Headsmans, and Drum group will open the 7<sup>th</sup> National Indian Nations Conference. The Oklahoma Vietnam Veterans Association Honor Color Guard will lead the procession followed by the tribal flags that will be posted at the front of the ballroom for the duration of the conference. The welcome will be held in the Tulsa Ballroom South and Central from 8:30 – 11:30 AM on Tuesday, September 28th. The closing ceremonies will be the retiring of the flags.

## **WELCOMING ADDRESS**

There will be welcoming remarks from the Office for Victims of Crime and the Oklahoma and Kansas US Attorney's Offices. Jan Middleton-Moz, PhD, will give the conference keynote address and will moderate the Victim Panel.

## **EVALUATION**

As at most professional trainings, you will be asked to complete a brief evaluation at the end of each session you attend. You will also be asked to evaluate the conference as a whole at the conclusion. The information retrieved from these evaluations will determine how the conference is run in the future. Please take a few minutes to fill these forms out. Thank You.

## **CONTINUING EDUCATION**

There will be a separate table set up in the registration area for continuing education. When you turn in your overall conference evaluation, you will receive your verification of attendance and/or continuing education certificate. Please refer to the separate handout received in your conference materials as to the proper procedure you need to follow according to profession.

## **EXHIBITS**

Exhibits will be located throughout the hotel foyer areas. Please take some time to examine these displays. A list of exhibitors is included in the conference agenda.





## **RECEPTION**

A reception will be held on Monday evening at 7:00 PM to introduce the sponsoring agencies of the Department of Justice in Tulsa Ballroom South. Cultural stations such as traditional story telling, historical photos, and cultural artifacts will be available for viewing and information sharing. Food and beverages will be served.

## **FOOD FUNCTIONS**

Continental breakfast will be served from 7:30 – 8:30 AM on Tuesday, Wednesday, and Thursday. The food will be located in the upper level lobby of the hotel. Afternoon breaks will be served in the same area. The conference will provide a luncheon on Tuesday for the OVC Awards and a luncheon on Wednesday prior to the presentation of Buddy Big Mountain.

## **GRANTEE MEETING**

The Office for Victims of Crime is sponsoring a grantee meeting for CJA, VAIC, and other interested individuals on Tuesday, September 28, 1999. Issues to be discussed will be funding, training and technical assistance, grant management, and other issues that grantees present. The Grantee Meeting will be held in the Tulsa Ballroom South beginning at 6:30 PM.

## **CONFERENCE MANUAL**

The conference manual contains presenters' handouts for each of the workshops. The handouts are laid out in correspondence with their workshops as they are listed in the agenda. A limited number of workshop handouts may not be available in this book. Please check with the presenters if handouts are not included in the manual.

## **ABOUT THE HOTEL**

The meetings for the plenary and individual workshops for the **Seventh National Indian Nations Conference** will take place on the first, second, and third floors of the Adam's Mark Hotel. The Adam's Mark Hotel has been selected as the premier hotel for Native American functions as well as being a four star hotel. You will find a hotel map on the back cover of your conference agenda.



## Biographical Sketches of Presenters

### **Judith Alexander, PsyD**

Dr. Alexander is a Licensed Psychologist. She is the Director of the Children's SAFE Place in Fort Thompson, SD. Dr. Alexander earned a BS degree from Worcester State College in Psychology and Biology, a MA degree in Psychology from Assumption College in Worcester, MA and a Doctorate in Clinical Psychology from Antioch New England Graduate School in Keene, NH.

Dr. Alexander has lived and worked on the Crow Creek Indian Reservation for nine years. She is a neuropsychologist and has worked diagnosing and treating children with Alcohol Related Developmental Disabilities before working at the Children's SAFE Place. Her partner when working with children is Winston a 95 pound, retired seeing-eye dog. In addition to her work on the Crow Creek Reservation, Dr. Alexander lectures and teaches at several colleges and is a consultant for several children's programs.

Dr. Alexander is the mother of two grown daughters. She has two grandchildren and lives in Massachusetts when she is not in South Dakota.

### **Stephen P. Amos, D. Crim**

Stephen is the Deputy Director of the Corrections Program Office (CPO) in the Office of Justice Programs (OJP), U.S. Department of Justice (DOJ). In this capacity, Dr. Amos is responsible for providing program administration, policy analysis, and counsel to the Director regarding the corrections and offender treatment grant programs administered by OJP/CPO under authorization of the Violent Crime Control and Law Enforcement Act of 1994. Dr. Amos' duties as Deputy Director include serving as the Director's representative; preparing responses to criminal justice policy inquiries from the White House, Congress, and Federal, State, and local officials; assisting the Director on a variety of special projects; and chairing or serving as a member of numerous interagency committees related to corrections, substance abuse treatment, and Native American issues.

Prior to his work at OJP/CPO, Dr. Amos was the Director of the Research and Evaluation Unit, Oregon Department of Corrections. His experience includes teaching, research and administrative faculty appointments in both the California and Oregon University systems. He has served in the capacity of State Parole Agent/Manager with the California Department of Corrections, and Group Supervisor and Youth Counselor the California Youth Authority. Dr. Amos' experience includes working both as a City and State Police Officer prior to moving into the field of corrections. Dr. Amos has a bachelor's degree in Sociology, a master's degree in Law Enforcement and Correctional Administration, and a doctorate in Criminology.

### **Marcella Benson-Quaziana, PhD**

Dr. Marcella Benson-Quaziana is currently the Deputy Director for the National Court Appointed Special Advocate Association. In her duties as director she is responsible for the Organization Development and Training Department. Her duties include coordination of their national conference, training curriculum and she leads the efforts for the tribal court project. Marcella came to National CASA with experience in training, conference planning, mediation, group process, diversity, and organizational development. Her prior position was Office Chief of Staff Development, Training and Diversity with the Children's Administration of the Department of Social and Health Services (DSHS) in Washington State.



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### **Peggy Bird (Pueblo of Santo Domingo)**

Peggy is of the Sun Clan from the Santo Domingo Pueblo, and is currently assisting the NSH/TA Project with various projects. She was formerly the Project Director of the Native American Family Violence Prevention Project through the DNA People's Legal Services, Inc. She has held various positions, such as managing attorney, staff attorney as well as a law clerk for the DNA-PLS, Inc. She received her Bachelor of Art degree from the University of New Mexico in 1987 and her Juris Doctorate Degree from the University of New Mexico School of Law in 1990. She is licensed to practice before the state courts of New Mexico, the U.S. District Court of New Mexico, the 10<sup>th</sup> Circuit Court of Appeals, U.S. Tax Court, and the Navajo Nation Courts. She is a member of the Navajo Nation Bar Association and Indian Bar Association of new Mexico.

### **Barbara L. Bonner, PhD**

Barbara L. Bonner, PhD, a Clinical Child Psychologist, is an Associate Professor and Director of the Center on Child Abuse and Neglect in the Department of Pediatrics at the University of Oklahoma Health Sciences Center. Her clinical and research interests include the assessment and treatment of abused children, forensic evaluation of alleged sexually abused children, prevention of child fatalities, and treatment of children and adolescents with inappropriate or illegal sexual behavior.

Dr. Bonner established a treatment program for adolescent sex offenders in 1986 and has presented seminars on the program throughout the US and in several foreign countries. She recently completed a five-year research project funded by the National Center on Child Abuse and Neglect to compare two approaches to treatment for children with sexual behavior problems. Dr. Bonner currently serves on the Board of Councilors of the International Society to Prevent Child Abuse and is Past President of the American Professional Society on the Abuse of Children.

### **Roe Bubar, JD**

Roe is an attorney and partner in a Native owned consulting firm, Bubar & Hall. Ms. Bubar currently consults on forensic interviewing of children, legal issues related to child abuse cases, and multicultural issues within the context of child abuse cases. She has participated in over 1200 investigations of child sexual abuse allegations and cases involving acute trauma. Ms. Bubar has over 10 years of experience as a counselor working with children in a variety of clinical settings and has been an attorney for eight years. Ms. Bubar works with state, federal, and tribal agencies and has worked extensively in Indian Country. In July of 1994 she co-produced a videotape entitled, Forensic Interviewing of Young Children and Children With Developmental Disabilities. She also teaches courses in Federal Indian Law and Perspectives on Conquest at Colorado State University. Ms. Bubar is currently President of the Board for the National Children's Alliance.

### **Teresa Cain**

Teresa is the Executive Director of the Western Regional children's Advocacy Center, established by the Office of Juvenile Justice and Delinquency Prevention to help communities improve their response to child abuse. Ms. Cain has twenty years of experience in the nonprofit and government sectors as a human service planner, funder, program developer and administrator. Her areas of expertise include Children's Advocacy Center organizational development, coordination of CAC multidisciplinary



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teams, and formation of collaborative partnerships for child abuse prevention and intervention.

Ms. Cain has extensive experience in providing training, technical assistance and consultation to communities seeking to develop or strengthen Children's Advocacy Centers. Beyond her work with local communities, she's helped to establish state networking organizations in Colorado, California, Arizona and Washington in order to support the continued development of CACs in those states.

### **Mark Chaffin, PhD**

Dr. Chaffin is a psychologist specializing in child abuse and neglect. He is an Associate Professor at the Center on Child Abuse and Neglect at the University of Oklahoma Health Sciences Center. His clinical practice includes working with adolescent sex offenders and their families.

### **Nancy Chandler, ACSW, LCSW**

Nancy has served as the Executive Director of the National Children's Alliance since April, 1994. The National Children's Alliance is a not for profit organization whose mission is to provide training, technical assistance and networking opportunities to communities seeking to plan, establish, and improve Children's Advocacy Centers. As Executive Director, Ms. Chandler's responsibilities include overall leadership and management of the Alliance's finances, resource development, training, program development, communications, membership services, and supervision of staff.

Prior to this appointment, she served as the Executive Director of the Memphis Child Advocacy Center for six years. As the first staff hired to direct the development of this Center, Ms. Chandler was instrumental in formulating the plans for the operations of the Center, coordinating the work of the multi-disciplinary team, fund raising, and collaborating on the design and renovation of the Victorian home utilized as the Memphis child Advocacy Center.

### **Don Chapin (Mohawk)**

Don is Coordinator of the Batterers Intervention Programs for Crossroad/Lincoln County community Nonviolence Program in Newport, OR and BI Incorporated in Aloha, OR and works in close collaboration with the Rincon Reservation in Southern California. He is a consultant for the New York City Dept. of Corrections at Rikers Island and the Office of Criminal Justice Planning for the State of California. Don was formerly a coordinator of the Men's Nonviolence Programs of Mending the Sacred Hoop and the Domestic Violence Intervention Project in Duluth, MN. Before his work in Duluth he had served as Director of Family Services for Minnesota Indian Women's Resource Center and Director of the Family Violence and Sexual Assault Programs for Division of Indian Work in Minneapolis, MN. Don also was a staff member of the Domestic Abuse Project in Minneapolis. Don has been pro-active in programmatic designing, coordinating community services, curriculum development and direct services for men and children. He also provides training and technical assistance on issues of violence against women, sexual assault, working with men who batter, the effects of violence on children and coordinating community services in Tribal communities across the U.S., Canada and overseas since 1981. Don's work is based on what affects one member of the community affects the whole community; and women are sacred and victim/survivor safety comes first. It is important to respect the difference between what are traditional vs. what are multi-generational belief systems; and that effective intervention with perpetrators can work only when the community coordinates its response around these





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issues and respects what women bring to this work; that violence is always a choice; and that a perpetrator is responsible and needs to be held responsible for the violence.

### **Bonnie Clairmont**

Bonnie is a member of the Ho-Chunk Nation of Wisconsin and resides in St. Paul, MN where she is the Assistant Program Coordinator for Sexual Offense Services of Ramsey County, a rape crisis center. She has worked for the past 20 years with victims of sexual assault and domestic violence. She has dedicated much of her work to providing and improving services for victim/survivors of domestic and sexual violence, particularly from communities of color by developing collaborations, networking and training other professionals from a variety of disciplines. Bonnie was the 1995 recipient of the National Crime Victim Services Award presented by President Clinton and Attorney General Janet Reno.

### **Jennifer Cramer**

Jennifer has an undergraduate degree in Accounting from Penn State University and worked as a Financial Analyst in the Office of the Comptroller, OJP from 1995-1998. She is currently working in the Training and Policy Division of the Office of the Comptroller.

### **Michael Dever**

Michael Dever is the Grants Manager for the Construction of Correctional Facilities in American Indian/Alaska Native Communities Discretionary Grant Program administered by the Corrections Program Office, Office of Justice Programs, U.S. Department of Justice. Before joining the Corrections Program Office in 1998, he served for two years in community development as a Peace Corps Volunteer in the Dominican Republic. His experience includes conducting community surveys, needs assessments, and preparing grant proposals to acquire funding for local community projects. Mr. Dever has a bachelor's degree from Dickinson College.

### **John J. Ellis**

John J. Ellis graduated from the University of California in Santa Barbara with a BA in History in 1966 and received his Juris Doctor from California Western University School of Law in San Diego, CA in 1969. He joined the FBI in 1969 and served in New Haven, Boston, Monterrey and New York City, where he was a Russian translator. In 1975 he transferred to Pierre, South Dakota where he served until retirement in December 1994. He then accepted the Chief Program Administrator and Chief Criminal Investigator position for the Law Enforcement Program with the Rosebud Sioux Tribe, and ran the Police Department until early 1997. He has been a private consultant and trainer since that time. He has presented many workshops and classes for the FBI, the United States Attorney's Office, the University of North Dakota School of Law and other state, Tribal and private organizations, both locally and nationally, in the areas of Child Sexual Abuse Investigations, interagency cooperation, mandatory reporting, report writing, and general police training.

### **Dewey Ertz, PhD**

Dr. Ertz completed a Doctor of Education at the Univ. of South Dakota in 1977. His initial training was in school psychology. Dr. Ertz has worked with public schools and a private residential school for American Indian students. He has published two book chapters on the assessment and treatment of American Indian sexual offenders.



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He has worked four years in community mental health on the reservation and has a background in the assessment and treatment of individuals that were exposed to alcohol during gestation.

### **Danna Farabee (Lac du Flambeau Band of Lake Superior Chippewa)**

Danna has held the position of director for the Sexual Assault Program of Beltrami, Cass and Hubbard Counties from 1988 to present. From 1979 to 1988, she worked in a variety of capacities at the Northwoods Coalition for Battered Women including Children's Advocate, Women's Advocate, community Education and Volunteer Coordinator. She volunteer with an number of local services, most of which focus on the needs and interests of women and youth, including ISD#31, Indian Education Parent Committee, Bemidji Library Advisory Board, Bemidji Council of Non-Profits, and Hope House Community Support Program.

### **Gerald B. (Jerry) Gardner**

Jerry is the Executive Director of the Tribal Law and Policy Institute, an Indian owned and operated non-profit corporation organized to design and deliver education, research, training, and technical assistance programs which promote the improvement of justice in Indian Country and the health, well-being, and culture of Native peoples. He also serves as the administrator for the National American Indian Court Judges Association (NAICJA). He is an Adjunct Lecturer for the University of California, Berkeley, School of Law (Boalt Hall) where he directs the Hopi Appellate Court Clinical and teaches Indian Law and Tribal Legal Systems classes.

Jerry Gardner is an attorney with more than 20 years of experience in providing educational programs for Indian Justice Systems. He holds a Juris Doctor from Antioch School of Law (1979) and a B.A. from Northwestern University (1976). He is a member of both the California State Bar Association and the District of Columbia Bar Association. From 1983-1996, Jerry Gardner served as the Senior Staff Attorney and Curriculum Specialist for the National Indian Justice Center (NIJC), an organization formed by tribal court judges to design and deliver educational, research, technical assistance, and training programs to promote the development of justice in Indian country. Prior to 1983, Jerry Gardner served as a Staff Attorney and Curriculum Specialist for the American Indian Lawyer Training Program (1981-1983), Training Specialist and Assistant to the Director of the Advocacy Training and Development Unit of the Office of Program Support of the national office of the Legal Services Corporation (1979-1981), and as a Professional Staff Member of the United States Senate Committee on Indian Affairs (1978-1979).

### **Norena Henry**

Norena is the Director of the American Indian and Alaska Native Affairs Desk in the Office of the Assistant Attorney General, Office of Justice Programs, U.S. Department of Justice. She is responsible for coordinating the initiatives and programs sponsored by the various OJP bureaus and offices involving or affecting American Indian and Alaska Native tribes. This includes working with other Justice Department components and Federal agencies to enhance access to resources for Indian tribes. She assists in program development and arranging for training and technical assistance to be provided to tribes by the different OJP bureaus and offices. Prior to joining OJP, Ms. Henry served as the Senior Legislative Associate for the Navajo Nation Washington Office, working with Congress on national legislation and Federal agencies to address policy issues and obtain funding in health, social service and justice areas.



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### **Chris Horvath**

Chris is currently a Social Worker with South Dakota Department of Social Services - Office of Adult Services and Aging, on the Rosebud Reservation. Chris has served the Child Protection Services and Economic Assistance on the Rosebud Reservation. Chris has worked actively with Adult Protective Services and Community Development since 1984. He is currently active in Sicangu Elderly Concerns, Inc. Community Education Radio Project.

Chris has provided training on "Protective Services in a Cultural Environment" at national and regional conferences, and had developed what may be the first Tribal Elder Abuse Statute in 1984.

Additionally, Chris has developed Sicangu Elderly Concerns organization and is currently Corresponding Secretary of the Board of Directors; developed and is currently the chair of the Rosebud Sioux Tribe Elderly Protection Team; developed Tribal Elder Day and Tribal Senior Olympics/Games; developed Sicangu Disabled, Inc.; conducted Tribal Elderly Housing Study and Tenant Council System; conducted various local workshops for APS and long term care; developed proposed amendments to Tribal Elderly Abuse statute; completed 12 graduate hours in Native American Gerontology at Gerontology Institute at Kansas University; and, developed the first Native American Gerontology course at Sinte Gleska University.

### **Achaessa James**

Achaessa is Kwakiutl (Vancouver Island) and Cherokee (Ohio)/Choctaw (Oklahoma) and is an enrolled member of the Overhill Band of the Eastern Cherokee Nation. She has been a professional in the legal field for over twenty years in tandem with self-employment as a communications consultant and Indian community networker. Achaessa is a member of the National Indian Child Welfare Association and National CASA and serves as a volunteer court advocate in the King County Dependency CASA Program representing Native American children in the Seattle Urban Indian community. She holds a teaching certificate with endorsements in Intercultural Communication, Indian Education and Contemporary Culture, and Indian Child and Family Welfare.

### **Genevieve "Genne" James (Navajo)**

Genne is a domestic violence consultant/trainer in the areas of advocacy, community organizing and program development. Presently, she provides technical assistance to the S.T.O.P. Violence Against Indian Women grantees. Her experience includes working as a women's advocate, systems advocate, group facilitator for youth, women's and men's groups in Minnesota and New Mexico. She co-developed Mending the Sacred Hoop Project, an intervention project focused on violence against Indian women in Minnesota. She co-organized a coordinating council in Minnesota that included state judges, law enforcement, advocates and the Fond du Lac Reservation. She began the men's re-education program and Eight Northern Indian Pueblos, Inc. She co-founded the Native Women's Coalition that includes Indian women from Colorado, Arizona and New Mexico. She has participated as a Native women representing/presenter to the National Resource Center on Domestic Violence-Women of color Network in Washington, Dc. She served on the board of directors for the Minnesota Coalition for Battered Women and Morning Star, Inc. She co-developed Equaysayway, a chemical dependency program for Native women residing in northern Minnesota. She has also served on the planning committees for the Minnesota



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Supreme Court's Continuing Education Conference for Judges and the Full Faith and Credit National Committee.

### **Ruth Jenks**

Ruth graduated in 1984 from Brigham Young University with a BS in Psychology. Her experiences includes working in a group home for male juveniles, Substance Abuse program coordinator, Social Services Director, Family Preservation Program Coordinator, Indian Child Welfare Program Coordinator, Juvenile Detention Deputy Administrator and currently the Juvenile Detention Administrator. Each of these positions were for various tribes in Oklahoma and Utah. Ruth resides in Shawnee, OK with her family, which includes four teens. Her hobbies include spending time with her children, sewing and genealogy.

### **Timothy J. Johnson**

Tim works for you in the US Dept of Justice since 1978. He has been a Program Specialist with the Office for Victims of Crime since May, 1996. Current assignment at OVC is as a Program Specialist with the Federal Crime Victims Division. Other duties Tim is assigned include; working with special Department of Justice Task Forces addressing hate and bias crimes, and, managing the Federal Symposium on Victims of Federal Crime. Prior to his joining OVC Tim was with the DOJ, Community Relations Services (CRS) as a Program Specialist, Conciliation Specialist, and Chief, Field Coordination. Tim spent several years in the New York Regional Office of CRS responding to cases alleging discriminatory practices, many of which involved disputes concerning local police departments. Tim is a certified Police Academy Instructor for the State of New Jersey, and for the Federal Law Enforcement Training Center. Tim has also held positions with the DOJ in the Office of Juvenile Justice and Delinquency Prevention, and the Law Enforcement Assistance Administration as a Criminal Justice Specialist. Tim worked in the corrections field for the Virginia State Department of Corrections, and the Suffolk County, New York Department of Corrections. Tim has published numerous articles and papers in the 'The Police Chief' and other law enforcement journals dealing with various aspects of law enforcement including topics such as, use of force, community oriented policing and hate and bias crimes.

### **B.J. Jones, Esq.**

B.J. is currently the Director of the Northern Plains Tribal Judicial Institute at the University of North Dakota School of Law. He also serves in the capacity of Chief Judge of the Sisseton-Wahpeton Sioux Tribal Court and the Chief Justice of the Turtle Mountain Tribal Court of Appeals. He received his Juris Doctor from the University of Virginia in 1984.

### **Carlos Jones**

Carlos was born and raised in Montana. He is an enrolled member of the Fort Peck Indian Reservation in Northeast Montana and graduated from Montana State University in Bozeman, MT in 1981 with a BS degree in Sociology, with an emphasis in Criminal Justice. He was a Juvenile Probation Officer for Gallatin County, Bozeman, MT from 1981 to 1991. In 1991 he was hired as a US Probation Officer in Billings, MT. His primary duties are writing Presentence Investigation Reports, Pretrial Investigation, and supervision of offenders on probation and those discharged from Federal Institutions.





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### **Chris Martin**

Chris Martin is a sergeant with the Sacramento Sheriff's Department. In his eighteen years in law enforcement, he has served in patrol, corrections, administration, strategic planning and he is the Sheriff's Department's jail domestic violence program development coordinator. He developed and implemented an innovative domestic violence program at the county jail that is currently the subject of an ambitious National Institute of Justice study. Sergeant Martin has led local efforts to develop strategies to reduce domestic violence and reduce the impact of the mentally ill on the criminal justice system. He is called upon frequently at the local and national level to provide his unique perspective on the nexus between community policing and corrections. He is the recipient of several awards including the National Institute of Justice Outstanding Achievement Award.

### **Beverly McBride, MA**

Beverly is the Project Facilitator for the SAFE Kids/SAFE Streets, Building Strong Native American Families for the Sault Ste. Marie Tribe of Chippewa. She has a Masters of Arts in Rehabilitation Counseling and many years of field work as a social worker, program developer and community developer in Florida.

### **Kathy McGregor, MSW**

Kathy works for the National Indian Child Welfare Association, a non-profit organization that provides technical assistance to the Native American sites that are Comprehensive Community Mental Health Services for Children and Their Families Program grantees. She is currently the Native American Hub Director for these grantees. She has a background working with sexual abuse survivors, domestic violence survivors and offenders.

### **SSA Blaine "Mac" McIlwaine**

Special Agent Blaine (Mac) McIlwaine is assigned as a Supervisory Special Agent (SSA), Federal Bureau of Investigation, in the Child Abduction and Serial Killer Unit, Critical Incident Response Group at the FBI Academy in Quantico, Virginia. He serves as a resource specialist in the field of crimes against children in Indian Country.

SSA McIlwaine served as a Special Agent at the Flagstaff, Arizona Resident Agency from 1987-1997. He was the Senior Polygraph Examiner for the FBI in Arizona from 1990-1997. SSA McIlwaine served as the Senior Resident Agent in Gallup, New Mexico from 1985-1987.

SSA McIlwaine served as a criminal personality profile specialist at the Behavioral Science Unit, FBI Academy from 1983-1985. He has served as the Special Agent Applicant Coordinator at San Francisco, California from 1982-1983 and was the Arizona Resident Agent from 1971-1982. SSA McIlwaine's first office of assignment with the FBI was in Denver, Colorado, 1970-1971 and prior to his employment with the FBI he was an investigator with the United States Customs.

### **Arvo Mikkanen, JD**

Mr. Mikkanen is an Assistant US Attorney for the Western District of Oklahoma and serves as the District's Special Assistant for Tribal Relations. A former tribal judge, Mr. Mikkanen handles the prosecution of crime occurring within Indian Country of the 19 tribes located in Western Oklahoma. He is a Kiowa/Comanche attorney and is a graduate of Dartmouth College and Yale Law School. He has been a federal prosecutor for 5 years and focuses on Indian cases, both criminal and civil.



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### **Rick Miller, MD**

Dr. Miller is a graduate of Bradley University in Peoria, Illinois and the University of Illinois College of Medicine in Chicago. His residency was in Pediatrics and he is board certified in Pediatrics and Emergency Medicine. He is presently the Chairman of the Emergency Department at OSF St. Francis Medical Center in Peoria, IL, a Level 1 Trauma Center and Emergency Medicine Training Hospital.

### **Anne Munch, esq.**

Anne attended the University of Denver for both her undergraduate and graduate degrees in Psychology/Sociology and law, respectively. Since then, Anne has worked extensively with sexual assault and domestic violence victims as a prosecutor, and as the executive director of the San Miguel Resource Center. She currently travels all over the country educating communities on issues related to violence against women. This is her first trip to Oklahoma.

### **Ada Pecos Melton**

Ms. Melton (Jemez Pueblo) is President of American Indian Development Associates (AIDA), a 100% Indian-owned technical assistance, training and research firm. The AIDA provides training for Indian justice systems in program and public policy development, research and design of tribal justice systems; particularly, in incorporating the use of indigenous methods, traditions, and conflict resolution to address crime, delinquency, violence and victimization issues in Indian communities. Ms. Melton has researched Indian child abuse and neglect nationally and helped draft revisions for the New Mexico Children's Code which enhanced the handling and treatment of Indian children by the State in adoption, juvenile delinquency, child abuse and neglect, family in need of care, and mental health proceedings. Her public service includes work as a probation officer, court administrator and Director of juvenile programs. In 1995, she took a one year sabbatical to establish the American Indian and Alaska Native Desk in the Department of Justice, Office of Justice Programs. She received her Masters in Public Administration and Bachelor of Arts degree in Criminal Justice, both from the University of New Mexico.

### **Rick Robinson**

Rick is the Executive Director of the Boys and Girls Club of the Northern Cheyenne Nation located in Lame Deer, MT. Rick was the founding director, in 1993, of one of the first Native American Boys & Girls Clubs in Indian Country. Rick served 6 years on the Tribal Council and while on the Council placed a special emphasis on children and youth programs. Rick attended Montana State University in Bozeman and Weber State College in Ogden, UT. Rick has extensive training and experience assisting the Native American Boys and Girls Clubs and serves on the Boys and Girls Clubs of America/Native American National Advisory Committee. He has won the 1998 *Boys and Girls Clubs of America/Southwest Region "Jim Weatherington" Professional of the Year Award* and the "1999 National Native American Service Award" for services to Native American Clubs.



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### **Madeline Rugh, PhD**

Madeline is an artist, educator and therapist who has specialized in working with older adults for the past twenty years. She was an artist-in-residence for the State of Oklahoma for 13 years and currently works as a consultant and educator developing healing art programs. Her personal artwork is ecologically based and involves the creation of images of people woven into the natural environment.

### **Patrick J. Schneider**

Patrick graduated from the University of Wyoming School of Law in 1987 and served as the Deputy County Attorney for the Maricopa County Attorney's Office in Phoenix, AZ. In this position he prosecuted gangs and high rate recidivists. In 1991 he became the Assistant US Attorney for the District of Arizona. His duties include the prosecution of street, motorcycle and prison gangs, as well as being the District of Arizona Anti-Violent Crime Initiative Coordinator. He successfully prosecuted the first ever RICO case of a street gang in Indian Country. In 1994 he received the award for International Outlaw Motorcycle Gang Investigators Conference Gil Amoroso Memorial Award for Outstanding Prosecution of Outlaw Motorcycle Gangs; in 1995 he received the US Department of Justice Director's Award for Superior Performance as an Assistant US Attorney and in 1998 he received the US Department of Justice Special Achievement Award.

### **Jacquelyn Secondine Hensley, MS**

Jacquelyn Hensley is a member of the Kaw Tribe of Oklahoma as well as being part Shawnee and Delaware Indian. She is currently a Criminal Investigator for the Bureau of Indian Affairs, District II in Muskogee, Oklahoma. Jacquelyn services 41 counties in Oklahoma; approximately every county east of Interstate 35.

In addition to her investigatory duties with the Bureau of Indian Affairs, Jacquelyn is an instructor at the Indian Police Academy located in Artesia, New Mexico. She is also an instructor of the "Crimes Against Children" Seminars which are sponsored and presented by the Federal Bureau of Investigation for agents and other law enforcement personnel who work crimes in Indian Country.

A native Oklahoman, Jacquelyn earned a Bachelors Degree in Education from Oklahoma State University, a Masters Degree in counseling Psychology from the University of Tulsa, and has completed twenty hours toward her Doctorate Degree at the University of Tulsa.

Prior to her employment with the Bureau of Indian Affairs, Jacquelyn was employed as a United States Probation Officer for the Northern District of Illinois in Chicago, Illinois. From 1982-1994, Jacquelyn worked as a therapist counseling abusive families.

### **Rose Mary Shaw, LCSW**

Rose Mary was born in Pawhuska Oklahoma and is over one half Osage Indian. She belongs to the Eagle Clan and has the name of Hon-pe-a-kah which means Moccasin Strings or one who gathers others around her. Her family is the Drumkeeper for the Greyhorse Village and hosts the Osage ceremonial dances yearly. She attained her BSW degree from Northeastern State University in Tahlequah, OK and a MSW from Washington University in St. Louis, MO. She has recently completed the requirements for licensure as a Licensed Clinical Social Worker. She has been in the alcohol and drug field as a clinician and administrator for 13 years. She has worked in the private sector, public and state programs, as well as tribal social service programs. She has been responsible for sex offender outpatient programs, domestic violence programs,



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family co-dependency programs, as well as inpatient and outpatient chemical dependency programs. She presently works for the Osage Nation as the Director of the Osage Nation Counseling Center.

### **Janet Smith, MS, ATR**

Janet is currently the Director of Jack Brown Center at Cherokee Nation in Tahlequah, OK. She began the first Art Therapy program for Cherokee Nation in 1991 at the Jack Brown Center. In addition, she teaches art therapy course work at Northeastern State University in Tahlequah, the University of Oklahoma and Southwestern College in Santa Fe, New Mexico.

### **Michele Stewart**

Michele has a Master of Social Work degree from Eastern Washington University and is a licensed clinical social worker. She has undergraduate degrees in psychology and sociology from Rocky Mountain College. Michele is a FBI Contract Victim/Witness Coordinator and provides victim/witness services on two Indian reservations. Michele is also a therapist in private practice specializing in sex offender treatment. She has worked in cooperation with the US Probation Office to develop community based sex offender treatment for Native American populations. She has presented at regional and national conferences on topics related to sexual abuse treatment with Native American populations. She is a member of the Crow Tribe in Montana.

### **Dolores Subia BigFoot, PhD**

Dr. BigFoot is an Assistant Professor in the Department of Pediatrics, at the University of Oklahoma Health Sciences Center. She is the Director of Project Making Medicine. She is a trainer and consultant on multicultural issues in prevention, intervention, and treatment of American Indian families, including parenting, family violence, and mental health. Dr. BigFoot is recognized for her efforts to bring traditional Indian practices into the service delivery for Indian people and has publications on cross-cultural issues in treatment and service delivery. Dr. BigFoot is an enrolled member of the Caddo Tribe of Oklahoma and is part Aztec and Mexican. She is the Co-Project Officer for the Indian Nations Conference.

### **Ronald S. Teel**

Ron is currently the Chief of Police for the Osage Nation Police Department since March 1998. His prior experience includes working as a Lieutenant and Training Officer. He has 16 years of law enforcement experience with the U.S. Army as a Military Police Office, Fort Oakland (Tonkawa Tribe) Police Department and Oklahoma National Guard Military Police Office and for the Stillwater, OK Police Department. He graduated from the BIA Basic Police Academy, State of Missouri POST Academy, and the State of Oklahoma CLEET Academy.

### **Henry R. Thompson**

Henry is a member of the San Carlos Apache Tribe. He is the former Chair of the Arizona Coalition for Victim Services, which includes members from state, local and tribal crime victim advocates in the state of Arizona. He has held the position as Director for the Apache Country Attorney's Crime Victims Compensation and Assistance programs for the past 10 years. Henry has recently organized a coalition entitled Justice for Crime Victims in Indian Country. The coalition meets monthly to discuss various





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issues confronting crime victims, and to provide training assistance to members of the coalition so that they may better serve victims in Indian Country.

### **Lisa Thompson**

Lisa has been the Director of Wiconi Wawokiya, Inc. since 1992 prior to being the Program Director she was an advocate. She has been instrumental in acquiring funding to expand the program and ultimately to develop the Children's SAFE Place in 1997. Ms. Thompson is the co-chair for the South Dakota Coalition for domestic violence and Sexual Assault and co-chair for the National Native American Children's Alliance and serves on the Governor's Task Force on Domestic Violence. She is a member of the Lower Brule Sioux Tribe.

### **John Veen**

Mr. Veen had been working in the Drug Courts Program Office (DCPO) as the Supervisory Program Manager for the past two years. Mr. Veen has 26 years experience in Federal grants and contract management starting with the U.S. Department of Justice, Law Enforcement Assistance Administration (LEAA) in 1974. Mr. Veen started his Federal service at the U.S. Department of Justice in 1974 with LEAA after earning his Bachelor of Science degree in Criminal Justice.

For approximately eleven years, Mr. Veen served as a Senior Program Manager in the Law Enforcement Branch, Discretionary Grant Programs Division, Bureau of Justice Assistance (BJA). As a Senior Program Manager, Mr. Veen managed a wide variety of programs including narcotics trafficking enforcement, financial investigations, and task force training programs; firearms trafficking program; and state and local anti-terrorism training program. Prior to managing the programs listed above, for approximately three and a half years, Mr. Veen managed the Regional Information Sharing Systems (RISS) Program, a national criminal intelligence database. Mr. Veen has also served as a Program Manager in the Office of Juvenile Justice and Delinquency Prevention and the Office for Victims of Crime and as a Financial Analyst in the Office of the comptroller.

### **Kathleen Waits, JD**

Kathleen is an Associate Professor at the University of Tulsa College of Law where she teaches Domestic Violence, Professional Responsibility, Contracts, and Remedies. She has published articles on domestic violence, professional responsibility and civil procedure. She has given numerous presentations to lawyers, non-lawyer professionals and community groups, on ethics and domestic violence. She received her undergraduate degree from Cornell University, and her law degree, cum laude, from Harvard Law School. In 1987, she won nearly \$50,000 on the TV game Jeopardy! and was a semi finalist in the Jeopardy! Tournament of Champions in 1988.

### **Janna Walker**

Janna is a program director with the National Association of Drug Court Professionals (NADCP). NADCP is the membership organization of almost 600 existing drug courts and 3,000 individual drug court professionals. Mrs. Walker manages several projects including the NADCP Native American Alaskan native Drug Court project, which is funded through the US Department of Justice, Office of Justice Programs, Drug Court Programs Office. Prior to joining NADCP, Mrs. Walker was the program director for Oklahoma's Payne/Logan County Drug Court for three years. This drug court covers a



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two county rural jurisdiction and was the first drug court program established in the State of Oklahoma, as well as one of the first rural drug court programs in the country.

### **Beverly Wilkins**

Beverly is the Coordinator of the Family Violence Prevention Program with Indian Health Service/Office of Mental Health and Social Services at Headquarters West. She is a national trainer on issues of violence against women and has provided training to tribal communities, service providers, law enforcement and at related conferences nationwide. Beverly serves in an advisory capacity with several local, state and national domestic violence programs regarding violence against women and cultural competency.

### **Esther Yazzie-Lewis, MPA**

Esther grew up south of Farmington, NM on the Navajo Reservation and completed her early western schooling at the Navajo Methodist Mission in Farmington. Esther's first public employment was with the Navajo police department as a radio dispatcher, police officer and police clerk in 1971. In 1975 Esther was employed by the Window Rock District Court as a Deputy Court Clerk and later as a Probation Officer. In 1979 she entered the University of New Mexico to pursue studies in the area of Political Science and received a Bachelor of Science Degree in 1985. During this time she did freelance interpreting in the Federal Courts. In 1984 Esther co-authored the Navajo/English Legal Glossary which was published by the US District Courts. In 1990, Esther completed her Masters in Public Administration and in 1999 completed American Studies at the University of New Mexico.

### **Honorable Robert Yazzie**

In 1992, Chief Justice Robert Yazzie was appointed by the Navajo Nation Council as the Chief Justice of the Navajo Nation. Chief Justice Yazzie, a law school-trained judge has been on the bench for nine years. He earned a B.A. in Sociology from Oberlin College in Ohio and went on to continue his education at Mesa Community College and Harvard University. Chief Justice Yazzie was born in Rehoboth, NM and grew up with traditional values. He has not forgotten his obligation of sharing traditional values and continues to implement the Navajo philosophy in the Navajo Nation Courts.

He is a formidable leader in the Navajo campaign against the pain of domestic violence. He is a strong advocate for victim's rights and in the establishment of long term crime victims on the Navajo Nation.

Since his appointment as Chief Justice in 1992, he has been quite successful in developing court rules. He also initiated a sentencing commission. The Navajo Nation Peacemaker Division was expanded under Chief Justice Yazzie. The Navajo Nation Judicial Branch was awarded a BIA grant to hire community organizers and liaisons to appointment as peacemakers, also known as a "Naa'taanii" in each of the 110 chapters located within the Navajo Nation. In addition, Chief Justice Yazzie has acquired funds appropriated by the Navajo Nation Council for the peacemaking program. He has directed grassroots organizing and community education efforts to widen the participation of local leaders in the program.



# 7<sup>th</sup> Indian Nations Conference

## **Pre-Conference Institute September 27, 1999**

### **"A Cross Cultural Curriculum for Federal Criminal Justice Personnel" Dolores Subia BigFoot, PhD, Ron Hall, JD and Eidell Wasserman, PhD**

#### **Learning Objectives:**

1. To provide participants with information about the Cross Cultural Curriculum so that they can utilize the information and materials with tribal and federal personnel on their reservations.
2. To introduce the curriculum and the individual modules and the most appropriate use of the materials.
3. To provide an overview of all sections of the curriculum so that federal criminal justice personnel will gain a greater understanding of Native people and their culture and traditions.

In recent years, federal employees have been working with Native American victims of crime in increasing numbers. In 1989, the Office for Victims began funding on-reservation programs through the Victim Assistance in Indian Country (VAIC) discretionary grant program. As increasing numbers of Indian victims of crime have come into the criminal justice system, U.S. Attorneys, Federal Victim/Witness Coordinators, FBI Agents, and other federal personnel who are predominantly non-Indian, have encountered cultural differences in working with Native American crime victims.

This curriculum and video will present some of the realities of the delivery of services to Native victims by victim assistance programs with the goal of increasing understanding of how VAIC programs may differ from similar non-Indian programs. Any discussion of Native programs must begin with the caveat that all tribes are different and that there is no single correct way to deal with all Indian persons and/or programs. Non-Indian personnel working within Indian Country must educate themselves regarding the Indian Nations in their jurisdiction.

**An Overview of "A Cross Cultural Curriculum for Federal Criminal Justice Personnel" workshop is being offered on Wednesday, September 29, 1999, from 3:30 – 5:00 in the Oklahoma South Room**



**Pre-Conference Institute  
September 27, 1999**

**"Introduction to the Children's Advocacy Center Model"  
Teresa Cain and Roe Bubar, JD**

**Learning Objectives:**

1. To increase understanding of the history, philosophy and benefits of the Children's Advocacy Center multidisciplinary approach to child abuse.
2. Identify the common program components of the CAC model, and explore the unique programmatic options that have been adopted by tribes to meet the needs of child victims of abuse in Indian Country.
3. Define what steps are commonly taken in moving from concept to reality in developing a multidisciplinary team and Child Advocacy Center.

This interactive session will provide information on how the Children's Advocacy Center multidisciplinary approach can help to meet the needs of child victims of abuse in Indian Country. Common program component of the CAC model will be identified, and the unique programmatic options that have been adopted by tribes will be explored. Steps commonly taken in moving from concept to reality in developing MDTs and CACs will be covered.

A Children's Advocacy Center is a child-focused, facility-based program in which representatives from many disciplines meet to discuss and make decisions about investigation, treatment, and prosecution of child abuse cases. The multidisciplinary team approach brings together under one umbrella all the professionals and agencies needed to offer comprehensive services: law enforcement, child protective services, prosecution, mental health and the medical community. CACs are community-based programs designed by professionals and volunteers to meet the unique needs of a community and minimize the potential for revictimization of children. This comprehensive approach ensures that children receive child-focused services in a child-friendly environment - one in which the child's need come first!

**Workshops on "Children's Advocacy Centers" are offered on Tuesday, September 28<sup>th</sup> at 1:30-3:00 in Director's Row 4 Room and on Wednesday, September 29<sup>th</sup> at 8:30-10:00 in the Diplomat Room**





7<sup>th</sup> Indian Nations Conference

Investigating and Prosecuting Organized  
Gangs in Indian Country

Patrick Schneider, Assistant U.S. Attorney  
District of Arizona

Tulsa, Oklahoma 1999



## 7<sup>th</sup> Indian Nations Conference


### **"Investigating and Prosecuting Organized Gangs in Indian Country"** **Patrick Schneider, Asst. U.S. Attorney**

#### **Learning Objectives:**

1. To increase the knowledge of participants of the structure of gangs.
2. To assist participants in better understanding the process of a successful prosecution of organized gangs.
3. To provide information on identifying and communicating with organized gangs.

This workshop will address the prevalence of organized gangs on American Indian reservations. Participants will learn how to identify an organized gang, appropriate steps to take in investigating criminal activities of gangs and the process it takes to successfully prosecute gangs and their members on reservations. This workshop will address the jurisdictional issues that arise when working with gangs in Indian Country.





HANDOUTS FOR THIS  
PRESENTATION MAY OR  
MAY NOT BE AVAILABLE  
DURING THIS SESSION



7<sup>th</sup> Indian Nations Conference

Federal Resources in Support of  
Tribal Corrections

Stephen Amos, D.Crim.

Tulsa, Oklahoma 1999





## 7<sup>th</sup> Indian Nations Conference


### **“Federal Resources in Support of Tribal Corrections” Stephen Amos, D.Crim.**

#### **Learning Objectives:**

1. Presenter will provide a overview of the status of tribal corrections to include statistical summaries and national trends.
2. Presenter will detail the President's Law Enforcement Initiative in Indian Country in its efforts to address the gap in correctional services and facilities.
3. Participants will be able to identify potential Federal resources to support tribal correctional needs.

This presentation will provide participants an overview of the demographics of offenders that tribal corrections serve, to include: the social, economic, and environmental factors that impact crime, and substance abuse in Indian Country; the role of alcohol and illicit drugs; and the approaches currently being deployed to manage offenders in Indian Country. Emphasis will be placed on providing culturally appropriate responses to criminal behavior by tribal members.





HANDOUTS FOR THIS  
PRESENTATION MAY OR  
MAY NOT BE AVAILABLE  
DURING THIS SESSION



7<sup>th</sup> Indian Nations Conference

Child Abuse Investigations in Indian Country  
for Law Enforcement and Social Services

Jacquelyn Secondine Hensley, MS

Tulsa, Oklahoma 1999



## 7<sup>th</sup> Indian Nations Conference

### **"Child Abuse Investigations in Indian Country for Law Enforcement and Social Services"**

**Jacquelyn Secondine Hensley, MS**

#### **Learning Objectives:**

1. Identify child abuse in Indian Country.
2. Know the appropriate protocol to report child abuse in Indian Country.
3. Provide information on the working relations of law enforcement and social services in Indian Country.

A brief slide presentation of different types of physical abuse will be shown for the purpose of identification of accidental versus non-accidental injuries. Next, the presenter will go through the steps of reporting child abuse in Indian Country as stated in federal, state and tribal law. Lastly, the presenter will discuss the investigative process of a child abuse case in Indian Country focusing primarily on the relationship of law enforcement and social services.





Jacquelyn Secondine  
 B.I.A. Child Abuse Criminal Investigator  
 Office:(918)687-2266 Pager:(918)684-0110  
 101 N. 5th, Muskogee, OK 74401-6206

**PHYSICAL ABUSE**

Soft Tissue Injuries. \*Location, Number, and Distribution.

Bruises	Lacerations\Abrasions	Burns
<p><b>Coloring</b></p> <ol style="list-style-type: none"> <li>1. Initially: red</li> <li>2. 6-12 hours: blue</li> <li>3. 12-24 hours: black\purple</li> <li>4. 4-6 days: green tint, dark</li> <li>5. 5-10 days: pale green to yellow</li> </ol> <p>Bruises on the backs of body surfaces (head, necks, back, arm, and legs) especially both sides are unlikely to be accidental.</p> <p>-Kids DON'T BOUNCE          -Age &amp; Development</p>	<p><b>Healing</b></p> <ol style="list-style-type: none"> <li>1. Within hours: Raw surface oozing blood &amp; clear liquid.</li> <li>2. More than 6 hours: Dry red depending of treatment.</li> <li>3. Over 24 hours: Scabs form</li> </ol> <p>Eye damage is so common that any child suspected of being abused should have an eye exam.</p> <p>-Bite marks.          -Cuts.</p>	<p><b>Types of Burns</b></p> <ol style="list-style-type: none"> <li>1. Light ray.</li> <li>2. Brush burns.</li> <li>3. Chemical burns.</li> <li>4. Contact burns.</li> </ol> <p>-Age of victim.          -Body Location.</p>

## (c) Limitation

No funds are authorized to be appropriated for a fiscal year to carry out this subchapter unless the aggregate amount appropriated to carry out title II of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5611 et seq.) for such fiscal year is not less than the aggregate amount appropriated to carry out such title for the preceding fiscal year.

(Pub.L. 101-647, Title II, § 224, Nov. 23, 1990, 104 Stat. 4798.)

## HISTORICAL AND STATUTORY NOTES

## References in Text

This subchapter, referred to in subsec. (a), read in the original, this chapter. Reference to this subtitle was probably intended, meaning subtitle C of Title II of Pub.L. 101-647, Nov. 23, 1990, 104 Stat. 4798, which enacted this subchapter. For complete classification of this Act to the Code, see Short Title Note set out under section 13001 and Tables.

The Juvenile Justice and Delinquency Prevention Act of 1974, referred to in subsec. (c), is

Pub.L. 93-415, Sept. 7, 1974, 88 Stat. 1109, as amended, which is classified principally to chapter 72 (section 5601 et seq.) of this title. Title II of the Act is classified to section 5611 et seq. of this title. For complete classification of this Act to the Code, see Short Title Note set out under section 5601 of this title and Tables.

## Legislative History

For legislative history and purposes of Pub.L. 101-647, see 1990 U.S. Code Cong. and Adm. News, p. 6472.

## SUBCHAPTER IV—FEDERAL VICTIMS' PROTECTIONS AND RIGHTS

## § 13031. Child abuse reporting

## (a) In general

A person who, while engaged in a professional capacity or activity described in subsection (b) of this section on Federal land or in a federally operated (or contracted) facility, learns of facts that give reason to suspect that a child has suffered an incident of child abuse, shall as soon as possible make a report of the suspected abuse to the agency designated under subsection (d) of this section.

## (b) Covered professionals

Persons engaged in the following professions and activities are subject to the requirements of subsection (a) of this section:

- (1) Physicians, dentists, medical residents or interns, hospital personnel and administrators, nurses, health care practitioners, chiropractors, osteopaths, pharmacists, optometrists, podiatrists, emergency medical technicians, ambulance drivers, undertakers, coroners, medical examiners, alcohol or drug treatment personnel, and persons performing a healing role or practicing the healing arts.
- (2) Psychologists, psychiatrists, and mental health professionals.
- (3) Social workers, licensed or unlicensed marriage, family, and individual counselors.
- (4) Teachers, teacher's aides or assistants, school counselors and guidance personnel, school officials, and school administrators.
- (5) Child care workers and administrators.
- (6) Law enforcement personnel, probation officers, criminal prosecutors, and juvenile rehabilitation or detention facility employees.
- (7) Foster parents.
- (8) Commercial film and photo processors.

## (c) Definitions

For the purposes of this section—

- (1) the term "child abuse" means the physical or mental injury, sexual abuse or exploitation, or negligent treatment of a child;
- (2) the term "physical injury" includes but is not limited to lacerations, fractured bones, burns, internal injuries, severe bruising or serious bodily harm;
- (3) the term "mental injury" means harm to a child's psychological or intellectual functioning which may be exhibited by severe anxiety, depression, withdrawal or

outward aggressive behavior, or a combination of those behaviors, which may be demonstrated by a change in behavior, emotional response or cognition;

(4) the term "sexual abuse" includes the employment, use, persuasion, inducement, enticement, or coercion of a child to engage in, or assist another person to engage in, sexually explicit conduct or the rape, molestation, prostitution, or other form of sexual exploitation of children, or incest with children;

(5) the term "sexually explicit conduct" means actual or simulated—

(A) sexual intercourse, including sexual contact in the manner of genital-genital, oral-genital, anal-genital, or oral-anal contact, whether between persons of the same or of opposite sex: sexual contact means the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify sexual desire of any person;

(B) bestiality;

(C) masturbation;

(D) lascivious exhibition of the genitals or pubic area of a person or animal;

(E) sadistic or masochistic abuse;

(6) the term "exploitation" means child pornography or child prostitution;

(7) the term "negligent treatment" means the failure to provide, for reasons other than poverty, adequate food, clothing, shelter, or medical care so as to seriously endanger the physical health of the child; and

(8) the term "child abuse" shall not include discipline administered by a parent or legal guardian to his or her child provided it is reasonable in manner and moderate in degree and otherwise does not constitute cruelty.

## (d) Agency designated to receive report and action to be taken

For all Federal lands and all federally operated (or contracted) facilities in which children are cared for or reside, the Attorney General shall designate an agency to receive and investigate the reports described in subsection (a) of this section. By formal written agreement, the designated agency may be a non-Federal agency. When such reports are received by social services or health care agencies, and involve allegations of sexual abuse, serious physical injury, or life-threatening neglect of a child, there shall be an immediate referral of the report to a law enforcement agency with authority to take emergency action to protect the child. All reports received shall be promptly investigated, and whenever appropriate, investigations shall be conducted jointly by social services and law enforcement personnel, with a view toward avoiding unnecessary multiple interviews with the child.

## (e) Reporting form

In every federally operated (or contracted) facility, and on all Federal lands, a standard written reporting form, with instructions, shall be disseminated to all mandated reporter groups. Use of the form shall be encouraged, but its use shall not take the place of the immediate making of oral reports, telephonically or otherwise, when circumstances dictate.

## (f) Immunity for good faith reporting and associated actions

All persons who, acting in good faith, make a report by subsection (a) of this section, or otherwise provide information or assistance in connection with a report, investigation, or legal intervention pursuant to a report, shall be immune from civil and criminal liability arising out of such actions. There shall be a presumption that any such persons acted in good faith. If a person is sued because of the person's performance of one of the above functions, and the defendant prevails in the litigation, the court may order that the plaintiff pay the defendant's legal expenses. Immunity shall not be accorded to persons acting in bad faith.

## (g) Omitted

(Pub.L. 101-647, Title II, § 225, Nov. 23, 1990, 104 Stat. 4808.)

## 1169. Reporting of child abuse

### (a) Any person who—

#### (1) is a—

(A) physician, surgeon, dentist, podiatrist, chiropractor, nurse, dental hygienist, optometrist, medical examiner, emergency medical technician, paramedic, or health care provider,

(B) teacher, school counselor, instructional aide, teacher's aide, teacher's assistant, or bus driver employed by any tribal, Federal, public or private school,

(C) administrative officer, supervisor of child welfare and attendance, or truancy officer of any tribal, Federal, public or private school,

(D) child day care worker, headstart teacher, public assistance worker, worker in a group home or residential or day care facility, or social worker,

(E) psychiatrist, psychologist, or psychological assistant,

(F) licensed or unlicensed marriage, family, or child counselor,

(G) person employed in the mental health profession, or

(H) law enforcement officer, probation officer, worker in a juvenile rehabilitation or detention facility, or person employed in a public agency who is responsible for enforcing statutes and judicial orders;

#### (2) knows, or has reasonable suspicion, that—

(A) a child was abused in Indian country, or

(B) actions are being taken, or are going to be taken, that would reasonably be expected to result in abuse of a child in Indian country; and

(3) fails to immediately report such abuse or actions described in paragraph (2) to the local child protective services agency or local law enforcement agency,

shall be fined under this title or imprisoned for not more than 6 months or both.

### (b) Any person who—

(1) supervises, or has authority over, a person described in subsection (a)(1), and

(2) inhibits or prevents that person from making the report described in subsection (a),

shall be fined under this title or imprisoned for not more than 6 months or both.

### (c) For purposes of this section, the term—

#### (1) "abuse" includes—

##### (A) any case in which—

(i) a child is dead or exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, soft tissue swelling, and

(ii) such condition is not justifiably explained or may not be the product of an accidental occurrence; and

(B) any case in which a child is subjected to sexual assault, sexual molestation, sexual exploitation, sexual contact, or prostitution;

#### (2) "child" means an individual who—

(A) is not married, and

(B) has not attained 18 years of age;

(3) "local child protective services agency" means that agency of the Federal Government, of a State, or of an Indian tribe that has the primary responsibility for child protection on any Indian reservation or within any community in Indian country; and

(4) "local law enforcement agency" means that Federal, tribal, or State law enforcement agency that has the primary responsibility for the investigation of an instance of alleged child abuse within the portion of Indian country involved.

(d) Any person making a report described in subsection (a) which is based upon their reasonable belief and which is made in good faith shall be immune from civil or criminal liability for making that report. (Added Pub.L. 101-630, Title IV, § 404(a)(1), Nov. 28, 1990, 104 Stat. 4547, and amended Pub.L. 103-322, Title XXXI, §§ 330011(d), 330016(1)(E), Sept. 13, 1994, 108 Stat. 2147.)

## § 2258. Failure to report child abuse

A person who, while engaged in a professional capacity or activity described in subsection (b) of section 2256 of the Victims of Child Abuse Act of 1990 on Federal land or in a federally operated (or contracted) facility, learns of facts that give reason to suspect that a child has suffered an incident of child abuse, as defined in subsection (c) of that section, and fails to make a timely report as required by subsection (a) of that section, shall be guilty of a Class B misdemeanor.

(Added Pub.L. 101-647, Title II, § 228(g)(1), Nov. 29, 1990, 104 Stat. 4908.)



## IDENTIFYING ABUSED AND NEGLECTED CHILDREN

Stephen J. Bavolek, Ph.D.

(An adaptation)

### PHYSICAL ABUSE

#### Definition:

A physically abused child is one who has received injuries from shaking, beating, striking, or burning.

#### Physical Indicators:

You should consider the possibility of physical abuse when any of the following conditions exists.

1. The child shows evidence of repeated injuries. There are signs of new injuries before old injuries have healed (skin abrasions, fractures, etc.).
2. The history is not consistent with injuries. The way the child states how the injuries were received is not consistent with the type of injury (falling on the playground and bruises or welts on the legs or arms, or buttocks).
3. The child complains of abdominal pain. Internal injuries have developed which may be the result of punching, kicking, or hitting the child in the midsection.
4. The child has unexplained injuries. The child refuses to state how the injury occurred or offers several contradictory explanations as to the origin of the injury.
5. The injuries are bilateral and appear clustered on the child's body. The injuries of physically abused children usually appear on both sides of the body (both sides of the back or buttocks, both legs or arms, etc.) and are clustered around a particular bodily area. A child who is repeatedly spanked on the buttocks will show evidence of bruises on both sides without evidence of trauma to other bodily areas.
6. The child shows evidence of the following injuries.

#### Bruises, welts, scars

- a. On the face, lips, or mouth
- b. On the large areas of the torso, back, buttocks, or thighs

- c. On both sides of the body
- d. In unusual or clustered patterns
- e. Reflective of an instrument used to inflict the injury (rope, paddle, coat hanger, stock, etc.)

#### Burns

- a. Circular burns separately or in a series received from cigars or cigarettes usually inflicted on:
  - the palms of the hands
  - the soles of the feet
  - the arms
  - scalp
- b. Immersion burns indicative of dunking in hot liquid. Such burns usually have a clear line of immersion which differentiates abuse from accidental injuries. Areas commonly traumatized are:
  - the hands up to the wrist (glove-like in appearance)
  - the feet just above the ankles (sock-like in appearance)
  - the buttocks and genital areas
- c. Caustic burns resulting from chemicals (acid, etc.) being splashed or poured on the child.
- d. Reflecting patterns that show the shape of the object (iron, grill, etc.) that was used to inflict the injury.
- e. Resembling "tattoo" marks such as initials, words, or pictures usually inflicted with a hot pin, needle or other sharp, pointed object.

#### Fractures

- a. Skull, jaw, or nasal areas
- b. Spiral fractures of the long bones of the arms and legs
- c. Multiple fractures (arms, legs, etc.)

d. In any child under the age of two, many fractures may not be outwardly visible. The following signs may indicate a bone fracture:

- tenderness and swelling of body part
- child is reluctant to move that part of the body
- child tries to protect that part of the body from contact with others

X-ray is the only resource to document bone fractures and dislocations in very young children. But, X-rays will never be taken unless someone is suspicious and requests further investigation.

#### Ocular injuries

- a. Dislocated lens, retinal and subretinal hemorrhage -- usually caused by grabbing the child and shaking the child violently.
- b. Bruises or "black eyes" caused by trauma to the ocular region.

#### Restraint injuries

Injuries (blisters, bruises) occur as a result of the child being tied with a rope or cord. The injuries commonly appear around:

- the mouth (being gagged)
- the wrists and/or ankles (being tied)
- the neck or torso (being hung)

#### Head trauma

- a. Bald patches on scalp resulting from hair pulling
- b. Seizures in a child with no previous history of such. The seizures may be manifestations of cephalic hematomas or subdural hematomas caused by head trauma.

#### Human bite marks

U-shaped teeth marks as opposed to animal bites which are more V-shaped.

## Lacerations and Abrasions

- a. Mouth, lips, or gums
- b. External genitalia

## Behavioral Indicators and Characteristics of Physically Abused Children

It is often said that the most severe trauma a child suffers as a result of abuse is not physical but emotional. The physical wounds often heal--but the emotional scars that have resulted from acts of violence may last a lifetime. These emotional scars may manifest themselves in the following behaviors:

1. Extreme fright. Some children manifest extreme fright at the prospect of any physical contact; they whimper and attempt to hide under the sheets, for example.
2. Apathy. Some children exhibit profound apathy to the point of appearing to be in a stupor; they may not withdraw from tactile stimulation.
3. Emotional blunting. A child's behavior may resemble what is known as "shell shock" in adults. They display a profound blunting of all external manifestations of inner life. They may:
  - a. Sit or lie motionless
  - b. Be devoid of facial expression
  - c. Be unresponsive to all attempts at evoking recognition of the external world
4. Aggression. Harsh physical punishment of a child often leads to development of serious violent and delinquent behaviors.
5. Emotional problems. Serious emotional illnesses may develop as a result of severe and persistent physical abuse. Self-destructive behavior, suicidal attempts and self-mutilations are significantly higher in abused children than in nonabused children.
6. Pseudo maturity. Children develop extremely precocious skills in initiating social contact with adults as a means of guarding and protecting themselves.



7. Hypervigilance. Some abused children become hyper-vigilant. These children:
  - a. Become watchers for any sudden adult movements
  - b. Develop a remarkable ability for perceiving the mood of adults.
  - c. "Test the waters" by verbally notifying the caretaker in advance of what the child is going to do (I'm gonna go to the bathroom now; Can I color on this piece of paper?).
8. Personality shifts. Abused children may develop a "chameleon nature." That is, their behavior shifts and changes according to the inconsistent environment provided by their parents.
9. Ego restrictions. Abused children may suffer restriction of various ego functions. The child:
  - a. May not attempt new tasks.
  - b. Is "seen but not heard"--to be silent is to be safe.
  - c. Avoids antagonizing adults.
10. Academic Retardation. Abused children may show deficits in gross motor development, speech, and language.



7<sup>th</sup> Indian Nations Conference

Developing Juvenile Detention Facilities  
Appropriate for Native Communities

Ruth Jenks

Tulsa, Oklahoma 1999



## 7<sup>th</sup> Indian Nations Conference

### **"Developing Juvenile Detention Facilities Appropriate for Native Communities"**


**Ruth Jenks**

#### **Learning Objectives:**

1. Facilitating the development of ideas from community.
2. Getting started.
3. Determining what is in place, re-evaluating and modifying.

This presentation will include the process the Sac and Fox Nation Juvenile Facility has been through to get where the program is appropriate for the population of juveniles served. The population not only includes Native American but juveniles from other ethnic groups and culture.





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PRESENTATION MAY OR  
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7<sup>th</sup> Indian Nations Conference

Eight Activities of Intervention:  
Effective Advocacy for Native Women

Genevieve James

Tulsa, Oklahoma 1999



## 7<sup>th</sup> Indian Nations Conference


### **"Eight Activities of Intervention: Effective Advocacy for Native Women"** **Genevieve James**

#### **Learning Objectives:**

1. Provide an overview of the Eight Activities of Intervention.
2. Improve the effectiveness of advocacy provided on behalf of Native battered women by discussing strategies for the application of the "Eight Activities of Intervention."

An overview of the eight activities of intervention will be provided and a discussion about their application within tribal based domestic violence programs. The workshop will begin with a brief lecture followed by small group strategy discussions.





HANDOUTS FOR THIS  
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7<sup>th</sup> Indian Nations Conference

Child Advocacy Centers: Development and  
Implementation in Indian Country

Teresa Cain and Nancy Chandler

Tulsa, Oklahoma 1999





## 7<sup>th</sup> Indian Nations Conference

### **"Child Advocacy Centers: Development and Implementation in Indian Country"**

**Teresa Cain and Roe Bubar, JD**

#### **Learning Objectives:**

4. To increase understanding of the benefits of the Children's Advocacy Center multidisciplinary approach to child victims of abuse.
5. Identify the common program components of the CAC model, and explore programmatic options that have been adopted by tribes to meet the needs of child victims of abuse in Indian Country.
6. Define steps that are commonly taken in developing a multidisciplinary team and Child Advocacy Center.

A Children's Advocacy Center is a child-focused, facility-based program in which representatives from many disciplines meet to discuss and make decisions about investigation, treatment, and prosecution of child abuse cases. The multidisciplinary team approach brings together all the professionals and agencies needed to offer comprehensive services: law enforcement, child protective services, prosecution, mental health and the medical community. This workshop will address the actions of the team in organizing and maintaining a multidisciplinary team as well as a Children' Advocacy Center.



**IMPROVING COMMUNITY RESPONSE TO CHILD ABUSE:**  
**THE CHILD ADVOCACY CENTER INTERDISCIPLINARY APPROACH**

Children's Advocacy Centers (CACs) have been successful in improving local response to child abuse in many communities throughout the country. The need for coordinated interdisciplinary approaches to child abuse is great in Indian Country, and nine tribes are now working to fully develop their own CACs customized to meet the needs of their communities. The CAC model is particularly suited to federal policy of tribal self-determination and leadership. Implementation of the interdisciplinary approach is largely determined by cultural and geographic factors as well as the resources available, and is limited only by the vision of the community.

A Children's Advocacy Center is a child-focused, facility-based program in which representatives from many disciplines meet to discuss and make decisions about investigation, treatment, and prosecution of child abuse cases. The multi-disciplinary team approach brings together under one umbrella all the professionals and agencies needed to offer comprehensive services: law enforcement, child protective services, prosecution, mental health and the medical community. CACs are community-based programs designed by professionals and volunteers to meet the unique needs of a community and prevent the further victimization of children. This comprehensive approach ensures that children receive child-focused services in a child-friendly environment - one in which the child's needs comes first!

The CAC approach is a flexible one. Some centers operate as independent nonprofit organizations in a free-standing facility such as a renovated house. Others are agency-affiliated and may share space and resources. What unites the CACs is that the needs of the child and non-offending family members are quickly and effectively met through the following core components:

- Separate, child-friendly space for interviewing and providing services to child victims and their non-offending family members
- Involvement of specially trained professionals from the six core disciplines: law enforcement, child protective services, prosecution, mental health, medical and victims advocacy
- Coordinated multidisciplinary investigative team
- Regular interdisciplinary case review or staffing and intensive case follow-up

In an effort to assist communities in improving their response to child abuse through development of CACs, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) established four Regional Children's Advocacy Centers to provide information, consultation, training and technical assistance. An area of special emphasis for the Western Regional Children's Advocacy Center has been the development of strategies to meet the needs of Native American and Native Alaskan communities and the challenges of creating interdisciplinary approaches that involve tribal, county, state and/or federal jurisdictions. The RCACs assist communities in the following areas:

- Assessing the community's capacity to provide services
- Assisting in the development of comprehensive, multidisciplinary responses to child abuse
- Encouraging open communication and case coordination among the professionals and agencies involved in child protection efforts
- Enhancing professional skills among the interdisciplinary partners
- Identifying and developing funding and marketing strategies

- Strengthening the organizational capacity of CACs
- Assisting with plans for program expansion
- Increasing community understanding of child abuse and community readiness to support multidisciplinary teams and CACs

For additional information on Children's Advocacy Centers, please contact your Regional Child Advocacy Center or the National Network of Children's Advocacy Centers:

***Western Regional Children's Advocacy Center***

Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada,  
New Mexico, Oregon, Utah, Washington, Wyoming  
(800) 582 - 2203 or [wrcac@rmi.net](mailto:wrcac@rmi.net)  
Teresa Cain, Executive Director

***Midwest Regional Children's Advocacy Center***

Ohio, Indiana, Michigan, Illinois, Wisconsin, Missouri, Iowa, Minnesota,  
Kansas, Nebraska, South Dakota, North Dakota  
(888) 422 - 2955 or [julie.pape@childrenshc.org](mailto:julie.pape@childrenshc.org)  
Julie Pape, Project Director

***Northeastern Regional Children's Advocacy Center***

Maine, New Hampshire, Vermont, New York, Massachusetts, Connecticut,  
Rhode Island, Pennsylvania, New Jersey  
(800) 662 - 4124 or [nrcac@cacphila.org](mailto:nrcac@cacphila.org)  
Ann Lynn, Project Coordinator

***Southern Regional Children's Advocacy Center***

Maryland, Virginia, North Carolina, South Carolina, Alabama, Georgia,  
Florida, Mississippi, Louisiana, Tennessee, Kentucky, Arkansas, Texas,  
District of Columbia, Delaware, Oklahoma, West Virginia  
(800) 747 - 8122 or [srcac@aol.com](mailto:srcac@aol.com)  
Carolyn Gilbert, Project Director

***National Children's Alliance***

(800) 239 - 9950 or [info@nca-online.org](mailto:info@nca-online.org)  
Nancy Chandler, Executive Director

For additional information on the tribally-sponsored Children's Advocacy Centers, please contact:

**Crow Creek**

The Children's Safe Place - Ft. Thompson, SD  
605-245-2471 or [wwaste@rapidnet.com](mailto:wwaste@rapidnet.com)  
Lisa Thompson, Director

**Eastern Cherokee**

Heart to Heart Child Advocacy & Family Preservation Center - Cherokee, NC  
828-497-6209 or [bjack@cherokee.nc.com](mailto:bjack@cherokee.nc.com)  
Regina Rosario, Child Abuse Investigator

**Ft. Peck Assiniboine & Sioux**

Ft. Peck Tribes Crisis Center - Wolf Point, MT  
406-653-1494 or savtp@midrivers.com  
Phoebe Jones, Victim Witness Coordinator

**Hannahville**

Hannahville Indian Community - Wilson, MI  
906-466-9223 or jenthom@up.net  
Jenny Thompson, CPS Worker

**Mashantucket Pequot**

Mashantucket Pequot Child Advocacy Center - Mashantucket, CT  
860- 464-8248 or DBradley@mptn.org or RBradley@mptn.org  
Dawn Bradley, Child Protective Services Director  
Lt. Robert Bradley, Tribal Juvenile Officer

**Navajo**

Navajo Child Special Advocacy Project - Window Rock, AZ  
520-871-6759 or Fax 520-871-6278  
Genny Yazzie, Director

**Saulte Ste. Marie Chippewa**

Anishnabek Comm. & Family Services - Sault St Marie, MI  
906-632-5250 or Fax 906-632-5266  
Maggie Donaubaauer, Project Director

**Tulalip Tribes**

Beda?Chelh - Marysville, WA  
360-651-3285 or Fax 360-651-3290  
Margaret Henry Hayes, CAC Coordinator

**Wind River Shoshone & Arapaho**

Wind River Child Advocacy Center - Arapaho, WY  
307-857-1001 or twrcac@rmisp.com  
Laura Lee Monroe, Director

# CAC

**EDUCATION,  
TRAINING  
&  
PREVENTION**

**NETWORKING:  
LOCAL, STATE  
REGIONAL &  
NATIONAL**

**MEDICAL  
EXAMS  
&  
EVALUATION**

**VICTIMS  
&  
NON-OFFENDING  
PARENT  
SUPPORT**

**MENTAL  
HEALTH  
TREATMENT**

**PROSECUTION**

**JOINT  
INVESTIGATIVE  
INTERVIEWS**

**CASE  
REVIEW  
&  
TRACKING**

**AGENCY  
AFFILIATED**

**INDEPENDENT  
NONPROFIT**

**MULTI-DISCIPLINARY  
TEAMING**

**MULTI-AGENCY  
COMMITMENT**

# CHILDREN'S ADVOCACY CENTER ORGANIZATIONAL DEVELOPMENT CHECKLIST

by

Teresa A. Cain, Executive Director  
Western Regional Children's Advocacy Center

This checklist summarizes the developmental tasks which need to be completed in establishing a Children's Advocacy Center. Key organizational issues are included, followed by questions which will need to be addressed at that particular step of the process. Activities are listed in approximately the order in which they will need to occur, recognizing that some will need to take place concurrently, and that there will be variations in process and sequence within each community. This checklist is followed by a list of resources that are available to assist you with various aspects of the organizational development process.

- \_\_\_\_\_ **Convene a working committee or task force of key individuals**  
Who needs to be involved? (Include key representatives from the fields of law enforcement, child protective services, mental health, medicine and prosecution.)
  
- \_\_\_\_\_ **Select leadership**  
Who will convene the group and guide the process?  
Who can provide the leadership and influence to bring the key disciplines together?
  
- \_\_\_\_\_ **Conduct a needs assessment of the extent of the problem in the community**  
What is the extent of the problem and how can a CAC help improve community response to child abuse?
  
- \_\_\_\_\_ **Develop statements of vision and mission**  
What is our vision of the future?  
What is our mission in working to actualize this vision?  
Does our mission statement address:  
Who we are? What we do? For whom? To what end or purpose?
  
- \_\_\_\_\_ **Determine CAC service population**  
What geographical area will be covered?  
Will only sexual abuse victims be served? Physical abuse? Severe neglect?  
Other forms of child victimization?
  
- \_\_\_\_\_ **Gather information on various CAC models**  
What are the possible options?
  
- \_\_\_\_\_ **Select the CAC approach that best fits the community**  
What approach will best fit our community?

\_\_\_\_\_ **Develop interagency agreement and obtain agency commitment**

What approach do participating agencies agree on?

\_\_\_\_\_ **Determine organizational structure**

How will your CAC be structured?

Will it be an independent nonprofit? If so, who will seek 501(c)3 tax exempt status and file for incorporation?

Or will it be affiliated or sponsored by a participating agency (prosecution, child protection, law enforcement, hospital-based, etc.?)

\_\_\_\_\_ **Determine which services will be offered on-site or through referrals**

What program services will be offered at the CAC?

Will medical exams and mental health therapy be offered on-site or through referrals?

\_\_\_\_\_ **Select site and design or acquire space for child-appropriate facility**

Where can agency be located for maximum accessibility?

What space (size and design) needs to be available for program?

Will facility be purchased or leased, new or renovated?

\_\_\_\_\_ **Staffing and agency roles**

What staff roles and qualifications are needed?

Which staff will be hired by the CAC?

What others be assigned to the program by participating agencies?

Will assigned staff be located at the CAC facility?

Will a "master interviewer" be hired by the CAC or will agency investigators conduct all interviews?

\_\_\_\_\_ **Multi-disciplinary team protocol development**

How will the participating agencies, MDT and CAC all work together?

Who will comprise the MDT? Same team for all cases or possibly different team for each case?

How will joint investigative interviews occur?

Will interviews be audio or videotaped?

How will cases be tracked and reviewed by the team?

\_\_\_\_\_ **Research potential sources of support**

Who can/will help and in which ways?

\_\_\_\_\_ **Plan and carry out resource development**

What resources will be needed, how will they be obtained, by whom?



- \_\_\_\_\_ **Plan and implement community outreach and awareness campaign**  
How will the community be informed about the new program?
  
- \_\_\_\_\_ **Development of governance board or advisory structure**  
Who will make policy decisions or provide guidance to CAC?  
How will the board of directors or advisory board be structured?  
How will members be recruited, oriented and retained?
  
- \_\_\_\_\_ **Develop policies and procedures for security and safe-guards (internal financial controls, liability insurance, conflict of interest policies, etc.**  
How will children, program, board and staff will be safeguarded?  
Do written policies and procedures include: staffing screening, confidentiality, safety, client records, intake, investigation, therapy and child abuse reporting, no perpetrators on-site?
  
- \_\_\_\_\_ **Volunteer recruitment, screening and training program development**  
How will volunteers be recruited, screened, trained and supervised?
  
- \_\_\_\_\_ **Provide training for program staff and the community**  
How will training be provided, by whom and for which groups?
  
- \_\_\_\_\_ **Consider providing child abuse prevention programming**  
What role will the CAC take regarding prevention? Primary? Secondary?
  
- \_\_\_\_\_ **Develop program evaluation and accountability plan**  
How will program be evaluated and demonstrate accountability?
  
- \_\_\_\_\_ **Cultivate leadership on ongoing basis**  
How will leadership be developed to ensure the long-term viability of the organization?

# RESOURCES FOR CAC ORGANIZATIONAL DEVELOPMENT

To assist in answering the questions on the check list the following resources may be helpful:

**BEST PRACTICES: A GUIDEBOOK FOR ESTABLISHING A CHILDREN'S ADVOCACY CENTER PROGRAM**, National Network of Children's Advocacy Centers

Convene a working committee or task force of key individuals  
Select leadership  
Gather information on various CAC models  
Develop interagency agreement and obtain agency commitment  
Determine organizational structure  
Determine which services will be offered on-site or through referrals  
Select site and design or acquire space for child-appropriate facility  
Staffing and agency roles  
Multi-disciplinary team protocol development  
Cultivate leadership on ongoing basis

**NEEDS ASSESSMENT, FEASIBILITY STUDY, WORKPLAN, AND EVALUATION**,  
Northeastern Regional Children's Advocacy Center

Conduct a needs assessment of the extent of the problem in the community  
Develop program evaluation and accountability plan

**ORGANIZATIONAL DEVELOPMENT FOR CHILDREN'S ADVOCACY CENTERS**,  
Western Regional Children's Advocacy Center

Develop statements of vision and mission  
Research potential sources of support  
Plan and carry out resource development  
Plan and implement community outreach and awareness campaign  
Development of governance board or advisory structure  
Volunteer recruitment, screening and training program development  
Develop program evaluation and accountability plan  
Cultivate leadership on ongoing basis

**To obtain copies of these resources please contact:**

National Network of Children's Advocacy Centers  
1319 F. Street NW, Suite 1001  
Washington, DC 20004-1106  
202-639-0597 or 202-639-0511 FAX


7<sup>th</sup> Indian Nations Conference

# Full Faith and Credit

Jacqueline Agtuca

Tulsa, Oklahoma 1999



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7<sup>th</sup> Indian Nations Conference

Clinical Treatment of  
Juvenile Sex Offenders  
Part I and II

Barbara L. Bonner, PhD  
and  
Mark Chaffin, PhD

Tulsa, Oklahoma 1999





## 7<sup>th</sup> Indian Nations Conference

### **"Clinical Treatment of Juvenile Sex Offenders"**

#### **Part I and II**

**Barbara L. Bonner, PhD and Mark Chaffin, PhD**

#### **Learning Objectives:**

1. Understand the difference between adolescent and adult sex offender treatment.
2. Understand components of treatment.
3. Understand collaboration necessary to monitor and maintain treatment compliance.

Adolescent sex offenders are reported to commit 30-50% of all child molestation. This presentation will describe a cognitive-behavioral outpatient treatment program, including criteria for admission, treatment components, cognitive-behavioral interventions, and criteria for termination.



## ADOLESCENT SEX OFFENDERS

### Definition

Ages 13-18

Boys and girls who have been charged with, convicted of, or have disclosed involvement as perpetrators in illegal sexual behavior

## INCIDENCE AND PREVALENCE

- Exact number unknown
- All sex crimes significantly underreported
- Crime statistics show 20% of rapes and 30%-50% of child sexual abuse committed by offenders under age 18

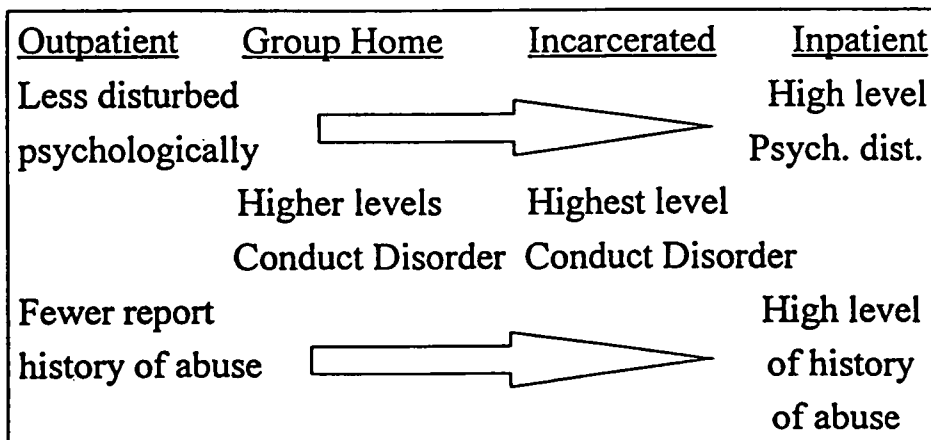
## AGE OF ONSET OF DEVIANT SEXUAL INTEREST

N=561

Act	Age					
	12	14	16	18	20	22
•Voyeurism	28	40	60	65	70	78
•Male Nonincest	18	33	50	61	71	73
•Frottage	0	16	46	58	62	70
•Exhibitionism	15	24	40	58	63	74
•Female Nonincest	8	18	37	46	55	59
•Rape	4	10	23	31	48	59
•Male Incest	17	33	50	64	70	74
•Female Incest	7	16	22	27	30	34

Marshall, W.L., Laws, D.R., & Barbaree, H.E. (Eds.) (1990).  
Handbook of sexual assault: Issues, theories and treatment of the  
offender. New York: Plenum Press.

## ASO CONTINUUM



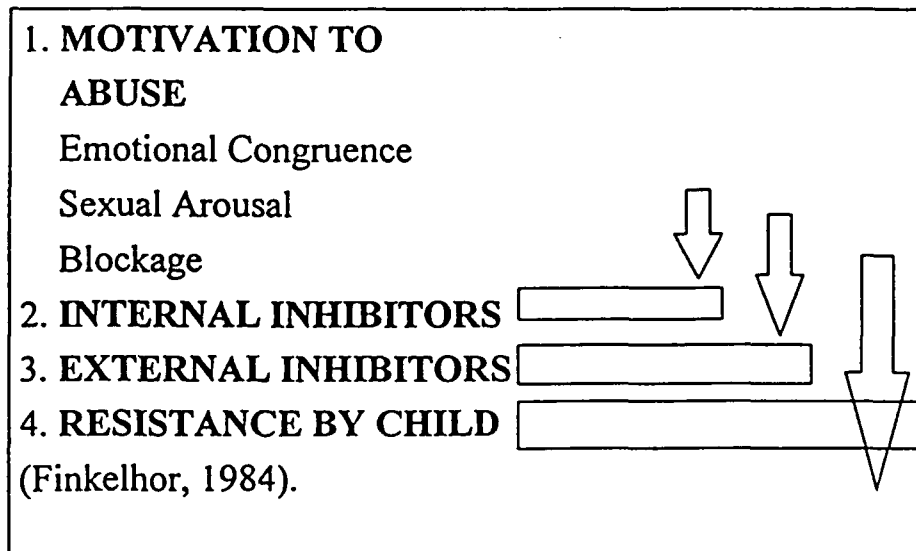
## ETIOLOGY

- No widely accepted theoretical model
- Delinquency Theory
- Finkelhor's 4 factor model

## CRITERIA FOR USEFULNESS OF A MODEL

- Comprehensive explanation of behavior
- Guides treatment plan
- Suggests method of prevention

## FOUR PRECONDITIONS: A MODEL



## TREATMENT PROGRAMS

- Should be based on theoretical model and thorough assessment
- Typically modified versions of adult programs
- Implemented in mental health clinics, group homes, psychiatric hospitals, and incarcerated settings

## TREATMENT COMPONENTS

- Reducing the denial and increasing the adolescents' sense of accepting the responsibility and accountability for their sexual offenses, including the use of confrontation techniques by peers in the group
- Increasing the adolescents' understanding of impact of abuse on victims
- Education related to human sexuality, sex roles, and values
- Helping adolescents to understand their victimization
- Increasing adolescents' understanding of motives and antecedent events that precipitated the sexual offense

## TREATMENT COMPONENTS

- Using behavioral techniques to eliminate deviant arousal patterns and fantasies, including masturbatory-reconditioning and aversive-conditioning procedures
- Cognitive restructuring related to destructive assumptions and beliefs about rape and the sexual abuse of children
- Skills in training in interpersonal, dating, and social situations
- Treatment in anger management and assertiveness
- Family therapy to promote positive parenting behavior and to reintegrate the adolescent into his family

(Davis & Leitenberg, 1987)

**ADOLESCENT OFFENDER PROGRAM**  
**University of Oklahoma Health Sciences**  
**Center**

- Established in 1986; group format
- Adolescent boys ages 13-18
- 1.5 hours weekly; minimum of 1 year
- Court ordered; requires parental involvement
- Known recidivism rate: <5%

**CRITERIA FOR ADMISSION**

- Be court ordered to treatment; regular hearings
- Have Probation Officer
- Age 13-17; admit to illegal sexual behavior
- Available for minimum of one year
- Adequate supervision
- Make restitution through community service



## TREATMENT COMPONENTS

- Orientation and Goal Setting
- Disclosure
- Empathy
- Effects on Victim and Restitution
- Evaluate Right/Wrong and Values Clarification

## TREATMENT COMPONENTS

- Impulse Control
- Assertion/Anger Management
- Sex Education
- Social Skills
- Relapse Prevention

## CRITERIA FOR TERMINATION

- Satisfactory attendance and participation
- No illegal sexual behavior (1 year)
- No other illegal behavior (1 year)
- Satisfactory school attendance and behavior

## CRITERIA FOR TERMINATION

- Satisfactory behavior at home
- Provide group leadership
- Obtain and keep a job
- Present acceptable prevention plan
- Make restitution to community

## **CURRENT ISSUES AND CONTROVERSIES**

- Lack of standardized assessment instruments
- Use of aversive techniques
- Reporting of additional offenses
- Use of plethysmograph

## **CURRENT ISSUES AND CONTROVERSIES**

- Use of polygraph
- Necessity of court involvement
- Length of treatment
- Risk factors for dangerousness

## **CURRENT ISSUES AND CONTROVERSIES**

- Efficacy of treatment
- Lack of research
- Community placement
- Application of adult offender models

## **DIRECTIONS FOR THE FUTURE**

- Increase research on all aspects on sexual behavior in children and adolescents
- Collect data on female adolescent sex offenders
- Develop risk factors and provide early intervention
- Conduct controlled treatment outcome studies
- Design and test primary prevention programs

## Do's and Don'ts

Below are a list of Do's and Don'ts that are recommended for parents. Go over these with your parents and discuss them in detail. You and your parents are to sign and date the Do's and Don'ts indicating that you have read them and are willing to follow them. If you have any questions about any of these, place a question mark by that item and discuss it with your therapists. The therapists will go over these with you and your parents in group session. It is your responsibility to review the contract as well as the Do's and Don'ts with your parents and obtain their signature.

### Do's and Don'ts for Parents of Adolescent Sex Offenders

#### DO:

- 1) ...spend quality time with your son (i.e., time alone with him when he has your individual attention).
- 2) ...communicate with your son. Encourage him to talk with you when he has problems or concerns, and talk to him yourself when you are bothered by something he is doing. Communicate about positive as well as negative things; i.e. communicate your love, affection, and concern for your son. Also talk to him about matters regarding sexuality and sexual behavior. Make sure you clearly convey your values in this area.
- 3) ...provide effective supervision of your son's behavior and set appropriate limits, such as establishing a curfew.
- 4) ...encourage responsibility in your son, such as doing chores around the house or getting a job.
- 5) ...encourage age-appropriate behavior, such as activities with boys and girls his own age, dating (later in his treatment program and with proper supervision) or taking part in extracurricular activities at school.
- 6) ...report any probation violations by your son to his probation officer and the therapists.
- 7) ...talk with the group therapists if you have any questions about your son's treatment.

# **ADOLESCENT SEX OFFENDER TREATMENT PROGRAM**

**Department of Pediatrics  
University of Oklahoma Health Sciences Center  
Directors  
Barbara L. Bonner, Ph.D. and Mark Chaffin, Ph.D.**

## **Disclosure Form**

**You are expected to describe your illegal behavior to the group. Listed below are some of the factors you will be asked to cover as you describe what you did that resulted in your attending the Adolescent Sex Offender Treatment Program.**

- 1. My age at the time the behavior began.**
- 2. The number, names(s), age(s), gender of my victim(s), and my relationship to the victim (my sister, a cousin, neighbor).**
- 3. The places where the illegal behavior(s) occurred.**
- 4. How long (weeks, months, years) the illegal behavior went on.**
- 5. Where I learned to do what I did.**
- 6. How long before committing the behavior did you think about it?**
- 7. How did you get the child alone?**
- 8. The details of what I did to the victim(s).**
- 9. Did you ejaculate with any of the victim(s)?**
- 10. What the victim said I did.**
- 11. What I did to get the victim(s) to cooperate or stop resisting.**
- 12. What the victim(s) said or did during the incident(s).**
- 13. How I felt about what I did before the behavior, during the behavior, right after the behavior, and now.**
- 14. How I made myself feel less guilty afterwards.**
- 15. How my illegal behavior was discovered.**
- 16. How I reacted when accused of the illegal behavior.**
- 17. How long after it was discovered before I admitted I did it.**
- 18. The first person to whom I told the truth.**
- 19. How I explain why I committed the illegal behavior.**
- 20. The effects of my behavior on my victim(s), me, and both families.**

## 7.2 - Rape Information Test

- |      |       |  |
|------|-------|--|
| True | False | 1. Most people are raped by strangers.                             |
| True | False | 2. Rapists usually have to use a gun or a knife.                   |
| True | False | 3. Most rapists are crazy.   |
| True | False | 4. Most rapes takes place in the victim's home.                    |
| True | False | 5. Men can be raped.   |
| True | False | 6. Women often accuse innocent men of raping them.                 |
| True | False | 7. If a girl wears really sexy clothing she is asking to be raped. |
| True | False | 8. The only reason for rape is to get sex.                         |
| True | False | 9. Most women secretly want to be raped.                           |
| True | False | 10. Most rapists are drunk or on drugs at the time they rape.      |

## EXERCISE FOUR: RESTITUTION

Restitution is another word that you may or may not be familiar with, but one that is important in your treatment. To make restitution means to pay back or make up for a wrong that you have committed. For you, this means that you should try to pay back the community or people you have harmed by your sexual offense. The most obvious person harmed by your offense was the victim or victims of your offenses. The next most obvious people are the families of the victims. But there are others, too. You have harmed your own family by engaging in inappropriate sexual behavior and you have harmed the community you live in. Thus, you need to think about restitution or paying back, in several ways.

First, you should think about possible restitution to your victim and the victim's parents. This might involve a face-to-face meeting with the victim or it may involve writing a letter. Often, however, your victims do not want any contact with you. This will be determined by the therapists and they will either arrange for further communication or inform you that they do not want contact with you. Nevertheless, it is important to think through in your own mind what you could say to the victim and the parents as part of your restitution. In the group session, you will discuss the things that should go in such a letter. List, in the space below, things that you think should go in the letter. During the discussion in group, you should add to your list.

Points to Include in the Letter to My Victim and in a Letter to My Victim's Parents:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_



## Risk Situations for Adolescent Offenders

Please rate the following situations as no, moderate, or high risk for you in terms of your committing any further illegal/inappropriate sexual behavior.

1. You are feeling extremely angry or upset.

0 1 2 3 4 5 6 7  
No Risk Moderate Risk High Risk

2. You are alone with a child or children.

0 1 2 3 4 5 6 7  
No Risk Moderate Risk High Risk

3. You are not accepted or rejected by boys your own age.

0 1 2 3 4 5 6 7  
No Risk Moderate Risk High Risk

4. You are alone with a girl your own age.

0 1 2 3 4 5 6 7  
No Risk Moderate Risk High Risk

5. You had a major conflict with an adult, i.e., your teacher or parents.

0 1 2 3 4 5 6 7  
No Risk Moderate Risk High Risk

6. You are watching sexually stimulating movies or videos.

0 1 2 3 4 5 6 7  
No Risk Moderate Risk High Risk

## WEEKLY PARTICIPATION ASSESSMENT/SELF-ASSESSMENT RECORD

1998

Name: \_\_\_\_\_

		1/7	1/14	1/21	1/28	2/4	2/11	2/18	2/25	3/4	3/11	3/18	3/25	
Excellent	7													
Very Good	6													
Good	5													
Satisfactory	4													
Minimally Acceptable	3													
Poor	2													
Very Poor	1													

- 1 = Disruptive and distracts other group members.
- 2 = Listens but does not enter into discussions even when called upon.
- 3 = Participates when called upon.
- 4 = Participates when called upon and makes some spontaneous comments.
- 5 = Participates frequently and without prompting.
- 6 = Participates frequently without prompting and comments are often of high quality.
- 7 = Participates frequently without prompting; comments often of high quality and provides leadership in group.

X = Participant  
O = Therapist



Worksheet 6.1

Behavior	Legal	Illegal	Appropriate	Inappropriate	Moral	Immoral	Fair	Unfair	Wise	Unwise

11. I thought the other person wouldn't care.

\_\_\_\_\_

12. I thought there wasn't anything wrong with it.

\_\_\_\_\_

13. I was on drugs or alcohol at the time.

\_\_\_\_\_

14. I don't know why I did it.

\_\_\_\_\_

15. I was with someone who made me do it.

\_\_\_\_\_

16. The person who was the "victim" wanted me to do it.

\_\_\_\_\_

17. Probably, the main reason I did what I did was \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Adolescent Sex Offenders  
Barbara L. Bonner, PhD  
University of Oklahoma Health Sciences Center

### Suggested Materials

1. **Juvenile Sex Offenders: A Follow-up Study of Reoffense Behaviors**  
A copy of the full report can be ordered from the authors by contacting:

Cheryl D. Malloy, Research Associate  
Urban Policy Research  
1101 N. Northlake Way, #106  
Seattle, WA 98103

A condensed version was published in Interchange, the newsletter of the National Adolescent Perpetrator Network, an organization directed by Gail Ryan at the Kempe Center in Denver. Professionals can join the network for \$30 annual dues. It is possible that single copies could be obtained for a nominal fee by contacting:

Gail Ryan, Network Facilitator  
The C. Henry Kempe National Center  
for the Prevention and Treatment of Child Abuse and Neglect  
1205 Oneida Street  
Denver, CO 80220

#### Manuals and Videos:

1. Breaking the Cycle: Adolescent Sexual Offenders. (1991). [33 minute videotape]. Bellefaire/Jewish Children's Bureau, PO Box 18009, Cleveland, OH 44118-0009; (216) 932-2800.
2. Gray, A.S., & Wallace, R. (1992). Adolescent-Sexual Offender Assessment Packet. Available from The Safer Society Press, RR 1, Box 24-B, Orwell, VT 05760-9756.; (802) 247-3132.
3. Kahn, T.J. (1990). Pathways: A Guided Workbook for Youth Beginning Treatment. Available from the Safer Society Press, RR 1, Box 24-B, Orwell, VT 05760-9756; (802) 247-3132.
4. Kahn, T.J. (1990). Pathways: Guide for Parents of Youth Beginning Treatment. Available from the Safer Society Press, RR 1, Box 24-B, Orwell, VT 05760-9756; (802) 247-3132.
5. Marsh, L.F., Connell, P., & Olson, E. (1988). Breaking the Cycle: Adolescent Sexual Treatment Manual. Available from St. Mary's Home for Boys, 16535 SW Tualatin Valley Highway, Beaverton, OR 97006; (503) 649-5651.
6. O'Brien, M.J. (1994). The Phase Manual: Assessment and Treatment of Adolescent Sex Offenders. Available from Alpha Phase Inc., St. Paul, MN.
7. Way, I.F., & Balthazor, T.J. (1990). A Manual for Structured Group Treatment with Adolescent Sexual Offenders. Available from Jalice Publications, PO Box 455, Notre Dame, IN 46556.

## “Don’t Shoot, We’re Your Children”: Have We Gone Too Far in Our Response to Adolescent Sexual Abusers and Children With Sexual Behavior Problems?

Fifteen years ago, when we first began working with adolescent sex offenders, treatment providers faced many obstacles. There were no treatment models uniquely designed from scratch for this population. No true experimental research had been used to evaluate the effectiveness of either customary or specialized interventions. There were no prospective data on the natural course of behavior in these youngsters. And there were no prospective data on the risk factors for developing the behavior. No empirically derived typologies existed. No actuarial risk assessment was available. Of course, the need to respond to social problems cannot and does not wait for better data. So, like our colleagues, we proceeded with some trepidation, knowing that we were largely working in the dark, and borrowed treatment models used with other populations and for other problems. We mixed and matched. We used informed guesswork, tried to remain guided by theory and professional standards, and hoped.

Now, 15 years later, things have changed. Unfortunately, much of what has changed has not been the state of our knowledge about many of the central questions needed to intelligently design interventions. Certainly, we have much more information about many important questions—general psychological characteristics, program descriptions, behavior patterns, relapse rates following intervention, family characteristics, and so forth. However, not one of the basic critical questions described above has been answered more than tentatively, if at all. There are still no true experimental studies comparing outcomes of treated versus untreated adolescents and no prospec-

tive data on either risk factors or the natural course of the behavior; there are only the beginnings of empirical typologies and no actuarial risk assessment. Largely, the field is still using treatment models and assumptions borrowed and adapted from programs developed for incarcerated adult pedophiles. These things have not changed.

Disturbingly, what has changed is the conviction that we have found the right track. The field has evolved conventional wisdoms that, like all conventional wisdoms, became accepted as fact when repeated and reinforced often enough. In some cases, they may shade into dogma. These might include beliefs, for example, that sex offender-specific treatment is the only acceptable and effective approach and that all teens and children who have performed inappropriate sexual behaviors must receive it; that a history of personal victimization is usually present, is a direct cause of abusive sexual behavior, and must be a focus of treatment; that denial must be broken; that hard, in-your-face confrontation is synonymous with good therapy; that treatment must be long term and involve highly restrictive conditions; that deviant arousal, deviant fantasies, grooming, and deceit are intrinsic features; that parents and families of offenders are generally dysfunctional; that long-term residential placement is commonly required; that the behaviors always involve an offense cycle or pattern that must be identified; that these teenagers and their parents must face the fact that they have a compulsive, incurable, life-long disorder; and that these youngsters are such dangerous predatory criminals that neighborhoods must be notified of their presence. Despite their wide acceptance, it is our opinion that clear, empirical scientific support for each and every one of these conventional wisdoms is either minimal or nonexistent.

offenders who have been in treatment programs are typically modest (around 5%-15%), despite widespread public and professional assumptions to the contrary. However, we do not know if this represents any difference from relapse rates of untreated adolescents. Empirically, we cannot say whether treatment helps, hurts, or makes no difference. Furthermore, the available data do not support any one type of treatment over another with the exception of tentatively supporting the delinquency-focused multisystemic treatment over individual counseling. One thing the data does support is the fact that nonsexual problems appear to be vastly more common than do sexual ones for these teenagers. The Association for the Treatment of Sexual Abusers (ATSA; 1997) has endorsed the position that "poor social competency skills and deficits in self-esteem can best explain sexual deviance in juveniles, rather than the paraphilic interests and psychopathic characteristics that are more common in adult offenders" and that "there is little evidence to support the assumption that the majority of juvenile sexual offenders are destined to become adult sexual offenders, or that these youths engage in acts of sexual perpetration for the same reasons as their adult counterparts" (pp. 1-2). Given this, perhaps it is time to emphasize some flexibility and compassion in which treatments we choose and to which individual youngsters we apply them and to

realize that individual need, not dogma, should dictate what must be accomplished.

The potential benefit of intervening with youthful sexual abusers is a real one. The fact remains that a significant amount of child sexual abuse and related behaviors are committed by children and teenagers. The fact remains that some currently unknown, but probably not insignificant, proportion of youthful abusers continue abusive behavior into adulthood and that adult abusers who have adolescent onsets may be responsible for a higher-than-usual number of events. To the extent that we can identify those truly at risk and work productively with them, our communities will be safer. But in the process, we should not forget that these are our children. And, as professionals committed to children's rights and welfare, we should think carefully about their rights and welfare before responding to their behavior.

Mark Chaffin, Ph.D.  
Editor

Barbara Bonner, Ph.D.  
Guest Editor

#### REFERENCE

Association for the Treatment of Sexual Offenders (1997, November). *Position on the effective legal management of juvenile sexual offenders*. Beaverton, OR: Author.

avoid labeling the youth as having a paraphilia (sexual disorder).

Given the lack of theoretically driven research and longitudinal studies, caution is also advised in making statements that juveniles who have engaged in sexually inappropriate behaviors will have to be monitored for the rest of their lives and that juveniles should have to register as sexual offenders even if they have engaged in only one sexual behavior that is considered norm violating. Caution is further urged in the mandating of registration or community notification for all juveniles who have committed sexual offenses. More research is needed to help us understand which juveniles represent true risks to the community and are in need of monitoring.

The etiologies and developmental course of sexual offending behaviors in juveniles has yet to be determined. What we do know from existing literature is that they are a heterogeneous group. Given this, further research is needed to develop typologies and then to tailor treatment and intervention to the specific needs of the youth. We can no longer afford to take the one-size-fits-all approach with these adolescents. It has not been empirically supported, is potentially costly, and, in some cases, may be detrimental to youth and their families. With these cautions in mind, this review will provide a summary of what has been reported in the literature regarding characteristics of juvenile sexual offenders, assessment findings, and treatment reports. The literature reviewed will be limited to adolescent offenders and does not include literature concerning prepubertal children with sexual behavior problems.

#### ETIOLOGIES OF SEXUAL OFFENDING BEHAVIORS

Researchers have proposed a number of theories to explain the etiology of sexually inappropriate behavior in adults; however, to date, there is no generally accepted theory regarding juvenile sexual offending. A number of factors have received empirical and clinical attention in the literature, including maltreatment experiences, exposure to pornography, substance abuse, and exposure to aggressive role models (Becker & Hunter, 1996). Currently, two models have been described in the literature. Ryan, Lane, Davis, and Isaac (1987) identify the sexual abuse cycle. This model begins with the adolescent having a negative self-image, which results in an increased probability of maladaptive coping strategies when confronted with negative responses to himself or herself. The negative self-image also leads the individual to predict a negative reaction from others. To protect against this anticipated rejection, the adolescent will become socially isolated and withdrawn and will begin to fan-

tasize to compensate for his or her feelings of lack of control or powerlessness. Finally, the sexual offense itself is physically carried out, leading to more negative self-imaging and thoughts of rejection. As can be seen, this is a repetitive cycle.

Becker and Kaplan's (1988) model proposed that the first sexual offense results from a combination of individual characteristics, such as lack of social skills and a history of nonsexual deviance, family variables including family relationships, and social-environmental variables such as social isolation and antisocial behavior. Following the commission of the first sex crime, the juvenile can embark on three possible paths: (a) the dead-end path on which he or she commits no further crimes; (b) the delinquency path on which the individual not only commits other sexual offenses, but also engages in general non-sex offenses and deviant behaviors; and (c) the sexual-interest pattern path on which the adolescent continues to commit sex crimes and often develops a paraphilic arousal pattern. It is important to note that neither of these two models have been empirically derived, nor have they been empirically validated. The Becker/Kaplan model was derived through clinical observations. Ryan et al.'s (1987) basic assumption is that to prevent further offending, offenders must have a framework on which to analyze their thoughts and feelings so they can self-monitor and modify their behavior prior to offending.

Recently, Kobayashi, Sales, Becker, Figueredo, & Kaplan (1995) used structural equation modeling to test a theoretical model of the etiology of deviant sexual aggression by adolescent males. The tested model included several family factors including perceived parental deviance, child physical and sexual abuse history, and child bonding with parents. These authors report that the results indicated that physical abuse by fathers and sexual abuse by males increased sexual aggression by adolescents. Bonding to mothers was found to decrease sexual aggression. Weinrott (1996) has recently critiqued this study and noted its methodological flaws; however, he noted that the two findings that emerged regarding physical and sexual victimization by males being associated with greater sexual aggression and bonding to mothers tending to mitigate the relationship may well hold up on replication.

In reviewing the literature on etiology and developmental progression of sexual aggression, Weinrott (1996) notes that most explanations of juvenile sexual crime are too simplistic or are applied universally. He recommended improved integration of findings from typology research and etiological studies, noting that distinct types of juvenile sexual offenders should be



cially in regard to extramarital affairs. Kaplan, Becker, and Cunningham-Rathner (1988) interviewed 27 parents of adolescent incest perpetrators regarding demographic characteristics, prior history of victimization and abuse, and parents' attitudes about their sons engaging in incestuous behaviors. Of the parents interviewed, 70% were the offenders' mothers. Ninety-three percent reported they had never been psychiatrically hospitalized, 96% had no prior history of nonsexual arrest, and only 9% had been arrested for a sex crime. Of the parents, 27% disclosed that they themselves had been physically abused and 30% disclosed that they had been sexually abused. Comparing mothers of adolescent incest offenders with parents of nonincest sexual offenders, the majority of the incest perpetrators had mothers who were not living with adult partners (Kaplan, Becker, & Martinez, 1990).

Graves et al. (1996), in the course of their meta-analysis, provide data on family structure and family interaction pattern as well as on parental use of alcohol and drugs and parental psychiatric illness. Considerably more of the juvenile assault offenders (78%) lived in single-parent families than did pedophilic offenders (44%) and mixed offenders (37%). However, 53% of the pedophilic youth reported living with foster families and blended families. The mixed offense offenders more often were living in single-parent families (37%) or with their biological families (36%).

In regard to family interaction pattern, the following four dichotomous variables were analyzed (flexible/structured, chaotic/rigid, separated/connected, and disengaged/enmeshed). Graves et al. (1996) report that the pedophilic and sexually assaulted youth tended to come from chaotic/rigid and disengaged/enmeshed families. These authors noted that although the majority of sexual offenders came from homes employing pathological interactions, some of the youth came from homes that had been coded as *happy*.

Data on parental alcohol abuse indicated that more of the pedophilic participants' mothers (43%) reported abusing alcohol, compared to 39% of those of the mixed offenders' and 17% of those of the sexual assault offenders. Data on drug usage indicated that 62% of the fathers and 43% of the mothers had used or abused illicit drugs. Regarding parental psychiatric illness, illness had been noted in 29% of the mothers of pedophilic youth compared to 13% of the mixed offense offenders. For the fathers, 18% of the fathers of pedophilic youth and 5% of the fathers of the mixed offense offenders were noted to have psychiatric disorders. Similarly, these authors found

that 12% of the fathers and 20% of the mothers of youth with sexual behavior problems had psychiatric illnesses.

Graves et al. (1996) discussed the conceptual and methodological implications of research and limitations of research conducted to date. As these authors note, a critical issue relates to sampling procedures—studies to date have underestimated upper-class families, and research conducted to date has provided limited information on the families of these youth. A second issue relates to conceptualization. For example, the U.S. Department of Justice reports only aggregate data, as opposed to specifying subgroups of sexual offenders. Also, many of the instruments that have been used to assess juvenile sexual offenders have not been standardized. Harris (1997) has reviewed the literature on juvenile sexual offenders and developed a matrix of assessment instruments that have been used to assess adolescent sexual offenders. Many of the instruments that have been reported in the literature to assess offenders do not present data on reliability and validity.

#### CHARACTERISTICS OF ADOLESCENT FEMALES

There has been an increasing awareness that juvenile females also engage in sexual-offending behavior (Fehrenbach & Monastersky, 1988; Hunter, Lexier, Goodwin, Browne, & Dennis, 1993; Matthews, Hunter, & Vuz, 1997). Fehrenbach and Monastersky (1988) reported on 28 female adolescents who were seen at a juvenile sexual offender program at the University of Washington. Of the female adolescents, 15 had been referred for rape and 13 for indecent liberties. *Indecent liberties* were defined as sexual touching of victims or as offenders having victims touch offenders. All behaviors were short of penetration. Rape was defined as either anal or vaginal intercourse or penetration of victims with objects. Of the 28 female adolescents, 36% had assaulted males, 57% had committed offenses against females, and two of the offenders had assaulted both male and female victims. All of the victims were known to the offenders. Fourteen percent had committed a delinquent act not involving a person—for example, theft. Of this population, 21% reported that they had been physically abused, and 50% reported they had been sexually abused.

Hunter et al. (1993) reported on 10 adolescent females who were receiving treatment in a residential treatment program for emotionally and behaviorally maladjusted youth. The average age of the females was 15 (range being 13 to 17 years of age). The authors assessed developmental/psychiatric characteristics, maltreatment experiences, and perpetration

#### COMPARISON OF SEX AND NON-SEXUAL OFFENDER GROUPS

In general, there has been a paucity of studies comparing juvenile sexual offenders with nonsexual delinquents. Ford and Linney (1995) compared three groups of juvenile offenders: juvenile sexual offenders, violent non-sexual offenders, and status offenders. Youth were in residence in one of four types of facilities: a facility to which youth were temporarily committed for diagnostic evaluations, a residential facility that provided services to status offenders, or two long-term residential facilities. The juvenile sexual offender group consisted of youth who had committed sexual offenses against children (at least 5 years younger than offenders) and those who had committed offenses against peers or adults. Measures included: demographic and background information, structured interview, the Conflict Tactic Scale (CTS), the Children's Assertive Behavior Scale (CABS), the Fundamental Interpersonal Relations Orientation-Behavior Questionnaire (FIRO-B), and the Piers-Harris Children's Self-Concept Scale (PHCSC). The groups did not differ as to age, living situation (the majority lived in single-parent households), family offense history, or intelligence (the majority fell in the low-average range).

However, differences were found in offense history. More than 60% of the child molesters were adjudicated on a first offense, whereas two thirds of the rapists had three or more prior offenses, usually for status or property offenses. Differences were observed on the CTS. Those youth who had committed sexual offenses against children had experienced more parental violence than did the status offenders and rapists. The child molesters also had been sexually victimized at a greater frequency than were the other groups—52% for the child molesters versus 17% for rapists and violent non-sexual offenders and versus 13% for status offenders. Although no statistically significant differences were found on the PHCSC, the child molesters reported experiencing problems on the following four scales: Displays of Problematic Behavior, Attitudes Toward Their Physical Appearances, Dysphoric Mood and Anxiety, and Popularity With Peers. On the CABS, the violent offenders reported that their friends got into more trouble than did the other groups. Significant differences were observed on the FIRO-B—the child molesters reported the greatest desire to control interpersonal relationships. The groups also differed on exposure to soft- and hard-core pornography. Although 42% of the sexual offenders reported exposure to hard-core sexual magazines, only 29% of the violent and status offenders reported such exposure.

Furthermore, the sexual offenders were exposed at earlier ages (5 to 8 years of age). Given that many of the rapists had prior offense histories for status and property offenses, one might hypothesize that their sexual offending was part of an overall pattern of conduct-disordered behavior and, consequently, would not differ significantly from the other two groups on many of the variables other than early exposure to pornography.

Recently, Jacobs, Kennedy, and Mayer (1997) assessed 156 juvenile delinquents who had been committed to the Dozier School for Boys in Florida. The 156 youth were divided into two groups of equal number. Half of the youth had committed sexual offenses against younger or peer victims. The other half were non-sexual offenders and had been committed for both violent and nonviolent offenses. These youth were assessed and compared on delinquency history, intelligence, academic achievement, and psychopathology. The sexual offender group was older than was the non-sexual offender group at first referral to the state (12.7 vs. 12.0) and had fewer prior delinquent referrals (12 vs. 17) and fewer prior commitments to the state for delinquent acts (2.5 vs. 3.35). No significant difference was found for IQ scores or for academic achievement testing. Furthermore, no statistically significant findings were apparent on the Hare Psychopathy Checklist-R (PCL-R). The total score for the sexual offenders was 27.24, compared to 26.19 for the non-sexual offenders. The juvenile sexual offenders in this study of incarcerated youth were quite versatile in their conduct-disordered behaviors as assessed by the PCL-R, which may be due to the fact that only the more dangerous and delinquent youth are incarcerated, whereas the less violent or delinquent youth receive treatment in the community.

Hastings, Anderson, and Hemphill (1997) also assessed daily stress, coping behaviors, and problem behaviors as well as cognitive distortions of adolescent sexual offenders, conduct-disordered youth, and a control group of adolescents. The juvenile sexual offenders were recruited from both outpatient and inpatient treatment programs. The conduct-disordered youth were recruited from a group home. Assessment instruments included a coping and problem experiences scale, a daily hassle questionnaire, the Revised Behavior Problem Checklist (RBPC), and an automatic thought questionnaire—revised. Significant differences were found on the Coping scale and the RPBC. Conduct-disordered youth scored higher than did the adolescent sexual offenders and control group on avoiding problems. The conduct-disordered youth also endorsed more frequent use of having sex with someone and hitting someone when

offender groups. They note the importance of tailoring treatment to address the specific psychopathologies of these youth. These MMPI studies provide evidence that personality assessment may be used for both developing typologies as well as assisting in delineating the focus of treatment for youth who have sexual behavior problems.

In addition to the MMPI, the Millon Multiaxial Inventory (MCMI) has been used to evaluate and compare the personality characteristics of adolescents who molested children (victims less than 12 years of age) and those who offended against their peers (victims at least 13 years of age and no less than 2 years younger than offenders) (Carpenter, Peed, & Eastman, 1995). Results indicated that adolescents who had offended against children scored significantly higher on the schizoid, avoidant, and dependent scales, compared to the adolescents who committed sexual offenses against their peers. Furthermore, the child victim group scores on the Dependent scale were within the clinically significant range. There were no significant differences between the two groups on the Histrionic, Narcissistic, and Antisocial scales. However, the degree of narcissism among those adolescents who offended against their peers was within the clinically significant range. Both groups' scores were within the clinically significant range on the Antisocial Personality Scale. This study is of importance in that it contrasted two groups of adolescent offenders and found that although both scored within the clinical range on the Antisocial scale, the peer offenders showed more narcissistic traits, whereas the child offenders showed more schizoid, dependent, and avoidant traits. Perhaps conduct disorder underlies both groups; however, the child offenders may have difficulty in relating to peers, may avoid them, and may feel more comfortable with less mature youth. Peer offenders, on the other hand, are more exploitive of adolescents their own age.

Personality characteristics of juvenile sexual offenders and adolescents who have committed nonsexual crimes also have been assessed using the Rorschach (McGraw & Pegg-McNad, 1989). All youth were assessed on an outpatient basis. Two statistically significant differences were found: The sexual offender group provided more responses and gave more anatomy responses (hypochondriacal preoccupation, repressed hostility, self-absorption) than did the nonsexual offenders. It is important to note, however, that the majority of the sexual offender group also had histories of engaging in nonsexual crimes and that the Rorschach examiner is not always blind to the reason for referral.

What is clear from the above cited studies is that results can be influenced by whether the youth are being evaluated and/or receiving treatment on an outpatient basis or whether they are incarcerated. In general, the more serious psychopathology is seen when youth are incarcerated. Also, given that many of the sexual offender youth also had histories of nonsexual offenses, it is not surprising that frequently, no differences are found when compared to nonsexual offenders. Finally, one can never rule out that nonsexual offenders have not committed sex offenses. Some of the comparison groups may in fact contain undetected or undisclosed youth who have also engaged in sexually offending behavior.

Future research on personality assessment should group participants according to inpatient/outpatient status, types of crimes committed, and gender and age of victims. Furthermore, attempts should be made to distinguish between youth who have only committed sex offenses (no history of nonsexual offenses), youth who have committed both sexual and nonsexual offenses, and youth who have only committed sexual offenses.

#### ASSESSMENT OF COMORBID PSYCHOLOGICAL AND/OR PSYCHIATRIC PROBLEMS

Clinicians and researchers have reported on the presence of other psychological and psychiatric problems in youth who have committed sexual offenses (Becker et al., 1991; Becker & Stein, 1991; Hastings et al., 1997; Hunter, Becker, Kaplan, & Goodwin, 1991; Kavoussi, Kaplan, & Becker, 1988; Lewis, Shanok, & Pincus, 1979; Lightfoot & Barbaree, 1993).

Lewis and colleagues (1979) compared incarcerated juvenile sexual offenders to a group of incarcerated violent offenders. She found that both groups had a significant prevalence of other psychiatric symptoms including depression, auditory hallucinations, paranoia, and thought disorders. Kavoussi et al. (1988) evaluated a sample of adolescent sexual offenders seen on an outpatient basis using *DSM-III* (APA, 1980) criteria. Conduct disorder was the most common diagnosis (48%). Those who had raped either their peers or adults had a higher prevalence of conduct disorder (75%) compared to those who had molested children (38%). Of the adolescents, 20% evidenced some symptoms of adjustment disorder with depressed mood, and 19% had no diagnosable *DSM-III* disorder. Given that the youth in the Lewis et al. (1979) study were incarcerated and those in the Kavoussi et al. (1988) study were not, one could hypothesize that the lack of serious psychopathology in the Kavoussi et al. study was due to the fact that the less disordered adolescents are allowed to remain in

cant differences between the groups on intelligence, age of victims targeted, presence of official arrests for sexual crimes, or type of abuse they perpetrated. The abused youth began 1.6 years earlier than did the nonabused, had two times the number of victims, were more likely to have both male and female victims, and were less likely to abuse only nonfamily members. Cultural/ethnic differences were observed, with fewer African American youth reporting that they had been abused than did Caucasian youth. The abused youth had higher scores on Scale Sc (schizophrenia) and marginally higher on Scale Pd (psychopathic deviate) of the MMPI.

Abused and nonabused youth did not differ on the Family Adaptation and Cohesion Evaluation Scale (FACES-III). Mixed results were found between the groups on criminality and delinquency, with the nonabused having two times the number of arrests for nonsexual crimes. However, they did not differ on self-reported delinquent behaviors. These authors hypothesize that there may be different developmental pathways to sexual offending related to abuse history, with sexually abused youth being more likely to develop deviant sexual arousal patterns. This possibility is supported by their earlier age of onset and more victims, specifically, more male victims.

#### PSYCHOPHYSIOLOGIC ASSESSMENT OF MALE ADOLESCENT SEXUAL OFFENDERS

Penile plethysmography is one form of assessing sexual arousal. In phallometric assessment, changes in penile tumescence are assessed while the respondent is exposed to a variety of sexual and nonsexual stimuli. There is a considerable body of literature on phallometric assessment with adult offenders, and its usefulness is well-established (Murphy & Barbaree, 1994). However, it is less clear how useful it is with adolescents. This form of assessment may be useful to the clinician in assessing some adolescents when used in a manner consistent with the guidelines recommended by the Association for the Treatment of Sexual Abusers (1997) and the National Task Force on Juvenile Sex Offending (National Adolescent Perpetrator Network, 1993). There is very little research on phallometric assessment with juvenile offenders (Becker, Hunter, Goodwin, Kaplan, & Martinez, 1992; Becker, Hunter, Stein, & Kaplan, 1989; Becker, Kaplan, & Tenke, 1992; Hunter, Goodwin, & Becker, 1994; Hunter, Becker, & Kaplan, 1995; Kaemingk, Koselka, Becker, & Kaplan, 1995). In general, the data indicates that the relationship between phallometric arousal and certain clinical characteristics appears

weaker in an adolescent population than in an adult population.

#### TREATMENT

As has been noted previously, there is a growing body of literature on reports of treatment outcome; however, there is only one controlled treatment outcome study in the literature. In part, the lack of controlled outcome studies relates to the ethics of randomly assigning offenders who may represent a danger to public safety to a wait-list control group or to a no-treatment control group. In addition, many of the uncontrolled studies have been fraught with methodological problems (Becker & Hunter, 1997). Becker and Kaplan (1993), Becker and Hunter (1997), and Pithers et al. (1995) provide a detailed description of treatment modalities that have been used in the treatment of juvenile sexual offenders.

Borduin, Henggeler, Blaske, and Stein (1990) have conducted the only controlled treatment outcome study comparing multisystemic therapy (MST) with individual therapy. MST is an ecologically focused delinquency intervention that is described elsewhere in this issue (Swenson, Schoenwald, Randall, Henggeler, & Kaufman, 1998 [this issue]). Juveniles were followed for an average of 37 months. Seventy-five percent (75%) of the youth who received individual therapy recidivated, compared with 12.5% of those who received MST. However, sample sizes were very small and the study has yet to be replicated.

Kahn and Chambers (1991) provide data on a retrospective follow-up on 221 juvenile sexual offenders treated in 10 programs in the state of Washington (some of the programs were outpatient and some were residential). Juveniles were followed for an average of 20 months. Whereas the sexual recidivism rate was low (7.5%), the overall recidivism rate (nonsexual offenses) was high (44.8%). Schram et al. (1991) reported on the results of an extended follow-up of 197 of the juveniles on which Kahn and Chambers (1991) reported. The rate of sexual reoffenses remained low, with 12.2% having been rearrested and 10% having been convicted of subsequent sex offenses.

Becker (1990) provided follow-up data on 80 juvenile sexual offenders who were treated on an outpatient basis and followed, in many cases, for up to 2 years. Recidivism data were determined by interviewing the youth, families, and referral sources. Of the youth, 8% had sexually reoffended. Sixty percent were convicted for nonsexual offenses.

Although the above cited studies have reported on the efficacy of specialized treatment programs for juvenile sexual offenders, Lab, Shields, and Schondel

lems should be considered for implementation in the area of sexual abuse.

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7<sup>th</sup> Indian Nations Conference

Working with Sexual Assault Victims  
And Their Families  
Part I and II

Anne Munch, esq.

Tulsa, Oklahoma 1999





## 7<sup>th</sup> Indian Nations Conference

### **"Working with Sexual Assault Victims and Their Families"**

**Anne Munch, esq.**

#### **Learning Objectives:**

1. To understand the myths, realities and challenges of sexual assault in our communities.
2. To understand how sexual assault affects the victim and our relationships with them.
3. To learn how to successfully work with victims of sexual assault and their families.

This workshop will review how victims of sexual assault are perceived by our society, by themselves, and by our criminal justice system. In looking at this issue, we will examine the myths and realities of sexual assault, and the victim's reactions to sexual violence. We will identify "do's and don'ts" of working with victims of sexual assault and their families, and learn effective means of assisting victims and their families through the rigors of the criminal justice system.



**"Working With Sexual Assault Victims and their Families"**  
**Seventh National Indian Nations Conference**  
**September 28-30, Tulsa Oklahoma**  
**Presented by Anne P. Munch, esq.**

**1. A Statistical Overview**

**a. Children**

- One in four girls and one in six boys are sexually assaulted before age 18. (Finkelhor, 1982)
- Overall, out of home abuse constitutes less than 5% of all sexual abuse cases reported to CPS agencies. Based on reports from 19 states in 1995, about 2% of all forms of confirmed abuse occurred in a daycare or foster care setting. (National Committee to Prevent Child Abuse, 1996)
- A 1996 national incidence study conducted by the federal government found that girls are sexually abused three times more often than boys. (Sedlak & Bradhurst, "Executive Summary of the 3<sup>rd</sup> National Incidence Study of Child Abuse and Neglect," 1996)
- About 115,000 cases of sexual abuse enter child protective services caseloads annually. (McCurdy & Daro, Current Trends in Child Abuse Reporting Fatalities: The Results of the 1994 Annual Fifty State Survey, 1995)
- 29% of all forcible rapes in America occurred when the victim was less than 11 years old. (NWS, "Rape in America: A Report to the Nation," 1992)
- Women raped before age 18 are twice as likely to be raped as an adult, compared with women who have not been raped before age 18. 18% of women who reported being raped before age 18 said they were also raped after the age of 18, compared with 9% of the women who did not report being raped before age 18. (NVAW, "Prevalence, Incidence, and Consequences of Violence Against Women," November 1998)
- Female survivors of child sexual abuse were four times more likely than non-survivors to have worked as a prostitute; male survivors were eight times as likely. Survivors were 40% more likely to have sex with someone they didn't know. (American Journal of Public Health, 1991)

**b. Date and Acquaintance Rape**

- Each year an estimated 500,000 women are the victims of some form of rape or sexual assault.

- Women were more likely to report being raped or sexually assaulted by friends or other acquaintances than by intimates, relatives or strangers.
- Friends and acquaintances committed about half of all rapes and sexual assaults. Intimates committed an additional 26%. Altogether, offenders known to the victim accounted for about three-quarters of all rapes and sexual assaults. Strangers committed 18% of such assaults. (NCVS, "Violence Against Women: Estimates from the Redesigned Survey," 1995)
- Sixty to seventy-five percent of victims are assaulted by someone who is an acquaintance. 95% of the victims of acquaintance rape do not report the crime to officials. (Koss, "Defending Date Rape", 1992)
- 75% of male students and 55% of female students involved in acquaintance rape had been drinking or using drugs.
- Only 16% of acquaintance rape victims report the crime to the police. (NWS, "Rape in America: A Report to the Nation," 1992)
- Women aged 16 to 24 are three times more likely to be raped than other women (US Department of Justice, 1991)

### c. Reporting Rates

- Only sixteen percent of rapes are ever reported to police. Fifty percent of surveyed rape victims said that they would be a lot more likely and 16% would be somewhat more likely to report rapes to police if there was a law prohibiting the news media from disclosing their names and addresses.
- In a survey of college women, 38% reported sexual victimization, which met the legal definition of a rape or attempted rape, yet only 4% or 1 out of every 25 reported their assault to the police. (NWS, Rape in America: A Report to the Nation," 1992)
- The FBI estimates that only 37% of all rapes are reported to the police. The Bureau of Justice Statistics are lower, only 30.7% reported the crime. (NCVS, 1996)
- A three-year study from the Senate Judiciary Committee found that: Approximately 16% of rapes are reported. Of those, about 62% lead to an arrest. Of the cases which result in conviction, half of the convicted rapists spend less than a year incarcerated. Almost a quarter of convicted rapists never go to prison. Rape cases are 40% more likely to be dismissed than cases dealing with robbery. (Timberlake, 1990)

- Delayed disclosure by victims of sexual assault is correlated to being a victim of child sexual abuse, the rape being completed (rather than just attempted) and use of avoidance coping mechanisms. Early disclosure was associated with the offender using alcohol before the assault and the victim seeking medical attention after the assault. (Ullman, "Correlates and Consequences of Adult Sexual Assault Disclosure," *Journal of Interpersonal Violence*, 1996)
- American Indian/Alaska Native women were most likely to report rape and physical assault victimization, while Asian Pacific Islander women were least likely to report. Hispanic women were less likely to report rape victimization than non-Hispanic women. (NVAW "Prevalence, Incidence, and Consequences of Violence Against Women," November 1998)

#### **d. Offenders**

- Rapists frequently have ongoing sexual relationships with spouses or girlfriends; they rape to fulfill other needs. (US Department of Justice, "Preventing Violence Against Women," June 1995)
- Weapons were used in only 25% of rapes and attempted rapes. (Bureau of Justice Statistics, 1991)
- Several studies reveal that most sexual offenders rape more than once, and most have numerous victims.

## **2. Post Traumatic Stress Disorder: Understanding the Basics**

### **a. What is PTSD?**

PTSD is defined in the DSM-III-R at section 309.89. The disorder is described as occurring when a person experiences an event that is outside the range of usual human experience and that would be markedly distressing to almost anyone. The traumatic event is then persistently re-experienced in at least one of several ways which include:

- Recurrent and intrusive distressing recollections of the event
- Recurrent distressing dreams of the event
- Sudden acting or feeling as if the traumatic event were recurring (flashbacks)
- Intense psychological distress at exposure to events that symbolize or resemble an aspect of the event, including anniversaries of the event.

PTSD also involves the persistent avoidance of stimuli associated with the event or numbing of general responsiveness as indicated by at least three of the following:

- Efforts to avoid thoughts or feelings associated with the traumatic event
- Efforts to avoid activities or situations that arouse recollections of the event
- Inability to recall an important aspect of the traumatic event
- Diminished interest in significant activities
- Feeling of detachment or estrangement from others
- Difficulty expressing and receiving affection
- Sense of a foreshortened future

PTSD also involves persistent symptoms of increased arousal (not present before the event) as indicated by at least two of the following:

- Difficulty falling or staying asleep
- Irritability or outbursts of anger
- Difficulty concentrating
- Hypervigilance
- Exaggerated startle response
- Physiologic reactivity upon exposure to events that symbolize or resemble an aspect of the event.

Victims who suffer from PTSD are thrown back into the initial crisis by "triggers". These triggering events can cause victims to re-experience crisis reactions, and can include:

- Seeing the assailant again (I.D. at trial)
- Sensory stimuli (hearing, seeing, smelling, touching, tasting)
- Anniversaries of the event
- Criminal justice hearings

**b. How common is it for sexual assault survivors to experience PTSD?**

- 28% of all crime victims develop PTSD (NIJ)
- Direct victims of sexual assault, aggravated robbery and family members of homicide are most likely to develop PTSD (NIJ)
- A 1992 study found that one week after a rape 94% of the survivors evaluated were experiencing PTSD. After 12 weeks, 47% were still experiencing PTSD. (Recovering from Rape, Ledray)
- 31% of surveyed rape victims developed rape related PTSD. 3.8 million adult women have suffered from rape related PTSD, and 1.3 million adult American women are still suffering the symptoms two years after the rape. (Rape in America, 1992)
- 50% of the women seen at the Sexual Assault Resource Service in Minneapolis in 1993 met the criteria for PTSD one year after the assault.

**c. What are the stages survivors go through with Rape related PTSD (or Rape Trauma Syndrome)?**

**1. Stage one: Acute**

- Immediately following sexual assault
- Affects to affect and behavior of the victim.
- Victim may appear numb

**2. State two: Pseudo-Adjustment state**

- Several weeks after the event
- Victim may be in denial and attempting to reorganize her life
- Victim may try to suppress feelings

**3. State Three: Reactivation state**

- May occur weeks, months or years after assault
- "Triggering event" may begin stage
- Victim may seek help in this stage
- Feelings of shame, guilt and self-doubt dominate her thoughts.
- Self-blame may allow her to feel a sense of power or control over what has happened to her.
- Acute distress and anxiety may be evident. (flashbacks, nightmares etc)
- Victim may be irritable and angry
- May be depressed or suicidal

**4. Stage Four: Anger**

- When the victim sees that she had no control over what happened, she may become angry or rageful
- Grief over the impact of the assault on the victim
- Control issues become quite dominant and may be evidenced by possessiveness, stubbornness, closed-mindedness, anger toward self, anger toward others for not protecting her, isolation from loved ones, anger toward the system, self inflicted harm.
- The victim may be motivated into action in this stage

**5. Stage Five: Resolution/Integration**

- No set time for this stage, and it sometimes never comes
- Victim realistically accepts the event and resolves feelings about perpetrator
- Victim may feel more in control, needing to control others less

### **3. Special considerations for rape survivors from cultural or rural minority populations**

The rape survivor who lives in a cultural or rural minority may have additional concerns around reporting the rape and following through on the case. Some of those concerns are:

- Religious or cultural values that manifest in certain attitudes or beliefs about the role of a woman when it comes to sex.
  - Conservative Christian community
  - Tribal beliefs
  - Drinking? Dancing? Out after dark?
  - Strict stereotypical gender roles
- The family name
  - Is there a reputation to uphold?
  - Will being a rape victim cause a stigma to the family?
  - What about the rapist's family?
  - Will anyone believe her given who the rapist is?
- Her social life
  - Does her social life revolve around the small community?
  - Will she be ostracized for coming forward?
  - Will her family and children suffer if she comes forward?
  - Will she split the clan if she reports?
  - Does she know who to call?
  - Is there 911 service in the community?
  - Does she know where law enforcement can be found?
  - Is she reluctant to call because she does know law enforcement?
- Is she a woman of color in a white society, she may ask:
  - Will they believe me?
  - Will they think I am dirty and ugly?
  - Will they ridicule me?
  - Will they treat the rapist too harshly if I report?
  - Will the Fed's take over the case?
  - Will I be further ostracized if they do?



**4. The survivor's concerns. What are some of the things to be aware of when working with sexual assault survivors and their families?**

**a. Reporting:**

- She will not be believed
- It is her fault
- She will be humiliated even more
- They won't do anything to the rapist even if she does report

**What can the family do?**

- Encourage her to consider reporting. Things you can point out are:
- She can report anonymously
- She can report and then change her mind about pursuing the case
- She can report and get the sexual assault examination kit done in case she decides to go ahead with the case now or in the future
- She can report so it might not happen to another woman
- If she reports, she can qualify for victim compensation money to assist her with the support she will need
- She can report for her own emotional health, and lay the blame where it belong
- Support the decision she makes
- If she does not want to report, do not take the law into your own hands and go out looking for the perpetrator.
- Encourage her to consider a rape kit exam and STD tests
- Do not become angry with her if her decision is different than the one you think she should make

**b. What now?**

**What is she experiencing after the assault? She may experience an array of feelings, none of which are pleasant, and may include:**

- Shock and disbelief
- Denial
- Confusion
- Fear
- Anger
- Depression
- Anxiety
- Low self esteem
- Guilt
- Suicidal ideation

➤ **Sexual Dysfunction**

**What can the family do?**

- **Believe her**
- **Reassure her**
- **Accept her feelings**
- **Listen to her**
- **Tell her how you feel**
- **Do not rescue her**
- **Do not take away her control out of your own fear**
- **Do not personalize her feelings**
- **Do not blame her for the changes in your life since the assault**
- **Take care of yourself**
- **Assist her with taking steps back into her life when she is ready**
- **Support her through the process**

**What can others in the criminal justice system do?**

- **Hold the offender accountable**
- **Obtain restraining orders for the victim**
- **Explore civil and Federal remedies or causes of action**
- **Use vertical investigation**
- **Use vertical prosecution**
- **Use victim advocates at every step**
- **Use expert witnesses to explain her response to trauma**
- **Prepare the survivor for the court process**
- **Support the decisions the survivor makes**
- **Become familiar with PTSD and how it affects the criminal case**
  - **The telling of the events may vary due to trauma**
  - **The survivor may target "the system" with her anger**
  - **Conversely, the survivor may appear numb and detached**
  - **The survivor may become "triggered" by court dates**
  - **The survivor may have memory impairment**
  - **The survivor may not remember the events in sequence**
  - **The survivor may appear demanding or controlling**
  - **Experts can help explain these nuances!**

7<sup>th</sup> Indian Nations Conference

Forensic Interviewing Techniques of  
Native Child Victims  
Part I and II

Roe Bubar, JD and Blaine "Mac" McIlwaine

Tulsa, Oklahoma 1999



## 7<sup>th</sup> Indian Nations Conference

### **"Forensic Interviewing: Techniques and Trends in Interviewing Native Child Victims" Part I and II**

**SSA Blaine "Mac" McIlwaine and Roe Bubar, JD**

#### **Learning Objectives:**

1. Develop a starting point for all participants to interview Native children in complex child abuse cases.
2. Understand how memory and suggestibility, as well as speech and language, impact interviews of child witnesses.
3. Understanding the complexity and developing culturally competent strategies in forensic interviews.

This workshop will focus on the following challenges in interviewing child witnesses in child sexual abuse cases: multivictim cases, cultural competence, memory and suggestibility, and speech and language



**Innovative Approaches to Forensic Interviews with Native Children**

**Roe Bubar, Esq.  
Bubar & Hall Consultants  
Fort Collins, Colorado**

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**Consider**

- Complexity of Interviewing Children
- Live work with Children in Conjunction with Forensic Supervision is Ideal
- This Workshop covers a Limited Area of Forensic Practice
- Complexity of Indian Country Cases

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**Cultural Competence In Forensic Interviews**

- Historical Context
- Native Worldview
- Assimilation and Acculturation
- Who Conducts the Interview
- Cultural Milieu
- Language Proficiency

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**Cultural Competence ...**

- Cultural Taboos
- Sexuality in Children
- Ethnocentricity
- Cultural Competence as a Personal and Professional Value

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**Communication Styles**

- Oral Tradition
- Listening
- Cadence of Speech
- Pace
- Silence
- Non-verbal Communication

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**Memory**

- Memory is Complex
- Research Changes in this Area
- Memory is not Static
- Context and Circumstances Around Memory is Important
- Children and Memory
- Children and Adults

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**Memory Continued ...**

- External Cues
- Central vs. Peripheral
- Forgetting Curve
- Errors of Omission
- Bizarre Statements do not Correlate with False Statements (Ceci, 1998)
- Action Events vs. Verbal Events

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**Suggestibility: is the ability to report misleading or inaccurate information**

- Leading Questions
- Structures that Empower Children
- Young Children are at Risk for Suggestibility
- Multiple Hypothesis
- Methodology for Questions
- Events Contaminating Another Memory

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**Suggestibility continued ...**

- Confidence in the Child's Response Should Consider the Type of Question Presented
- Continuum of Questions
- Suggestibility in Children can be Impacted by Questions, Events, Setting and the Demands of the Situation
- Factors that Typically Affect Suggestibility

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**Suggestibility continued ...**

- Repeatedly Questioning Children
- Resistance to Misleading Questions
- Corroborative Sources
- Be Prepared to Defend the use of a Leading Question

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**Reliability of Children's Statements**

- Weight Given to Child's Response Reflects Consideration of Questioning
- Consistency of Statements
- Nature and Quality of Details
- Multiple Hypothesis
- Developmental Considerations

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**Reliability ...**

- Emotional and Behavioral Presentation and Factors
- Collaborative Interviews & Information
- Motive

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## Long Term Emotional Survival While Investigating Crimes of Violence

By Blaine D. McIlwaine

## You can't Save Them All.

- Concentrate on the children and cases you can save.
- Get the BIG PICTURE.
- Take pride in your accomplishments.
- You will make a difference in some child's life.

## Stress Sources in Child Abuse Cases

- Organizational stress.
- Extensive stress due to travel.
- Frustration and fatigue due to case load.
- Stress reactions due to specific issues connected with child abuse cases.
  - Case reactive events.
  - Environmental issues pertaining to child abuse in general.

## Identify the Stress Sources

- Identify the sources of stress to you.
- Avoid denial of the problem : Acknowledge it without exaggerating it.
- Attempt to actively deal with it in some creative way.
- Share the problem with others who care.

## What Works for Me !

- Combining hobbies with the assignment.
- Working each case to my own satisfaction.
- Liberal and creative use of time and travel.
- Separation of job and off job activities.

## Top Ten Tips on Stress Management

- Develop a spiritual support system.
- Our family should be the most important thing to us in this world.
- Get in to a good hobby or pastime.
- Share your experiences with colleagues.
- Avoid self defeating behaviors.

## Cultural Awareness in Child Abuse Cases in Indian Country

By Blaine D. McIlwaine

## POINTS TO CONSIDER WHEN WORKING IN INDIAN COUNTRY

- All Native American cultures are different from us and most differ from each other.
- Your credibility is an issue in Indian Country.
- Your interpersonal style and approach will affect how you are perceived.
- Its just as important how we treat people as it is what we say to them.

## Cultural Differences between Indians and Non Indians

- |                             |                            |
|-----------------------------|----------------------------|
| • Extended family           | • Nuclear family           |
| • Interdependence           | • Independence             |
| • Cooperation               | • Self reliance            |
| • Patience and modesty      | • Competition              |
| • Giving /sharing           | • Acquisitive              |
| • Elders/children valued    | • Youth hold future        |
| • Intelligence is intuitive | • intelligence is rational |

- A. Chewiwi and T. Quasula, Native Issues Seminar 1996

## Differences in views of Justice Indians                      Non Indians

- |   |                                     |
|---|-------------------------------------|
| • Non adversarial                       | • Adversarial                       |
| • talk (everyone including non parties) | • Argue (one party against another) |
| • Rights of the community               | • Rights of the Individual          |
| • Restoration of peace                  | • Vindication of society            |
| • Forgiveness and reintegration         | • Punishment/imprisonment           |

- A. Chewiwi and T. Quasula, Native Issues Seminar, June 1996

## Differences in views of Justice continued

- |  |  |
|--|--|
| • Obligation of accused to speak             | • Rights of the accused to remain silent |
| • Restitution to victim harmed               | • Fine to the state                      |
| • Law is part of the whole (spiritual incl.) | • Separation of church and state         |
| • Oral record                                | • Emphasis on written record             |
| • No right to appeal                         | • Right to appeal                        |

- A Chewiwi and T Quasula, Native Issues Seminar 1996

## COMMON MISTAKES MADE BY NON INDIANS

- Speaking in a loud or fast manner.
- Shaking hands in an overly aggressive way.
- Looking to long at someone or looking directly into the eyes of someone.
- Speaking too directly to an older and/or more traditional person.
- Claiming Indian heritage.

### Top Ten Tips on Stress Management

- Manage your time wisely.
- Plan for the future, especially future time off or breaks in the routine.
- Practice some form of relaxation therapy.
- Digest some good materials on stress management.
- Get regular exercise.

### Proactive Vs. Reactive

- Plan for the long term.
- Stay ahead of the Power Curve.
- Accent the Positive not the negative.
- Network around problems.
- Remain flexible and receptive to new ideas or methods.

### **Errors of Investigators in Indian Country**

- Racing into a residence . Take your time.
- Interrupting a ceremony.
- Failure to state the reason you are seeking someone.
- Displaying your credentials and not letting the person hold them.
- Pointing at someone.

### **Cultural Points to Consider in Interview Situations**

- Take your time and develop rapport.
- Slow down your voice and watch your mannerisms.
- Shyness or quietness should not be mistaken for lack of cooperation.
- Averted eye contact should not be mistaken for deception.

## Interviews of Children in Multiple Victim Cases

By Blaine D Mcilwaine

## Preparation for Interviews

- Where and when you conduct the interview will have a direct impact on its outcome.
- What aids will you need to help the victims recollection ?
  - Consider the child's age and verbal skills.
  - With older children consider bringing various types of calendars, yearbooks or school schedules.

## Considerations in Dealing With Victims

- Expect initial denial or minimization.
- Reassure the victim that he or she has done nothing to be ashamed about.
- Note that the offender has spent more time with the victim than you have.
- Ambivalence is part of the process, expect some degree of continued contact with the offender.
- Always consider additional interviews.

## Determine the Approximate Number of Victims.

- With each victim proceed from the general to the specific.
- Determine the identities of other victims before you obtain any info. that could terminate the interview.
- Most victims will remember the first time and the last time they went to an offenders residence, or had contact with him.

## Establish a List of Potential Future Interviews

- Remember as your interviews mount up your list of victims will grow quickly.
- Your potential future interviews should be of any victims that can be connected to the offender.
- Consider any person with knowledge of the offenders activities also a potential future interview.
  - This includes coworkers and neighbors.

## Behavioral Commonalties in Multiple Victim Cases

- Remember that many multiple victim cases involve *preferential molesters*.
- Preferential molesters (pedophiles) are predictable in their approaches to children and in their interaction with them.
- Can you show any common behavior demonstrated by the offender through the interviews of the children.

### Preferential Molesters

- Manifest a true sexual attraction to children.
- Most molest large numbers of victims.
- They are avid collectors of child pornography.
- They are fantasy driven and their sexual fantasies focus on children.
- They have well developed techniques in obtaining victims.

### Understanding the Preferential Molester Mindset

- Pedophiles often engage in behavior that is high risk in nature.
- This behavior is dependant on their fantasy world and their inner needs.
- Their behavior is what we key on in the investigative process which is driven primarily by the interviews of victims.
- The interview of the victims helps establish our case.

### Document Patterns of Behavior in Multiple Victim Cases

- Do the victims statements in general indicate a commonality of behavioral style on the offenders part.
- Establish his complete interaction with the child.
- Be sure you are asking the same general questions of each child to show reliability and consistency.

### Intelligence Information From Interviews

- Does the offender keep a list of victims or a method of recording the sexual acts.
- Does the offender use a particular method of approaching the victims.
- Can the victim describe the words used by the offender.
- Did the offender make reference to other offenders or other victims.

### Evidence in Multiple Victim Cases

- What evidence is described to you by the interviews of your victims.
- Aside from the obvious things like semen, lubricants, etc. Is there evidence the victim has described to you that would *corroborate his statement*.
  - Can he describe an item in the offenders house or bedroom ?
  - Is he aware of any secreted items ?

### “Child Erotica” in Child Sexual Abuse Cases

- What can your victims tell you about this st form of evidence maintained by Preferential Molesters offenders ?
- You have to know what it is before you ask the correct questions during the interview.
- Child erotica is often overlooked in interviews of victims and in searches.



### Child Erotica

- It is a broader term than Child Pornography.
- It can be defined as any material, relating to children, that serves a sexual purpose for a given individual.
- It is sometimes referred to as *Pedophile Paraphernalia*.
- It is not illegal to possess but it tells us something about the offender's mindset.

### Investigating Multiple Victim Cases

- Be alert for any signs of group sexual activity.
- It is common for a victim to be shared by other offenders.
- Offenders can be victims and victims can be offenders.
- Expect community shock and denial once the investigation becomes public.

### Problems In Multiple Victim Cases Involving Native American Children

- Inadequate information on victims and families.
- Common last names.
- Inclusion of personnel not familiar with native American customs and values.
- Community denial and lack of cooperation by parents, guardians and bureaucrats.

### Overcoming Problems

- Outside resources to augment the interviewers.
- Use of people knowledgeable in both multiple victim cases and in working with native Americans.
- Increase of case prioritization by management at all levels of all disciplines.



## INTERVIEW AND INTERROGATION



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## Interview and Interrogation in Child Abuse Cases

By Blaine D McIlwaine

### INTERVIEW AND INTERROGATION: GENERAL CONSIDERATIONS

#### Definitions

1. **INTERVIEW** - a formal meeting between two people for the purpose of exchanging information.
2. **INTERROGATION** - asking formal questions to obtain the truth through planned or unplanned approaches and techniques.
3. **INTERROGATION APPROACH** - the manner in which the interrogator accomplishes the interrogation, (e.g., sympathetic, aggressive, indifferent, etc.).
4. **WITNESS** - an individual who has personal knowledge from seeing or hearing something about the incident.
5. **SUSPECT** - a person who may have planned, participated, committed or have guilty knowledge of a crime.

### INTERVIEW AND INTERROGATION: GENERAL CONSIDERATIONS (CONT)

#### Definitions

6. **SUBJECT** - a person who definitely has committed a crime.
7. **ADMISSION** - any act or statement made by the suspect that is a partial acknowledgement of the offense.
8. **CONFESSION** - a full and complete acknowledgement of guilt concerning participation in the commission of a crime.
9. **DECEPTION** - physical, emotional or mental attempts to deceive the interrogator.
10. **STATEMENT** - a written or oral assertion of certain facts and information in an investigation.

## Why do People Confess ?



- Some just want to tell their side of the story.
- Others are hoping if they cooperate they will get preferential treatment.
- Some are looking for notoriety, forgiveness or other reasons.

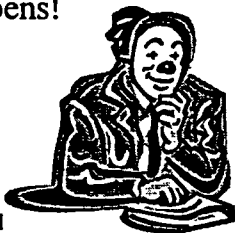
## Why People do not Confess.



- Poor chemistry between subject and interviewer.
- Poor environmental setting.
- Fear of the consequences.
- Shame or guilt of crime.

This is the toughest person, the one who has told himself he will not confess no matter what happens!

- Here is where we really earn our paycheck.
- We need to overcome his reluctance to talk and convince him it is in his best interest to confess.
- Then *Interrogation* with solid *case facts* and the best *themes* we can utilize.



### Interrogation is the Answer to Resolving Many Cases

- Use interrogation wisely !
- Do not use interrogation if you are not reasonably convinced of the persons guilt.
- Interrogation is work !



### INTERVIEW VS INTERROGATION

Non accusatory (Indirect)	Accusatory (Direct)
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Less structured

Goal: Gathering of information

Less control of environment

Less time and legal constraints

Conversational questioning



Specific Structure (in both setting and presentation)

Goal: Obtain admissions

Control of environment

More time and legal constraints

Orchestrated or systematic questioning



### Linkage to the Case

- When a person tells a story they may link themselves to the crime .
- If they do you can analyze the story they give you.
- Look for inconsistencies, gaps in the story etc.



### Non Linkage to Case

- Without a story that links them to the case you have nothing to analyze or attack.
- Thus you must analyze the case facts and attempt to develop a theory about how and why the crime was committed.



### Why do some interrogations fail?

- Because the interrogator either runs out of questions or runs out of things to say.
- Or the subject shuts down the communication process.



## THEMES KEEP THE CONVERSATION FLOWING

- Themes allow you to get around awkward silences and to bridge gaps or stalls in the interrogation.
- Memorize and utilize good credible themes that you have confidence in and that the offender will understand.



1. **General Themes** - Description of criminal justice system, bringing your cooperation to attention of the prosecutor, your story won't sell in court - Jury won't believe you, etc.

A - Openings

B - Human Nature

C - Closings



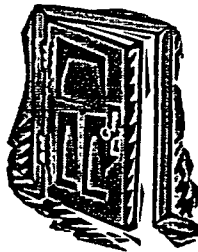
2. **Situational Themes** - Specific things in a specific situation. Look for a unique aspect in the case - Look at case facts.



3. **Themes That Apply To Each Crime** - Murder, robbery, child abuse etc. Standard stock themes.

## Confidence Case Facts and Themes

- This 'triad of strength' is the weapon we bring to the interview room every time we conduct an **Interrogation**.

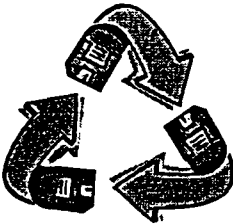


## Evidence in Interrogation

- Evidence is the key that unlocks the door to confession.
- Always stress the evidence during the interrogation, go back to it and stress the completeness of the investigation.



## RPM's

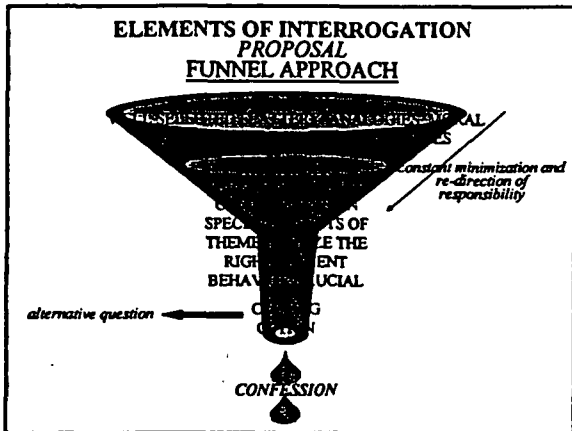


- **Rationalize** the offenders actions to him.
- **Project** the blame for his crime elsewhere.
- **Minimize** the crime and its impact throughout the contact.

## The Window of Opportunity for a Confession

- You must establish the right chemistry to get it.
- Once you have it you may only have it for a certain period of time.
- Use this window wisely!





**ELEMENTS OF INTERROGATION  
Definitions:**

A. An Accusation - A direct and formal allegation made to subject that initiates the interrogation.

B. Critical Pause - A brief period of silence immediately following the accusation that is utilized to assess subject's behavior.

C. Re-directional Statement - A statement that halts subject's denial of the accusation just presented and serves as an introduction to a formal theme.

**ELEMENTS OF INTERROGATION  
Definitions:**

D. THEME - A plausible scenario that offers subject a reason to confess. (A plan or scheme suggested for acceptance.) It removes subject from responsibility through re-direction of blame to other persons or events and reduces moral impact. Harsh terms of the event should be avoided.

E. DENIAL - A direct refusal to accept an allegation.

F. PROTEST - An excuse or adverse contention. (A denial in excuse form.)

G. CLOSING OPTION - A final statement at the end of a theme or group of themes that elicits a confession or admission.

**Time is of the essence in  
Interrogations**

- The longer you take in the interrogation the tougher it is to defend.
- Make sure you give the person breaks and that you record everything that he requests and note your attempts to meet his requests.

**Tenacity and Intuition are also  
determinants of Confessions.**

- When you are ready to end the contact, give it 5 more minutes!
- Remember they are just as tired as you are.
- Trust your instincts when it comes to direction and pursuit in the interrogation.

**You go into every contest  
expecting to Win!**

- Good preparation and a winning attitude will help gain a successful result even in the toughest cases.
- When the going gets tough the tough get going!



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## INVESTIGATING CHILD SEXUAL ABUSE IN THE AMERICAN INDIAN COMMUNITY

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**C**HILD SEXUAL ABUSE INVESTIGATIONS ARE DIFFICULT at best, but the problems are compounded when the crime occurs on an Indian reservation. Indians living on reservations are often geographically isolated. In addition to physical separation from the American mainstream, Indian tribes are culturally distinct. The judicial system on Indian reservations is more complicated because multiple federal and tribal law enforcement agencies often have concurrent jurisdiction. The cumulative effect is that Indian reservations can provide safe havens for child molesters, both Indian and non-Indian, who often remain active for many years without detection.

A significant problem that many investigators face is that the victim belongs to one cultural group while the investigator belongs to another. The possibility exists that investigators may make inappropriate decisions due to unfamiliarity with tribal culture and traditions. The authors are Special Agents for the Federal Bureau of Investigation (FBI) assigned to the Flagstaff, Arizona, Resident Agency and have over twenty years of combined experience investigating violent crimes on the Hopi and Navajo reservations located in a remote region of northeastern Arizona. The FBI has primary responsibility for investigating violent crimes on both reservations.

This study offers a survey of the problems normally associated with investigating child sexual abuse in Indian communities. Material for this study was gathered over a three-year period from 1986 to 1989. Many of the cases cited here are still in adjudication, which precludes the use of the defendants' names. The list of problems is not exhaustive, but should serve to alert the investigator to some of the difficulties that may be encountered.

Many Indian people believe that humans must act in harmony with nature to achieve a spiritual understanding of life. This philosophy is seen in the everyday behavior of the traditional and, to some extent, the less traditional Indian communities. Harmony between man and nature can be achieved through a variety of religious and

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traditional ceremonies usually performed by a medicine man. However, each Indian tribe has its own unique customs and cultures. Socially correct behavior in one tribal setting may not be acceptable behavior in a different tribal setting. Nonetheless, American Indian cultures, with few exceptions, have strong sanctions against incest and child sexual abuse (Gail 1987). In spite of the strong sanctions against the sexual abuse of children, sex is not openly discussed in the school or the family setting.

The traditional tribal punishment for the crime of incest is banishment of the offender. A tribal medicine man is then summoned to perform a purification ceremony to bring the victim back into harmony with nature. According to some Indian mythology, the incest offender will suffer certain psychological and physical maladies that will eventually drive the offender to suicide. In the Navajo Indian culture, it is not uncommon for the offender's family to compensate the victim's family by giving them sheep, cattle, turquoise jewelry, rugs, or other items of value instead of reporting the incident to the police.

The investigator should become familiar with specific tribal customs before conducting in-depth interviews with Native American sexual abuse victims. The following is an example of an investigator who, due to inexperience, assumed that all Indian tribes had similar cultures.

In 1987, an investigation on the Navajo Indian reservation focused on a non-Indian teacher employed at a Bureau of Indian Affairs (BIA) school who was suspected of being a pedophile. It was anticipated that many Navajo Indian children would have to be interviewed. Before conducting the interviews, the investigator consulted an expert who investigated child molestation cases on the Seminole Indian reservation in southern Florida. The expert advised the investigator to tell the Navajo victims that the tribal elders had been notified of the molestation allegations and urged the victims to cooperate fully with the investigators. This technique proved successful with Seminole molestation victims. However, the same approach angered the Navajo victims. The typical response of the Navajo victims was disbelief that the investigator would talk to the tribal elders. The Navajo victims did not cooperate because they knew that any information, true or false, spread quickly on the Navajo reservation. The victims were also keenly aware that information, especially of this nature, could scar their reputations for life. The investigative technique succeeded on the Seminole reservation because the Seminole tribal elders performed a leadership role different from that of the Navajo tribal elders. After receiving several negative responses from victims, a Navajo social worker was consulted and provided the investigator with some basic facts regarding Navajo culture and beliefs.

The investigator incorporated the advice of the social worker into subsequent interviews, and the victims responded favorably.

If the above-mentioned case had focused on only one victim, it could not have been prosecuted without the victim's testimony. However, the teacher involved had molested several students, thus allowing the investigator, by the use of the trial-and-error method, time to develop culturally specific interviewing skills.

The authors have identified the following interviewing techniques which were successful during interviews with Navajo and Hopi victims.

When interviewing Indian children, a confrontational posture should be avoided by not sitting directly in front of the child, but rather by taking a position slightly off to either side. Direct eye contact should also be avoided. Avoiding eye contact and a heightened sense of personal space are normal reactions in the Navajo and Hopi cultures. An inexperienced investigator might interpret these behavioral patterns as an indication the child is not being truthful.

Exact dates and times are often essential to successfully prosecute an offender. The investigator may encounter some difficulty accomplishing this task because time in the Indian culture is often expressed as day or night, by seasons or by ceremonial or religious events. Knowledge of special tribal ceremonies or religious events is a useful method to narrow the time frame within which the crime occurred or better understand the mind set of the victim.

In one case, a Hopi male in his teens refused to be interviewed by investigators. A week later a second attempt to interview him proved successful. Investigators later discovered the victim was reluctant to cooperate because he thought the content of the interview would become public, thus prohibiting his participation, for the first time, in an important tribal ceremony that was to be held the next day. Prior knowledge regarding specific tribal customs can usually be learned in a short period of time and can save the investigator hours of unnecessary work and frustration.

The extended family plays an important role in Indian society. Grandparents have customarily assumed the responsibility of teaching their grandchildren the oral traditions of the tribe as well as crafts such as woodcarving, beadwork, weaving, and pottery making. A child often has numerous aunts, uncles, and cousins who provide support and guidance for the child during the growing years. It is not out of the ordinary for a child to be shuttled back and forth between relatives who serve as substitute parents (Fischler 1985). Older siblings, sometimes very young themselves, are often given the responsibility of caring for younger brothers and sisters for long periods of time without adult supervision. This is believed to prepare the chil-

dren for their future roles as parents, as well as providing an immediate child care function (Korbin 1980).

The advantage of a community where almost everyone is related to or knows everyone else is that there are few secrets and, with persistence, the truth will become known. The disadvantage is that information regarding the investigation, or other information of any consequence, is effectively disseminated throughout the community via what is commonly referred to as the "moccasin telegraph." The investigator must assume that from the onset of the investigation nothing will remain confidential. In addition, the overwhelming experience of the authors has been that in a closed community environment the abused child may be pressured by parents or relatives to deny or change incriminating facts in an effort to protect a relative or the reputation of the family or clan. The members of the victim's extended family can either enhance or impede an investigation. The investigator's attitude plays an important role in gaining the support of family members.

Research has found that sexually abused victims are more likely to come from poor and single-parent families (Fischlier 1985; Gail 1987). The research, however, does not take into account the fact that members of the extended family often substitute for absent or working parents. In general, Indian communities are perceived to have a different standard of living than non-Indian communities. Many Native Americans exist and thrive under conditions that would be judged substandard by the surrounding majority culture. Many traditional Navajo families still live in small, one-room homes with no electricity, running water, or other modern conveniences. Navajo families living under these conditions may not see themselves as poor based on tribal traditions. Nonetheless, the unemployment rate, depending on the location of the Indian community, can be as high as 70% (Fischlier 1985). High unemployment can significantly impact the family's ability to meet the financial requirements of everyday life and subject family members to added pressures. The investigator should note that, due to the financial condition of the victim or the victim's family, transportation to and from the courthouse may be problematic. In addition, the jury's impression of the victim or witnesses may need to be considered if the victim does not have, or can not afford, clothing suitable for a courtroom setting.

A Navajo child abuse study found that 50% of abuse and 50% to 80% of neglect cases were alcohol-related, as compared to a 17% rate of occurrence in non-Indian communities (White 1977). The study did not indicate how many of the case studies were sexually related, but the results do indicate that alcohol is a significant contributing factor in all forms of child abuse. In some families, alcoholism has become a way of life. Alcohol dependence may also afflict many

members of the extended family. Alcoholism severely disrupts the ability of the parents and members of the extended family to provide the child with traditional values, proper guidance, and support.

Tribal governments may not have adequate resources to provide the required follow-up services for the victims of child abuse. The few qualified psychologists and social workers who are available have heavy caseloads and may not be able to offer the victim meaningful long-term therapy. More often than not, the investigator must take responsibility to notify off-reservation social service agencies to obtain necessary assistance for the victims. This type of assistance is often available through victim/witness assistance programs on both the state and federal levels. In one instance, a federal victim/witness coordinator granted a unique request. A family adhering to Navajo traditional customs sent their son, a victim of sexual abuse, to a medicine man in order to have a purification ceremony performed. The family paid for the services of the medicine man with sheep. The coordinator recognized that these actions were in accordance with traditional Navajo customs and reimbursed the family for the sheep. The reimbursement may seem unusual in the context of Anglo-American society, but the gesture was well received in the Indian community. It is essential that the victim and the victim's family be referred to professional counselors for long-term treatment of the problem. With proper psychological help, the victims will be less likely to abuse children when they become adults.

Cross-cultural studies suggest that child abuse in a variety of cultures increased or became evident for the first time as the culture took steps toward acculturation (Korbin 1980). Over the past century, American Indian communities have experienced an erosion of traditional values and lifestyle. Many Indian children are being raised in institutional settings. The Bureau of Indian Affairs (BIA) operates numerous boarding schools for Indian children. Children living in these institutional settings are isolated from the traditional family setting and may not have the proper parent modeling. Limited research suggests that boys living in institutional settings are at an increased risk of becoming victims of sexual abuse (Rimsza 1987). However, the study did not include girls living in institutional settings, and the available data are insufficient to accurately identify any high risk subgroups.

Over the past few years, it has become evident that the younger generations are rejecting, in increasing numbers, the traditional ways of their parents and grandparents. This rejection results in the loss of historical identity and a breakdown of the support systems provided by the extended family. As a result, parents left without effective family supports and coping mechanisms are prone to abuse their children (Gail 1987). In turn, a child who was abused during his child-

hood is more likely to abuse children as an adult (Gail 1987). Based on these findings, child sexual abuse in the Indian community may reach epidemic proportions in a few generations if the proper preventive steps are not taken in the near future.

The authors have identified second-generation victims on the Navajo Indian Reservation. In one instance, a father, himself molested by his non-Indian elementary school teacher, now has two sons who were molested by the same teacher a decade later. In the same vein, a thirty-two-year-old male Indian maintenance worker employed at a BIA boarding school was arrested for molesting five male students in their early teens. Less than two years later, one of the victims was discovered sexually molesting a younger male student in a BIA dormitory. The older student was placed into a counseling program, but, due to insufficient funding and a heavy caseload, the social worker was not able to adequately address the needs of the older student. The older student eventually became despondent, attempted suicide and was subsequently transferred to a larger city to receive extensive treatment at an in-patient facility.

One phenomenon that has been observed is that many Indian pedophiles were molested as children by non-Indian school teachers. The authors have also observed the arrest of a female child molester. The woman was a twenty-six-year-old non-Indian employee at a BIA boarding school located on the Navajo reservation. The woman was arrested, convicted, and sentenced to thirty months in a federal prison for sexually molesting a female student who lived in the BIA dormitory. The investigation revealed that several other female students living in the same dormitory were also targeted by the female offender; each victim was at a different stage in the seduction process. These observations have not been followed up by any scientific studies to determine if any general implications exist.

Over a three-year period, investigations on the Navajo and Hopi Indian reservations have resulted in the arrest of five teachers for child molestation or related offenses. Of the five teachers arrested, two were non-Indian teachers teaching at BIA schools, two were non-Indian teachers teaching at state-operated schools on the reservation, and one was an Indian teacher teaching at a BIA school. The five teachers lived within a fifty-mile radius and had little if any contact with one another. The teachers were able to avoid detection for long periods of time, in one instance for eighteen years. The method of victimization used by each teacher is typified by the following case.

In 1979, a thirty-four-year-old, non-Indian male was employed by the BIA as an elementary school teacher on the Hopi Indian Reservation. The teacher established a nationally acclaimed reading program that enabled the students to increase their reading scores dramatically. The teacher's acceptance into the Indian community

was signified by his participation in a religious "hair washing" ceremony. The school administration, students, and community at large felt the teacher made outstanding contributions to the educational system on the reservation. After eight years of dedicated service, the teacher was arrested for child molestation. During that period of time, the teacher kept an accurate record of his sexual activities with 142 male students. This case is considered one of the most widespread instances of child molestation in U.S. history. Approximately one out of every twenty school-aged Hopi Indian males was molested by this teacher. The last student named on the list, the most recent victim, was in the second grade, and the first name on the list, the oldest victim, is now in his early twenties. A majority of the students on the list came from poor, dysfunctional families. The teacher singled out these students and provided them with food, a place to stay, and, most importantly, affection. The students had their choice of dozens of video movies to see and games to play. The teacher took selected students to larger cities off the reservation and bought them clothes, shoes, and other items that the students' families could not afford to purchase. Gradually, over a period of two years, the teacher seduced the students by first touching them in seemingly innocent ways. The teacher progressed to touching their genitals and eventually to anal intercourse. During the course of the investigation, it was revealed that two police reports had been filed previously and several complaints were directed to the principal's office alleging that the teacher was molesting students. The teacher was so well thought of that in each instance the teacher was exonerated of any wrongdoing. In February 1987, the teacher was arrested by the FBI and is currently serving a life sentence in a North Carolina federal prison. Pursuant to an interview and correspondence between the teacher and the authors, the teacher readily admitted to sexually molesting the students but indicated his belief that the good he did for the Hopi community far outweighed his transgressions.

Shortly after the teacher's conviction, fifty-eight of the teacher's victims filed a law suit alleging that the BIA failed to prevent the teacher's misconduct. As part of the out-of-court settlement, fifty-seven victims ranging in age from nine to twenty-one and the mother of one victim who ultimately took his own life as a result of being molested will share a \$46.5 million award. The settlement also established counseling and education funds to ensure long-term assistance for the victims and their families.

In each case, the five teachers masked their pedophile activities so cleverly and developed such a good rapport with community members that the community was shocked and felt betrayed by the teachers. After the initial shock, most communities join forces and support the investigation and subsequent efforts to provide counseling for the

victims and their families; however, this is not always the case. The investigator must be acutely aware of the community's perception of the suspected pedophile and the investigation itself. The following case is an example of how a community's negative reaction took the investigators by surprise.

A fifty-year-old, non-Indian male was employed as a middle school teacher on the Navajo Indian Reservation. The teacher appeared to be very religious, with an excellent teaching record and a reputation beyond reproach. The teacher taught at the same school for eighteen years. During that time, the teacher molested a large number of male students. The only known record of the teacher's victims were names and dates written on a closet door next to a height chart. The growth of scores of students could be traced by hatchmarks etched progressively higher on the door. The teacher targeted students who came from poor, dysfunctional families, and often sought parents' written permission to allow their sons to live at the teacher's residence on a permanent basis. In several instances, the teacher was granted legal guardianship of the students. Most of the victims lived with the teacher from the time they were five or six years old. The investigators approached school administrators regarding the suspected teacher's pedophile activities. In less than an hour's time, the "moccasin telegraph" carried the news throughout the school and the community. The school administration and teachers, predominantly non-Indian, rallied behind the suspected teacher and, in light of the previous well-publicized investigations, accused the investigators of being on a "witch hunt." The investigation was frequently hindered by the teacher's supporters. Opposition to the investigation was subtle at first, but soon escalated to actions that bordered on obstruction of justice. One supporting teacher went so far as to file a false criminal complaint against one investigator. In addition, the investigators were allowed only restricted access to students during school hours, causing the investigators to travel long distances in an attempt to locate and interview victims at home. Many victims could not be found easily because it is not uncommon for a child to reside with different members of the extended family who live great distances from each other. In addition, houses on the Navajo reservation frequently do not have telephones or addresses and can only be found using landmarks for directions. Eventually, a majority of the members of the Indian community pressured the school administration to cooperate with the investigation in order to resolve the crisis. Notwithstanding, the school administrators continued to support the suspected teacher, which resulted in a division in the community generally along racial lines. At one point during the investigation, several Navajos who supported the accused teacher employed a medicine man to perform a ceremony that would protect

the teacher and place a hex on the investigators to prevent them from continuing the investigation. When members of the Indian community who supported the investigation heard about this action, they, in turn, retained a more powerful medicine man to perform a ceremony to counteract the hex. The investigation was long and frustrating but resulted in the arrest and conviction of the teacher. The teacher is now serving a thirty-year sentence in a federal prison.

The reaction of the community is an integral part of the investigation. The investigator may have to take time to educate school administrators and members of the community regarding the problem of child molestation. If a child sexual abuse awareness program is not in place at the school, the investigator should encourage the school administration to establish one.

As a direct result of the arrests of the five school teachers, the Navajo and Hopi tribal governments in conjunction with other federal agencies established child sexual abuse awareness programs for school aged children. Shortly after the awareness programs began, there was a noticeable increase in complaints of incest by students. Although these single-victim familial cases do not have the same political impact as a teacher molesting his students, the results are just as devastating. The extent of the incest problem on the Navajo and Hopi reservations is now becoming evident, and new resources must be allocated to address this problem.

Interviewing a victim of child sexual abuse can be difficult in most Indian communities. The investigator must first obtain cultural information not readily accessible to outsiders before an effective interview can be conducted. Local tribal law enforcement agencies or social workers will usually provide the necessary guidance to conduct a culturally correct interview. Background information regarding the victim, the offender, and the crime is as important as the interview itself because it provides a framework for the interview and allows the interviewer to become more comfortable with new ideas and perspectives.

Either a male or female can conduct effective interviews if the interviewer can demonstrate a sensitive and caring attitude toward the victim. In the case of an Indian victim, thought should be given to whether an Indian investigator should accompany a non-Indian investigator to interviews. In some cases, the presence of an Indian investigator will provide the victim with support and allow him or her to be more relaxed during the crisis period. However, in other instances, the presence of an Indian investigator may cause the victim to be more inhibited. Since there are few secrets on a reservation, the victim may feel that details of the crime will not remain confidential. The victim's sense of guilt, embarrassment, or shame may be heightened when the facts of the case are discussed in front of another



er tribal member. Conversely, the non-Indian investigator may elicit similar negative emotions from the victim. The interviewers must be perceptive to the ongoing dynamics of the interview and be prepared to make changes if necessary.

The best place to interview a victim is in a neutral setting. As a general rule, the interview should not be conducted in the same place where the crime occurred. The interview should also be conducted in privacy; however, in Indian communities this may not always be possible. The victim's residence may be small, with many other relatives living in the home. Wherever the interview takes place, the setting should be comfortable for the victim as well as the interviewer.

A researcher studied the reactions of sexually abused victims and observed that victims may react in one of two ways when interviewed (Rimsza 1987). With the first reaction, the victim may become very emotional, cry, express feelings of betrayal, or become outwardly embarrassed. The second reaction is a more controlled one. The victim is calm, cool, and relates details of the assault in a seemingly emotionless manner. Seventy-nine percent of the male victims in the study displayed a controlled reaction, while female victims were divided equally among the controlled and the emotional reactions.

The interviewer should also be aware that a victim may develop a strong emotional bond with the offender and vehemently deny having been sexually abused in an attempt to protect the offender. In many cases, presenting the victim with some type of tangible exhibit will loosen the bonds between the victim and the offender. The exhibit does not have to be of evidentiary value but sufficient to lend credibility to the investigator's presentation of the facts.

Investigators accustomed to using video cameras, pressure-activated microphones, two-way mirrors, and other aids may be disappointed, because few, if any, of these aids are available on most reservations due to the lack of funds to purchase this equipment. The investigator should bring along anatomically correct dolls or other necessary equipment. The authors have found that Indian victims seem to respond equally well when presented with dolls phenotypically Indian or non-Indian. Anatomically correct dolls can be useful during interviews, especially when the victims are young. However, investigators need not feel obligated to use the dolls, but should use them only when the victim cannot without difficulty verbalize the facts of the case. Permitting the victim to draw a picture and later discuss the picture is another nonverbal technique to facilitate communication.

Once the initial flurry of activity surrounding the investigation and subsequent judicial proceedings is over, the victims are left with the formidable task of reintegrating into the community. This process can be made easier, providing the community supports the victim.

The authors conducted informal post-investigation interviews with victims and teachers to assess the reintegration process. The teachers indicated that many of the victims suffered from a variety of psychological trauma, including irritability, learning disorders, low self-esteem, and, in extreme cases, suicide attempts. One teacher observed that the victims were often labeled as such and forced to form their own social subgroups. Several of the students who were interviewed felt they had been ostracized and were somehow different because they had been victims of sexual molestation. One male student in his mid teens wanted to begin dating, but was experiencing anxiety regarding his sexual identity. The problems cited are only a few of the myriad of challenges the victims must learn to overcome. The investigator's responsibility ends with the prosecution of the offender, but the victim's pain continues long after the offender's prison sentence has been completed.

The successful investigator must first understand local customs and traditions and then determine if a specific behavioral pattern is appropriate within that particular cultural context. Judgments should not be based on a single action but rather on a cluster of the offender's or victim's behavioral patterns. Most importantly, flexibility and common sense should be used when interviewing a victim of sexual abuse. What makes sense to the investigator may not always make sense to a victim with a different cultural background.

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7<sup>th</sup> Indian Nations Conference

Implementation of CASA Programs:  
A Resource for  
American Indian Children and Families

Marcella Benson-Quaziana, PhD  
and  
Jerry Gardner, JD

Tulsa, Oklahoma 1999



## 7<sup>th</sup> Indian Nations Conference

### **"Implementation of CASA Programs in Indian Country"** **Marcella Benson-Quaziana, PhD and Jerry Gardner, JD**

#### **Learning Objectives:**

1. The role of CASA volunteers.
2. The key steps involved in developing a tribal CASA program.
3. Current adaptations developed to meet the needs of Tribal Courts and Native American people.

The National CASA Association has identified innovative practices and procedures under the Tribal Court CASA program which is designed to increase the number of Indian children who are receiving family-centered, culturally-competent volunteer representation through indigenous CASA programs in tribal court proceedings. This workshop will showcase the programs and practices that are being developed in the process of adapting the CASA concept to the needs of tribal courts and Native American families.



# Tribal Court CASA Programs: Adapting CASA to Meet the Needs of Indian Tribal Courts and Native American People

by

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The National Court Appointed Special Advocates (CASA) Association has implemented a Tribal Court CASA Program designed to assist in the development and enhancement of tribal court programs that provide volunteer court-appointed special advocates (CASAs) for Native American children who have been abused or neglected. The overall goal of National CASA is to increase the number of Indian children who are receiving culturally sensitive representation through indigenous CASA programs in tribal court proceedings.

There are currently 14 Tribal Court CASA programs. A few of these programs have been in operation for years, but many are still in the planning stages. Some tribal court CASA programs serve one community; others serve more than one community. Most programs provide volunteers only in tribal courts, but some provide volunteers in both tribal and state court.

The tribal court CASA programs face many obstacles that have previously inhibited the development of tribal court CASA programs. The current National CASA initiative is designed to assist tribal courts to develop the tools to overcome these obstacles. This initiative was implemented in 1995 and many innovative policies and procedures have been identified which has been useful for the development of tribal court CASA programs.

The Tribal Court CASA project is assisted by an ad hoc Tribal Court Advisory Committee. The purpose of the advisory committee is to review and consult with National CASA on the development of Tribal court programs, the best methods to assist the tribal court programs, and the best methods for adapting CASA to meet the needs of Native American communities.

A comprehensive Tribal Court CASA Meeting and a CASA Tribal Court Advisory Committee Meeting are held every year in connection with the National CASA conference.

On-site technical assistance meetings with the current Tribal Court CASA programs are underway.

## Overview of Tribal Courts and a Historical Backdrop of Native American Child Welfare Policy

In order to appreciate the need to adapt CASA for tribal courts, it is necessary to provide a brief overview of tribal courts, the historical backdrop of Native American child welfare policy, and the Congressionally recognized need to have Native American child dependency cases heard in tribal courts.

Of the more than 500 federally recognized Native American tribes and Alaska Native villages, more than 250 have operational tribal court systems. These courts exercise jurisdiction over nearly 70 million acres throughout the country – some in remote locations and other in, or near, urban areas. The tribes themselves vary widely from the Navajo Nation with more than 200,000 members to bands with fewer than 100 members.

Indian tribes possess the inherent sovereign power to "make their own laws and be ruled by them" (*Williams v. Lee*, 358 U.S. 217 [1959]). As Congress reiterated in enacting the Indian Tribal Justice Act of 1993 (25 U.S.C. 3601), "tribal justice systems are an essential part of tribal governments and serve as important forums for ensuring public health and safety and the political integrity of tribal governments."

Tribal courts vary significantly from tribe to tribe. For example, the Navajo Nation court system processes nearly 100,000 cases per year while smaller tribal courts may hear less than 50 cases per year. Other tribal courts, especially in Alaska and the Pueblos of New Mexico, still operate as traditional courts. Many tribal courts have court-annexed traditional or peacemaking court forums. Even those tribal courts which appear similar to non-Indian courts often incorporate tribal customs and traditions in ways which distinguish them from their non-Indian counterparts. These traditional components may include use of Native language, introduction of customary or common law, a more holistic approach to

dispute resolution, inclusion of the extended family, more fluid communication, invocation of the spiritual realm in ceremonies/prayer, comprehensive problem solving, focus on reparative and restorative justice, and use of customary sanctions.

It is also necessary to understand the historical backdrop of Native American child welfare policy. Beginning in the 1800s, the United States implemented an oppressive assimilationist policy towards Native Americans and Native American children in particular – forcibly taking Native American children from their homes and sending them to boarding schools where they were severely punished for speaking their Native languages and practicing Native customs and religious practices.

In more recent years, the removal of Native American children from their homes continued, but more often the children were placed in non-Indian foster care and adoptive homes at an increasingly alarming rate rather than boarding schools. For example, in 1974, 25% to 35% of all Native American children were in some type of out-of-home placement. In response to this extraordinarily high number of out-of-home placements of Native American children, Congress passed the Indian Child Welfare Act (ICWA) in 1978 (25 U.S.C. 1901-1963).

As the ICWA Congressional findings concluded:

- 1) that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions, and
- 2) that the States, exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and cultural and social standards prevailing in Indian communities and families.

ICWA clearly recognized that “there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children.” In order to protect the best interests of Native American children and to promote the stability and security of Native American tribes and families, Congress set forth two basic jurisdictional and procedural requirements. First, ICWA provides that whenever possible, Native American child dependency cases should be heard in tribal courts where it is presumed that the essential tribal relations and the prevailing cultural and social standards will be respected. Second, for those cases which remain in state courts, ICWA provides a series of procedural safeguards which are designed to address the historic failures of the state court systems to protect Native American children.

### Training and Technical Assistance Needs

The Tribal Court CASA Program includes a significant training and technical assistance component which is designed to assist the current grant programs to achieve their program goals and objectives. Moreover, it is designed to develop training and technical assistance resources which can be utilized by other tribal court CASA

### **Tribal Court CASA Programs**

The following is a listing of 14 current tribal court CASA programs. For more information on each of these programs, see the full listing on the National CASA web site at:

[http://www.casenet.org/nuts\\_bolts/tribal/tribes.htm](http://www.casenet.org/nuts_bolts/tribal/tribes.htm)

- Cherokee Nation/Cherokee County CASA (Oklahoma)
- Confederated Salish & Kootenai Tribes of the Flathead Reservation (Montana)
- Grand Traverse Band of Ottawa and Chippewa Indians CASA (Michigan)
- Nisqually Tribe CASA Program (Washington)
- Okmulgee County/Creek Nation CASA Project (Oklahoma)
- Oglala Lakota CASA Program (South Dakota)
- Four Directions CASA Program (Ute Tribe – Fort Duchesne, Utah)
- Spokane Tribal CASA Program (Washington)
- Laguna Pueblo CASA Program (New Mexico)
- Northern Cheyenne CASA Program (Montana)
- CASA Program of the Shoshone & Arapahoe Tribes (Wyoming)
- Navajo Nation CASA Program (Arizona/New Mexico)
- Alaska Tribal CASA Program
- Cedar Lodge CASA Program (Oklahoma)

programs in adapting the CASA program to meet the needs of their individual communities. The training and technical assistance is being provided by the National CASA Association and The Tribal Law and Policy Institute.

An extensive needs assessment process has been conducted of the 10 tribal court CASA programs which received funding in the 1997-1997 funding cycle. This needs assessment process identified numerous barriers faced by tribal court CASA programs such as:

- Complex relationships that exist between federal, state, and tribal agencies;
- Jurisdictional limitations (including the lack of criminal jurisdiction over non-Indians and the effects of Public Law 280);
- Problems with state court recognition of tribal court orders;
- Isolated location of most reservations (which presents problems in getting services to the community and necessitates substantial travel for CASA volunteers and staff);



- Turnover/turmoil as result of tribal elections;
- Lack of community awareness concerning CASA;
- Difficulty in adapting a non-Indian program to meet the needs of individual Indian communities;
- Difficulty coordinating with state agencies/programs;
- Difficulty in promoting a volunteer program in communities with high poverty and unemployment rates; and
- The critical need for Indian-specific resources and program materials.

Moreover, the needs assessment process identified and prioritized the training and technical needs of the tribal court CASA programs.

### **Adaptation Issues – Innovative Policies and Procedures**

The following is a partial listing of critical issues concerning tribal court CASA adaptation and innovative policies and procedures which are being developed by tribal court CASA programs:

- **How to Organize Tribal Court CASA Programs:** There have been substantial discussions concerning whether a tribal court CASA program should be a private nonprofit organization or a tribal agency and, if a tribal agency, how it fits in the tribal governmental structure. It is clear that this is critical decision which must be made early in the planning phase and that the factors involved in making the decision will vary from community to community.
- **How to Recruit Native American Volunteers:** There have been continual discussions concerning this critical issue. Many different solutions have been discussed, including community education, brochures/posters, tribal newsletters, tribal resolutions, adding CASA provisions to the tribal code, and utilizing students from tribal community colleges as CASA volunteers.
- **Tribal Resolutions on CASA:** On many Indian reservations, the largest employer is the tribe itself. The tribe may hire employees to perform various tribal functions and also to work in tribal enterprises, including tribal gaming enterprises. Consequently, one of the innovative recruitment policies recommended for the tribal court CASA programs concerns working with the tribal government to enact tribal resolutions endorsing the CASA program and giving tribal employees time off from their jobs as tribal employees to perform CASA duties.
- **Obtaining Credit at Tribal Colleges for CASA Volunteers:** The Confederated Salish and Kootenai Tribes of the Flathead Reservation Program (Montana) successfully worked with the Salish Kootenai College to

recruit and train students as CASA volunteers and provided college credit for these students. This program has been very effective and many of the tribal court CASA programs are planning to replicate the Flathead program through their own tribal colleges.

- **Incorporating Tribal Custom and Tradition:** There has been continual discussions concerning the critical issue of incorporating tribal custom and tradition into the tribal court CASA programs. Recommendations concerning this issue have included providing volunteer training on tribal custom and tradition and traditional child rearing methods, use of tribal language whenever appropriate, use of peacemaking/traditional dispute resolution methods, and use of other traditional methods such as family group conferences.
- **Involvement of Tribal Elders:** There have also been extensive discussions concerning the related issue of involving tribal elders in the tribal court CASA programs as trainers, volunteers, board members, and program promoters. Tribal elders may have difficulty with some of the writing and/or oral advocacy aspects of the CASA role. Consequently, some programs are experimenting with more supportive efforts of tribal elders such as tape recording of oral recommendations/reports which are then included in a written report prepared by program staff and other types of report writing assistance. Moreover, the idea of partnering tribal elders on CASA volunteer team with a younger volunteer (such as tribal college student) is being developed.
- **Traditional Program Name/Logo:** Some of the programs have decided to use traditional concepts and/or word(s) from their tribal language for the program name of the tribal court CASA program. Other programs have developed traditional program logos. For example, the Grand Traverse CASA Program has developed a program logo which utilized tribal custom and tradition to illustrate the CASA program. The Grand Traverse logo includes a bear which represents good medicine stepping in to protect children – like the tribal justice system steps in to protect children. Moreover, the logo represents that the CASA volunteer has to have the same qualities as the bear in order to perform their role – the CASA volunteers have to be brave and strong and they can draw upon the strength of the bear to fulfill their role.
- **Volunteer Training:** The volunteer training discussions have focused upon possible training resources (such as state CASA programs), specific tribal court training needs (such as training concerning Indian law and jurisdictional issues), and the need to include tribal custom and tradition issues in all volunteer training (including the use of tribal elders as trainers).
- **Small Tribal Community Issues:** There have been extensive discussions concerning the specific

issues/problem areas facing tribal court CASA programs. Some of these issues are related to the nature of a small rural community where everyone knows each other, but other issues are relative to the specific nature of Native American communities. Two issues have been discussed extensively. First, the general consensus has been that the nature of most tribal communities makes it very difficult for tribal court CASA programs/volunteers to maintain the strict role boundaries generally set forth for CASA programs. Second, the nature of most tribal communities (except very large tribes or those tribes with geographically separated communities) makes it impossible to only assign volunteers to cases in which they do not know the parties. Instead, the tribal court CASA programs are developing an alternate method for screening volunteer assignments.

- **Resources/Funding:** There is continuing need for more tribal court CASA resources, especially Native American-specific resources. Moreover, there is a continuing need to develop funding strategies to meet the specific needs of the tribal court CASA programs.

## Future Directions

A series of technical assistance resources are being planned and developed to assist current and developing Tribal Court CASA programs. The following projects are proposed for the coming year.

- A general Tribal Court CASA Program brochure;
- A Starting a Tribal Court CASA Program brochure;
- A Guide to Tribal Court CASA Program Development;
- A Tribal Court CASA Resource Guide;
- A sample Tribal Code CASA provisions; and
- Tribal CASA training curriculum materials.

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## CASA Fact Sheet

### What is a CASA volunteer?

A Court Appointed Special Advocate (CASA) volunteer is a trained citizen who is appointed by a judge to represent the best interests of a child in court. Children helped by CASA volunteers include those for whom home placement is being determined in juvenile court. Most of the children are victims of abuse and neglect.

### What is the CASA volunteer's role?

A CASA volunteer provides a judge with carefully researched background of the child to help the court make a sound decision about that child's future. Each home placement case is as unique as the child involved. The CASA volunteer must determine if it is in a child's best interests to stay with his or her parents or guardians, be placed in foster care, or be freed for permanent adoption. The CASA volunteer makes a recommendation on placement to the judge, and follows through on the case until it is permanently resolved.

### How does a CASA volunteer investigate a case?

To prepare a recommendation, the CASA volunteer talks with the child, parents, family members, social workers, school officials, health providers and others who are knowledgeable about the child's history. The CASA volunteer also reviews all records pertaining to the child -- school, medical and case worker reports; and other documents.

### How does a CASA volunteer differ from a social service caseworker?

Social workers generally are employed by state governments. They sometimes work on as many as 60 to 90 cases at a time and are frequently unable to conduct a comprehensive investigation of each. The CASA worker is a volunteer with more time and a smaller caseload (an average of 1-2 cases at a time). The CASA volunteer does not replace a social worker on a case; he or she is an independent appointee of the court. The CASA volunteer can thoroughly examine a child's case, has knowledge of community resources, and can make a recommendation to the court independent of state agency restrictions.

### How does the role of a CASA volunteer differ from an attorney?

The CASA volunteer does not provide legal representation in the courtroom. That is the role of the attorney. However, the CASA volunteer does provide crucial background information that assists attorneys in presenting their cases. It is important to remember that CASA volunteers do not represent a child's wishes in court. Rather, they speak to the child's best interests.

### Is there a "typical" CASA volunteer?

CASA volunteers come from all walks of life, with a variety of professional, educational and ethnic backgrounds. There are more than 38,000 CASA volunteers nationally. Local programs vary in number of volunteers they utilize. Aside from their CASA volunteer work, 52 percent are employed in regular full-time jobs; the majority tend to be professionals. 82% of the volunteers nationwide are women; 18% are men.

### How does the CASA volunteer relate to the child he or she represents?

CASA volunteers offer children trust and advocacy during complex legal proceedings. They explain to the child the events that are happening, the reasons they all are in court, and the roles the judge, lawyers, and social workers play. CASA volunteers also encourage the child to express his or her own opinion and hopes, while remaining objective observers.

### How many cases on the average does a CASA volunteer carry at a time?

The number varies from jurisdiction to jurisdiction, but an average caseload is one to two.

### Do lawyers, judges and social caseworkers support CASA?

Yes. Juvenile and family court judges implement the CASA program in their courtrooms and appoint volunteers. CASA has been endorsed by the American Bar Association, the National Council of Juvenile and Family Court Judges, and the Office of Juvenile Justice and Delinquency Prevention of the U.S. Department of Justice.

### Does the federal government support CASA?

CASA is a priority project of the Department of Justice's Office of Juvenile Justice and Delinquency Prevention. The office encourages the establishment of new CASA programs, assists established CASA programs, and provides partial funding for the National CASA Association.

-more-

How many CASA programs are there?

There are now 642 CASA programs in all 50 states, Washington DC and the U.S. Virgin Islands. New programs start up at the average of three or four per month.

How effective have CASA programs been?

Preliminary findings show that children who have been assigned CASA volunteers tend to spend less time in court and less time within the foster care system than those who do not have CASA representation. Judges have observed that CASA children also have better chances of finding permanent homes than non-CASA children.

How much time does it require?

Each case is different. A CASA volunteer usually spends about 10 hours doing research and conducting interviews prior to the first court appearance. More complicated cases take longer. Once initiated into the system, volunteers work about 10-15 hours a month.

How long does a CASA volunteer remain involved with a case?

The volunteer continues until the case is permanently resolved. One of the primary benefits of the CASA program is that, unlike other court principals who often rotate cases, the CASA volunteer is a consistent figure in the proceedings, and provides continuity for a child.

Are there any other agencies or groups that provide the same service?

No. There are other child advocacy organizations, but CASA is the only program where volunteers are appointed by the court to represent a child's best interests.

What children are assigned CASA volunteers?

Children who are victims of abuse and neglect who have become wards of the court are assigned CASA volunteers. The program is most common in juvenile and family court cases.

What is the role of the National CASA Association?

The National CASA Association is a non-profit organization that represents and serves the local CASA programs. It provides training, technical assistance, research, media and public awareness services to members.

How is CASA funded?

At the local level, CASA programs are generally funded through a state's department of justice. Many programs are privately funded through service organizations such as the Junior League and the National Council of Jewish Women. The National CASA Association is funded through a combination of private grants, federal funds (U.S. Justice Department), memberships and contributions.

How can I find the CASA program in my community?

CASA programs are known by a variety of names, including Guardian ad Litem, ProKids, Child Advocates, Inc., and Voices for Children, to name a few. If you cannot find a program in your area, contact the National CASA Association for referral.

How do I get more information about becoming a CASA volunteer or joining the National CASA Association?

Contact:  
National CASA Association  
100 West Harrison St.  
North Tower, Suite 500  
Seattle, WA 98119  
Phone: (206) 720-0072 or  
(800) 628-3233  
Fax: (206) 720-0078

7<sup>th</sup> Indian Nations Conference

Successful Prosecution of Sexual Assault  
Cases: An Advocates' Perspective

Dana Farabee

Tulsa, Oklahoma 1999



## 7<sup>th</sup> Indian Nations Conference

### **"Successful Prosecution of Sexual Assault Cases: An Advocates' Perspective" Danna Farabee**


#### **Learning Objectives:**

1. To show how to develop an effective working relationship with prosecutors.
2. To explain what an advocate needs to do to be effective with the criminal justice system.

The safety of Native women who are victims of rape is often contingent on the working relationships that their advocates have developed within the criminal justice system. This workshop will help enable advocates to become competent in that system.





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HANDOUTS FOR THIS  
PRESENTATION MAY OR  
MAY NOT BE AVAILABLE  
DURING THIS SESSION



7<sup>th</sup> Indian Nations Conference

Treatment of Post Traumatic  
Stress Syndrome

Kenneth Hodder, LISW

Tulsa, Oklahoma 1999



## 7<sup>th</sup> Indian Nations Conference

### **"Treatment of Post Traumatic Stress Syndrome"**

**Ken Hodder, MSW, ACSW, LISW**

#### **Learning Objectives:**

1. Participants will be able to identify the main features of Post Traumatic Stress Syndrome (PTSD).
2. Participants will become familiar with recent developments in treatment of PTSD.
3. Participants will be aware of special concerns in the treatment of children with PTSD.

This workshop will provide an overview of recent developments in the treatment of PTSD, with special emphasis on the treatment of children with PTSD.



## **Clinical Notes on the Treatment of P.T.S.D. Kenneth Hodder, LISW**

In this workshop, I would like to share some ideas about the treatment of Post-Traumatic Stress Disorder derived from recently developed successful therapeutic approaches.

Over thirty years of outcome studies tell us that successful psychotherapies all have common elements. A supportive relationship, and a motivated client being the major ingredients.

Dr. Bruce Perry, in his extensive work on Post-Traumatic Stress Disordered children, convincingly demonstrates the wisdom of this knowledge in his discussions of the physiological states of traumatized children.

In his work with traumatized children, Dr. Perry used heart rate monitoring to establish the arousal rates of the children and came to numerous significant findings about treatment. He argues that of necessity, one must interact with children at the level their arousal state allows.

Perry gives the example of asking a child to come to his car to get something. The child became unresponsive. Perry noticed that the child's heart rate had increased dramatically. After looking further into the child's case, he realized he had unwittingly triggered a response associated with molestation by a relative who regularly abused him in his car.

Perry and others talk about the importance of recognizing the inherent power difference between adults and children, and I would argue (despite my daily experience with my own teenager), that the power difference is inherently coercive and requires the clinician's careful consideration.

Perry recommends therapies which involve ceremony, movement and communal support for the child rather than styles which may by their nature elicit disabling levels of neurological arousal.

Treatment goes nowhere without sensitivity to the child's level of arousal. Long before I understood the neurophysiology of this reality, I practiced with the principle that no one could be worked with effectively in therapy until they felt safe.

In my work with both children and adults, I have been using elements of some recently developed therapeutic tools. The most important of these I will address today.

To relieve traumatic dreams and flashbacks which are a typical part of Post-Traumatic Stress Disorder, I am using a model developed at the University of New Mexico which involves the integration of the recurring dream or

flashback into a narrative account.

The client uses the dream or flashback imagery as the stem of a story which they are asked to reframe in a positive, or at least less upsetting, light. A case example might be helpful here.

Laura, a thirty-two year old woman who was injured when her vehicle was broadsided and rolled, experienced a dark looming presence over her shoulder anytime she drove on a freeway after the accident. While she knew there was nothing there, she found herself pulling her car away from the 'presence', often drifting into another lane and causing danger to herself and other drivers.

I asked her to imagine the scenario and make the presence become something which made sense to her. She chose to see a truck overtaking her, a common and mildly arousing experience driving on freeways.

Although this experience had been troubling Laura almost daily for the preceding three months, after just one session in which Laura added a benign ending to her experience, she was no longer bothered by the symptom.

I used an adapted E.D.M.R. procedure to augment the positive narrative, and after a two year follow up, there have been no further problems.

In the case of recurring dreams or nightmares, the procedure usually involves writing down all that is remembered of the dream and modifying the ending in some way such that the dream is less upsetting.

Joey is an eight year old who was sexually and physically abused by his parents, and is being raised in a foster family. He began having dreams of his mother in which she was angry with him and threatened to harm him. Because he is a poor writer and reader, I helped him to "change the dream" so that his mother came to check on him because she was worried about him, not angry, but upset that he was not feeling good.

We talked about this "reframing" or ending, Joey liked it and agreed to have his foster mother read it to him before he went to bed a few times a week. After three weeks, the upsetting dream no longer reoccurred.

In the case of flashbacks of actual events or of upsetting memories, I often use E.M.D.R. or some aspect of it such as desensitization processes, combined with an "eidetic" imagery to defuse the emotional impact of the event.



In my use of E.M.D.R. and Eidetics, I try to access the negative cognition which is often married to the trauma or some aspect of it. As you are aware, the assumption in cognitive therapy suggests that there are counter-productive cognitions or cognitive styles which have negative consequences for clients.

For example, Sally, a forty-two year old woman who came to treatment feeling suicidal after her father died, reported significant emotional abuse as a child by her mother who called Sally stupid, daily, and cut all of her hair off on one occasion after Sally had been sick and her father chose to stay home and nurse her.

These recollections came up in using E.M.D.R. and were associated with self-concepts of being stupid and ugly and also associated with tremendous guilt. Sally had for many years been promiscuous and had been imprisoned for drug use, behaviors which she used to "deaden [her] pain and prove [her] worth".

In treatment, she was able to improve her self-concept and self-esteem by using imagery of positive interactions with her mother, primarily involving her standing up for herself in a strong and assertive fashion. After six sessions, although with a long way to go, Sally reported her feeling of being stupid, which she initially rated (on a scale of 1-10) at 10 was down to 3, and she had managed to keep from drinking for eight weeks, at the time of this writing, something she had not managed in the past five years.

At the community level, for the optimum adjustment, the conditions of a supportive, loving, community are required. In the case of physical abuse, this ideal is often lacking as children and adults are most often abused by someone in their support network. Frequently, protective intervention initiates further abuse or maltreatment in retaliation, by people in the child's or adult's support network, or by an insensitive and imperfect system.

It is imperative that everyone who is abused, but most importantly, children, be engaged in healing care in the midst of a supportive network.

I have included in this handout a model for use in Indian Nations which was first developed by clinicians of the Navajo Tribe and was used with some success.

# **THERAPY PROCESS FLOWCHART FOR VICTIMS OF CHILD ABUSE AND NEGLECT**

**START  
REPORT/REFERRALS**

**STEP 1  
CPS INTERVENTION**

**STEP 2  
ASSESSMENT/CASE PLANNING BY THERAPIST**

**STEP 3  
CONSULTATION AND/OR REFERRAL TO SERVICE UNIT**

**STEP 4  
INTEGRATION OF WESTERN THERAPY/TRADITIONAL INTERVENTION  
FURTHER CASE/TREATMENT PLANNING**

**STEP 5  
ACTUAL TREATMENT PROCESS**

***TRADITIONAL INTERVENTION***

**CONSULTATION; CLIENT'S  
FAMILY ASSESSMENT**

**DIAGNOSIS OF CLIENT AND  
FAMILY**

**IMPLEMENTATION OF CEREMONY**

**FOLLOW UP AND CONTINUE  
CLIENT TREATMENT  
AS NECESSARY**

***WESTERN THERAPY***

**INTAKE AND ASSESSMENT**

**THERAPY WITH CHILD AND  
FAMILY**

**CASE MANAGEMENT**

**FOLLOW UP AND CONTINUE  
CLIENT TREATMENT  
AS NECESSARY**

## **NAVAJO TRADITIONAL TREATMENT MODALITIES**

1. DIAGNOSIS (HAND TREMBLING, CRYSTAL GAZING, ETC.)
2. REMOVAL OF FOREIGN OBJECTS & ENERGY BLOCKAGES.
3. PROTECTION WAY CEREMONY.
4. MOUNTAIN TOBACCO WAY CEREMONY.
5. BLESSING WAY CEREMONY.
6. NATIVE AMERICAN CHURCH CEREMONY.
7. THE BASKET WAY CEREMONY.
8. EDUCATION ON TRADITIONAL PRACTICES/BELIEF SYSTEMS.

## **WESTERN TREATMENT MODALITIES**

1. PLAY THERAPY.
2. ART THERAPY.
3. FANTASY WORK.
4. GUIDED IMAGERY.
5. GESTALT THERAPY.
6. COGNITIVE-BEHAVIORAL THERAPY.
7. FAMILY THERAPY.
8. REALITY THERAPY.
9. GROUP THERAPY.

# **IMPACT AND TREATMENT ISSUES FOR VICTIMS OF CHILD SEXUAL ABUSE**

1. "DAMAGED GOODS" SYNDROME  
PHYSICAL INJURY OR FEAR OF PHYSICAL INJURY
2. SOCIETAL RESPONSE
3. FEAR
4. DEPRESSION
5. LOW SELF-ESTEEM AND POOR SOCIAL SKILLS
6. REPRESSED ANGER AND HOSTILITY
7. IMPAIRED ABILITY TO TRUST
8. BLURRED ROLE BOUNDARIES AND ROLE CONFUSION
9. PSEUDOMATURITY COUPLED WITH FAILURE TO ACCOMPLISH DEVELOPMENTAL TASKS
10. SELF-MASTERY AND CONTROL
11. DENIAL
12. MINIMIZATION
13. PROCRASTINATION
14. AVOIDANCE
15. HOPELESSNESS
16. HELPLESSNESS
17. FEAR OF PROSECUTION - PROTECTION CEREMONIES
18. FEAR OF RETALIATION - WITCHCRAFT
19. STIGMATIZATION (IN COMMUNITY)
20. APATHY
21. RATIONALIZATION (APOLOGIES, REASONS)
22. DISPLACED ANGER - AGGRESSION
23. LOYALTY, COALITION
24. RELAPSE
25. THREATS BY PERPETRATOR OR VICTIM
26. ANGER AND AGGRESSION
27. MENTAL DISORDER
28. PERSONALITY DISORDER
29. SUBSTANCE ABUSE
30. FAMILY DYSFUNCTION
31. LACK OF SPIRITUALITY
32. ACCULTURATION
33. SHAME



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[ptsd](#)



Files about:

[ptsd](#)

Web Matches: 14715

**1. PTSD**

**POST- TRAUMATIC STRESS DISORDER (PTSD)** On this page you will find n sites relating to Post-Traumatic Stress Disorder (PTSD) Home Of The Veterans PTSD Abuse Senzig's PTSD Page Trauma/PTSD PSL GROUP International.. 99% 1999/05/31 <http://www.sdvets.org/ptsd.htm>

**2. National Center for Police Officers with PTSD**

Site created by 2 disabled police officers with posttraumatic stress disorder or P online resources, crisis hotline, message forum and referral service for police off 98% 1999/07/17 <http://www.freeyellow.com/members6/ncpoptsd/index.html>

**3. PTSD: Legal Issues**

Part III: Legal Issues In the third edition, the legal issues section has been expan chapters. "The Forensic Evaluation" contains a format for conducting an examin analyzes psychophysiologic testing. The chapter "The Expert.. 98% 1997/04/11 <http://www.neworleansla.com/ptsd/legal.htm>

**4. PTSD Consulting Services**

PTSD Support Services offers consulting and information on PTSD to groups ar that may deal with the effects of war, and victims of incest, natural disaster, rape violent crime 98% 1999/07/06 <http://www.sni.net/trips/index.html>

**5. Medications for PTSD**

Medications used for the treatment of posttraumatic stress disorder or PTS 98% 1999/07/17 <http://www.expage.com/page/livingwithptsd4>

**6. PTSD Mail Accounts**

PTSD Ackeren, John Van johnva PTSD Bloemker, Karen karenb PTSD Camfie PTSD Davis, Tedd tedd PTSD Dietz, Gretchen gdietz PTSD Marckworth, Phyllis Mead, Martha martym PTSD Nelson, Kathy kathyn PTSD Rudolph, Judith jrudol 98% 1999/06/24 <http://164.116.5.5/gguide/userlists/PTSD.html>

**7. PTSD: Third Edition by C.B. Scrignar, M.D.**

Since the first edition of this book, recent epidemiologic studies have disclosed th prevalence rates for PTSD within the general population range from 1.0 to 12.3 exceed 20 per cent in war veterans and rape victims. DSM-IV.. 98% 1997/05/08 <http://www.neworleansla.com/ptsd>

**8. WA PTSD Programmes**

[Home] [Australian Capital Territory PTSD Programmes] [NSW PTSD Program Territory PTSD Programmes] [Queensland PTSD Programmes] [South Australic Programmes] [Tasmanian PTSD Programmes] [Victorian PTSD Programmes] [ 98% 1999/02/02 <http://www.psy.uq.edu.au/PTSD/NCPTSD/accredited/wa.html>

**9. Yahoo! Health:Diseases and Conditions:Post-Traumatic Stress Disorder**

Personalize Help - Check Email Home > Health > Diseases and Conditions > P Stress Disorder (PTSD) all of Yahoo! just this category Yahoo! Health: Post-Tra Disorder- definitions, alternative names, and related resources.. 98% 1999/07/10

[http://dir.yahoo.com/Health/Diseases\\_and\\_Conditions/Post\\_Traumatic\\_Stress\\_](http://dir.yahoo.com/Health/Diseases_and_Conditions/Post_Traumatic_Stress_) 10 **Military Veterans PTSD Reference Manual**

How much do you want to take off this summer?

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CHET: The Computer Network

Files about:

[ptsd](#)

**11. Health Center: PTSD - PTSD & Depression**

PTSD May Lead to Depression In general, people with PTSD respond to situations more intensely than people who do not have the disorder. Whereas others may respond with denial, a person with PTSD would respond by withdrawing and may turn to alcohol.  
98% 1999/07/09

<http://www.health-center.com/english/brain/ptsd/depress.htm>

**12. Disorders - PTSD**

PTSD Related sites Conferences by Topic Multimedia Library - Home Study Courses Select Your Destination--> About CME, Inc. CME InfoStore Earn all the CE Credit You Need Mental Health InfoSource Home Page Help! Customer Service Online Search MHI..  
98% 1999/07/20 <http://www.mhsource.com/disorders/ptsd.html>

**13. Vietnam Veterans of Florida PTSD**

Welcome Home Remember YOU are not alone One of the hardest things that the Vietnam Veteran has had to face since returning home, is dealing with his past. Since Vietnam, America has learned there is more than the monetary cost to a War. The cost of  
98% 1999/04/10 <http://www.vvof.org/vvofptsd.htm>

**14. Pharmacology of PTSD**

Pharmacology of PTSD Return to IMHN Home Page This is an invitation to join the research in the assessment, treatment, and pharmacology of PTSD. IMH-Network is currently conducting a nation-wide research in assessment, treatment, and pharmacology..  
98% 1998/04/24 <http://www.ptan.com/ptsdphm.htm>

**15. HRAC - PTSD**

HRAC PTSD Informatio  
98% 1999/05/24 <http://www.childabuse.net/PTSD.htm>

**16. PTSD-Forschungsvorhaben: Neuer Nutzer**

PTSD-Forschungsvorhabens der Katastrophenforschungsstelle, CAU Kie  
98% 1999/06/26  
[http://kfs009.sozilogie.uni-kiel.de/~ptsd\\_ger/newuser/Welcome.phtml](http://kfs009.sozilogie.uni-kiel.de/~ptsd_ger/newuser/Welcome.phtml)

**17. PTSD-Forschungsvorhaben - Literaturrecherche: Neuer Nutzer**

PTSD-Forschungsvorhabens der Katastrophenforschungsstelle, CAU Kie  
98% 1998/12/04  
[http://kfs009.sozilogie.uni-kiel.de/~ptsd\\_ger/newuser/top\\_bot.html](http://kfs009.sozilogie.uni-kiel.de/~ptsd_ger/newuser/top_bot.html)

**18. PTSD Research Project: Summary**

Summary: PTSD Research Project of the Disaster Research Unit, CAU Kie  
98% 1999/07/10  
[http://kfs009.sozilogie.uni-kiel.de/~ptsd\\_eng/newuser/Welcome.phtml](http://kfs009.sozilogie.uni-kiel.de/~ptsd_eng/newuser/Welcome.phtml)

**19. districtnumbers**

District Level Staff e-mail List Click on the name to send an e-mail Superintendent: Gene Medina [meding@hspo.ptsd.wednet.edu](mailto:meding@hspo.ptsd.wednet.edu) Director of

7<sup>th</sup> Indian Nations Conference

A Probation Response to Ending Violence  
Against Native Women

Gloria One Feather

Tulsa, Oklahoma 1999





## 7<sup>th</sup> Indian Nations Conference

### **"A Probation Response to Ending Violence Against Native Women" Gloria One Feather**

#### **Learning Objectives:**

1. To disclose the efficacy of a probationary response to domestic violence.
2. To determine ways to develop a probationary program in tribal court systems.

Sacred Circle has developed the only tribal system in the country to utilize probation officers as a response to domestic violence. Without the use of probation officers, domestic violence laws can be difficult to enforce. This workshop will explain how this system was developed and how and why it has been effective.



7<sup>th</sup> Indian Nations Conference

Tribal Policies and Legislative  
Agenda Development

B.J. Jones

Tulsa, Oklahoma 1999



## 7<sup>th</sup> Indian Nations Conference

### **"Tribal Policies and Legislative Agenda Development"**

**B.J. Jones, JD**

#### **Learning Objectives:**

1. Developing appropriate Victim's Assistance Codes.
2. Child Sexual Abuse Code development.
3. Inter-agency cooperation and protocols.

This workshop will discuss the need for Indian tribes to develop an integrated multidisciplinary approach to assisting victims of crime in Indian Country based upon code development, protocol development and legislative policy implementation.



7<sup>th</sup> Indian Nations Conference

Victims Compensation and Victims  
Assistance: Connecting Partnerships in  
Indian Country

Henry Thompson

Tulsa, Oklahoma 1999





## 7<sup>th</sup> Indian Nations Conference

### **"Victims Compensation and Victims Assistance Programs: Connecting Partnerships in Indian Country"**


**Henry R. Thompson**

#### **Learning Objectives:**

1. Practical application of Crime Victim's compensation in Indian Country.
2. Departments and personnel involved in the process.
3. Depiction of obstacles and uniqueness.

This portion of the workshop will focus on the practical application of Arizona/Apache County Attorney's Crime Victim Compensation Program. The procedure utilized in the processing of these claims starting from initial notifications to the forwarding of documents to the US Attorney's office for restitution; and the different departments and personnel that are involved in the process will be explained. Obstacles such as distance, etc., and the uniqueness of the culture will be addressed. The reservations depicted in this session will be the White Mountain Apache and the Navajo Nations.





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MAY NOT BE AVAILABLE  
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7<sup>th</sup> Indian Nations Conference

**SAFE Kids/SAFE Streets:  
Partnerships in Indian Communities**

Rick O'Kane and Beverly McBride

Tulsa, Oklahoma 1999



## 7<sup>th</sup> Indian Nations Conference

### **"SAFE Kids/SAFE Streets: Building Strong Native American Families"**

**Rick O'Kane, MA and Beverly McBride**

#### **Learning Objectives:**

1. Establishing community collaboratives.
2. The goals and objectives of SAFE Kids/SAFE Streets project.
3. Planning for the future.

This workshop will share the experiences of the Sault Ste. Marie Tribe of Chippewa Indians in establishing its SAFE Kids/SAFE Streets project. Presenters will discuss their successes and challenges while developing a common vision and moving toward more effective services.





1

Safe Kids, Safe Streets  
Elements of the Solicitation

***ELEMENT 1: SYSTEM REFORM AND  
ACCOUNTABILITY***

***ELEMENT 2: CONTINUUM OF SERVICES***

***ELEMENT 3: TRAINING***

***ELEMENT 4: LOCAL EVALUATION***

***ELEMENT 5: NATIONAL EVALUATION***

***ELEMENT 6: CROSS AGENCY INFORMATION SYSTEM***

***ELEMENT 7: PREVENTION EDUCATION AND  
PUBLIC INFORMATION***



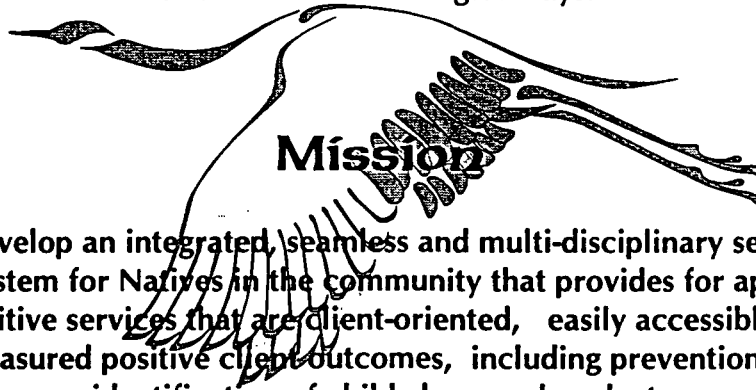
Anishnabek Community and Family Services  
**Safe Kids, Safe Streets**  
**Building Strong Native American Families**

*"Solving serious community problems by working together."*

## **BUILDING STRONG NATIVE AMERICAN FAMILIES**

### **Vision**

A community where no child or family suffers the abuse, neglect or other ills that often lead to delinquency and when service intervention is needed, it is available and offered in effective and meaningful ways.



To develop an integrated, seamless and multi-disciplinary service delivery system for Natives in the community that provides for appropriate, culturally sensitive services that are client-oriented, easily accessible and focused toward measured positive client outcomes, including prevention and early identification of child abuse and neglect.

### **Goals**


1. To develop a seamless services delivery system emphasizing prevention, early intervention and coordinated services.
2. To provide non-Native service providers with information and training regarding cultural norms and practices, specifically parenting, family values and norms.
3. To educate the community to the need for early intervention and availability of services.
4. To research, recommend, purchase, install a provider accessible services information system.

## Identified Community Risk Factors for Child Abuse and Neglect

- ✓ Lack of systemic approach to "Red Flags" for children and families
- ✓ Who/How to intervene in cases of resistance/denial of drug/alcohol/abuse behaviors
- ✓ Need for support networks for families
- ✓ Diversity of norms
- ✓ Need to leave parental responsibility intact
- ✓ Expectations for failure
- ✓ Stress factors
- ✓ Intervention viewed as non-adversarial/non territorial process

Teach your child what we have taught our children--  
that the earth is our mother.

Whatever befalls the earth befalls  
the sons and daughters of the earth.



This we know: The earth does not belong to us;  
we belong to the earth.

This we know: All things are connected--  
like the blood which unites one family.  
All things are connected.

Whatever befalls the earth befalls  
the sons and daughters on the earth.

We did not weave the web of life;  
We are merely a strand in it.  
Whatever we do to the web,  
We do to ourselves.....

-Chief Seattle

Safe Kids, Safe Streets  
Building Strong Native American Families



## **Strategic Direction**

### **Strategic Planning to Ensure Tribal Future**

- Develop Quality Resource Planning Procedures*
- Appropriate use of Technical Resources*
- Implementing Tribal Mission Statement Within Programs*

### **Working Together to Build a Strong Community**

- Building Trust and Teamwork*
- Increasing the Value of Open Communication*

### **Revitalizing our Traditional and Spiritual Values**

- Creatively Integrating Anishnabe Values*
- Respecting Individual Spirituality*

### **Strengthening Anishnabe Families**

- Strengthening Partnerships with Parents*
- Develop Binogii First Programming*



Safe Kids, Safe Streets **Building Strong Native American Families** **Year's Accomplishments**

Strategic Direction	Activity	Status
<p><b>Strategic Planning to ensure Tribal Future</b>            (Data collection &amp; Evaluation)            [System Reform &amp; Accountability]            [Local and National Evaluation]</p>	<ul style="list-style-type: none"> <li>* <i>Tribal Strategic Visioning</i></li> <li>* <i>Capacity Inventory</i></li> <li>* <i>Tribal Membership Survey</i></li> </ul>	<p>Done October 1998            Done-to be summarized            Done- August 1997</p>
<p><b>Working Together to Build a Strong Community</b>            (System Reform and Accountability)            [System Reform and Accountability]            [Continuum of Services]            [Training]            [Cross agency information system]</p>	<ul style="list-style-type: none"> <li>* <i>Development of Collaboration-Stakeholders</i></li> <li>* <i>Community Response Continuum</i></li> <li>* <i>Cross community Standardized Reporting Training</i></li> <li>* <i>Identification of MIS Systems</i></li> <li>* <i>Tribal Children and Youth Network</i></li> </ul>	<p>Done- Ongoing            Developed            Done - Ongoing            Done-to be developed            Meeting- Ongoing</p>
<p><b>Revitalizing our Traditional and Spiritual Values</b>            (System Reform and Accountability)            [Training]</p>	<ul style="list-style-type: none"> <li>* <i>Identification of Cultural Educational Issues</i></li> </ul>	<p>Done - to be developed</p>
<p><b>Strengthening Anishnabe Families</b>            (Continuum of services to Protect Children and Support Families)            (Prevention Education and Public Information)            [Continuum of services]            [Training]            [Prevention Education &amp; Public Information]</p>	<ul style="list-style-type: none"> <li>* <i>Summer Resource Guide</i></li> <li>* <i>Distinguished Youth Award</i></li> <li>* <i>Family Stressors survey</i></li> <li>* <i>Top 10 Family issues</i></li> <li>* <i>Family Assessment Form</i></li> <li>* <i>Identification of Media Campaign Targets</i></li> <li>* <i>Community Standard for At Risk Factors</i></li> <li>* <i>Youth Focus Groups</i></li> </ul>	<p>Done -2 guides published            8 awards given            Done            Done- to be developed            Under development            Done - to be developed            Done            Done</p>



Anishnabek Community and Family Services  
**Safe Kids, Safe Streets**  
**Building Strong Native American Families**

*"Solving serious Community problems by working together."*

## Keys to an effective Safe Kids, Safe Streets Project

\* NON- POLITICAL, NON-TURF

\* STRONG/ACTIVE COMMITTEE STRUCTURE

\* MOTIVATED/ACTIVE MEMBERSHIP

\* PUBLIC SECTOR INVOLVEMENT

\* COMMUNITY CONNECTIONS/ COLLABORATION

\* BELIEF/UNDERSTANDING OF WHOLE PICTURE

\* ACCURATE ASSESSMENT OF NEEDS

\* CREATIVE IMPLEMENTATION

\* REFRAMED CULTURAL SENSITIVITY

Anishnabek Community and Family Services  
**Safe Kids, Safe Streets**  
Building Strong Native American Families  
*"Solving serious community problems by working together."*

Anticipated Outcomes of the Project

- ✓COMMUNITY COMMITMENT TO CHILDREN
  - ✓TRUE COLLABORATIONS
- ✓COMMUNITY TAKING RESPONSIBILITY FOR ISSUES
  - ✓CALM AND REASONABLE ACTION
  - ✓PARENT ACCOUNTABILITY
  - ✓INCREASED FUNDING
  - ✓NEEDS DRIVEN SYSTEM
- ✓SUPPORT SYSTEMS/RESOURCES DEVELOPMENT
- ✓CHANGED COMMUNITY PERCEPTION OF EFFECTIVENESS
  - ✓SYSTEM QUALITY ACCOUNTABILITY
  - ✓CASELOAD REDUCTION
- ✓A COMMON THEORETICAL BASIS FOR PREVENTION PROGRAMS
  - ✓A HOLISTIC APPROACH TO SERVICES
  - ✓COMMUNITY MOBILIZATION
  - ✓COMMUNITY CONSENSUS
- ✓COST-EFFECTIVE PROGRAMS AND SERVICES
- ✓ENHANCED CULTURAL RELEVANCE OF SYSTEM-WIDE SERVICES
- ✓EFFECTIVE CULTURALLY-SENSITIVE PROGRAM AND SERVICES



7<sup>th</sup> Indian Nations Conference

# The Role of the FBI in Criminal Investigations

Dan Roggenbuck

Tulsa, Oklahoma 1999



HANDOUTS FOR THIS  
PRESENTATION MAY OR  
MAY NOT BE AVAILABLE  
DURING THIS SESSION



7<sup>th</sup> Indian Nations Conference

## Juvenile Justice Issues

Ada Pecos Melton

Tulsa, Oklahoma 1999



# 7<sup>th</sup> Indian Nations Conference

## **"Juvenile Justice Issues"** **Ada Pecos Melton**

### **Learning Objectives:**

1. To provide an overview of juvenile justice issues.
2. To provide information on approaches and programs being funded to address juvenile crime, violence and victimization issues.
3. To provide an understanding of the gaps in services and research in addressing juvenile justice systems.

This presentation will provide an overview of juvenile justice systems aimed at increasing and understanding of the ways in which Indian nations are addressing youth crime, violence and victimization problems and to discuss the problems, strengths, barriers and possible solutions for addressing the gaps in services, resources and research.







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## VICTIMS OF GANG VIOLENCE

Excerpt from Focus Group Report on  
Gang Violence and  
Victimization in Indian Country  
(1997)  
Prepared by Ada Pecos Melton

Although tribes have been aware of gangs existing in cities and outside communities, gangs or gang related problems in Indian communities did not exist until recently. Tribes have noted some of the unique issues they face in providing safety to victims of gang violence and/or to gang members who want to get out. These include the lack of providing "safe houses" on the reservation where victims or ex-gang members can live until the danger they face is subdued. On most reservations, everyone knows everyone and where they live, the lack of anonymity creates problems for safety and protection. Gang affiliation also threatens the make up of extended families because it transcends familial and clan boundaries and sets up conflicting relationships by pitting family and clan members against one another. This type of intra-tribal violence places a burden on tribes to develop innovative responses.<sup>1</sup> Tribes are now faced with a completely new reality and need to mobilize to design responses to interdict the growth and operations of gangs and the impact on community protection.

Most gang-related crimes are property crimes. Although not as serious as violent crime, acts such as breaking into homes and theft instill fear and insecurity in community members. The elderly and young children appear to be particularly easy targets of gang

crime because they cannot adequately protect themselves and are more likely to submit to gang intimidation. The elderly are frequently victims of gang violence, theft, and property crimes. By contrast, juveniles are more likely to be intimidated by and pressured to join gangs, and once members, to commit crimes. Data about victims of other crimes<sup>2</sup>, such as domestic violence and child physical and sexual abuse, reveal that Indian victims face considerable obstacles to obtaining services, including:

- Delayed law enforcement response to violent crime
- Lengthy investigations
- Absent or poor prosecution of cases
- Lack of immediate medical care
- An absence of on-reservation "safe houses" and
- Insensitivity to cultural needs of victims and witnesses by federal, state, and tribal service providers.

### UNIQUE ISSUES OF GANG VICTIMIZATION IN INDIAN COMMUNITIES

Victim issues in Indian communities need to be understood at multiple levels because the impact of gang violence and victimization extends not only to individual victims, but to families, communities, and the tribes. In addition, Indian gangs cannot be understood without referencing the historical experience of all Indian people. The impact of relocation, genocide, and cultural oppression by the larger society over four centuries has contributed greatly to the social problems

<sup>1</sup> Melton, Ada (1997) Final Focus Group Report: *Victims of Gang Violence in Native American Communities*. U.S. Department of Justice, Office for Victims Of Crime in Washington, D.C.

<sup>2</sup> Findings referred to under the Indian Child Protection and Family Violence Act of 1990 (Public Law. 101-630), which was enacted to address the maltreatment of Indian children, cited under-reporting, child sexual abuse, and inadequate funding as areas for reform.

such as gang violence in Indian communities today<sup>3</sup>.

### *Issues that Impact Indian Victims*

*Limited resources for victims.* Most tribes are located in remote or rural areas. This tends to narrow the kinds of resources capable of reaching a tribal community, or conversely, that can be provided by the tribe itself. Victims, who generally live in the same communities as offenders or gang members, often are not willing or able to relocate within or outside it. In addition, many do not possess the financial and family resources to leave the community entirely. Elderly victims are especially reluctant to leave and do not seek victim assistance for fear of being asked to leave their homes. Nonetheless, victims rather than offenders often are removed from the reservation or are pressured into leaving for the sake of safety and protection. This explicit compromising of victims' rights erodes citizen confidence in the ability of tribal response systems to offer safety and protection to its citizens. Fearing that their needs cannot be met on the reservation, many tribal citizens withdraw from the community.

*Lack of system reliability.* Inadequate financial support for law enforcement services in Indian communities inhibits timely police response to crime and undermines protection and assistance for victims. Victims and witnesses are reluctant to report, because the lag time creates opportunities for gang intimidation and retaliatory tactics. System reliability is further hindered by poor coordination of and minimal communication among various tribal, state, and federal entities that become involved with victims in violent gang-related cases. Communication gaps also exist among components of tribal response systems, such as law enforcement, tribal courts, and social services, and with families. As a result, victims are unsure of where to go for assistance in case processing, notification

for court appearances, information about the offender, or for compensation and other types of victim assistance.

*Lack of knowledge and victim-blaming.* Some communities appear to lack an awareness and understanding of gang violence. Communities often overlook or discount the needs of victims of gang violence because they cannot distinguish gang violence from other kinds of violence (including domestic violence). The burden for individuals victimized by their own gang-identified family members is even greater. These individuals are seen as contributing to their own victimization by accepting or tolerating the violence that is committed by their children or extended family who are gang members.

*Limited training for service providers.* Tribal police, social services, probation, and other court-related service providers often receive little or no training about the dynamics of gang violence and may not recognize specific crimes as gang-related. Further, they may fail to understand the specific needs of victims of gang violence or to provide adequate assistance to them.

### *Issues Impacting Indian Families*

*Influence from the dominant society.* Influence from non-Indian cultures and lifestyles, along with negative peer influence, have diminished the authority of parents to discipline their children and to instill in them the cultural values, lifestyle, and traditions of tribal communities. Most destructive to the extended Indian family have been historical government policies that are designed to assimilate tribes into society at large. Policies such as the reservation system, termination of federally recognized tribal status, boarding schools, and relocation programs have contributed to an erosion of cultural heritage that continues to influence Indian people today.

*Lack of involvement with educational systems.* Most public school systems do not support Native American cultural values even when the majority of students are Native American. As a result, parents and students

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<sup>3</sup> Indeed, some focus group participants referred to Indian gang members *themselves* as victims—disempowered youth for whom gang membership is a method of survival and coping.

feel alienated from the educational system and perceive themselves as unable to initiate or influence change, such as demanding curricula that address the needs of Indian youth in academic, cultural, and other social and behavioral areas. The lack of an affirmative education is a key factor in Indian children dropping out of school. The dropout rate for Indian youth ages 16 to 19 years old is 18 percent, a full eight percent higher than the national average.<sup>4</sup> Youth who drop out of school are more likely to join subculture groups, such as gangs.

*Multi-problem families.* Existing family problems such as unemployment, alcoholism, domestic violence, and child abuse and neglect, are also factors in youth susceptibility to gangs. The needs of crime victims with such pre-existing problems often are ignored, especially if those problems or the needs of the family appear to be more urgent.

#### Issues Impacting Indian Tribal Communities

*Lack of education and awareness.* Some tribes have organized multi-disciplinary planning groups that are working to empower the community through education and awareness campaigns, mentorship programs for youth, and strategies to prevent or suppress gang activity. However, the rapid infiltration of gangs into tribal communities has left many tribes unprepared to respond to gang-related crime and violence. Some tribes have minimized gang problems in their communities by categorizing youth who display gang-like behavior as "wannabes." However, the perception that gangs are somehow an "accepted" or benign subculture that others simply want to join makes communities more vulnerable to gang entry. Problems that could be best dealt with when they are small and more manageable, through prevention or intervention, are ignored. Youth who are considered "wannabes," usually the

highest risk-takers, are left to the deleterious influence of gangs. These "wannabes" often have the most to prove in order to earn gang membership, and therefore are more easily pressured into committing serious crimes.

*Lack of community involvement.* Community participation is an essential component in successfully preventing, intervening in, or suppressing gang activity, and in providing services that victims need. In some communities, resources such as civic and religious institutions, and private businesses, are being enlisted as partners in developing and implementing defensive strategies against crime and violence. Without the tribal community as a partner, tribal response systems cannot effectively impose sanctions, rehabilitate offenders, allay victims concerns, or protect the public.

*Lack of leadership.* Victims and tribal citizens do not demand accountability by tribal leaders to address the gang problems in their communities. To demonstrate a committed concern for victim rights and needs, it is essential for tribal leaders institutionalizing victim assistance programs. Not only must tribal leaders hold offenders accountable for criminal behavior, they must model zero tolerance for violence in their own lives and in their community. Holding offenders accountable is a critical element in the restorative justice approach that is inherent in most tribal justice systems.<sup>5</sup>

*Prejudice.* The close-knit nature of many tribal communities can create negative

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<sup>4</sup> Snyder H. And M. Sickmund. *Juvenile Offenders and Violence: A National Report*. U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, 1995.

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<sup>5</sup> The balanced and restorative justice approach in mainstream society consists of three related objectives: community protection, accountability, and competency development of youth who enter the juvenile justice system. In tribal justice systems the restorative justice approach refers to the process used to handle juvenile crime cases through which the victim and offender, surrounded by their family members, confront each other to resolve conflicts. This holistic approach promotes problem solving in a non-adversarial manner and addresses the healing needs of the victim, the offender, and their families. See also, A.P. Melton, *Indigenous Justice Systems and Tribal Society in Indian Tribal Courts and Justice*, *Judicature*, November-December, 1995 Vol. 79, No. 3.

experiences for victims from families with highly visible social problems (e.g., alcoholism, domestic violence, unemployment, single parenthood, etc.). Victims from other tribes or non-tribal communities may encounter similar attitudes. Sometimes offenders who have more power or status in a tribe actually receive more support than the victims they have harmed. Prejudice from outside the tribe hinders the ability of Indian victims to access available resources. Indian people who must rely on non-Indian resources often are refused services because of the perception held by non-Indian agencies that all "Indian problems" are the responsibility of the BIA or the Indian Health Service (IHS).

*Geographic location.* Today Indian people are finding success and prosperity working for their tribal governments or tribal-owned businesses, or as entrepreneurs, contradicting the notion that an Indian person must leave the reservation in order to prosper. However, the rural nature and geographic isolation of many tribes continues to strain existing resources and to limit the influx of new ones. Depressed tribal economies and limited employment opportunities deprive tribes of a sustainable tax base from which to fund needed services.

### Issues Impacting Tribal Response Systems

*Minimal support for tribal systems or for local solutions to local problems.* Support for tribes is weakened by the image or belief by insiders and outsiders that Indian people cannot handle their own problems. This promotes the idea that solutions and model programs need to be imported to deal with tribal problems that are similar to problems in mainstream society. While the problems may be similar, solutions need to be designed within the tribal context. Mainstream models for handling crime problems need to be adjusted before they are applied to problems in Indian communities. Tribes need to address problems from their perspective and the solutions they design need to be supported.

The historical imposition of constitutional governments to replace indigenous governmental structures has caused continuing problems for many tribes. Most have not completely converted to or accepted the underlying "separation of powers" doctrine that provides the framework for tripartite governments with executive, legislative, and judicial branches of government. As a result, in tribal communities with constitutional governments, the judicial branch constantly struggles to maintain or obtain autonomy from the other two branches of government. For victims, conflict arises when representatives from either the legislative or executive branch interfere (usually at the request of the contending plaintiff) by asserting tribal authority and overriding or amending the judicial process or outcomes.

*Limited infrastructure.* The basic need to build infrastructure includes system development such as law and order codes; stabilizing recurring funds for basic operations and expansion; program development; and facility development. Weak or absent infrastructure impedes the ability of tribal response systems to develop effective victim assistance and advocacy programs. This makes tribes more prone to accepting programs that have been designed by criminal justice experts outside Indian country and that are often culturally inappropriate. Many such programs are experimental and as a result, Indian people often are left with the impression that their communities are viewed merely as laboratories for social scientists.

Some communities have responded with innovative approaches. For example, some tribes have designated housing inhabited by Indian elders as drug-free zones, and some have even demanded that entire tribal communities or reservations be designated as such. In other tribal communities, tribally controlled public housing is made available for the relocation of victims and their families. Still other tribal councils have begun to institutionalize assistance services for crime victims, including victims of gang crimes. Tribes are also making efforts to empower younger members to employ tribal concepts of law and justice.

*Limited financial resources and direct funding streams.* Many tribes have neither a sufficient tax base nor enough reliable profit-making enterprises to provide financial support for community programs. Such depressed tribal economies rely substantially on state and federal financial assistance. Unlike the states, tribes do not receive formula grant funds directly from the federal government. Tribes must instead go through the state which subjects them to be treated like a local unit of state government in order to access federal funds. Under federal law, tribes are sovereign nations. The current situation undermines tribal sovereignty and in essence violates the government-to-government relationship between the tribes and the Federal government.

*Training and technical assistance.* State and federal granting agencies provide little or no funding support to tribes to strengthen or revive indigenous systems of law and justice that could address crime in Indian communities. Federal and state granting agencies usually require concrete explanations of proposed programs, and tribes may have difficulty articulating how proposed systems will work. Information about grants and other types of training and technical assistance resources is available through non-governmental organizations. Nonetheless, tribes frequently receive inconsistent information about available training and technical assistance from state and federal agencies. As a result, tribes often are uninformed about what is available or about changes that occur in federal and state programs over time.

*Lack of long-term and comprehensive solutions.* Violent crime often results in long-term trauma and injury to victims and their families. The absence of long-term service and advocacy programs within the tribal community hinders the ability of victims to heal physically, emotionally, mentally and spiritually. In some cases, victim trauma may actually be prolonged. However, long-term solutions require a continuum of care and services model that is non-existent in most tribal communities.

*Limited experience at administrative levels.* Elected or appointed tribal government officials often are unprepared to run governmental or public affairs when they assume office. Most do not have prior experience or training as public administrators or public officials. This, coupled with the short time they serve, limits what they can accomplish for their communities. As a result, community members and those outside the community may have little respect for tribal officials and may label them as incompetent, uncaring, or unwilling to help. A related point is tribal experience with external political systems. Tribes have little control over the federal process and lack sufficient political power to influence it. Tribes often are unaware of political changes at the federal level that affect them, such as the disbanding of offices specifically established to address Native American concerns.

*Jurisdictional conflicts.* In many cases, overlapping legal jurisdictions render Native Americans simultaneously subject to tribal, state, and federal criminal jurisdictions. Offenses that occur off tribal lands often are not communicated to tribes or victims and their families. Furthermore, Indian offenders and victims in mainstream law-and-order-systems are often subject to "assembly line justice" that is insensitive to their unique social, cultural, and linguistic needs. Prescribed penalties limit opportunities for appropriate attention to the cultural or individual needs of victims, offenders, or the tribal communities. Sensitivity and respect may be absent, and as a result, victim trauma may be increased.

*Dependence on external processes and authorities.* The reluctance of federal agents to share their investigative findings when federal prosecution is declined hinders the efforts of tribes to investigate and prosecute crime. Although tribes have concurrent jurisdiction over felonies, they often delay tribal prosecution pending the outcome of Federal case proceedings. In either case, delays or gaps in information may lead to a lag in the provision of victim services and to prolonged or secondary victim trauma.

*Lack of communication, coordination, and collaboration.* A general lack of communication between internal and external agencies at all phases of case processing hinders tracking and monitoring offenders, as well as victim notification of case proceedings and outcomes. For example, acts of gang violence committed in public schools often are handled by the school system independent of any input or participation from tribal justice systems. This is a lost opportunity for tribes to intervene early on when problems can still be contained, violence can be averted, and students can remain in school.

*Limited options.* Most tribes do not operate or have access to detention or correctional facilities, and many do not have operational probation and aftercare programs. As a result, tribes cannot impose certain and immediate sanctions on violent offenders, nor can they ensure victim safety. In the absence of alternatives, offenders are not held accountable to their victims, and victims are left unprotected.

An important consideration in the scope of tribal sentencing power is the Indian Civil Rights Act, which prohibits tribes from imposing sanctions that exceed one year in jail and/or a \$5,000 fine. As a result, tribal courts are unable to impose sentences that are commensurate with the severity of violent crimes committed by gangs. The sanctions thus have no deterrent effect, and offenders continue their criminal behavior.

Some tribes have adopted community service, such as painting over graffiti or repairing damaged property, as a sentencing option for some gang offenders. This option demonstrates offender accountability to victims and community while also sending the message, through highly visible public service, that crime will not be tolerated. It also allows offenders to remain in the community rather than being transferred to off-reservation detention facilities.

*Limited Management Information Systems* The lack of complete and consistent data management and collection systems makes it difficult to establish a universe of reported gang-related crimes and victimization

in Indian country. What is known is based on information that is collected in a fragmented fashion and pieced together to form an understanding of the rates of gang-related crime, violence and victimization in Indian communities. Tribes have little or no information concerning whether victims are being served, if offender mobility and compliance is being monitored, or whether offenders are being tracked. A related problem is the absence of clear and uniform criteria, across tribal communities, that define gangs and gang-related crimes. Without clear definitions, accurate statistics cannot be collected to determine the prevalence of gangs, the magnitude of gang-related crimes, and the types of crime being committed against citizens.

## SOLUTIONS FOR CHANGE

Tribes, states, the federal government and citizens must take the following steps to address the various facets of gang violence in Indian communities.

### Victims

- Improve victim services. At the tribal level, victim services should include assistance from the immediate crisis through the investigation, prosecution, and sentencing processes; provision of immediate shelter and continuing protection; and, crime victim compensation. Case tracking mechanisms should be developed. There needs to be an increase in the victim/witness advocacy staff and in probation officers at the tribal and Federal level, in order to ensure that victims are fully informed and that their rights are upheld.
- Hold public forums to inform community members of victim assistance services and to educate citizens on how to avoid being victimized.
- Victim advocates and tribes should draw on cultural traditions (e.g., ceremonies, rituals, remedies, etc.) to

help victims regain their physical, emotional, mental and spiritual well-being.

### Community Mobilization

- Community awareness programs should educate citizens about their rights, what to do if they are victimized, and resources and services that are available through tribal, state, federal, and non-governmental agencies, both immediately after the crime and throughout case proceedings.
- The Department of Justice and other related governmental entities should support community awareness and skill-building through workshops, seminars, and public meetings to teach communities how to generate community action plans and implement strategies to combat violent crime.
- Tribal justice institutions should collaboratively sponsor multi-disciplinary task forces and community boards on crime and victimization.
- Tribes should develop programs that involve whole families—youth, their parents and their extended family.
- Tribes should use various media such as electronic bulletin boards, community newsletters, and local TV and radio stations to positively influence Indian children and youth.

### Youth Development

- Build linkages between youth, parents, the community and the education system by developing school-based, early intervention programs that address truancy, altercations, substance abuse, and conflict resolution.
- Involve youth in community or tribal government planning groups and task

forces that have organized to address gangs, gang crime, and victim issues.

- Develop community-based programs such as UNITY chapters and Boys and Girls Clubs of America.
- Build competency through programs in job training and employment skills for youth and young adults. These programs channel energy into positive activities and help young people to develop skills and abilities that can be used in the future.

### Tribal Governments

- Newly elected or appointed tribal officials should receive training in public affairs, public administration, and legislative and policy development at the tribal, state and federal levels. Tribal government officials must lead by example, not by exception. Tribes should develop standards to guide the administration of tribal governments.
- Tribal legislatures should enact victim rights legislation that articulates specific protections for victims of crime.
- Tribal leaders must demonstrate commitment and concern for victim rights and needs and must model zero tolerance for violence in their own lives and communities.
- Law enforcement departments need a process for publicly addressing issues of ethnic and racial discrimination.
- Law enforcement and judicial practitioners should lead efforts to improve collection and analysis of data about Indian crime, violence, and victimization.

### Offenders

- Federal and state funding agencies should support victim-offender mediation and conflict resolution

forums that are based on tribal concepts of law and justice.

- Federal and state funding agencies need to support tribes in developing a full range of community-based alternatives to deal with offenders. These alternatives should encompass intervention, should be available at all stages of the tribal justice process, and should include a system of graduated sanctions such as boot camps, electronic monitoring, community service for restitution, and day treatment.
- Tribes need support from county, state, and federal governments to access secure detention and correctional facilities for the confinement of violent offenders. The possibility of building facilities that can be shared among tribes should be explored. Without available facilities, certain and immediate punishment for violent criminals is impossible.
- Increase aftercare programs to integrate offenders back into the community, to assist the offender and tribal community through the transition, and to minimize recidivism. Service providers based in tribal communities (such as tribal probation officers, where they exist) should participate in transition plans for offenders who are confined in off-reservation correctional facilities or treatment programs.

### **Tribal Resources and Funding Opportunities**

- State, federal, and non-governmental agencies need to enhance financial resources for inpatient and outpatient treatment, confinement, and shelter care or safe havens for victims. Tribes need an adequate level of funding support for infrastructure development and program operations, to enhance services, to plan and develop innovative programs, and to

address emerging or rapidly growing crime problems.

- It is essential that tribes obtain flexible, non-competitive, direct funding from federal sources. Federal and state funding agencies should apply their regulations flexibly so that tribes can tailor funded programs to their unique needs.
- Tribes should receive funding to develop volunteer programs and to train community members in crisis response, victim advocacy, and support services. A victim/witness coordinator should be stationed in each of the 12 Indian Health Service areas throughout the country.

### **Intergovernmental Relations and Communication**

- Develop model intergovernmental agreements for the various entities that provide investigation, prosecution, law enforcement, medical, and social services to the tribes. Memoranda of Understanding or Agreement should specify the role of each level of government in processing federal and state offenses and in providing services for victims.
- Tribes should examine as potential models the government-funded strategies other communities have used to combat gang violence, and should pursue the same sources of funding.
- Develop coordinated systems for service delivery and referral.
- Enhance intergovernmental relationships through interdisciplinary training for service providers at the tribal, state and federal levels. Non-governmental agencies should also be invited to attend. The training itself should clarify roles and focus on ensuring continuity of service.



- Establish a consistent process for communicating to victims and their families and the tribal community. Tribal leadership should establish similar processes for communicating with state and federal agencies.
- Conduct monthly or quarterly face-to-face meetings among tribal, state, and federal service providers to share information on cases, conduct case management, address needs and problems, and discuss grant or funding opportunities.
- Increase the number of statewide, regional and national meetings for tribal, federal and state representatives to share promising approaches and to discuss crime and victimization in Native American communities.
- Improve the dissemination of information about federal and state funding available to tribes and explore venues such as the internet, Native American publications, and the media.

#### **Cultural Diversity and Sensitivity Training**

- State and program professionals and paraprofessionals need to be culturally sensitive. Furthermore, they should provide services that are tailored to the victim's level of cultural competence or proficiency. Training for service providers should address tribal languages, beliefs, practices, tribal conflict resolution approaches, tribal sanctions, socio-economics, and other fundamental elements of Native American culture and life.
- Tribes must take the lead in defining what is culturally appropriate for their peoples. State and federal agencies must respect and support tribal determinations about the appropriateness of treatment and services, including policies, procedures, and protocols for service delivery. State and federal agencies must also recognize the validity of

decisions made by both modern and traditional tribal courts.

- Data collection and analysis of tribal programs must be culturally sensitive. Data collection instruments should be designed to collect culturally relevant information in a respectful and unintrusive manner.

#### **Role of the Office for Victims of Crime and Other Federal Agencies**

- In recent years, the U.S. Office for Victims of Crime (OVC) has provided grant support and technical assistance in the areas of child maltreatment and victimization, and on building the tribal infrastructure necessary to address it, including the development of policies, codes, and legislation. The same grant support and technical assistance is needed to address issues of gang violence, and in particular, to ensure safety, security and protection for victims.
- Funding should be provided directly to the tribes whenever they can meet a particular need within the community.
- Office of Justice Programs (OJP) bureaus and offices should pool funding resources that support initiatives in Indian country. Other federal agencies that should be tapped for funding for training and technical assistance for the tribes are the Bureau of Prisons, the Department of Housing and Urban Development, the Department of the Interior, the Department of Health and Human Services, and the Department of Labor.
- The Department of Justice and related state entities should set aside funding for programs that serve Indian victims who live in off-reservation communities.
- OVC should develop regulations and guidelines for states that will ensure equitable Victims of Crime Act funds for tribes. OVC should survey states

as to their guidelines for determining victim eligibility for compensation funds.

- Property crimes terrorize individuals and erode a community's sense of security. Crime victims compensation should be available for victims of property crimes.
- OVC should support the expansion of the OJP American Indian and Alaska Native Desk, which has helped to reduce the intimidation tribes experience when requesting funds. Expansion of the position could be useful in coordinating federal funding to tribes.
- OJP should streamline the grant process and consolidate monitoring of grants to tribes, so that each tribe has only one or two rather than several grant monitors.
- OVC and other OJP bureaus and offices must seek tribal input on their victim programs and policies through focus group meetings and other regional and national gatherings of tribal, state and federal representatives.

## CONCLUSION

Indian people today are equipped with an increasing awareness and understanding of the historical and social aspects of crime and victimization in their communities. Although their culture and languages differ, the various Indian nations share a history of survival and traditions that honor communal harmony and well-being. These commonalities are unique strengths that Native Americans will surely draw upon as they face the challenges of eradicating gang violence, restoring wholeness to victims, and working to strengthen tribal communities.



# AMERICAN INDIAN DEVELOPMENT ASSOCIATES

*Since 1989, the American Indian Development Associates (AIDA) has been an important resource for Indian tribes. The AIDA provides consulting, training and technical assistance to Indian tribes and tribal programs. The AIDA is a 100% American Indian owned small business.*

## STAFF

The AIDA employs staff & associates with expertise in children, youth & families justice systems, community involvement & mobilization, criminal justice cultural diversity, indigenous justice, juvenile rights & protections, program evaluation, program development, public administration, public policy & legislation, social justice research & tribal youth development, mentoring & leadership.

## MISSION

*The AIDA mission is to build the capacity of Indian Nations to address Indian crime, delinquency, violence, and victimization issues and problems by assisting them to develop comprehensive, system-wide responses to these problems in their communities.*



## GOAL

The goal of AIDA is to provide training and technical assistance to Indian Nations by building upon the strengths of their community institutions and culture and their tribal knowledge, skills, and abilities.

## CURRENT AIDA SERVICES

### Tribal Court Development

- Probation Systems
- Design & Implementation of Court Management Systems
- Indigenous Justice & Restorative Justice Systems

### Youth & Wellness

- Early Intervention & Secondary Prevention Programs
- Juvenile Justice Planning
- Child Advocacy & Protection Teams

### Community Development

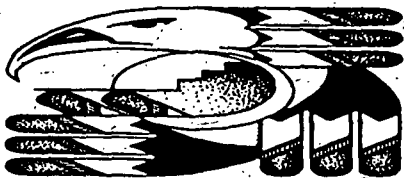
- Community Mobilization & Social Marketing Strategies for Social Programs
- Public Policy Development

### Training & Technical Assistance

- Cultural Diversity
- Focus Groups/Qualitative Data Collection
- Needs Assessments
- Case Management & Classification Systems
- Conference Design & Management



*AIDA Clients*  
*Indian Nation Governments*  
*Agencies & Programs*  
*Federal Agencies & Programs*  
*State Agencies & Programs*  
*Private & Non-profit*  
*Organizations*  
*Colleges & Universities*



**American Indian Development Associates**

2401 12th St NW, Suite 212  
Albuquerque, NM 87104

Telephone: (505) 842-1122  
Fax: (505) 842-9652  
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American Indian Development Associates  
2401 12th St. NW, Suite 212  
Albuquerque, NM 87104



# AMERICAN INDIAN DEVELOPMENT ASSOCIATES



*Supporting Tribal Self  
Determination Through  
Justice, Health and  
Community Development*



**American Indian Development Associates  
Technical Assistance Projects & Training Seminars**

- **Early Intervention & Secondary Prevention Programs**
- **Juvenile Justice Planning**
- **Probation Systems**
- **Focus Groups/Qualitative Data Collection**
- **Cultural Diversity**
- **Needs Assessments**
- **Case Management & Classification Systems**
- **Design & Implementation of Court Management Systems**
- **Indigenous Justice & Restorative Justice Systems**
- **Child Advocacy & Protection Teams**
- **Community Mobilization & Social Marketing Strategies for Social Programs**
- **Public Policy Development**
- **Conference Design & Management**



7<sup>th</sup> Indian Nations Conference

Offender Tracking and Victim Notification:  
Implementation in Indian Country

Carlos Jones and Michelle Stewart

Tulsa, Oklahoma 1999





## 7<sup>th</sup> Indian Nations Conference

### **"Offender Tracking and Victim Notification: Implementation in Indian Country"**

**Carlos Jones and Michele Stewart**

#### **Learning Objectives:**

1. To increase participants' knowledge of offender and victim issues in Indian Country.
2. Increase participant's awareness of victim rights and develop new strategies for victim notification.
3. Develop a process for implementing a sex offender registry in Indian Country.

This session will discuss issues regarding sexual and violent offenders in Indian Country and the victims of these offenses. Information on victim's rights regarding notification of offender status will be emphasized. Communication, agency responsibilities and the process of notification will be explored as a group. Participants will create a working document for sexual offender registration/tracking in Indian Country for each participant.



HANDOUTS FOR THIS  
PRESENTATION MAY OR  
MAY NOT BE AVAILABLE  
DURING THIS SESSION



7<sup>th</sup> Indian Nations Conference

Working with Native Victims  
of Elder Abuse  
Part I and II

Chris Horvath

Tulsa, Oklahoma 1999



## 7<sup>th</sup> Indian Nations Conference

### **"A Response to Elderly Abuse and Neglect in a Native American Environment" Part I and II**

**Chris Horvath**

#### **Learning Objectives:**

1. Participants will become familiar with the dynamics of Elderly abuse in a cultural environment.
2. Participants will become aware of the components of a core Tribal Elderly abuse statute, and the composition and role of an Elderly Protection Team.
3. Participants will be exposed to a wide range of responses to the abuse of Tribal Elders, with copies of developed statutes being provided.
4. Participants will be provided with a description of the components of a successful prevention model.
5. Participants will be provided with the tools to respond to Elderly abuse in their environment.

These sessions will provide introductory background material on the subject of Elderly abuse and neglect in a cultural environment, describe a response to Elderly abuse developed in a cultural environment, including a review of an existing Tribal Elder abuse statute, and the role of an Elderly Protection Team. These sessions will also describe in detail an ideal statute that encompasses a wide range of interventions appropriate to Tribal Elders. The sessions will conclude with a description of a successful prevention model, providing specific examples of successful strategies.





CHAPTER 37

ELDERLY ABUSE

5-37-1 INTENT: An Ordinance to prohibit abuse of disabled adults, to require reporting of abuse of disabled adults, to provide for services through the Elderly Protection Team, and to provide a penalty for such abuse.

5-37-2 DEFINITIONS: Terms used in this Act, unless a different meaning is clearly indicated by context mean;

(1) "Disabled Adult", any person 18 years of age or over who is incapacitated due to physical or mental disability or due to age; who is found to be in a situation or condition whereby he/she is unable to protect his/her own interest or where he/she faces abuse or attempts to cause abuse by a caretaker, or who is suffering from neglect, or who is exploited by his/her caretaker, or any other individual.

(2) "Abuse", any willful or negligent act which results in physical injury or pain or mental anguish or injury, sexual abuse, unreasonable confinement, malnutrition, or the deprivation by a caretaker of goods and services necessary to avoid physical harm or mental anguish, or other maltreatment or exploitation.

(3) "Mental anguish or injury", willingly subjecting a disabled adult to fear, agitation, confusion, severe depression, or other forms of serious emotional distress, through threats, harassment, or other forms of intimidating behavior.

(4) "Neglect", the caretaker's failure to provide adequate shelter, food, clothing, or medical services to a disabled adult.

(5) "Caretaker", an individual or public institution who has assumed the responsibility for the care of a person either voluntarily, by contract, by receipt of payment for care, as the result of family relationship or by order of a court.

(6) "Exploitation", illegal or improper utilization of a disabled person or their resources for monetary or personal benefit, profit or gain.

(7) "Goods and services necessary to avoid physical harm or mental anguish", includes but is not limited to provision of medical care for physical and mental health needs, assistance in personal hygiene, providing adequate shelter with heat and ventilation, protection from health and safety hazards, protection from malnutrition, proper supervision when appropriate, and transportation necessary to secure these needs.

(8) "Elderly Protection Team (E.P.T.)", a resource group of Tribal Elders and Professionals comprised of representatives from those agencies whose goals include serving the elderly population of the Rosebud Reservation. The function of the E.P.T. is as outlined in sections 4,6,7,9,10,11,12 and 13 of the Chapter.

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To: Julie-Bradley		From: Jo Brumakaw	
Co.		Co.	(605)
Dept.		Phone #	856.4489
Fax #		Fax #	

(9) "Self-endangerment", any disabled adult or elderly person, whose behavior indicates that he/she is incapable of adequately caring for him/herself or because of physical/mental/functional impairment is unable/unwilling to protect themselves from abuse/exploitation/neglect or who is at risk of imminent danger of personal harm as evidence by an inability to provide for some of (but not limited to) his/her basic needs, such as food, clothing, shelter, health and safety.

(10) "Least Restrictive Alternative", shall mean disabled adult protective services provided in a manner no more restrictive of a vulnerable adult's liberty, and no more intrusive than necessary to achieve and ensure goods and services necessary to avoid physical harm and mental anguish of a vulnerable adult.

(11) "Interpreter", a person able to speak and understand accurately both the Lakota and English language. Access to an unbiased and accurate interpreter of the Lakota language will be made available in all elderly abuse related matters and proceedings to insure effective communication.

#### 5-37-3

Notwithstanding any other provisions of this Chapter, no caretaker who in good faith is providing treatment to a person solely by spiritual means through prayer in accordance with the tenets and practices of a recognized group through a duly accredited practitioner shall for the reason alone be considered to have abused or neglected that person under this Chapter.

#### 5-37-4 REPORTING

Any person knowing or having reasonable cause to suspect that a disabled adult is or has been abused other than by accidental means shall report such abuse to the Elderly Protection Team or to the appropriate law enforcement agency. If the report is made to a law enforcement agency, the agency shall immediately notify the E.P.T. The report must be in writing and shall contain the name, age, and address of the disabled adult, the name and address of the alleged perpetrator, the nature and extent of the abuse, and any other pertinent information known to the person making the report. Any person who intentionally fails to make a report required by this section will share liability.

#### 5-37-5 IMMUNITIES

Any person who in good faith makes any report pursuant to this Chapter or who testifies in any judicial proceedings arising from such report shall be immune from civil or criminal liability because of such report or testimony.

#### 5-37-6 SERVICES

Upon receiving a report of abuse of a disabled adult, the E.P.T. shall make a prompt and thorough investigation to determine if such abuse exists and whether the disabled adult is in need of protection services. Services provided to abused disabled adults by the E.P.T. may include:

(1) Identification of the disabled adult and provision of services from the Elderly Protection Team;

(2) Evaluation and diagnosis of the needs of the disabled adult;

- (3) Assistance in locating and receiving alternative living arrangements as necessary;
- (4) Assistance in locating and receiving necessary protection services;
- (5) The coordination and cooperation of other agencies to provide for the needs of the disabled adult; and
- (6) Referral of the alleged abuse to the Tribal Prosecutor.

**5-37-7 CENTRAL REGISTRY**

The E.P.T. shall establish a central registry for reports of and convictions of abuse of disabled person. The information in the central registry shall be confidential and may be released only to the E.P.T.

**5-37-8 CONFIDENTIALITY**

All records, files, and information concerning disabled adult abuse reports are confidential and no disclosure or release of such information shall be made except as authorized by section seven (7) of this Act. Any person who knowingly violates the confidential nature of such records, files, and information shall be criminally liable.

**5-37-9 THE ELDERLY PROTECTION TEAM**

The Elderly Protection Team shall provide no services to an abused disabled adult unless the adult gives consent. If the abused, disabled adult is incapable of giving consent due to legal disability, incompetency, self-endangerment or the caretaker of the disabled adult refuses to provide the necessary service or to allow the E.P.T. to provide the service, the E.P.T. may petition Tribal Court for appropriate relief, which may include but is not limited to, alternative hearing, order for protection, guardianship, through a hearing process.

**5-37-10 SELF-ENDANGERMENT**

If any individual found, upon investigation by the Elderly Protection Team (see Section on Mandatory Reporting) to have caused their own abuse, mistreatment, or have endangered one's self, the court may, upon assessment and recommendation of the Elderly Protection Team, order one or a combination of the following, but not limited to, alternatives (according to Least Restrictive Alternative) (1) medical/psychological evaluation, (2) protective payee, (3) guardianship, (4) placement, (5) temporary emergency-guardianship (hearing to be held within 3 working days, but not more than 5 days after the emergency guardianship is issued). In those cases where conflict of interest exists between the parties and/or a third party, the B.I.A. Superintendent shall be appointed as the guardian and/or payee.

**5-37-11<sup>1</sup> CONFIDENTIAL RELATION PRIVILEGE**

The confidential relation privilege may not be claimed in any judicial proceedings involving abuse of a disabled adult.

**5-37-12 ACCESS TO AN INTERPRETER**

The court shall advise a petitioner/plaintiff of the right to file a motion and affidavit and to sue without cost and shall assist with the writing and filing of the motion and affidavit. The court, at this time shall advise the petitioner/plaintiff that access to an

interpreter will be provided. Access to an unbiased and accurate interpreter of the Lakota language will be made available in all elderly abuse related matters and proceedings to insure effective communication.

#### 5-37-13 ALTERNATIVE HEARING

At the time of arraignment, an elderly abuse/neglect case may be referred to the protection team for alternate resolution by three (3) Elders. The referral will be made for first time offenders and/or for (less serious) offenders. The referral, if made, will be made by the prosecutor, with the consent of a Tribal Judge, to the Elderly Protection Team.

The purpose is to allow an opportunity for alternate resolution, preventing further abuse.

The results of the alternate hearing will be made in writing to the court, indicating whether the dispute was resolved or not and recommendation.

If resolution is achieved, the changes may be discussed and if no resolution is achieved, the matter will be referred back to the prosecutor, where prosecution will proceed.

Alternative hearing by Elders may also be requested voluntarily.

#### 5-37-14 PENALTIES

##### (a) Mandatory Arrest Provision

A law enforcement officer shall arrest and take into custody any person or persons with or without a warrant, at any place, including at the person's residence, if the officer:

- (1) has probable cause to believe a violation of order for protection has occurred, if the existence of the order can be verified by the officer,
- (2) has probable cause to believe an assault has occurred to an elderly person or disabled adult,
- (3) has probable cause to believe a threat of assault has occurred to an elderly person or disabled adult, and
- (4) has probable cause to believe that an alleged perpetrator has caused an elderly person or disabled adult to fear imminent bodily harm.

The arrest shall be made even though the assault did not take place in the presence of an officer.

NOTE: Probable cause is defined as follows: Based on the officer's observations and statements made by the parties involved and witness (if any) the officer using reasonable judgement believes an assault did occur and the person to be arrested committed the assault. This mandatory arrest provision means that the victim need not sign a complaint for an arrest to occur. Further, under the provisions stated above, an officer shall arrest under probable cause even though it may be against the expressed wishes of the victim.

REPORTING Whenever an officer investigates an allegation of an incident as described in the above paragraphs, whether or not an arrest is made, the officer shall make a written report of the alleged incident and submit that report to his/her Supervising Officer. The Supervising Officer will forward copies of reports of elderly abuse to the Elderly Protection Team and/ or to the Adult Service Worker in the Department of Social Services within 48 working hours.

##### (b) Order For Protection

There will exist an action known as a petition for an order of protection

in cases of elderly abuse.

(1) A petition for relief under this section may be made, by any family or household member on behalf of himself or herself or on behalf of other household or family member.

(2) A petition for relief shall allege the existence of elderly abuse.

(3) A petition for relief may be made regardless of whether or not there is a pending lawsuit, complaint, petition or other action between the parties.

(4) The court shall provide simplified forms and clerical assistance to help with the writing and filing of a petition under this section.

(5) The court shall advise a petitioner of the right to file a motion and affidavit and to sue and/or initiate action without cost. Access to an interpreter will be provided.

(6) An automatic ex parte protection order upon filing of an elderly abuse complaint, which shall be in effect immediately, will be issued when the elderly person has fear of imminent serious bodily injury or death from the alleged abuser. Such order for protection shall include restraining the abusing party from committing acts of elderly abuse and/or exclude the abusing party from the residence of the elderly person, and protection from retaliation. Within ten (10) days of service of such an order, a hearing shall be held, at which time the court shall either dissolve an ex parte order which has been issued, or shall extend the order for protection for a definite period of time not to exceed one (1) year. If the court, after the hearing, issues or extends an order for protection, the petitioner's court costs and attorney's fees shall be assessed against the (alleged) abuser.

**(c) Abuse Offender Assessment/Treatment**

Any individual found guilty of Elderly Abuse, will be referred to the Elderly Protection Team for a mandatory assessment. The assessment will be completed by the following Elderly Protection Team members; a Substance Abuse Counselor, Domestic Violence Counselor, Mental Health Counselor, Adult Services/Aging Social Worker and Elders. Presence of the investigating police officer may also be requested at the assessment. The referral for assessment will be by Order of the Court. The assessment will be initiated within two (2) working days of receipt of referral from Tribal Court. A person assessed may be referred to the offender treatment program for mandatory participation. The treatment program will consist of a minimum of seven (7) sessions and may result in additional referrals to other agencies for specific treatment.

The purpose of the assessment/treatment program is to assess treatability and prevent reoccurrences of Elderly Abuse, providing services to perpetrator and victim.

Any individual who fails to comply with assessment and treatment will be considered in contempt of court and will be subject to further penalties of the court.

The order for assessment may also include, at the request of the Elderly Protection Team, an authorization for release of information relevant to the assessment process, to facilitate accurate assessment.

**(d) Limited Number Of Court Ordered Substance Abuse Treatment**

There will be a limit of two (2) court ordered referrals for substance abuse treatment and aftercare program within a three year period for any individual found guilty of elderly abuse (84-13) pending results and recommendations of Elderly Protection Team assessment (see section

assessment). This does not prevent voluntary participation in a substance abuse treatment program. Any voluntary participation in a substance abuse treatment program by the perpetrator does not count towards the limit of two referrals.

Any individual who does not cooperate with or who fails to complete substance abuse treatment as ordered is considered in contempt of the court and is subject to arrest. Any suspension of the original sentence pending completion of the substance abuse treatment ordered shall be revoked and evidence of non-cooperation shall be presented to the court. If probable cause of non-cooperation is established a bench warrant will be issued and a hearing held within three (3) working days.

**NOTE:** The intent is to prevent the court system from enabling the perpetrator, by offering the opportunity to deal with the problem as presented. However, this does not preclude the perpetrators responsibility and liability.

If the offense of Elderly Abuse precipitating the order for treatment involved an assault or threat of assault, the person shall be held in custody until placement in an alcohol treatment program is effected.

**(e) Mandatory Sentencing For Repeat Offenders**

Any person convicted of a second offense of elderly abuse shall be sentenced to not less than half of the maximum sentence for class A crime, pending results and recommendations of the Elderly Protection Team (see section on assessment).

Any person convicted of third or subsequent offenses shall receive the maximum sentence of class A crime. A referral to Elderly Protection Team offenders treatment program for mandatory counseling may also be ordered by the court.

**NOTE:** The nature and severity of the abuse (physical or trauma experienced) considering a disabled adults vulnerability to harm from such abuse will be considered.

**(f) PENALTY**

Any person who intentionally abuses a disabled person in a manner which does not constitute aggravated assault is guilty of abuse and neglect, as defined in section 1 of this Chapter, and the penalty shall be a \$500.00 fine and/or 6 months in jail.

**(g) PENALTY**

Any person who negligently abuses a disabled person in a manner which does not constitute simple assault is guilty of abuse and neglect as defined in section 1 of this Chapter, and the penalty shall be a \$500.00 fine and 60 days in jail.

ORDINANCE NO. 84 -13

OF THE ROSEBUD SIOUX TRIBE

AN ORDINANCE, to prohibit abuse of disabled adults, to require reporting of abuse of disabled adults, to provide for services through the Elderly Protection Team, and to provide a penalty for such abuse.

SECTION 1: Terms used in this Act, unless a different meaning is clearly indicated by the context mean:

- (1) "Disabled adult", any person 18 years of age or over who is incapacitated due to a physical or mental disability or due to age, who is found to be in a situation or condition whereby he is unable to protect his own interests or where he faces abuse or attempts to cause abuse by a caretaker, or who is suffering from neglect, or who is exploited by his caretaker, or any other individual.
- (2) "Abuse", any willful or negligent act which results in physical injury or pain or mental anguish or injury, sexual abuse, unreasonable confinement, malnutrition, or the deprivation by a caretaker of goods and services necessary to avoid physical harm or mental anguish, or other maltreatment or exploitation.
- (3) "Mental anguish or injury", willingly subjecting a disabled adult to fear, agitation, confusion, severe depression, or other forms of serious emotional distress, through threats, harassment, or other forms of intimidating behavior.
- (4) "Neglect", the caretaker's failure to provide adequate shelter, food, clothing, or medical services to a disabled adult.
- (5) "Caretaker", an individual or public institution who has assumed the responsibility for the care of a person, either voluntarily, by contract, by receipt of payment for care, as the result of family relationship or by order of a court.
- (6) "Exploitation", illegal or improper utilization of a disabled person or their resources for monetary or personal benefit, profit or gain.
- (7) "Goods and services necessary to avoid physical harm or mental anguish", includes but is not limited to the provision of medical care for physical and mental health needs, assistance in personal hygiene, providing adequate clothing, providing adequate shelter with heat and ventilation, protection from health and safety hazards, protection from malnutrition, and transportation necessary to secure these needs.

- (8) "Elderly Protection Team (E.P.T.)", a resource group of professionals comprised of representatives from those agencies whose goals include serving the elderly population of the Rosebud Reservation. The function of the E.P.T. is as outlined in sections 3,5,6, and 8 of this Ordinance.

SECTION 2: Notwithstanding any other provisions of this Ordinance, no caretaker who in good faith is providing treatment to a person solely by spiritual means through prayer in accordance with the tenets and practices of a recognized group through a duly accredited practitioner shall for that reason alone be considered to have abused or neglected that person under this Ordinance.

SECTION 3: Any person knowing or having reasonable cause to suspect that a disabled adult is or has been abused other than by accidental means shall report such abuse to the Elderly Protection Team or to the appropriate law enforcement agency. If the report is made to a law enforcement agency, the agency shall immediately notify the E.P.T. The report must be in writing and shall contain the name, age, and address of the disabled adult; the name and address of the alleged perpetrator, the nature and extent of the abuse, and any other pertinent information known to the person making the report. Any person who intentionally fails to make a report required by this section will share liability.

SECTION 4: Any person who in good faith makes any report pursuant to this ordinance or who testifies in any judicial proceedings arising from such report shall be immune from any civil or criminal liability because of such report or testimony.

SECTION 5: Upon receiving a report of abuse of a disabled adult, the E.P.T. shall make a prompt and thorough investigation to determine if such abuse exists and whether the disabled adult is in need of protective services. Services provided to abused disabled adults by the E.P.T. may include:



- (1) Identification of the disabled adult and provision of services from the Emergency Protection Team;
- (2) Evaluation and diagnosis of the needs of the disabled adult;
- (3) Assistance in locating and receiving alternative living arrangements as necessary;
- (4) Assistance in locating and receiving necessary protective services;
- (5) The coordination and cooperation of other agencies to provide for the needs of the disabled adult; and
- (6) Referral of the alleged abuse to the Tribal Prosecutor.

SECTION 6: The E.P.T. shall establish a central registry for reports of and convictions of abuse of disabled persons. The information in the central registry shall be confidential and may be released only to the E.P.T.

SECTION 7: All records, files, and information concerning disabled adult abuse reports are confidential, and no disclosure or release of such information shall be made except as authorized by section six (6) of this Act. Any person who knowingly violates the confidential nature of such records, files and information shall be criminally liable.

SECTION 8: The Emergency Protection Team shall provide no services to an abused disabled adult unless the adult gives consent. If the abused, disabled adult is incapable of giving consent due to legal disability or incompetency, and the caretaker of the disabled adult refuses to provide the necessary service or to allow the E.P.T. to provide the service, the E.P.T. may petition Tribal Court to assume guardianship.

SECTION 9: The confidential relation privilege may not be claimed in any judicial proceedings involving abuse of a disabled adult.

SECTION 10: Any person who intentionally abuses a disabled person in a manner which does not constitute aggravated assault is guilty of abuse and neglect, as defined in Section 1 of this Ordinance, and the penalty shall be a \$500 fine and 60 days in jail.

SECTION 11: Any person who negligently abuses a disabled person in a manner which does not constitute simple assault is guilty of abuse and neglect as defined in Section 1 of this Ordinance, and the penalty shall be a \$500 fine and/or 60 days in jail.

C E R T I F I C A T I O N

This is to certify that Ordinance No. 84-13 was duly passed by the Rosebud Sioux Tribal Council in session on April 5, 1984 by a vote of 24 in favor, 0 opposed, and 1 not voting. The said resolution was adopted pursuant to authority vested in the Council. A quorum was present.



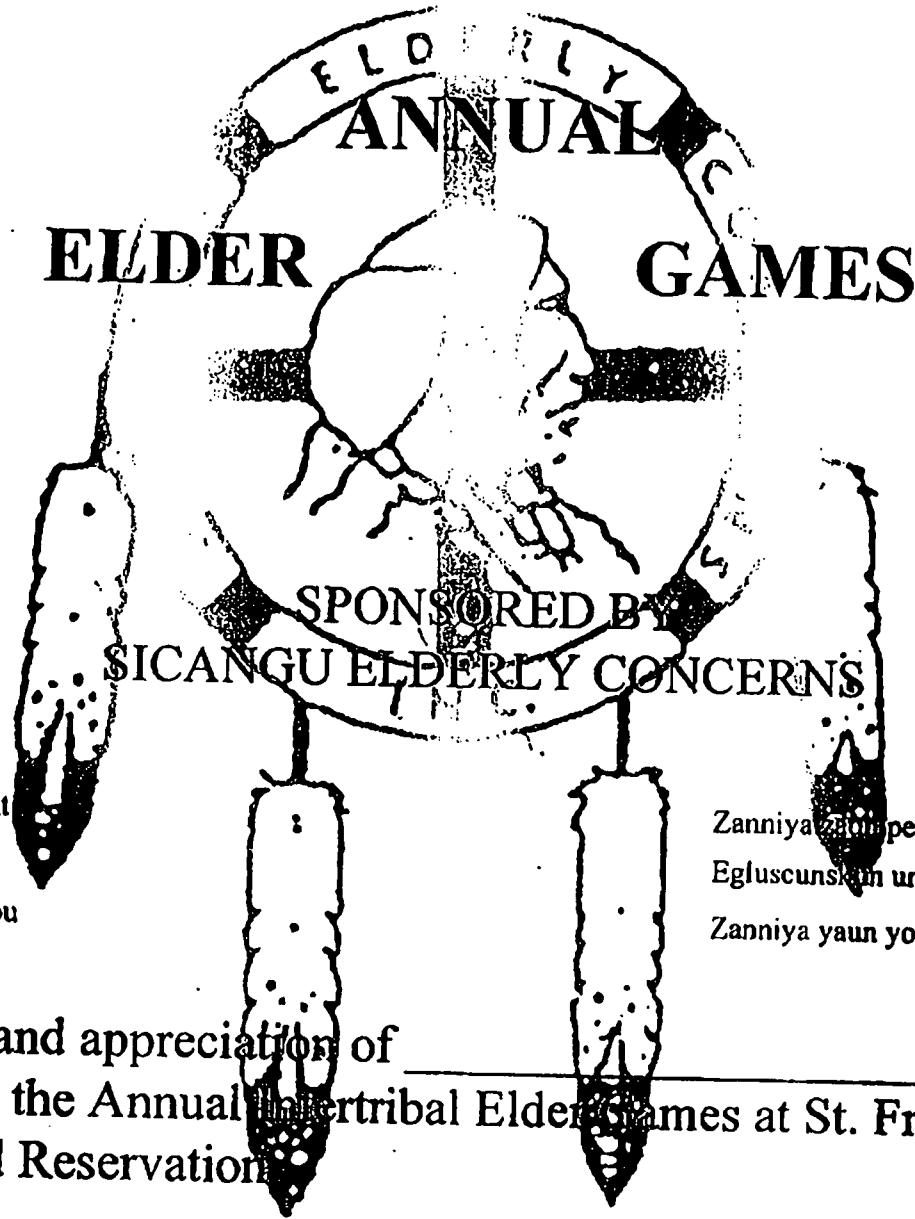
*Webster Two Hawk*  
Webster Two Hawk  
President  
Rosebud Sioux Tribe

ATTEST:

*Lloyd B. One Star, Sr.*  
Lloyd B. One Star, Sr.  
Tribal Secretary  
Rosebud Sioux Tribe

DATE SUBMITTED *4/19/84*  
TO ROSEBUD AGENCY SUPT.

APPROVED: *4/27/84*  
*Donald W. Randall*  
Superintendent



# ELDER GAMES

SPONSORED BY  
SICANGU ELDERLY CONCERNS

Good Health is Important  
Excercise is Fun.  
Staying Well is Up to You

Zanniya zompe ke tokahenya ya ke yapi kte  
Egluscunskun unpi.  
Zanniya yaun yocin hantan awa nic iglakin kte.

In recognition and appreciation of \_\_\_\_\_ for your  
participation in the Annual Intertribal Elder Games at St. Francis Indian School  
on the Rosebud Reservation

Sicangu Elderly Concerns \_\_\_\_\_



# CERTIFICATE OF APPRECIATION

SICANGU ELDERLY CONCERNS, INC.

This Certificate Is Hereby Presented To

\_\_\_\_\_  
In Recognition Of Support, Concern And Respect Shown Toward Elders,  
And The Example Shown To Others And The Generations To Come.

**LILA WOPILA!**

Sicangu Elderly Concerns, Inc. \_\_\_\_\_



# TANŪKAN-ŪKA NA WAOHOLA

Ehanŵi tanŵkan-ŵka ki hiŵayeŵu ɔaŵna wiŵi towaŵi nahan  
Ikanŵola winahun, petijanjan ŵka e la ile yukesni hehan

Woyuonihan ha tofahe kiyapi

Ehanŵi tokeske kici yuonihanŵi unŵkoyakapi s'a.

Unŵi unŵilapi nahan tiwahe, woyute, hayapi yuha unŵiya pi.  
Hetel ikope ŵni wotakuye el u-pi

Taku icanŵ unŵicapi ɔan unŵiɔa pŵan pi

Ca unŵis ehan unŵicaga pi Tanŵkan-ŵka ki awa wiɔa unŵlaka pi.

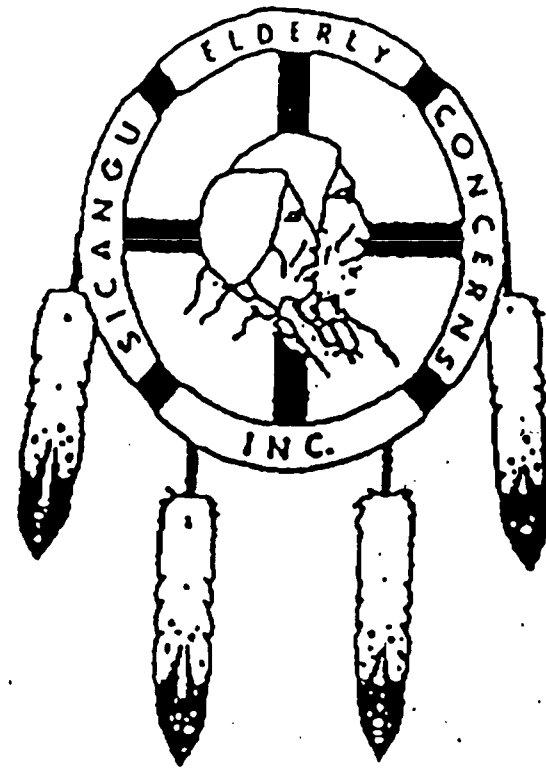
Tokel itagunyapiki iyeɔel wiɔa unŵlonihan pi kie.

Woyakapi ki lena un wounŵpe nahan wowableze eŵan han  
wiɔoun.

Woyu onihan lena unŵnuni pi ki, Tanŵkan-ŵka ikokpa pi.

Tanŵkan-ŵka ki lena waniciyuza pi.

Tanŵkan-ŵka Unŵi wiɔa ki la pe / po



15

## PREVENT ELDERLY ABUSE

## RESPECT ELDERS

## ELDERS AND RESPECT

Elders tell us -- in the old days, before television or transistor radios, and even electric lights; we would sit and talk in the evenings. Our Grandparents would tell stories. Elders would talk about the importance of respect; how to speak and act not only in public, but amongst ourselves; how to treat each other. They would always treat us with a warm heart and kindness. Elders made sure we had a warm house, and food to eat, and clothes to wear. Elders would make sure we had a home that we could be proud to bring our friends back to. When we cried, they would comfort us and make us happy. When we were hungry, they made sure we had something to eat. They always treated us with respect and spoke to us in a respectful loving caring way. Elders would teach respect by example.

As we grew older and our Elders slowed down, it became our turn to care for our Elders. It became our turn to make sure they always had a warm, safe, and clean place to live. It became our turn to make sure they always had plenty to eat. Elders would be proud that their children, as they grew up, had learned these important lessons of life; the most important being respect for Elders; our relatives and everyone; to

respect ourselves. We also learned to give and not always be taking.

In the evenings, some were lucky, and had a radio, that would be hooked up to a storage battery and we would listen to the radio for maybe a ½ hour. Otherwise we would visit and talk, and tell stories. The stories were lessons; that was real education. The lessons were about how to live, and why respect is important, and what can happen if that gets lost.

This is what Elders worry about today. They see this respect falling to other things. Elders continue to teach by example, and carry on the good-hearted ways, but feel bad, when they see it not being picked up by the generations to follow. Elders challenge all of us to return the caring respect they have shown.

**PREVENT ELDERLY ABUSE**

**RESPECT ELDERS.**





7<sup>th</sup> Indian Nations Conference

Report Writing for Law Enforcement, Social  
Services and Primary Responders

John J. Ellis

Tulsa, Oklahoma 1999



# 7<sup>th</sup> Indian Nations Conference

## **"Report Writing for Law Enforcement, Social Services and Primary Responders"**


**John J. Ellis, JD**

### **Learning Objectives:**

1. Write an Objective Report containing necessary details.
2. Learn to trust yourself, your observations and your abilities.
3. Be comfortable testifying in court by using your report to refresh your memory.

As the first or primary responder you may be called upon to testify in court or some type of administrative hearing as to what you saw and what you did. This workshop will teach you how to write a comprehensive report of your observations, actions you took and then use this report to refresh your memory and make testifying easier and less traumatic. This workshop can be utilized by police officers, criminal investigators, social workers, ambulance or medical personnel, foster parents, jail personnel, court personnel and child welfare or domestic violence volunteers and professionals.



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HANDOUTS FOR THIS  
PRESENTATION MAY OR  
MAY NOT BE AVAILABLE  
DURING THIS SESSION



7<sup>th</sup> Indian Nations Conference

## Tribal Jurisdictional Issues

Jerry Gardner, JD

Tulsa, Oklahoma 1999





## 7<sup>th</sup> Indian Nations Conference

### **"Tribal Jurisdictional Issues"**

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#### **Learning Objectives:**

1. To provide an overview of the division of criminal jurisdiction in Indian Country between tribal, federal, and state authorities.
2. To examine possible methods for dealing with the lack of tribal court criminal jurisdiction over non-Indians.
3. To discuss Public Law 280 issues and problems.
4. To provide information concerning strategies for limiting the potential impact of the Strate and Venetie decisions.
5. To provide information concerning efforts to protect victims in Indian Country through improved cooperation between tribal, federal, and state authorities.

This workshop will address a wide range of tribal jurisdictional issues and problems with an emphasis upon practical tips concerning how victim advocates in Indian Country can address these issues and problems. Topics include: 1) the division of criminal jurisdiction in Indian Country between tribal, federal, and state authorities; 2) possible methods for dealing with the lack of tribal court criminal jurisdiction over non-Indians; 3) Public Law 80 issues and problems; 4) strategies for limiting the potential impact of the Strate and Venetie decisions; and, 5) efforts to protect victims in Indian Country through improved cooperation between tribal, federal, and state authorities.



## Public Law 280: Issues and Concerns for Victims of Crime in Indian Country

by Jerry Gardner and Ada Pecos Melton\*

Public Law 83-280 (commonly referred to as Public Law 280 or PL 280) is a federal statute enacted in the 1950s termination era through which states were given greater authority over Indian reservations. Public Law 280 was a transfer of legal power (jurisdiction) from the federal government to state governments which significantly changed the division of legal authority among tribal, federal, and state governments. Congress gave six states (five states initially - California, Minnesota, Nebraska, Oregon, and Wisconsin; and then Alaska upon statehood) extensive criminal and civil jurisdiction over tribal lands within the affected states (the so-called "mandatory states"). Public Law 280 also permitted the other states to acquire jurisdiction at their option.

Public Law 280 has generally brought about (1) an increased role for state criminal justice systems in "Indian country" (a term which is specifically defined in federal statutes<sup>1</sup>), (2) a virtual elimination of the special federal criminal justice role (and a consequent diminishment of the special relationship between Indian Nations and the federal government), (3) numerous real and perceived obstacles to individual Nations in their development of tribal criminal justice systems, and (4) an increased and confusing state role in civil related matters. Consequently, Public Law 280 presents a series of important issues and concerns for Indian country crime victims and for those involved in assisting these crime victims.

Public Law 280, however, is a complicated statute which has been very controversial since the time of its enactment in 1953. It has often been misunderstood and misapplied by both federal and state governments. Moreover, the practical impact of Public Law 280 has gone way beyond that which was legally required, intended, and contemplated

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<sup>1</sup> 18 U.S.C. 1151 defines "Indian Country" as "(a) all Indian lands within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same."

## *1. What is Public Law 280?*

Public Law 83-280, the 280<sup>th</sup> Public Law enacted by the 83<sup>rd</sup> Congress in 1953<sup>2</sup>, was a substantial transfer of jurisdiction from the federal government to the states in Indian country. This transfer of jurisdiction was required (or mandatory) for the states specifically mentioned in the Act and Public Law 280 also permitted other states to acquire jurisdiction. Indian Nations, on the other hand, had no choice in the matter. The Indian Nations which were affected by Public Law 280 had to deal with greatly increased state power and state control over a broad range of reservation activities without any tribal consent.

Before Public Law 280 was enacted, the federal government and Indian tribal courts shared jurisdiction over almost all civil and criminal matters<sup>3</sup> involving Indians in Indian country. The states had no jurisdiction. With the enactment of Public Law 280, affected states received criminal jurisdiction over reservation Indians. Furthermore, Public Law 280 opened state courts to civil litigation that previously had been possible only in tribal or federal courts. In the affected states, the federal government gave up control over crimes in Indian country (those involving Indian perpetrators and/or victims). Indian Nations lost control over many criminal and civil matters within their respective territories due to the policies of the federal and state governments.

## *2. Why was Public Law 280 Enacted?*

Practically every analysis of Public Law 280 begins with a reference to the pendulum of federal policy swing between (1) Indian self-determination with an emphasis upon respecting tribal sovereignty and tribal self-government and (2) Indian "termination" with an emphasis upon "terminating" Indian Nations in order to assimilate their members into the dominant society. Public Law 280 was enacted in the 1950's - a period of termination and assimilation in Indian country - and it must be examined and understood within the context of the time period in which it was enacted. Public Law 280 was enacted in 1953 at the height of the post-World War II assimilationist period which included (1) the adoption in 1953 of House Concurrent Resolution 108 which established tribal termination as the official federal policy and singled out specific Indian Nations for termination, and (2) the implementation of the Bureau of Indian Affairs "relocation" program to encourage Indians to leave the reservations and seek employment in various metropolitan centers<sup>4</sup>

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<sup>2</sup> Act of August 15, 1953, ch. 505, 67 Stat. 588-590 (now codified as 18 U.S.C. 1162, 28 U.S.C. 1360 and other scattered sections in 18 and 28 U.S.C.).

<sup>3</sup> Criminal matters are generally illegal (or criminal) acts which involve a violation of the government's criminal laws whereas civil matters are generally actions between private parties brought to enforce a right or gain payment for a wrong.

<sup>4</sup> These termination and relocation policies were implemented by Bureau of Indian Affairs Commissioner Dillon S. Myer who had overseen the internment of Japanese-Americans during World War II.

The federal courts have generally held that Congress may “authorize” states to exercise jurisdiction in Indian country. Public Law 280, however, differed from earlier grants of jurisdiction to the states in that it allowed every state to assume jurisdiction at their own option at any time in the future. Most previous grants of jurisdiction to the states<sup>5</sup> had been limited to some or all the reservations in a single state. They also had generally followed consultation with the individual state and the affected Indian Nations.

Public Law 280 itself began as an attempt to confer jurisdiction only on the state of California. Its scope, however, was substantially broadened in the course of the process which led to its adoption by Congress. The Senate Report of the bill<sup>6</sup> indicates that alleged lawlessness on the reservations and the accompanying threat to state citizens living nearby was the foremost concern of Congress when they passed Public Law 280 in the 1953. Instead of enhancing tribal criminal justice systems, Congress chose to adopt a policy which had the effect of radically shifting the balance of jurisdictional power towards the states and away from the federal government and Indian Nations.

### *3. Why is Public Law 280 Controversial?*

From the beginning, Public Law 280 was unsatisfactory to both states and Indian Nations. Public Law 280 inspired widespread criticism and concern from Indians and non-Indians alike. Disagreements arose immediately concerning the scope of powers given to the states and the methods of assuming that power.

#### *Indian Opposition*

Indian opposition to Public Law 280 has focused upon the one-sided process which imposed state jurisdiction on Indian Nations and the complete failure to recognize tribal sovereignty and tribal self-determination. Public Law 280 required neither the consent of the Indian Nations being affected nor even consultation with these Indian Nations. When he signed it into law, even President Eisenhower expressed misgivings about the lack of tribal consent and urged immediate amendment of the law to require tribal referenda - no such amendment passed Congress until 1968.

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<sup>5</sup> Act of June 8, 1940, ch. 276, 54 Stat. 249 (criminal jurisdiction to Kansas); Act of May 31, 1946, ch. 279, 60 Stat. 229 (criminal jurisdiction to North Dakota over the Devils Lake Reservation); Act of June 30, 1948, ch. 759, 62 Stat. 1161 (criminal jurisdiction to Iowa over the Sac and Fox Reservation); Act of July 2, 1948, ch. 809, 62 Stat. 1224 (criminal jurisdiction to New York) (codified at 25 U.S.C. sec. 232 [1970]); Act of Oct. 5, 1949, ch. 604, 63 Stat. 705 (civil and criminal jurisdiction to California over Agua Caliente Reservation); Act of Sept. 13, 1950, ch. 947, 64 Stat. 845 (civil jurisdiction to New York); (This list does not include the earliest jurisdictional grants to the states, especially the jurisdiction assumed early this century by the State of Oklahoma - It is important to note that Oklahoma Indian Nations were not directly impacted by Public Law 280 and Oklahoma did not take any affirmative legislative action under Public Law 280.)

<sup>6</sup> S.REP.No.699, 83d Cong., 1<sup>st</sup> sess.5 (1953).

### State Dissatisfaction

State dissatisfaction has focused upon the failure of the Act to provide federal funding for states assuming authority under Public Law 280. The states were handed jurisdiction, but denied the funds necessary to finance it (in today's language - an "unfunded mandate").

Furthermore, Public Law 280 has been criticized as a source of lawlessness rather than as a remedy. Professor Carole Goldberg, the preeminent legal authority on Public Law 280, has made a compelling case that Public Law 280 is a law which was allegedly designed to cure the problem of "lawlessness" on reservations, but which has actually worsened the problem of lawlessness. As Professor Goldberg has stated<sup>7</sup>:

... Public Law 280 has itself become the source of lawlessness on reservations. Two different and distinct varieties of lawlessness are discernible. First, jurisdictional vacuums or gaps have been created, often precipitating the use of self-help remedies that border on or erupt into violence. Sometimes these gaps exist because no government has authority. Sometimes they arise because the government(s) that may have authority in theory have no institutional support or incentive for the exercise of that authority. I will call this kind of lawlessness the "legal vacuum" type. Second, where state law enforcement does intervene, gross abuses of authority are not uncommon. In other words, power is uncabined by the law that it is supposed to constrain it. I will call this kind of lawlessness the "abuse of authority" type.

#### **4. How has Public Law 280 been Amended since it Became Law in 1953?**

Congress amended Public Law 280 in 1968<sup>8</sup> - fifteen years after it was originally enacted. These 1968 amendments added a tribal consent requirement and authorized states to give back (or retrocede) jurisdiction to the federal government.

The tribal consent requirement, however, only applied to future transfers of jurisdiction to the states under Public Law 280. It did not apply to transfers of jurisdiction which had already taken place prior to 1968. Not surprisingly, not a single Indian Nation has consented to state jurisdiction since these 1968 amendments were enacted.<sup>9</sup>

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<sup>7</sup> Carole Goldberg-Ambrose, *Planting Tail Feathers: Tribal Survival and Public Law 280* (UCLA American Indian Studies Center, 1997), p. 12.

<sup>8</sup> These amendments were part of the 1968 Civil Rights Act. They are now codified at 25 U.S.C. sec. 1321-26.

<sup>9</sup> At least two Indian Nations have been forced to accede to Public Law 280 jurisdiction since 1968 through Congressional recognition legislation which provided that Public Law 280 would apply to their reservation either "notwithstanding the provisions" of the 1968 amendments (Mashantucket Pequot Nation in Connecticut, Public Law 98-134) or "as if they had consented" to it (Ysleta Del Sur Pueblo in Texas, Public Law 100-89).

The 1968 amendments also included a section which enables any state which had previously assumed jurisdiction under Public Law 280 to offer the return (or retrocession) of all or any measure of its jurisdiction to the federal government by sending a resolution to the Secretary of the Interior. The Secretary then has the discretion (or choice) to accept or reject the return of jurisdiction. Under this amendment, however, Indian Nations do not have a formal role in the retrocession process although Indian Nations have attempted to do so informally. The amendments did not contain any mechanism by which Indian Nations could initiate return jurisdiction on their own or force this retrocession on an unwilling state.

### ***5. Which States are Affected by Public Law 280?***

*[This section could be provided as Exhibit #1 or as a sidebar.]*

#### *Mandatory States*

Public Law 280 conferred criminal and civil jurisdiction on six specifically listed states (the so-called mandatory states) as follows:

- California            *All Indian country*
- Minnesota           *All Indian country, except the Red Lake Reservation*
- Nebraska             *All Indian country*
- Oregon               *All Indian country, except the Warm Springs Reservation*
- Wisconsin           *All Indian country*
- Alaska<sup>10</sup>            *All Indian country, except Metlakatla criminal jurisdiction*

The original exceptions of the Red Lake, Warm Springs, and Metlakatla Reservations were for Indian Nations which not only successfully demonstrated that they had satisfactory law enforcement mechanisms in place, but successfully objected to being subjected to state jurisdiction. However, most Indian Nations which objected in 1953 were not successful in being excluded from the application of Public Law 280.

A few mandatory states have successfully returned (or retroceded) jurisdiction back to the federal government since the 1968 amendments, including the following:

- (1) Wisconsin retroceded jurisdiction over the Menominee Reservation in connection with the Menominee Restoration Act (Public Law 93-197).
- (2) Nebraska retroceded jurisdiction over the Winnebago and Omaha Reservations.
- (3) Oregon partially retroceded jurisdiction over the Umatilla Reservation.

#### *Optional States*

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<sup>10</sup> There were only five mandatory states in the original version of Public Law 280. Alaska was added later by the Act of Aug. 8, 1958, Pub. L. 85-615, 72 Stat.545, in connection with its admission to the Union.

Public Law 280 also authorized any non-mandatory state to assume civil and/or criminal jurisdiction over Indian country within its borders. These non-mandatory states had the option of taking partial jurisdiction without tribal consent until after the 1968 amendments were enacted. In some instances, these transfers of jurisdiction under Public Law 280 have also been returned (retroceded) back to the federal government, overturned by the courts, or have never been implemented. The optional states fall into two categories - states with disclaimers in their state constitutions limiting state jurisdiction over Indian country and states without these state constitutional disclaimers. For the optional states without disclaimers in their state constitutions, the procedure for accepting Public Law 280 was straightforward. The following states without disclaimers assumed Public Law 280 jurisdiction either in whole or in part over Indian country within their states:

- *Nevada* - 1955 (Nevada Revised Statutes section 41.430).
- *Florida* - 1961 (Florida Statutes Annotated section 285.16).
- *Idaho*<sup>11</sup> - 1963 (subject to tribal consent)(Idaho Code sections 67-5101/3).
- *Iowa* - 1967 (Iowa Code Annotated sections 1.12-.14).

There were eight optional states with disclaimers in their state constitutions limiting state jurisdiction over Indian country within their state borders. Congress assumed that these states would have to remove (or repeal) these disclaimers by constitutional amendment before Public Law 280 jurisdiction could be validly transferred. Six of the eight states with disclaimers have enacted legislation claiming full or partial Public Law 280 jurisdiction. Yet five of the six states - Washington, Montana, Arizona, North Dakota, and Utah - have not amended their state constitutions and, consequently, their claims of jurisdiction are subject to legal challenges. The following states with disclaimers have assumed jurisdiction either in whole or in part over Indian country within their states:

- *Washington*<sup>12</sup> - 1957 and 1963 (Washington Revised Code section 37.12.010)
- *South Dakota* - 1957 and 1961 (civil and criminal actions on highways only) (South Dakota Compiled Laws Annotated sections 1-1-17, 1-2-21).
- *Montana* - 1963 (Montana Revised Code Annotated section 83-802).
- *North Dakota*-1963 (subject to tribal consent)(North Dakota Cent. Code section 27-19-02).
- *Arizona* -1967 (air and water pollution)(Arizona Revised Statutes Annotated sections 36-1801, 36-1856).
- *Utah* - 1971 (Utah Code Annotated sections 63-36-9 to 63-36-21).

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<sup>11</sup> Idaho and Washington asserted jurisdiction over compulsory school attendance, public assistance, domestic relations, mental illness, juvenile delinquency, adoption proceedings, dependent children, and operation of motor vehicles over public roads.

<sup>12</sup> Idaho and Washington asserted jurisdiction over compulsory school attendance, public assistance, domestic relations, mental illness, juvenile delinquency, adoption proceedings, dependent children, and operation of motor vehicles over public roads.



## 6. *What is the Effect of Public Law 280 in Criminal Actions?*

The impact of Public Law 280 is most straightforward with regard to criminal actions. It is important, however, to examine separately the legal impact and the practical impact of Public Law 280.

### Legal Impact

The main legal impact of Public Law 280 concerning criminal jurisdiction is that it (1) extended state criminal jurisdiction and the application of state criminal laws onto Indian reservations within the affected states and (2) eliminated special federal criminal jurisdiction over reservation areas in the affected states. In essence, the criminal jurisdiction sections of Public Law 280 shifted the special federal criminal jurisdiction over reservation areas to the state. The grant of criminal jurisdiction to the states was broader ("to the same extent that such State has jurisdiction over offenses committed elsewhere within the State") than the limited federal criminal jurisdiction which existed prior to Public Law 280 and, consequently, it expanded the realm of non-Indian control over reservation activities. Exhibit #2 sets out the differences in criminal jurisdiction between states with Public Law 280 and states without Public Law 280.

### Practical Impact

The practical impact of Public Law 280 has generally been much greater than the Act itself legally required. Public Law 280 did not eliminate tribal criminal jurisdiction - in fact, it did not make specific reference to tribal jurisdiction at all. Consequently, most courts and attorneys general have found that Indian Nations retain their inherent sovereign authority with regard to criminal jurisdiction.

Thus, although states were delegated broad criminal jurisdiction, that jurisdiction remained concurrent (running together) with the inherent tribal criminal jurisdiction. The federal government, however, viewed Public Law 280 as a license to drop financial and technical support for tribal self-government and tribal governmental institutions in the Public Law 280 states. The Bureau of Indian Affairs (BIA) used it as an excuse for redirecting federal support on a wholesale basis away from Indian Nations in the "Public Law 280 states" and towards all other Indian Nations. The most striking illustration of this redirected federal support concerns the funding of tribal law enforcement and tribal courts. In many Public Law 280 states, the BIA refused to support tribal law enforcement and tribal courts on the grounds that Public Law 280 made tribal criminal jurisdiction unnecessary.<sup>13</sup>

As a result of the decision to drop federal support for tribal law enforcement and tribal court systems in Public Law 280 states, many Indian Nations in Public Law 280 states still do not have functioning criminal justice systems. The situation has been changing in recent years. An increasing number of Indian Nations in Public Law 280 states are developing criminal justice systems. In some instances, Indian Nations are creating law

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<sup>13</sup> Carole Goldberg-Ambrose, *Planting Tail Feathers: Tribal Survival and Public Law 280* (UCLA American Indian Studies Center, 1997), pp. 8-12.

enforcement and court systems in connection with a formal Public Law 280 retrocession process. In most instances, however, Indian Nations are simply asserting their concurrent criminal jurisdiction.

[This exhibit could be placed here or in a shaded box.]

**Exhibit #2: Criminal Jurisdiction on Indian Reservations (Indian Country)**

	<i>States without PL 280</i>	<i>States with PL 280</i>
<b><i>Tribal</i></b>	Over Indians, subject to limits on punishment in Indian Civil Rights Act (ICRA)	Over Indians, subject to limits on punishment in Indian Civil Rights Act (ICRA)
<b><i>Federal</i></b>	Over major crimes committed by Indians (Major Crimes Act); Over interracial crime: Indian v. non-Indian (General Crimes Act); Over special liquor, gaming, and other offenses; Otherwise, same as Off-Reservation	Same as Off-Reservation
<b><i>State</i></b>	Only over crimes committed by non-Indians against other non-Indians	Over Indians and non-Indians generally, with exceptions found in Public Law 280

**7. What is the Effect of Public Law 280 in Civil Actions?**

The civil jurisdiction impact of Public Law 280 is less straightforward than the criminal jurisdiction impact. In general, it authorized the application of general state adjudicatory jurisdiction (jurisdiction of courts to judge or adjudicate cases) to reservations in the affected states, but it did not authorize state civil regulatory jurisdiction (jurisdiction of government administrative agencies to regulate conduct - see following section). Since federal courts were not authorized to hear many civil actions, Public Law 280 did not transfer federal civil jurisdiction. Instead, it authorized the state to intervene in civil matters (and individuals to file actions in state courts) which had previously been under exclusive tribal jurisdiction and, consequently, greatly expanded the realm of non-Indian control over reservation activities. Exhibit #3 sets out the differences in civil jurisdiction between states with Public Law 280 and states without Public Law 280.

The practical impact of Public Law 280 with regard to civil jurisdiction was much more substantial than legally required by the Act itself. Public Law 280 did not eliminate tribal civil jurisdiction. However, as a result of the decision to drop federal support for tribal governmental institutions, many Indian Nations in Public Law 280 states were unable to operate court systems. In recent years, an increasing number of these Indian Nations are again developing court systems. It is important to note that many of these developing tribal courts are initially asserting civil jurisdiction, especially over Indian Child Welfare and child protection matters. The development of criminal justice systems is often delayed due to the high cost of law enforcement and detention facilities required for a fully functional tribal criminal justice system.

[This exhibit could be placed here or in a shaded box.]

**Exhibit #3: Civil Jurisdiction on Indian Reservations (Indian Country)**

	<i>States without PL 280</i>	<i>States with PL 280</i>
<i>Tribal</i>	Over Indians and non-Indians with limitations	Over Indians and non-Indians with limitations
<i>Federal</i>	Same as Off-Reservation (diversity of citizenship, federal question, etc.)	Same as Off-Reservation (diversity of citizenship, federal question, etc.)
<i>State</i>	None, except some suits with non-Indians or on fee lands	Over suits involving Indians or non-Indians generally, with exceptions found in PL 280

**8. What are the Limitations on Public Law 280?**

There are a number of important limitations on the application of Public Law 280, including the following:

- (a) *Trust Status:* Public Law 280 specifically provided that it did not affect the trust status of Indian lands. It also did not terminate the trust relationship, end tribal sovereign immunity, or exclude Indians in affected states from receiving benefits under federal Indian programs.
- (b) *Limits to State Authority:* States may not apply laws related to such matters as environmental control, land use, gambling, and licenses if those laws are part of a general state regulatory scheme. Public Law 280 gave states only law enforcement

and civil judicial authority - not regulatory power. It also denied states power to legislate concerning certain matters, particularly property held in trust by the United States and reserved hunting and fishing rights. The state generally cannot tax on Indian reservations. The U. S. Supreme Court<sup>14</sup> has interpreted Public Law 280 as a law designed only to open state courts to civil and criminal actions involving reservation Indians and not to subject reservations to the full range of state regulation. Finally, there are some matters considered so central to the very definition of the Indian Nations - such as enrollment and certain domestic matters - that state courts may be excluded from hearing such matters.

- (c) *Municipal and County Laws*: Public Law 280 may have established that only statewide laws are applicable to reservation Indians - excluding municipal and county laws. Courts have generally excluded the application of local laws since Public Law 280 was not intended to deny Indian Nations their basic governmental functions.
- (d) *Later Federal Laws*: Some federal laws enacted after the 1953 enactment of Public Law 280 have reduced the amount of jurisdiction available to the states and simultaneously increased tribal sovereignty and/or federal power. For example, the 1978 Indian Child Welfare Act (Public Law 95-608) gave Indian Nations exclusive jurisdiction over certain child custody proceedings involving Indian children, and the 1988 Indian Gaming Regulatory Act (Public Law 100-487) makes enforcement of state gaming laws a federal rather than a state responsibility.

### **9. How Does Public Law 280 Affect Indian Country Crime Victims?**

There are many ways in which Public Law 280 may affect crime victims in Indian country, including the following:

- (a) *Federal Role Eliminated*: In states without Public Law 280, the federal criminal justice system has a special role in Indian Country - crimes are often investigated by the Federal Bureau of Investigation and the Bureau of Indian Affairs; major crimes and interracial (Indian v. non-Indian) crimes are prosecuted through the United States Attorney's offices; the federal victim witness coordinator is actively involved in these federal cases; etc. In states with Public Law 280, this special federal role is eliminated.
- (b) *Greatly Expanded Role of State Criminal Justice System*: In states without Public Law 280, the role of the state criminal justice system in Indian country is generally limited to non-Indian v. non-Indian crimes only. In states with Public Law 280, the role of the state criminal justice system in Indian country is essentially the same as outside Indian country. The prior federal role has been transferred to the state, but the grant of criminal jurisdiction to the states is even greater than the prior federal role.

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<sup>14</sup> *Bryan v. Itasca County*, 426 U.S. 373 (1976).

Consequently, Public Law 280 significantly expanded the realm of non-Indian control over reservation activities.

- (c) *Limited Tribal Criminal Justice Systems in Public Law 280 States:* As a result of the limited federal support for tribal law enforcement and tribal court systems in Public Law 280 states, many Indian Nations in Public Law 280 states still do not have functioning criminal justice systems. There may not be any tribal law enforcement or tribal court system. If a tribal court does exist, it may only exercise jurisdiction over civil actions. If a tribal criminal justice system does exist, it may be informal and/or have only very limited resources available.
- (d) *Possible Choice of Criminal Justice System:* Due to the concurrent jurisdiction of the tribal and state criminal justice systems under Public Law 280, it is possible that a victim of crime may face a choice of criminal justice systems (assuming that there is a functioning tribal criminal justice system) or the possibility of two prosecutions by the separate sovereigns (state and tribal).
- (e) *Lawlessness of the "Legal Vacuum" Type:* Public Law 280 has often created what Professor Goldberg identified as lawlessness of the "legal vacuum" type. The jurisdictional vacuums or gaps caused by Public Law 280 have often precipitated the use of self-help remedies that border on or erupt into violence. These self-help remedies have developed because (1) no government (either tribal or state) has authority, (2) the perception exists that no government has authority, and/or (3) the government has authority in theory but no institutional support or incentive for the exercise of that authority.
- (f) *Lawlessness of the "Abuse of Authority" Type:* Public Law 280 has often created what Professor Goldberg identified as lawlessness of the "abuse of authority" type. There have been many instances in which state law enforcement has intervened, but gross abuses of authority have occurred (power is unleashed by the law that is supposed to constrain it).
- (g) *Mistrust and Hostility between Tribal and State Officials /Communities:* On many reservations, Public Law 280 has contributed to a continuing history of mistrust and hostility between tribal and state officials/communities. The controversy surrounding Public Law 280 has contributed to this situation, including the state dissatisfaction with the lack of federal funding and the tribal opposition to the broad unilateral imposition of state law. Furthermore, a common Indian perception in many Public Law 280 states is that state law enforcement claims that they have no authority whenever the Indian Nation asks them to intervene ("legal vacuum" lawlessness), but that state law enforcement claims that they have this authority whenever the Indian Nation does not want them to intervene ("abuse of authority" lawlessness). Obviously, this situation can present many problems for Indian country crime victims.

## ***10. How Do I Determine the Impact of Public Law 280 on an Individual Reservation?***

There are a series of questions which need to be answered in order to determine the impact of Public Law 280 upon individual states and reservations, including the following:

***(a) Is the state one of the mandatory Public Law 280 states?***

The mandatory Public Law 280 states are California, Minnesota, Nebraska, Oregon, Wisconsin, and Alaska (see Exhibit #1). The mandatory states were provided with full transfer of jurisdiction under Public Law 280.

***(b) Is the state one of the optional Public Law 280 states and, if so, was it a partial or a full assumption of jurisdiction ?***

There are 10 optional Public Law 280 states - Nevada, Florida, Idaho, Iowa, Washington, South Dakota, Montana, North Dakota, Arizona, and Utah (see Exhibit #1). Unlike the mandatory states, these optional states were able to assume Public Law 280 jurisdiction either in whole or in part. Consequently, it is important to determine the specific application of jurisdiction by the individual state. (In addition, there have been other federal laws granting state jurisdiction for individual reservations or states - see footnotes 3 and 7).

***(c) Has the state returned or retroceded Public Law 280 jurisdiction or is it otherwise no longer in effect?***

A number of both the mandatory and optional states have retroceded (or returned) jurisdiction back to the federal government since the 1968 Public Law 280 amendments. In addition, some assertions of jurisdiction have been overturned by the courts or were never implemented.

***(d) Is the specific reservation affected?***

In many states, Public Law 280 has been applied to some reservations, but not to other reservations. Even if the state is listed as either a mandatory or an optional Public Law 280 state, it may not apply to all of the reservations within that state.

***(f) Is there a tribal court system?***

An increasing number of Indian Nations in Public Law 280 states have developed court systems, but the situation varies substantially from state to state and from tribe to tribe. Tribal courts now exist in most of the optional Public Law 280 states. The development of tribal court systems in the mandatory states has generally been more difficult, especially in California and Alaska. The existence of a tribal court system greatly increases the available remedies and services for crime victims.

***(g) Does the tribal court assert both civil and criminal jurisdiction?***

Many of the tribal courts which are being developed in Public Law 280 states initially assert only civil jurisdiction due to the high cost of law enforcement and detention

facilities. The rights of a crime victim and the services available to that crime victim may be limited if the only tribal court option is a civil action (for example, a civil domestic violence action does not generally have as much impact as a criminal action since options such as mandatory arrest policies may not be available).

*(h) Are there tribal law enforcement services and facilities?*

Many Indian Nations in Public Law 280 states have limited law enforcement services and facilities. The rights of a crime victim may be limited if these services/facilities are non-existent, limited, or severely rationed due to budgetary limitations.

*(i) What is the relationship between the tribal criminal justice system and the state criminal justice system?*

The relationship between the tribal criminal justice system and the state criminal justice system can have a significant impact upon the rights of Indian country crime victims, but this relationship varies substantially from state to state. Some Public Law 280 states have been willing to retrocede Public Law 280 jurisdiction. In some states, this relationship has been particularly difficult, especially in California and Alaska. In other states, the tribal and state justice systems have been able to establish very productive relationships. For example, tribal and state courts in Wisconsin have generally established good working relationships. In fact, the Wisconsin Court of Appeals held that once an Indian Nation has a domestic abuse ordinance in place and a tribal court to enforce it, then the tribal court has exclusive jurisdiction despite Public Law 280.<sup>15</sup>

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<sup>15</sup> *St. Germain v. Chapman*, 178 Wis. 2d 869 (1993).

## Public Law 280 Resources

Goldberg-Ambrose, Carole. *Planting Tail Feathers: Tribal Survival and Public Law 280* (UCLA American Indian Studies Center, 1997).

*This is the most comprehensive resource available on Public Law 280 written by the preeminent Public Law 280 scholar. It is available for \$15.00 per copy from the UCLA American Indian Studies Center (310-825-7315). Information is available online at <http://www.sscnet.ucla.edu/indian/pubs/gen.books>*

Goldberg, Carole. "Public Law 280: the Limits of State Jurisdiction over Reservation Indians", 22 U.C.L.A. L.Rev. 535 (1975).

*This is the preeminent law review article on Public Law 280 (It is reprinted as Chapter 2 in *Planting Tail Feathers: Tribal Survival and Public Law 280* above).*

Goldberg, Carole and Champagne, Duane. "A Century of Dishonor: Federal Inequities and California Tribes" (Report prepared for the Advisory Council on California Indian Policy, 26 March 1996).

*Available from UCLA American Indian Studies Center (310-825-7315) or online at <http://www.sscnet.ucla.edu/indian/ca/Tribes>*

American Indian Policy Review Commission, Task Force Four Report on Federal, State, and Tribal Jurisdiction. Issues in Public Law 280 States, pages 4-33 (1976).

*Felix Cohen's Handbook of Federal Indian Law* (1982 Edition), pages 362-373.

*Manual of Indian Law* (American Indian Lawyer Training Program, 1982), pages 87-108.

Clinton, Robert; Newton, Nell; and Price, Monroe. *American Indian Law, Third Edition* (The Mitchie Company, 1991), pages 594-622.



## Limiting the Potential Impact of *Strate*

The 1998 U.S. Supreme Court decision in *Strate v. A-1 Contractors* has potentially devastating impact for tribal court civil jurisdiction. If the broad language used in many parts of the decision is applied, then the decision could have impact far beyond the specific facts and holding of the case. In fact, many federal and state courts have been applying this broad language and expanding the impact of the decision well beyond the specific facts and holding of the case. It is critical, however, to

stress whenever possible that these broad statements are merely *dicta* (see definition below), and therefore not binding in subsequent cases. Tribal courts must take a lead role in restricting the *Strate* decision to its facts. It is critical that whenever non-Indian parties are involved in tribal civil actions (and *Strate* issues could be raised), the tribal court should conduct extensive fact finding. This fact finding would then be used to distinguish (that is, to point out an essential difference; to prove a case cited is inapplicable) the case at hand from the *Strate* decision.

***Tribal courts must take a lead role in restricting the Strate decision to its facts.***

*Strate, et al. v. A-1 Contractors, et al.*  
520 U.S. 438 (1997); Decided April 28, 1997.  
Addressing the jurisdiction of a tribal court over an action arising out of an automobile accident involving non-Indians on a state highway right-of-way on Indian lands, the Court holds that a tribe's adjudicative jurisdiction does not exceed its legislative jurisdiction, finding that subject to controlling provisions in treaties and statutes, and the exceptions outlined in *Montana v. United States*, 450 U.S. 544 (1981), the civil authority of Indian tribes and tribal courts does not extend to the actions of non-tribal members on non-Indian fee lands.

*The following are possible ways to distinguish the case at hand from Strate. In order to distinguish (or point out differences) from Strate, the court will need to make specific factual findings concerning these issues.*

**Parties:** Both parties in *Strate* were non-Indian. If any party is Indian (or tribal member), then *Strate* does not apply. (Note that the 9<sup>th</sup> circuit in *Wilson v. Marchington*, 127 F.3d 805, does not agree).

**Nature of the Land:** *Strate* only applies to non-

Indian fee land - the Supreme Court held that the nature of the right of way in *Strate* rendered it equivalent to non-Indian fee land. If the land is trust land (or a tribal road rather than a state road) without similar right of way, then *Strate* does not apply.

**Rule of the Road:** The Supreme Court in *Strate* was simply setting out a straight line rule of the road. The *Strate* decision, therefore, only applies to highway accident cases which takes place on state roads. If it was not a highway accident or it did not take place on a state road, then *Strate* does not apply.

**Montana Test:** If a greater case can be made for either of the *Montana* prongs, then *Strate* does not apply. For example: (1) under consensual relationships - in *Strate*, the Court found that the parties were "strangers" to the contract or the accident, but a greater case could be made if this was not the case; (2) under political integrity, economic security, and especially health or safety - a greater case could be made if, for example, any party is Indian (in the overruled *Bremner* district court opinion, the court held that "injury to a single tribal member is sufficient to implicate the interests protected by the second *Montana* exception." - note that this decision, 24 ILR 3213, although it has been overturned actually contained a very good example of a possible methodology for distinguishing *Strate*), the non-Indian business is located on the reservation, the non-Indian is a reservation resident, etc. (Also note that the *Montana* test should only be applied if non-Indian fee land is at issue.)

**Treaty or Statute:** The Court in *Strate* frequently qualified its holding by stating that it was "absent a statute or treaty authorizing the tribe to govern the conduct of non-members on the highway in question". If there is a treaty (such as the Navajo Nation Treaty of 1868 with the "bad men" clause), then a good argument can be made that *Strate* does not apply.

*Black's Law Dictionary defines dicta as follows: Opinions of a judge which do not embody the resolution or determination of the court. Expressions in court's opinion which go beyond the facts before the court and therefore are individual views of author of opinion and not binding in subsequent cases.*

## Judicial Update: Cases, Continued

Tribal Court lacks authority to adjudicate the case; and enjoins the defendants from proceeding further against the plaintiffs in Crow Tribal Court.

Northern District of New York  
*Basil Cook Enterprises, Inc., et al. v. St. Regis Mohawk Tribe, et al.*, 26 F.Supp. 2d 446; 1998 U.S. Dist. Lexis 18409; 26 Indian L. Rep. 3019

In an action arising under the Indian Civil Right Act for damages and seeking an order to compel arbitration of the parties' dispute and to enjoin the defendants from proceeding with further action in tribal court, the district court dismisses the action for failure to exhaust tribal court remedies.

### Tribal Courts Navajo Nation

#### *Means v. District Court*

This decision holds that Russell Means is subject to the criminal jurisdiction of the Navajo Nation. The Court based its ruling on three principals: (1) The "set apart for the use and occupation" and "bad men" language of the United States-Navajo Nation Treaty of 1868 recognizes criminal jurisdiction over nonmember Indians by the Navajo Nation. (2) Russell Means gave his consent to criminal jurisdiction by "assuming tribal relations" with Navajos by becoming a *hadane* or "in-law." (3) The assertion of criminal jurisdiction over a non-member Indian does not violate

equal protection of the law, because any person can become an in-law and there is a Navajo Nation governmental interest in maintaining peace and order. [Note: The full decision for this case can be accessed at [www.tribal-institute.org](http://www.tribal-institute.org).]

### Hopi Tribe

*Youvella, et al. v. Dallas, et al.*, 26 Indian L. Rep. 6044

The Hopi Tribe Appellate Court remands to the trial court for a hearing to determine whether sovereign immunity bars a suit against the tribal treasurer sued in his individual capacity or otherwise.



## Limiting the Potential Impact of *Venetie*

The 1998 U.S. Supreme Court *Venetie* decision had devastating consequences for Alaska Natives, but it also presents substantial problems for Indian Nations in the lower 48 states since the Court adopted a very restrictive interpretation of the "dependent Indian community" prong in the "Indian country" definition. Specifically, the Court required that both a federal set-aside and a federal superintendence requirement must be satisfied for a finding of "dependent Indian community" rather than the broader tests which had previously been adopted by many circuits.

### *Alaska v. Native Village of Venetie Tribal Government, et al.*

522 U.S. 520 (1998); Decided February 25, 1998.

In an action challenging the authority of the Native Village of Venetie to impose taxes on the conduct of business activities on tribal lands, the U.S. Supreme Court holds the term "dependent Indian communities" as employed in the 18 U.S.C. 1151 definition of "Indian country" refers to a limited category of Indian lands that are neither reservations or allotments and that satisfy two requirements: (1) the lands must have been set aside by the United States for the use of the Indians as Indian lands; and (2) the lands must be under federal superintendence;

and concludes that the lands at issue do not constitute Indian country.

The following are two possible methods to address the problems presented by *Venetie*:

First, convert tribal fee land (whether owned by tribe or individual) into trust status whenever possible and as soon as possible.

Second, tribal courts should conduct extensive fact finding when given the first opportunity to determine if tribal jurisdiction is appropriate (that is when determining if the land in question is "Indian Country" based upon its status as a "dependent Indian community"). Specifically, tribal courts should make as many specific factual findings concerning both the federal set-aside and the federal superintendence requirements. In making these factual findings, a tribal court might want to refer to the broader "dependent Indian community" tests which had previously been used by federal appellate courts. Although the Supreme Court has limited the "dependent Indian community" definition to federal set-aside and federal superintendence, it may be possible over time to incorporate many of the other factors into these two requirements.

## Tribal Court Resources

**Tribal Court Clearinghouse Up and Running!**  
<http://www.tribal-institute.org>  
 The Tribal Law and Policy institute is pleased to announce the debut of the Tribal Court Clearinghouse website at <http://www.tribal-institute.org>. The Clearinghouse is a much needed resource for those interested in

*The Tribal Court Clearinghouse is up and running at [www.tribal-institute.org](http://www.tribal-institute.org)*

issues surrounding Justice in Indian Country, and is the most comprehensive website dealing with Tribal Courts to date, providing resources, general information and links. The Clearinghouse currently includes 25 separate sections of information as follows on a drop down list: Native American Nations, Native American Tribal Justice Systems, Indian Law Reviews, Federal Laws, Pending Federal Legislation, Federal Agencies, Supreme Court Decisions, Tribal Court Decisions, State Laws, Codes and Constitutions, Alcohol and Substance Abuse, Child Abuse and Neglect, Domestic Violence, Indian Housing, Probate in Indian Country, Indian Gaming, Environmental Law, Native Education, Newsbriefs from Indian Country, Humor, Traditional Law Resources, Tribal Drug Court Resources, Tribal Court CASA Resources, Tribal Court Funding Resources, Tribal Court Forums and Mailing Lists. In addition, the website provides a forum for discussions between Tribal Court personnel and a "Mentor's Circle" - an opportunity to gain advice from those with years of experience in specific areas of Tribal Justice. The Clearing-

house brings together for the first time the resources available to Tribal Courts on the Internet all at one website and will provide invaluable assistance for tribal courts in navigating the vast resources on the web.



**Navajo Nation Publications**  
 The Navajo Nation is now offering the following publications for purchase: The Navajo Appellate Reports is a two volume set containing published Navajo Nation Supreme Court decisions/opinions (\$400 per set); the Navajo Trial Reports is currently a one volume reporter containing decisions/opinions of Navajo District, Family, and other courts (\$175); the Navajo Law Digest covers both the Navajo Appellate Reports and Navajo Trial Reports (\$700 complete set); Navajo Administrative Decisions is a compilation administrative decisions (\$150 - 1 volume and 1999 subscription); and the Navajo Nation Practice Book (Third Edition) is a compilation of all rules of the Navajo Nation Supreme Court, Navajo Nation District Courts, Navajo Nation Family Courts, Navajo Peacemaker Court, and other selected Nation Administrative Rules of Procedure (\$170.00). To order contact T & B Publishing, P.O. Box 1707, Window Rock, Navajo Nation, AZ, 86515 or call (505) 264-7055, or fax (505) 986-4280. For additional information on these publications call the Navajo Nation Courts at (520) 871-6763.



**Y2K Computer Questions?**  
 The President's Council on Year 2000 (Y2K) Conversion is helping Indian and non-Indian communities get answers to their Y2K bug question by offering to hold "Community Conversations." These one to two hour events will bring members of the community together with expert resource persons, including representatives from banks, utilities, emergency services, government, social service agencies, and other organizations, and will provide for a dialogue where people can get answers to their questions and find out what is needed in their communities. An event planning guidebook, flyers, posters, sample press releases, and other kinds of assistance are available at the Community Conversations Project Office by calling (877) 265-1451 or visiting [www.y2k.gov](http://www.y2k.gov).



**Now Available From the National Indian Justice Center**  
 The National Indian Justice Center has produced a video and three resource documents under a series of grants with the Bureau of Justice Assistance (BJA) of the U.S. Department of Justice, Office of Justice Programs. The video is titled "Justice in Indian Country: The Role of Tribal Courts." The three resource documents are as follows: "Civil and Criminal Jurisdiction Over Matters Arising in Indian Country," "Mending the Circle: Addressing Youth Gangs in Indian Country," and "The Significant Ties Exception to the Indian Child Welfare Act." To obtain copies of the video and/or resource documents contact the National Indian Justice Center at (707) 762-7681.

U.S. Department of Justice  
Office of Justice Programs  
*Office for Victims of Crime*

Office for Victims of Crime

# OVC Bulletin

*Advocating for the Fair*

*Treatment of Crime Victims*

Message from

## The Director

This bulletin presents basic information for improving the cooperation between Tribal and Federal agencies in handling child sexual abuse cases. It describes how close cooperation between Tribal and Federal law enforcement agencies will ensure effective investigation and prosecution of child abuse cases.

The investigation and prosecution of child sexual abuse cases often present a jurisdictional maze. This confusion is the result of difficulty in determining jurisdiction combined with provisions for concurrent jurisdiction of certain cases for Tribal and Federal officials. Due to overlapping jurisdictional lines, law enforcement agencies and service providers often feel compelled to interview child victims multiple times thus producing unnecessary victim trauma.

In response to overlapping jurisdictions, many American Indian tribes have developed multi-agency protocols and multidisciplinary teams, children's advocacy centers, and court appointed special advocate (CASA) programs to address jurisdictional concerns and to coordinate the investigation and prosecution of cases and to minimize trauma to child victims. The Federal government has undertaken a number of new initiatives to facilitate Tribal and Federal cooperation: hiring 26 Assistant U.S. Attorneys to work in districts with large Indian populations, establishing a Tribal Justice Office at the U.S. Department of Justice, and creating an American Indian and Alaskan Natives Office at the Justice Department's Office of Justice Programs. These offices are designed to monitor program support and provide technical assistance to the tribes.

**Kathryn M. Turman**  
*Acting Director*  
Office for Victims of Crime

### Improving Tribal/Federal Prosecution of Child Sexual Abuse Cases Through Agency Cooperation

*The Children's Justice Act of 1986 (CJA) makes money Available to State and local governments to improve the handling of child abuse cases through a multidisciplinary, coordinated approach that diminishes the trauma experienced by child victims.*

The multijurisdictional responsibilities for investigating incidents of child abuse in Indian Country can produce confusion among service providers and others who work with child sexual abuse victims in Indian Country. A crime committed in Indian Country can be subject to investigation by local law enforcement, consisting of Tribal and/or Bureau of Indian Affairs (BIA) police; State law enforcement, such as the county sheriff, city police, or State troopers; and/or Federal law enforcement personnel from the BIA and the Federal Bureau of Investigation (FBI). Further, once a case has been investigated, it may be subject to prosecution by one or more jurisdictions, including State, Federal, and/or Tribal courts.

For victims and service providers alike, this overlapping of investigative and prosecutorial responsibilities can be frustrating. The lack of clear protocols among agencies that may have jurisdiction over crimes in Indian Country has also led to confusion among law enforcement and prosecutorial professionals over who is responsible for criminal investigation and prosecution.

### **Determining Criminal Jurisdiction**

The determination of which agency has criminal jurisdiction (which includes investigative and prosecutorial responsibilities) over cases in Indian Country is influenced by several factors: where the crime occurred, the type of crime, the race of both the victim and the perpetrator, and statutes specifying Federal, State, and Tribal jurisdiction over certain cases. The law enforcement agency that receives the initial report of the crime may assume the responsibility for determining criminal investigative jurisdiction.

### **Location**

One factor that affects the determination of criminal jurisdiction is the physical location where the alleged offense occurred. If an offense occurs within Indian Country (as defined by 18 U.S.C. Section 1151, see the text box below), it is subject to preliminary investigation by the police serving that land. However, in many instances both Tribal and BIA law enforcement agencies provide services to an Indian reservation. Tribal police may be the first to respond to a suspected crime, while BIA criminal investigators may perform the actual criminal investigation. Hence, it is critical that the investigative roles be clarified and understood by each agency as well as by the affected parties, (i.e., offender, victim, and the Tribal community). Some tribes have their own Tribal criminal investigators who perform the same duties as BIA criminal investigators. In addition, investigative responsibility for all serious Federal crimes rests with the FBI, regardless of where the crime occurred.

### ***Indian Country is defined in 18 U.S.C. Section 1151 as:***

*(a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.*

### **Type of Crime**

A second factor affecting the determination of criminal jurisdiction is the type of crime. The

Major Crimes Act, 18 U.S.C. Section 1153, establishes Federal jurisdiction for 16 major criminal offenses (including child sexual abuse) if the crime was allegedly committed by an Indian defendant. Major Crime Act offenses in Indian Country may be subject to Federal and/or Tribal jurisdiction. The General Crimes Act, 18 U.S.C. 1152, provides for Federal criminal jurisdiction over a broader range of possible criminal actions involving interracial crimes in Indian Country.

### **Race**

A third factor influencing criminal jurisdiction involves the race of the alleged perpetrator and victim. Pursuant to case law, cases that involve a non-Indian perpetrator and a non-Indian victim are within State jurisdiction; in these cases, Tribal and Federal courts exercise no jurisdiction. However, if the perpetrator is Indian, Tribal agencies have jurisdiction. Depending on the type of crime, Federal agencies may also have jurisdiction, as defined by the Major Crimes Act.

The race of the perpetrator is also a major factor in prosecution. As the U.S. Supreme Court noted in *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978), Tribal courts do not have criminal jurisdiction over non-Indians (see the text box on page 3). Criminal jurisdiction over non-Indians rests solely with the Federal government. However, Tribal courts do have civil jurisdiction over non-Indians. There are a number of sanctions such as civil infractions, civil contempt for failure to comply with a court order, and exclusion that Tribal courts can apply to non-Indians through civil actions related to child sexual abuse allegations.

### **18 U.S.C. Section 1153.**

#### **Offenses committed within Indian Country**

*(a) Any Indian who commits against the person or property of another Indian or other person any of the following offenses, namely, murder, manslaughter, kidnapping, maiming, a felony under chapter 109A [aggravated sexual abuse (including with children), sexual abuse, sexual abuse of a minor or ward, and abusive sexual contact], incest, assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury, an assault against an individual who has not attained the age of 16 years, arson, burglary, robbery, and a felony under section 661 of this title [theft of personal property] within the Indian Country, shall be subject to the same law and penalties as all other persons committing any of the above offenses, within the exclusive jurisdiction of the United States.*

*(b) Any offense referred to in subsection (a) of this section that is not defined and punished by Federal law in force within the exclusive jurisdiction of the United States shall be defined and punished in accordance with the laws of the State in which such offense was committed as are in force at the time of such offense.*

### **18 U.S.C. Section 1152.**

#### **Laws governing**

*Except as otherwise expressly provided by law, the general laws of the United States as to the punishment of offenses committed in any place within the sole and exclusive jurisdiction of the United States, except in the District of Columbia, shall extend to the Indian Country.*

*This section shall not extend to offenses committed by one Indian against the person or property of another Indian, nor to any Indian committing any offense in the Indian Country who has been punished by the local law of the tribe, or to any case where, by treaty stipulations, the exclusive jurisdiction over such offenses is or may be secured to the Indian tribes respectively.*

*If an Indian child is abused but the incident takes place outside of Indian Country, the Tribal court has no jurisdiction. The tribe does have an interest in the disposition of any civil custody actions involving a child who is an enrolled member of the tribe or is eligible for enrollment in the tribe through the Indian Child Welfare Act, 25 U.S.C. Sections 1901–1963.*

<b>Exhibit 1. Effect of Race and Type of Crime on Criminal Jurisdiction</b>		
Race	Type of Crime	
	"Major" Crime (as defined by Major Crime Acts)	All Other Crimes
Indian perpetrator, Indian victim	Federal (under Major Crimes Act) & Tribal jurisdiction	Tribal jurisdiction
Indian perpetrator, Indian victim	Federal (under Major Crimes Act) & Tribal jurisdiction	Federal (under General Crimes Act) & Tribal
Non-Indian perpetrator, Indian victim	Federal (under General Crimes Act) jurisdiction	Federal (under General Crimes Act) jurisdiction
Non-Indian perpetrator, Indian victim	State jurisdiction	State jurisdiction

### **Statutory Jurisdiction**

Federal law can also affect criminal jurisdiction. For example, Public Law 83–280 (P.L. 280) transfers Federal criminal jurisdiction in Indian Country to the State (see the text box on the next page). In P.L. 280 states, the tribe and the State have concurrent jurisdiction in both investigation and prosecution provided the tribe has the governmental resources to perform these duties.

Just as there are multiple jurisdictions involved in the investigation of child sexual abuse cases, similar jurisdictional concerns exist regarding the prosecution of child sexual abuse cases. Tribal courts have concurrent criminal jurisdiction with Federal courts (and with certain States under P.L. 280) over child sexual abuse cases in Indian Country. Federal jurisdiction over child sexual abuse cases derives from the General Crimes Act or the Major Crimes Act. The Major Crimes Act provides for Federal jurisdiction over specified crimes occurring in Indian Country when the defendant is an Indian and the crime involved is either incest or any felony under Chapter 109 A, 18 U.S.C. Sections 2241–2245.

The U.S. Supreme Court has ruled that charging a defendant in both Federal court and Tribal court does not amount to double jeopardy. In *United States v. Wheeler*, 435 U.S. 313 (1978), the Court held that if a person, subject to the jurisdiction of the tribe, is tried and convicted in Tribal court for an offense, that same person may be tried by the Federal government for a similar offense arising out of the same incident (see the text box on the next page).

### ***Oliphant v. Suquamish Indian Tribe***

*The U.S. Supreme Court ruled that Indian Tribal courts do not have inherent criminal jurisdiction to try and to punish non-Indians, and hence may not assume such jurisdiction unless specifically authorized to do so by Congress.*

*As the Court noted:*

*Tribes [that] claim authority to try non-Indians [do so] not on the basis of congressional statute or treaty provision but by reasons of their retained national sovereignty.*

*Indian tribes do retain elements of "quasi-sovereign" authority after ceding their lands to the United States and announcing their dependence on the Federal Government. But the tribes' retained powers are not such that they are limited only by specific restrictions in treaties or congressional enactments. As the Court of Appeals recognized, Indian tribes are prohibited from exercising both those powers of autonomous States that are expressly terminated by Congress and those powers "inconsistent with their status."*

*The Court did note the increasing sophistication of Indian Tribal court systems, the safeguards for non-Indians included in the Indian Civil Rights Act of 1968, and Tribal concerns about the prevalence of non-Indian crime on reservations. Nevertheless, the Court found that these considerations did not outweigh the longstanding principle that Indian tribes do not have inherent jurisdiction to try and to punish non-Indians for criminal offenses.*

#### **Public Law 280: A Federal grant of jurisdiction to the States**

*In 1953, Congress adopted an approach, commonly known as Public Law 280 (67 Stat. 588) to change the division of jurisdiction among Federal, State, and Tribal governments. Congress initially gave five States, and later a sixth, extensive criminal and civil jurisdiction over Indian Country and permitted all other States to acquire jurisdiction at their option. In the States where P.L. 280 applies (Alaska, California, Minnesota, Nebraska, Oregon, and Washington), it radically shifts the balance of jurisdictional power toward the States and away from the Federal government and the tribes. It does not, however, confer total jurisdiction on the States, nor does it alter the trust status of Indian lands or terminate the trust relationship between the tribes and the Federal government. It also does not end the sovereign immunity of the tribes [see *California v. Quechan Tribe of Indians*, 595 F.2d 1153 (9th Cir. 1979)].*

*From its inception P.L. 280 engendered criticism from both the States and the tribes. State governments resented the fact that they were given the duty of law enforcement without the means to pay for it; Congress neither appropriated funds for that purpose nor rendered Indian lands taxable by the States. The tribes, on the other hand, resented the fact that State jurisdiction was thrust on them without their consent, and they particularly objected to the provision that additional States could acquire jurisdiction without consulting the concerned tribes. These criticisms prompted Congress to draft a group of amendments to P.L. 280 that was passed as part of the Indian Civil Rights Act of 1968. These amendments permitted States to retrocede jurisdiction over Indian Country to the Federal government, and also provided that no States in the future could assume this jurisdiction without Tribal consent. As a consequence, there has been almost no expansion of P.L. 280 jurisdiction since 1968. In the number of States where it is still in effect, however, P.L. 280 presents jurisdictional questions of considerable complexity.*

The Wheeler decision allows a person to be criminally charged in both Federal and Tribal court for child sexual abuse. This gives both Tribal and Federal courts greater flexibility in handling child sexual abuse cases. Under the decision, a Tribal prosecutor is allowed to proceed with Tribal court action immediately after a case is reported instead of being required to wait until the Federal prosecutor decides whether to accept or decline the case. Since a decision on Federal prosecution frequently takes several months or more, it is often necessary for the Tribal prosecutor to take action more quickly to punish the perpetrator and send a clear message to the community that child sexual abuse will not be tolerated. However, investigation emanates from each court, and the victim is subjected to multiple interviews.

#### **Reaching Agreement**

From the initial receipt of a report of alleged child sexual abuse, complex jurisdictional considerations arise. Through formal or informal arrangements, Federal, State, Tribal, and



local police may have agreements clarifying agency roles for investigating certain types of cases in Tribal territory. Confusion regarding criminal jurisdiction can be minimized when such arrangements are described in written protocols that clearly confer responsibility for making initial jurisdictional decisions and outline the nature of the working relationships between the various Tribal, State, and Federal agencies.

### ***United States v. Wheeler***

*The U.S. Supreme Court ruled that when an Indian tribe criminally punishes a tribe member for violating Tribal law, the tribe acts as an independent sovereign and not as an arm of the Federal government, and since Tribal and Federal prosecutions are brought by separate sovereigns, they are not "for the same offense" and the Double Jeopardy Clause thus does not bar one when the other has occurred. The Court stated that:*

*[O]ur cases recognize that the Indian tribes have not given up their full sovereignty. We have recently said, "Indian tribes are unique aggregations possessing attributes of sovereignty over both their members and their territory....[They] are a good deal more than 'private, voluntary organizations....'" In sum, Indian tribes still possess those aspects of sovereignty not withdrawn by treaty or statute, or by implication as a necessary result of their dependent status. (See *Oliphant v. Suquamish Indian Tribe*.)*

### **Coordinating Criminal Investigation and Prosecution**

Once criminal jurisdiction has been established, Tribal, State, and Federal coordination of criminal investigation and prosecution of child sexual abuse cases is imperative. The possibility for multiple interviews of child victims is obvious, given the number of jurisdictions and agencies that have a legitimate interest in child sexual abuse cases in Indian Country. It is conceivable, for example, that an incest case could be handled as follows:

Tribal police receive an after-hours report of alleged child sexual abuse. A Tribal police officer responds to the crime scene and performs a preliminary investigation. The officer's initial investigation is reviewed by his or her superior and assigned to a BIA criminal investigator for further investigation. The case is also forwarded to the FBI.

The BIA criminal investigator and Tribal child protective services worker jointly interview the child and prepare their reports. The criminal investigator's report goes forward through the criminal justice system, and the child protective service worker's report goes through the civil court system. In processing the criminal case, the FBI agent may feel that further investigation needs to be undertaken, including additional interviews of the victim performed by either the agent or the criminal investigator.

The case is presented to both the Tribal prosecutor and the U.S. Attorney's Office. One or both of these prosecutors may feel that it is necessary to personally interview the child, perhaps to assess the child's ability to testify in court. The Federal prosecutor may request additional information prior to making a prosecutorial decision.

By the end of this scenario, the child could have been interviewed by six separate individuals in six or more separate interviews. Each individual has a legitimate interest in the case and the need to obtain specific information. While tremendous progress has been made in coordinating interviews and reducing the number of persons interviewing child victims, the complexity of multiple jurisdictions in Indian Country poses special challenges to reducing the number of interviews a child endures. OVC has addressed the challenge of

reducing trauma to child victims through the CJA Partnerships for Indian Communities. The goal of the CJA Partnership is to improve the investigation and prosecution of child abuse and child sexual abuse cases in Indian Country in a manner that limits additional trauma to the child victim.

### **Multidisciplinary Teams**

The development of multidisciplinary teams (MDTs) in Indian Country is an important vehicle for coordinating the investigation, prosecution, and disposition of child sexual abuse cases. To be effective, MDTs must have the participation of all law enforcement, social services, medical, child welfare, victim assistance, and judicial agencies with jurisdiction over child sexual abuse cases. Tribal representation is necessary on existing county or regional MDTs, and State and Federal law enforcement officers and prosecutors must participate in Tribally based MDTs. Participation in such MDTs is mandated for Federal agencies under the Victims of Child Abuse Act of 1990 and the Indian Child Protection and Family Violence Prevention Act (Public Law 101-630) (see the text box on the next page).

MDTs offer an ideal opportunity to discuss prosecutorial action. Representatives from U.S. Attorneys' or district attorneys' offices meet with Tribal prosecutors and determine the best venue for initial criminal prosecution. Information on the status of various investigations should be available on a regular basis. Lack of access to information regarding the status of cases has long been a problem for Tribal police and prosecutors, and the MDT offers an appropriate forum to share information and plan strategies.

### **U.S. Department of Justice Initiatives**

In addition to OVC initiatives, the U.S. Department of Justice (DOJ) has undertaken new projects to improve Federal/Tribal coordination. President Clinton's April 29, 1994, memorandum, "Government-to-Government Relations with Native American Tribal Governments," led to the implementation of several DOJ programs: the Tribal Courts Project to assist tribes in developing and strengthening their courts; the Tribal Court-DOJ Partnership Project to strengthen Tribal courts and their abilities to respond to family violence and juvenile issues; the addition of 26 assistant U.S. Attorneys to districts with high Indian populations; the redesign of training programs to ensure that Federal prosecutors understand the jurisdictional framework of Tribal lands; the addition of 7 criminal lawyers, who have expertise in child sexual abuse in Indian Country — to the Child Exploitation and Obscenity Section of DOJ's Criminal Division; the awarding of 68 grants to Tribal domestic violence programs under the Violence Against Women Act grant program; a Tribal CAC demonstration project to serve as a model to establish Tribal Children's Advocacy Centers across Indian Country; and the establishment of an Office of Justice Programs (OJP) American Indian and Alaskan Natives Office to monitor program support and technical assistance to tribes and to assist in planning and developing new OJP initiatives.

### ***Mandates for Multidisciplinary Teams***

#### ***Victims of Child Abuse Act of 1990***

#### ***Subtitle D—Federal Victims' Protections and Rights***

#### ***Section 225. Child Victims' Rights***

#### ***(g) Use of Multidisciplinary Child Abuse Teams.***

***(1) In General. A multidisciplinary child abuse team shall be used when it is feasible to do***

*so. The court shall work with State and local governments that have established multidisciplinary child abuse teams designed to assist child victims and child witnesses, and the court and the attorney for the government shall consult with the multidisciplinary child abuse team as appropriate.*

*Indian Child Protection and Family Violence Prevention Act (Public Law 101-630)*

*Section 3210 (d). Funds provided pursuant to this section may be used for...*

*(3) the development and implementation of a multidisciplinary child abuse investigation and prosecution program which may—*

*(A) coordinate child abuse prevention, investigation, prosecution, treatment, and counseling services,*

*(B) develop protocols among related agencies to ensure that investigations of child abuse cases, to the extent practicable, minimize the trauma to the child victim, and*

*(C) provide for the coordination and cooperation of law enforcement agencies, courts of competent jurisdiction, and other Tribal, Federal, and State agencies through intergovernmental or interagency agreements that define and specify each party's responsibilities.*

#### **Notes**

*1. William C. Canby, Jr., "American Indian Law in a Nutshell" (U.S. Court of Appeals for the Ninth Circuit).*

#### **Other Activities**

There are other actions that State and Federal agencies can undertake to facilitate cooperative relationships with Tribal agencies. These activities include the development of protocols; provision of training to all agencies involved in cases of child sexual abuse (e.g., law enforcement, prosecution, child protection, and medical and mental health); participation in workshops and Tribally sponsored training; inclusion of Tribal representatives on State and Federal committees, planning panels, and review committees; and informal interaction with Tribal service providers. In addition, State and Federal representatives must be willing to travel to reservations for joint meetings, rather than holding all meetings at government locations to ensure the participation of all interested parties. Similarly, Tribal representatives must be willing to cooperate with Federal and State agencies in investigating and prosecuting cases.

#### **Conclusion**

Tribal, State, and Federal coordination of criminal investigation and prosecution is critical to ensuring the best treatment of child victims of sexual abuse and the successful resolution of child sexual abuse cases. OVC and the Department of Justice have undertaken projects to improve coordination among Tribal, State, and Federal agencies and will continue to take an active role in fostering cooperation. The information presented here is a starting point for determining criminal jurisdiction in such cases and coordinating investigative and prosecutorial efforts.

The CJA Partnerships for Indian Communities (formally the CJA Discretionary Grant Program for Native Americans) funds programs for child abuse victims on Indian reservations and other locations where Federally recognized Indian tribes exist. This program is the only source of Federal funding for Native American tribes that exclusively

focuses on lessening the trauma to Tribal child victims by improving the criminal justice process. The program provides funds for enhanced investigation and prosecution of such cases, more efficient case coordination, and improved services to victims.

The Office for Victims of Crime (OVC) was statutorily created as part of the Victims of Crime Act of 1984 (VOCA), as amended in 1988, to support programs that benefit crime victims. As the Federal government's chief advocate for crime victims, OVC collaborates with other Federal agencies and public and private organizations to improve services to victims of crime on the Federal, State, Tribal, and local levels.

OVC administers VOCA funds for State crime victim compensation and victim assistance programs, support services to victims of crime, training and technical assistance to criminal justice and allied professionals, demonstration initiatives, and dissemination of information on victim-related issues.

#### **For More Information**

##### **Office for Victims of Crime**

810 Seventh Street, NW

Washington, DC 20531

Phone: 202-307-5983

Fax: 202-514-6383

World Wide Web address: <http://www.ojp.usdoj.gov/ovc/>

##### **Bureau of Indian Affairs**

Office of Tribal Services

1849 C Street, NW, MS 4603

Washington, DC 20240

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World Wide Web address: <http://www.doi.gov/bia>

##### **National Indian Justice Center**

The McNear Building

#7 Fourth Street, Suite 46

Petaluma, CA 94952

Phone: 707-762-8113

Fax: 707-762-7681

World Wide Web address: <http://nijc.indian.com/>

##### **Office of Justice Programs**

###### **American Indian & Alaskan Native Desk**

810 Seventh Street, NW, Room 6353

Washington, DC 20531

Phone: 202-616-3205

Fax: 202-514-7805

##### **Office for Victims of Crime**

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Rockville, MD 20849-6000

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Justice.*

## **Public Law 280: Issues and Concerns for Victims of Crime in Indian Country**

*by Jerry Gardner and Ada Pecos Melton\**

Public Law 83-280 (commonly referred to as Public Law 280 or PL 280) is a federal statute enacted in the 1950s termination era through which states were given greater authority over Indian reservations. Public Law 280 was a transfer of legal power (jurisdiction) from the federal government to state governments which significantly changed the division of legal authority among tribal, federal, and state governments. Congress gave six states (five states initially - California, Minnesota, Nebraska, Oregon, and Wisconsin; and then Alaska upon statehood) extensive criminal and civil jurisdiction over tribal lands within the affected states (the so-called "mandatory states"). Public Law 280 also permitted the other states to acquire jurisdiction at their option.

Public Law 280 has generally brought about (1) an increased role for state criminal justice systems in "Indian country" (a term which is specifically defined in federal statutes<sup>1</sup>), (2) a virtual elimination of the special federal criminal justice role (and a consequent diminishment of the special relationship between Indian Nations and the federal government), (3) numerous real and perceived obstacles to individual Nations in their development of tribal criminal justice systems, and (4) an increased and confusing state role in civil related matters. Consequently, Public Law 280 presents a series of important issues and concerns for Indian country crime victims and for those involved in assisting these crime victims.

Public Law 280, however, is a complicated statute which has been very controversial since the time of its enactment in 1953. It has often been misunderstood and misapplied by both federal and state governments. Moreover, the practical impact of Public Law 280 has gone way beyond that which was legally required, intended, and contemplated.

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<sup>1</sup> 18 U.S.C. 1151 defines "Indian Country" as "(a) all Indian lands within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights -of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same."

### *1. What is Public Law 280?*

Public Law 83-280, the 280<sup>th</sup> Public Law enacted by the 83<sup>rd</sup> Congress in 1953<sup>2</sup>, was a substantial transfer of jurisdiction from the federal government to the states in Indian country. This transfer of jurisdiction was required (or mandatory) for the states specifically mentioned in the Act and Public Law 280 also permitted other states to acquire jurisdiction. Indian Nations, on the other hand, had no choice in the matter. The Indian Nations which were affected by Public Law 280 had to deal with greatly increased state power and state control over a broad range of reservation activities without any tribal consent.

Before Public Law 280 was enacted, the federal government and Indian tribal courts shared jurisdiction over almost all civil and criminal matters<sup>3</sup> involving Indians in Indian country. The states had no jurisdiction. With the enactment of Public Law 280, affected states received criminal jurisdiction over reservation Indians. Furthermore, Public Law 280 opened state courts to civil litigation that previously had been possible only in tribal or federal courts. In the affected states, the federal government gave up control over crimes in Indian country (those involving Indian perpetrators and/or victims). Indian Nations lost control over many criminal and civil matters within their respective territories due to the policies of the federal and state governments.

### *2. Why was Public Law 280 Enacted?*

Practically every analysis of Public Law 280 begins with a reference to the pendulum of federal policy swing between (1) Indian self-determination with an emphasis upon respecting tribal sovereignty and tribal self-government and (2) Indian "termination" with an emphasis upon "terminating" Indian Nations in order to assimilate their members into the dominant society. Public Law 280 was enacted in the 1950's - a period of termination and assimilation in Indian country - and it must be examined and understood within the context of the time period in which it was enacted. Public Law 280 was enacted in 1953 at the height of the post-World War II assimilationist period which included (1) the adoption in 1953 of House Concurrent Resolution 108 which established tribal termination as the official federal policy and singled out specific Indian Nations for termination, and (2) the implementation of the Bureau of Indian Affairs "relocation"

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<sup>2</sup> Act of August 15, 1953, ch. 505, 67 Stat. 588-590 (now codified as 18 U.S.C. 1162, 28 U.S.C. 1360 and other scattered sections in 18 and 28 U.S.C.).

<sup>3</sup> Criminal matters are generally illegal (or criminal) acts which involve a violation of the government's criminal laws whereas civil matters are generally actions between private parties brought to enforce a right or gain payment for a wrong.

program to encourage Indians to leave the reservations and seek employment in various metropolitan centers<sup>4</sup>

The federal courts have generally held that Congress may “authorize” states to exercise jurisdiction in Indian country. Public Law 280, however, differed from earlier grants of jurisdiction to the states in that it allowed every state to assume jurisdiction at their own option at any time in the future. Most previous grants of jurisdiction to the states<sup>5</sup> had been limited to some or all the reservations in a single state. They also had generally followed consultation with the individual state and the affected Indian Nations.

Public Law 280 itself began as an attempt to confer jurisdiction only on the state of California. Its scope, however, was substantially broadened in the course of the process which led to its adoption by Congress. The Senate Report of the bill<sup>6</sup> indicates that alleged lawlessness on the reservations and the accompanying threat to state citizens living nearby was the foremost concern of Congress when they passed Public Law 280 in the 1953. Instead of enhancing tribal criminal justice systems, Congress chose to adopt a policy which had the effect of radically shifting the balance of jurisdictional power towards the states and away from the federal government and Indian Nations.

### ***3. Why is Public Law 280 Controversial?***

From the beginning, Public Law 280 was unsatisfactory to both states and Indian Nations. Public Law 280 inspired widespread criticism and concern from Indians and non-Indians alike. Disagreements arose immediately concerning the scope of powers given to the states and the methods of assuming that power.

#### *Indian Opposition*

Indian opposition to Public Law 280 has focused upon the one-sided process which imposed state jurisdiction on Indian Nations and the complete failure to recognize tribal

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<sup>4</sup> These termination and relocation policies were implemented by Bureau of Indian Affairs Commissioner Dillon S. Myer who had overseen the internment of Japanese-Americans during World War II.

<sup>5</sup> Act of June 8, 1940, ch. 276, 54 Stat. 249 (criminal jurisdiction to Kansas); Act of May 31, 1946, ch. 279, 60 Stat. 229 (criminal jurisdiction to North Dakota over the Devils Lake Reservation); Act of June 30, 1948, ch. 759, 62 Stat. 1161 (criminal jurisdiction to Iowa over the Sac and Fox Reservation); Act of July 2, 1948, ch. 809, 62 Stat. 1224 (criminal jurisdiction to New York) (codified at 25 U.S.C. sec. 232 [1970]); Act of Oct. 5, 1949, ch. 604, 63 Stat. 705 (civil and criminal jurisdiction to California over Agua Caliente Reservation); Act of Sept. 13, 1950, ch. 947, 64 Stat. 845 (civil jurisdiction to New York); (This list does not include the earliest jurisdictional grants to the states, especially the jurisdiction assumed early this century by the State of Oklahoma - It is important to note that Oklahoma Indian Nations were not directly impacted by Public Law 280 and Oklahoma did not take any affirmative legislative action under Public Law 280.)

<sup>6</sup> S.REP.No.699, 83d Cong., 1<sup>st</sup> sess.5 (1953).



sovereignty and tribal self-determination. Public Law 280 required neither the consent of the Indian Nations being affected nor even consultation with these Indian Nations. When he signed it into law, even President Eisenhower expressed misgivings about the lack of tribal consent and urged immediate amendment of the law to require tribal referenda - no such amendment passed Congress until 1968.

#### State Dissatisfaction

State dissatisfaction has focused upon the failure of the Act to provide federal funding for states assuming authority under Public Law 280. The states were handed jurisdiction, but denied the funds necessary to finance it (in today's language - an "unfunded mandate").

Furthermore, Public Law 280 has been criticized as a source of lawlessness rather than as a remedy. Professor Carole Goldberg, the preeminent legal authority on Public Law 280, has made a compelling case that Public Law 280 is a law which was allegedly designed to cure the problem of "lawlessness" on reservations, but which has actually worsened the problem of lawlessness. As Professor Goldberg has stated<sup>7</sup>:

... Public Law 280 has itself become the source of lawlessness on reservations. Two different and distinct varieties of lawlessness are discernible. First, jurisdictional vacuums or gaps have been created, often precipitating the use of self-help remedies that border on or erupt into violence. Sometimes these gaps exist because no government has authority. Sometimes they arise because the government(s) that may have authority in theory have no institutional support or incentive for the exercise of that authority. I will call this kind of lawlessness the "legal vacuum" type. Second, where state law enforcement does intervene, gross abuses of authority are not uncommon. In other words, power is uncabined by the law that it is supposed to constrain it. I will call this kind of lawlessness the "abuse of authority" type.

#### ***4. How has Public Law 280 been Amended since it Became Law in 1953?***

Congress amended Public Law 280 in 1968<sup>8</sup> - fifteen years after it was originally enacted. These 1968 amendments added a tribal consent requirement and authorized states to give back (or retrocede) jurisdiction to the federal government.

The tribal consent requirement, however, only applied to future transfers of jurisdiction to the states under Public Law 280. It did not apply to transfers of jurisdiction which had

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<sup>7</sup> Carole Goldberg-Ambrose, *Planting Tail Feathers: Tribal Survival and Public Law 280* (UCLA American Indian Studies Center, 1997), p. 12.

<sup>8</sup> These amendments were part of the 1968 Civil Rights Act. They are now codified at 25 U.S.C. sec. 1321-26.

already taken place prior to 1968. Not surprisingly, not a single Indian Nation has consented to state jurisdiction since these 1968 amendments were enacted.<sup>9</sup>

The 1968 amendments also included a section which enables any state which had previously assumed jurisdiction under Public Law 280 to offer the return (or retrocession) of all or any measure of its jurisdiction to the federal government by sending a resolution to the Secretary of the Interior. The Secretary then has the discretion (or choice) to accept or reject the return of jurisdiction. Under this amendment, however, Indian Nations do not have a formal role in the retrocession process although Indian Nations have attempted to do so informally. The amendments did not contain any mechanism by which Indian Nations could initiate return jurisdiction on their own or force this retrocession on an unwilling state.

### ***5. Which States are Affected by Public Law 280?***

*[This section could be provided as Exhibit #1 or as a sidebar.]*

#### *Mandatory States*

Public Law 280 conferred criminal and civil jurisdiction on six specifically listed states (the so-called mandatory states) as follows:

- |                        |  |
|------------------------|--|
| ■ California           | <i>All Indian country</i>  |
| ■ Minnesota            | <i>All Indian country, except the Red Lake Reservation</i>         |
| ■ Nebraska             | <i>All Indian country</i>  |
| ■ Oregon               | <i>All Indian country, except the Warm Springs Reservation</i>     |
| ■ Wisconsin            | <i>All Indian country</i>  |
| ■ Alaska <sup>10</sup> | <i>All Indian country, except Metlakatla criminal jurisdiction</i> |

The original exceptions of the Red Lake, Warm Springs, and Metlakatla Reservations were for Indian Nations which not only successfully demonstrated that they had satisfactory law enforcement mechanisms in place, but successfully objected to being subjected to state jurisdiction. However, most Indian Nations which objected in 1953 were not successful in being excluded from the application of Public Law 280.

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<sup>9</sup> At least two Indian Nations have been forced to accede to Public Law 280 jurisdiction since 1968 through Congressional recognition legislation which provided that Public Law 280 would apply to their reservation either "notwithstanding the provisions" of the 1968 amendments (Mashantucket Pequot Nation in Connecticut, Public Law 98-134) or "as if they had consented" to it (Ysleta Del Sur Pueblo in Texas, Public Law 100-89).

<sup>10</sup> There were only five mandatory states in the original version of Public Law 280. Alaska was added later by the Act of Aug. 8, 1958, Pub. L. 85-615, 72 Stat.545, in connection with its admission to the Union.

A few mandatory states have successfully returned (or retroceded) jurisdiction back to the federal government since the 1968 amendments, including the following:

- (1) Wisconsin retroceded jurisdiction over the Menominee Reservation in connection with the Menominee Restoration Act (Public Law 93-197).
- (2) Nebraska retroceded jurisdiction over the Winnebago and Omaha Reservations.
- (3) Oregon partially retroceded jurisdiction over the Umatilla Reservation.

#### Optional States

Public Law 280 also authorized any non-mandatory state to assume civil and/or criminal jurisdiction over Indian country within its borders. These non-mandatory states had the option of taking partial jurisdiction without tribal consent until after the 1968 amendments were enacted. In some instances, these transfers of jurisdiction under Public Law 280 have also been returned (retroceded) back to the federal government, overturned by the courts, or have never been implemented. The optional states fall into two categories - states with disclaimers in their state constitutions limiting state jurisdiction over Indian country and states without these state constitutional disclaimers. For the optional states without disclaimers in their state constitutions, the procedure for accepting Public Law 280 was straightforward. The following states without disclaimers assumed Public Law 280 jurisdiction either in whole or in part over Indian country within their states:

- *Nevada* - 1955 (Nevada Revised Statutes section 41.430).
- *Florida* - 1961 (Florida Statutes Annotated section 285.16).
- *Idaho*<sup>11</sup> - 1963 (subject to tribal consent)(Idaho Code sections 67-5101/3).
- *Iowa* - 1967 (Iowa Code Annotated sections 1.12-.14).

There were eight optional states with disclaimers in their state constitutions limiting state jurisdiction over Indian country within their state borders. Congress assumed that these states would have to remove (or repeal) these disclaimers by constitutional amendment before Public Law 280 jurisdiction could be validly transferred. Six of the eight states with disclaimers have enacted legislation claiming full or partial Public Law 280 jurisdiction. Yet five of the six states - Washington, Montana, Arizona, North Dakota, and Utah - have not amended their state constitutions and, consequently, their claims of jurisdiction are subject to legal challenges. The following states with disclaimers have assumed jurisdiction either in whole or in part over Indian country within their states:

- *Washington*<sup>12</sup> - 1957 and 1963 (Washington Revised Code section 37.12.010)

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<sup>11</sup> Idaho and Washington asserted jurisdiction over compulsory school attendance, public assistance, domestic relations, mental illness, juvenile delinquency, adoption proceedings, dependent children, and operation of motor vehicles over public roads.

<sup>12</sup> Idaho and Washington asserted jurisdiction over compulsory school attendance, public assistance, domestic relations, mental illness, juvenile delinquency, adoption proceedings, dependent children, and operation of motor vehicles over public roads.

- *South Dakota* - 1957 and 1961 (civil and criminal actions on highways only) (South Dakota Compiled Laws Annotated sections 1-1-17, 1-2-21).
- *Montana* - 1963 (Montana Revised Code Annotated section 83-802).
- *North Dakota*-1963 (subject to tribal consent)(North Dakota Cent. Code section 27-19-02).
- *Arizona* -1967 (air and water pollution)(Arizona Revised Statutes Annotated sections 36-1801, 36-1856).
- *Utah* - 1971 (Utah Code Annotated sections 63-36-9 to 63-36-21).

#### ***6. What is the Effect of Public Law 280 in Criminal Actions?***

The impact of Public Law 280 is most straightforward with regard to criminal actions. It is important, however, to examine separately the legal impact and the practical impact of Public Law 280.

##### ***Legal Impact***

The main legal impact of Public Law 280 concerning criminal jurisdiction is that it (1) extended state criminal jurisdiction and the application of state criminal laws onto Indian reservations within the affected states and (2) eliminated special federal criminal jurisdiction over reservation areas in the affected states. In essence, the criminal jurisdiction sections of Public Law 280 shifted the special federal criminal jurisdiction over reservation areas to the state. The grant of criminal jurisdiction to the states was broader ("to the same extent that such State has jurisdiction over offenses committed elsewhere within the State") than the limited federal criminal jurisdiction which existed prior to Public Law 280 and, consequently, it expanded the realm of non-Indian control over reservation activities. Exhibit #2 sets out the differences in criminal jurisdiction between states with Public Law 280 and states without Public Law 280.

##### ***Practical Impact***

The practical impact of Public Law 280 has generally been much greater than the Act itself legally required. Public Law 280 did not eliminate tribal criminal jurisdiction - in fact, it did not make specific reference to tribal jurisdiction at all. Consequently, most courts and attorneys general have found that Indian Nations retain their inherent sovereign authority with regard to criminal jurisdiction.

Thus, although states were delegated broad criminal jurisdiction, that jurisdiction remained concurrent (running together) with the inherent tribal criminal jurisdiction. The federal government, however, viewed Public Law 280 as a license to drop financial and

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technical support for tribal self-government and tribal governmental institutions in the Public Law 280 states. The Bureau of Indian Affairs (BIA) used it as an excuse for redirecting federal support on a wholesale basis away from Indian Nations in the “Public Law 280 states” and towards all other Indian Nations. The most striking illustration of this redirected federal support concerns the funding of tribal law enforcement and tribal courts. In many Public Law 280 states, the BIA refused to support tribal law enforcement and tribal courts on the grounds that Public Law 280 made tribal criminal jurisdiction unnecessary.<sup>13</sup>

As a result of the decision to drop federal support for tribal law enforcement and tribal court systems in Public Law 280 states, many Indian Nations in Public Law 280 states still do not have functioning criminal justice systems. The situation has been changing in recent years. An increasing number of Indian Nations in Public Law 280 states are developing criminal justice systems. In some instances, Indian Nations are creating law enforcement and court systems in connection with a formal Public Law 280 retrocession process. In most instances, however, Indian Nations are simply asserting their concurrent criminal jurisdiction.

[*This exhibit could be placed here or in a shaded box.*]

**Exhibit #2: Criminal Jurisdiction on Indian Reservations (Indian Country)**

	<i>States without PL 280</i>	<i>States with PL 280</i>
<b><i>Tribal</i></b>	Over Indians, subject to limits on punishment in Indian Civil Rights Act (ICRA)	Over Indians, subject to limits on punishment in Indian Civil Rights Act (ICRA)
<b><i>Federal</i></b>	Over major crimes committed by Indians (Major Crimes Act); Over interracial crime: Indian v. non-Indian (General Crimes Act); Over special liquor, gaming, and other offenses; Otherwise, same as Off-Reservation	Same as Off-Reservation
<b><i>State</i></b>	Only over crimes committed by non-Indians against other non-Indians	Over Indians and non-Indians generally, with exceptions found in Public Law 280

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<sup>13</sup> Carole Goldberg-Ambrose, *Planting Tail Feathers: Tribal Survival and Public Law 280* (UCLA American Indian Studies Center, 1997), pp. 8-12.

**7. What is the Effect of Public Law 280 in Civil Actions?**

The civil jurisdiction impact of Public Law 280 is less straightforward than the criminal jurisdiction impact. In general, it authorized the application of general state adjudicatory jurisdiction (jurisdiction of courts to judge or adjudicate cases) to reservations in the affected states, but it did not authorize state civil regulatory jurisdiction (jurisdiction of government administrative agencies to regulate conduct - see following section). Since federal courts were not authorized to hear many civil actions, Public Law 280 did not transfer federal civil jurisdiction. Instead, it authorized the state to intervene in civil matters (and individuals to file actions in state courts) which had previously been under exclusive tribal jurisdiction and, consequently, greatly expanded the realm of non-Indian control over reservation activities. Exhibit #3 sets out the differences in civil jurisdiction between states with Public Law 280 and states without Public Law 280.

The practical impact of Public Law 280 with regard to civil jurisdiction was much more substantial than legally required by the Act itself. Public Law 280 did not eliminate tribal civil jurisdiction. However, as a result of the decision to drop federal support for tribal governmental institutions, many Indian Nations in Public Law 280 states were unable to operate court systems. In recent years, an increasing number of these Indian Nations are again developing court systems. It is important to note that many of these developing tribal courts are initially asserting civil jurisdiction, especially over Indian Child Welfare and child protection matters. The development of criminal justice systems is often delayed due to the high cost of law enforcement and detention facilities required for a fully functional tribal criminal justice system.

*[This exhibit could be placed here or in a shaded box.]*

**Exhibit #3: Civil Jurisdiction on Indian Reservations (Indian Country)**

	<i>States without PL 280</i>	<i>States with PL 280</i>
<b><i>Tribal</i></b>	Over Indians and non-Indians with limitations	Over Indians and non-Indians with limitations
<b><i>Federal</i></b>	Same as Off-Reservation (diversity of citizenship, federal question, etc.)	Same as Off-Reservation (diversity of citizenship, federal question, etc.)
<b><i>State</i></b>	None, except some suits with non-Indians or on fee lands	Over suits involving Indians or non-Indians generally, with exceptions found

**8. What are the Limitations on Public Law 280?**

There are a number of important limitations on the application of Public Law 280, including the following:

- (a) *Trust Status*: Public Law 280 specifically provided that it did not affect the trust status of Indian lands. It also did not terminate the trust relationship, end tribal sovereign immunity, or exclude Indians in affected states from receiving benefits under federal Indian programs.
- (b) *Limits to State Authority*: States may not apply laws related to such matters as environmental control, land use, gambling, and licenses if those laws are part of a general state regulatory scheme. Public Law 280 gave states only law enforcement and civil judicial authority - not regulatory power. It also denied states power to legislate concerning certain matters, particularly property held in trust by the United States and reserved hunting and fishing rights. The state generally cannot tax on Indian reservations. The U. S. Supreme Court<sup>14</sup> has interpreted Public Law 280 as a law designed only to open state courts to civil and criminal actions involving reservation Indians and not to subject reservations to the full range of state regulation. Finally, there are some matters considered so central to the very definition of the Indian Nations - such as enrollment and certain domestic matters - that state courts may be excluded from hearing such matters.
- (c) *Municipal and County Laws*: Public Law 280 may have established that only statewide laws are applicable to reservation Indians - excluding municipal and county laws. Courts have generally excluded the application of local laws since Public Law 280 was not intended to deny Indian Nations their basic governmental functions.
- (d) *Later Federal Laws*: Some federal laws enacted after the 1953 enactment of Public Law 280 have reduced the amount of jurisdiction available to the states and simultaneously increased tribal sovereignty and/or federal power. For example, the 1978 Indian Child Welfare Act (Public Law 95-608) gave Indian Nations exclusive jurisdiction over certain child custody proceedings involving Indian children, and the 1988 Indian Gaming Regulatory Act (Public Law 100-487) makes enforcement of state gaming laws a federal rather than a state responsibility.

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<sup>14</sup> *Bryan v. Itasca County*, 426 U.S. 373 (1976).

## 9. *How Does Public Law 280 Affect Indian Country Crime Victims?*

There are many ways in which Public Law 280 may affect crime victims in Indian country, including the following:

- (a) *Federal Role Eliminated:* In states without Public Law 280, the federal criminal justice system has a special role in Indian Country - crimes are often investigated by the Federal Bureau of Investigation and the Bureau of Indian Affairs; major crimes and interracial (Indian v. non-Indian) crimes are prosecuted through the United States Attorney's offices; the federal victim witness coordinator is actively involved in these federal cases; etc. In states with Public Law 280, this special federal role is eliminated.
- (b) *Greatly Expanded Role of State Criminal Justice System:* In states without Public Law 280, the role of the state criminal justice system in Indian country is generally limited to non-Indian v. non-Indian crimes only. In states with Public Law 280, the role of the state criminal justice system in Indian country is essentially the same as outside Indian country. The prior federal role has been transferred to the state, but the grant of criminal jurisdiction to the states is even greater than the prior federal role. Consequently, Public Law 280 significantly expanded the realm of non-Indian control over reservation activities.
- (c) *Limited Tribal Criminal Justice Systems in Public Law 280 States:* As a result of the limited federal support for tribal law enforcement and tribal court systems in Public Law 280 states, many Indian Nations in Public Law 280 states still do not have functioning criminal justice systems. There may not be any tribal law enforcement or tribal court system. If a tribal court does exist, it may only exercise jurisdiction over civil actions. If a tribal criminal justice system does exist, it may be informal and/or have only very limited resources available.
- (d) *Possible Choice of Criminal Justice System:* Due to the concurrent jurisdiction of the tribal and state criminal justice systems under Public Law 280, it is possible that a victim of crime may face a choice of criminal justice systems (assuming that there is a functioning tribal criminal justice system) or the possibility of two prosecutions by the separate sovereigns (state and tribal).
- (e) *Lawlessness of the "Legal Vacuum" Type:* Public Law 280 has often created what Professor Goldberg identified as lawlessness of the "legal vacuum" type. The jurisdictional vacuums or gaps caused by Public Law 280 have often precipitated the use of self-help remedies that border on or erupt into violence. These self-help remedies have developed because (1) no government (either tribal or state) has authority, (2) the perception exists that no government has authority, and/or (3) the government has authority in theory but no institutional support or incentive for the exercise of that authority.



- (f) *Lawlessness of the "Abuse of Authority" Type:* Public Law 280 has often created what Professor Goldberg identified as lawlessness of the "abuse of authority" type. There have been many instances in which state law enforcement has intervened, but gross abuses of authority have occurred (power is unleashed by the law that is supposed to constrain it).
- (g) *Mistrust and Hostility between Tribal and State Officials /Communities:* On many reservations, Public Law 280 has contributed to a continuing history of mistrust and hostility between tribal and state officials/communities. The controversy surrounding Public Law 280 has contributed to this situation, including the state dissatisfaction with the lack of federal funding and the tribal opposition to the broad unilateral imposition of state law. Furthermore, a common Indian perception in many Public Law 280 states is that state law enforcement claims that they have no authority whenever the Indian Nation asks them to intervene ("legal vacuum" lawlessness), but that state law enforcement claims that they have this authority whenever the Indian Nation does not want them to intervene ("abuse of authority" lawlessness). Obviously, this situation can present many problems for Indian country crime victims.

## ***10. How Do I Determine the Impact of Public Law 280 on an Individual Reservation?***

There are a series of questions which need to be answered in order to determine the impact of Public Law 280 upon individual states and reservations, including the following:

***(a) Is the state one of the mandatory Public Law 280 states?***

The mandatory Public Law 280 states are California, Minnesota, Nebraska, Oregon, Wisconsin, and Alaska (see Exhibit #1). The mandatory states were provided with full transfer of jurisdiction under Public Law 280.

***(b) Is the state one of the optional Public Law 280 states and, if so, was it a partial or a full assumption of jurisdiction ?***

There are 10 optional Public Law 280 states - Nevada, Florida, Idaho, Iowa, Washington, South Dakota, Montana, North Dakota, Arizona, and Utah (see Exhibit #1). Unlike the mandatory states, these optional states were able to assume Public Law 280 jurisdiction either in whole or in part. Consequently, it is important to determine the specific application of jurisdiction by the individual state. (In addition, there have been other federal laws granting state jurisdiction for individual reservations or states - see footnotes 3 and 7).

***(c) Has the state returned or retroceded Public Law 280 jurisdiction or is it otherwise no longer in effect?***

A number of both the mandatory and optional states have retroceded (or returned) jurisdiction back to the federal government since the 1968 Public Law 280 amendments. In addition, some assertions of jurisdiction have been overturned by the courts or were never implemented.

***(d) Is the specific reservation affected?***

In many states, Public Law 280 has been applied to some reservations, but not to other reservations. Even if the state is listed as either a mandatory or an optional Public Law 280 state, it may not apply to all of the reservations within that state.

***(f) Is there a tribal court system?***

An increasing number of Indian Nations in Public Law 280 states have developed court systems, but the situation varies substantially from state to state and from tribe to tribe. Tribal courts now exist in most of the optional Public Law 280 states. The development of tribal court systems in the mandatory states has generally been more difficult, especially in California and Alaska. The existence of a tribal court system greatly increases the available remedies and services for crime victims.

***(g) Does the tribal court assert both civil and criminal jurisdiction?***

Many of the tribal courts which are being developed in Public Law 280 states initially assert only civil jurisdiction due to the high cost of law enforcement and detention

facilities. The rights of a crime victim and the services available to that crime victim may be limited if the only tribal court option is a civil action (for example, a civil domestic violence action does not generally have as much impact as a criminal action since options such as mandatory arrest policies may not be available).

*(h) Are there tribal law enforcement services and facilities?*

Many Indian Nations in Public Law 280 states have limited law enforcement services and facilities. The rights of a crime victim may be limited if these services/facilities are non-existent, limited, or severely rationed due to budgetary limitations.

*(i) What is the relationship between the tribal criminal justice system and the state criminal justice system?*

The relationship between the tribal criminal justice system and the state criminal justice system can have a significant impact upon the rights of Indian country crime victims, but this relationship varies substantially from state to state. Some Public Law 280 states have been willing to retrocede Public Law 280 jurisdiction. In some states, this relationship has been particularly difficult, especially in California and Alaska. In other states, the tribal and state justice systems have been able to establish very productive relationships. For example, tribal and state courts in Wisconsin have generally established good working relationships. In fact, the Wisconsin Court of Appeals held that once an Indian Nation has a domestic abuse ordinance in place and a tribal court to enforce it, then the tribal court has exclusive jurisdiction despite Public Law 280.<sup>15</sup>

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<sup>15</sup> *St. Germain v. Chapman*, 178 Wis. 2d 869 (1993).

## Public Law 280 Resources

Goldberg-Ambrose, Carole. *Planting Tail Feathers: Tribal Survival and Public Law 280* (UCLA American Indian Studies Center, 1997).

*This is the most comprehensive resource available on Public Law 280 written by the preeminent Public Law 280 scholar. It is available for \$15.00 per copy from the UCLA American Indian Studies Center (310-825-7315). Information is available online at <http://www.sscnet.ucla.edu/indian/pubs/gen.books>*

Goldberg, Carole. "Public Law 280: the Limits of State Jurisdiction over Reservation Indians", 22 U.C.L.A. L.Rev. 535 (1975).

*This is the preeminent law review article on Public Law 280 (It is reprinted as Chapter 2 in *Planting Tail Feathers: Tribal Survival and Public Law 280* above).*

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*Available from UCLA American Indian Studies Center (310-825-7315) or online at <http://www.sscnet.ucla.edu/indian/ca/Tribes>*

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*Felix Cohen's Handbook of Federal Indian Law* (1982 Edition), pages 362-373.

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Clinton, Robert; Newton, Nell; and Price, Monroe. *American Indian Law, Third Edition* (The Mitchie Company, 1991), pages 594-622.

7<sup>th</sup> Indian Nations Conference

Child Advocacy Centers  
and  
Community Partnerships

Lisa Thompson and Judith Alexander, PsyD

Tulsa, Oklahoma 1999



## 7<sup>th</sup> Indian Nations Conference

### **"Child Advocacy Centers and Community Partnerships"** **Judith Alexander, PsyD and Lisa Thompson**


#### **Learning Objectives:**

1. Participants will understand how the joining of two organizations can strengthen both.
2. Participants will learn the process of the development of a Children's Center.
3. Participants will be able to identify the roles of individual members of the multidisciplinary team.

This workshop will describe the process of developing a Children's Advocacy Center and joining that organization with an existing non-profit organization - a domestic violence shelter. Presenters will be discussing problems and benefits, as well as funding sources.





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7<sup>th</sup> Indian Nations Conference

Oral Tradition - More Than Storytelling:  
Listening to Others, Listening to Ourselves

Achaessa James

Tulsa, Oklahoma 1999



## 7<sup>th</sup> Indian Nations Conference

### **"Oral Tradition - More Than Storytelling: Listening to Others, Listening to Ourselves" Achaessa James**

#### **Learning Objectives:**

1. Emphasize the value of personal experience as the foundation for practical and important teaching stories.
2. Re-awaken the active use of oral tradition communication skills.
3. Reinforce understanding of oral tradition as the foundation for all Native traditions.
4. Discuss and discover the effective use of oral tradition skills in communications with Native and non-Native audiences.

This presentation will actively identify the qualitative and quantitative differences in thinking and perceiving between oral tradition cultures and written tradition cultures. Of primary focus will be the effective use of language in investigating, reporting, documenting and presenting legal matters and identifying the destructive nature of professional jargon in abuse and neglect cases. Special emphasis will be placed on identifying the strength and value of personal and family stories as teaching tools in concert with traditionally defined storytelling.



## **Oral Tradition – More Than Storytelling: *Listening to Others, Listening to Ourselves***

Presenter: Achaessa James, Native Child Advocate  
King County Dependency CASA Program, Seattle, Washington

Oral tradition is the foundation of all tribal traditions. Even those First Nations that had written traditions tended to reserve that method for trade and business, using the oral traditions of oration, singing and storytelling as the means for transmitting social and spiritual teachings. Oral tradition includes not only a particular way of speaking but also a different way of listening. Today, oral tradition can be used to increase our visibility in the majority culture and our effectiveness in working with Native populations if we remember a few simple concepts:

### **In Business/Social Interactions**

- ❖ ***Respect for others.*** People raised with an oral tradition learn to listen in silence, without verbal or mental interruption. Oral traditions teach us to open our minds to the words of others, to hear what that person's truth is, to understand that person's perspective, to sit with those words quietly and then, if appropriate, to respond thoughtfully, perhaps comparing or contrasting with our own experience on the same subject. In this way, even if the listener does not agree, the speaker knows that his or her point has been heard and considered. Group decision making benefits as much by this method as one-to-one communication.
- ❖ ***Speaking last.*** When I sit back in a meeting, letting everyone else speak first and interrupt each other, I am scouting their territory. When I finally do speak, I have the leader's ear. By listening respectfully and contemplating thoughtfully, I can either poke holes in another's strategy and show where mine is stronger, or show where their strategy needs support and how I can help them be more effective – either way, I win.
- ❖ ***Mixed Messages and Meanings.*** In working with urban Indian populations it is especially important to remember that forced relocation and systemic abuse are not experiences of the distant past. Most non-Native people have the politically enforced perception that these abuses are of the distant past and are not aware that relocation under various guises, including "vocational training", was a common governmental practice up until the early 1980's.
- ❖ The Indian Adoption Project was initiated in 1958 between the BIA and the Child Welfare League of America. In 1975 clearinghouse was jointly established for interstate placement of Indian children in non-Indian families. Studies conducted in 1969 and again in 1974 and 1976 showed that, in most states with large Indian populations, 25-35% of Indian children had been removed from their homes.
- ❖ The institution of the Indian Child Welfare Act in the mid-'70s, was a direct response to this governmentally-sanctioned kidnapping. Despite this federal legislation, Native families in dependency court have, in the majority of cases, not received active representation for the protection of their children. Not to mention the fact that our children are still actively being stolen from their parents through fraudulent adoptions by non-Natives.

- ❖ In light of all this, professionals in the social service community need to be particularly understanding in comprehending the level of mistrust held by Native people for workers that represent “the system”. An additional complication is the fact that many of our urban Native peoples speak English as a second language or were raised by parents who spoke English as a second language. For clear communication between Native parents and non-Native ICWA workers it is important to be sure that what you’re saying is what’s being heard and vice versa. Not everyone uses language in the same way and making the extra effort to clarify your words, seek a clearer meaning of the other person’s words, and generally ensure that you’re both on the same wavelength can save a lot of confusion and also serves to build trust with your Native client.

### **In Legal Proceedings/Reporting**

- ❖ ***Avoid the use of acronyms and industry jargon.*** The use of acronyms (e.g., FAS, FAE, DD, AAD, etc.) and jargon (e.g., unstable home, neurological dysfunction, attachment disorder, developmentally delayed, etc.) in the courtroom and reports to the court are ultimately ineffective and potentially destructive unless accompanied by words that paint a real picture of the family and people involved. Acronyms and jargon allow the court to skim a report without ever creating a real image of a real person, making the process an impersonal function of the system.
- ❖ ***Strive to be descriptive when reporting.*** Whether in oral testimony or written reporting, give brief details that put a face on your client. The effect is much different when I say “This child has serious neurological problems” without adding “she screams continuously approximately seven of every nine hours of the day and night.” Or, “This child is self-mutilating” as opposed to “This two-year old child has deep scars that cover her forearms and legs from self-mutilating scratching.” Descriptive statements awake the indignity of the court and force the judge or commissioner to take the matter more personally and more seriously. Detail allows those not directly involved with a child to comprehend the seriousness of the situation and creates a desire to stay personally informed about the welfare of the particular child.

### **Effective Speaking**

- ❖ ***Awaken the senses.*** Just as research has proven there are different styles of learning, so there are different styles of listening. A person’s “attention trigger” may be visual, tactile, auditory, olfactory, taste or memory related. By activating these triggers, your audience will not only listen more closely to what you have to say, but will feel personally involved in the communication – even in a group situation.
- ❖ ***Gauging your audience.*** In a one-on-one situation, just a little preliminary observation will give you clues about a person’s attention trigger. Do they dress in bright colors? Is the home so full of music that you can’t hear yourself speak (and is this acting as a cushion from reality)? Does the home/person have a distinctive smell (comforting or disturbing)? Is the home full of photographs (memory triggers)?
- ❖ ***Engaging your audience.*** In singles or groups, you can use language to effectively trigger your listener’s attention. Some simple trigger statements: Tactile – “Is it warm/cool in here or is it just me?” This causes your audience to check-in with their bodies and grounds them in the room with you. Visual – “Did you notice how blue the sky was this morning?” Again, this causes visually triggered people to go into their



memory for the answer to this visual question and unconsciously pay more attention to your following words for whatever images you might next stimulate. Olfactory – “I passed a bakery on the street this morning and the smell of fresh bread was delicious.” Again, a memory trigger and subsequent subconscious attention holder.

## Storytelling

- ❖ **Traditional stories.** Every Nation has its traditional stories that are valuable teaching tools. These are especially important in integrating the listener into the community culture and strengthening bonds with community members outside of the immediate family. Once a week or once a month storytellings in a neighborhood gathering place have been known to effectively unite a community on unrelated social and neighborhood issues by creating a sense of specific identity for the neighborhood residents.
- ❖ **Personal stories.** My father’s greatest gifts to me were the stories of his childhood. I have worked with many families and troubled youth and almost the only time I ever hear a parent talk about their childhood – to their children – is when they are lecturing the child about behavior or money. Personal stories are especially effective in a family setting because you are a real person to your listener (child or adult) – not some unattainable legendary or mythical figure doing fantastic deeds. Your stories are simple and true (or complicated and true) and knowing that you lived through the experience and learned from it is a valuable gift to your seven generations, giving them a guideline to follow as they grow and come to similar points in their lives.

### *Workshop presentation by:*

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## **We hear . . . but do we really listen?**

**By Achaessa James**

**Oral traditions teach us to open our minds to the words of others,  
to hear what that person's truth is,  
to understand that person's perspective,  
to contemplate those words quietly and then,  
if appropriate, to respond thoughtfully.**

When I was growing up, my father could get almost any one to do just about anything. I remember that even the neighborhood bullies never picked on my friends or me, not because they were afraid of my dad (who was strong and barrel-chested, but rather short), but because they thought he was a cool guy. In retrospect I see that my father's talent was not in pleasing or convincing people, but instead, it was his skillful listening that got the results he wanted.

This was an ability he gained not by formal schooling but by sitting on the curb, on the rez, next to his Kwakiutl father, learning to carve and inclining his ear to an oral tradition. A tradition that he had to keep in his heart, because he couldn't share it with the white adoptive family that raised him and beat him because of his half-breed heritage. A tradition and a skill that he later passed on to his daughter, in the garden, at the fishing hole, on long drives, wherever we happened to be together. He would talk; I would listen. I would talk; he would listen. Really listen.

For the last 20-plus years now, I have worked in the corporate world and the legal profession, and I see that listening is not a strong suit of the majority culture. I have watched people with far more education than my father or I have fall into nothing jobs. At the same time, both he and I, with barely more than a high school education, have taken on work and responsibilities far exceeding our degreed coworkers. And we both earned the reputation for being effective communicators. I can think of three cultural distinctions that have made a difference in my life and career:

**Educational system.**

In today's corporate world, there are multitudes of books, workshops, seminars and do-it-yourself methods for learning "The Lost Art of Listening." I see it as a natural consequence of an educational system based on written tradition, that listening would be a "lost art." Listening requires a flexibility of mind not present in the rote memorization and recital of the written tradition style of learning.

The current educational system teaches people to know the answers before the questions are even fully asked—Jane raises her hand and starts waving it at the teacher, squirming in her seat, answer on her lips, straining to be the "first" to answer.

I've seen this same behavior by adults in board meetings, department meetings, etc. (well, except for the waving hands). They verbally trip over each other, interrupting coworkers, no single thought ever getting fully presented, each person grasping the chance to be the "first" to give the boss the "right" answer. The problem is, in most circumstances, there is no one "right" answer and the plausible alternatives get lost in the verbal melee. The result? A corporate world that stagnates because of yes-men giving the expected answers. Which is why, today, a company that wants to flourish spends a lot of time and money training its staff in the "Lost Art of Listening."

The listening skills that we develop as an oral-tradition culture have proved, for me, to be the secret weapons of the corporate war. When I sit back in a meeting, letting everyone else speak first and interrupt each other, I am scouting their territory. When I finally do speak, I have the boss's ear. By listening respectfully and contemplating thoughtfully, I can either poke holes in their strategy and show where mine is stronger, or show where their strategy needs support and how I can help them be more effective—either way, I win.

Respect for others.

There remains a distinction between what I will call Native Listeners (oral tradition cultures) and Listening as a Second Language (written tradition cultures), and that is respect. People raised with an oral tradition learn to listen in silence, without verbal or mental interruption.

Oral traditions teach us to open our minds to the words of others, to hear what that person's truth is, to understand that person's perspective, to contemplate those words quietly and then, if appropriate, to respond thoughtfully, perhaps comparing or contrasting with our own experience on the same issue.

In this way, even if the listener does not agree, the speaker knows that his or her point has been heard and considered. Group decision making benefits as much by this method as one-to-one communication. This is a demonstration of respect at its finest. (And this was my father's secret for motivating others.)

By contrast, people raised with a written tradition are ingrained with the belief that the written word is immutable and therefore what they have read is right and always will be right. So, when they take up Listening as a Second Language, they generally never grasp the respect part. They can learn how to sit quietly while you talk. They can even learn how to parrot back parts of what you said. But the entire time they usually have their own script crowding their brains, waiting to leap out of their mouths the minute you're finished speaking. Often, instead of comparing or contrasting your topic with their own experience, they will discuss how something they read was just like what you were talking about. This is not respect, this is competition.

Sharing personal stories.

One of my father's greatest gifts to me was the stories of his childhood. I have worked with many families and troubled youths, and almost the only time I ever hear parents talk about their childhood—to their child—is when they are lecturing the child about behavior or money.

My favorite recollections are as a tiny girl, snuggling up against my dad before bed, and him telling stories. Stories like the argument between him and Mrs. S about the ducks and the geese when she took the hot poker out of the stove and chased him out of the house because he was right (I learned the difference between ducks and geese, and I also learned that sometimes it's just not worth it to be right over a minor point). Or the story of him badly spraining his ankle while working in the field and working all day because he knew he would get beaten if he went in early (I learned that even when you're badly hurt you can still go on and not be wounded for life). Or the story about the time when Mr. S came into the barn with the rubber hose to give my dad his daily beating, and the 14-year-old boy stood there silently with the pitchfork (I learned that you don't need to be loud to make a point and that eventually we all have to stand up for ourselves). Or the time he cried when he told me about his dead war buddies (I learned that there are some pains you just learn to live with, and that there will be people who love you enough to just sit and hold you while you cry). As a teenager I never got those "when I was a child" lectures from my dad because he knew that I already knew what it was like for him as a child.

When I came across situations as I was growing up, and on throughout my 40 years, I could look back and see where my father's stories met my need for immediate advice. And even though he's not alive anymore, I can still hear him telling me what he would do in my shoes—because he talked story and I listened.

*Achaessa James, September 1, 1998*  
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7<sup>th</sup> Indian Nations Conference

# Indicators of Physical and Sexual Abuse

Rick Miller, MD

Tulsa, Oklahoma 1999



## 7<sup>th</sup> Indian Nations Conference

### **"Indicators of Child Physical and Sexual Abuse"** **Rick Miller, MD**


#### **Learning Objectives:**

1. Recognize cultural differences in reporting of abuse and neglect.
2. Recognize common presentations of physical and sexual abuse.
3. Review the opportunities for intervention and prevention of child abuse.

This workshop will review the common and uncommon presentations of physical and sexual abuse of children. Prevention and intervention by the community or by individuals will be discussed.







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7<sup>th</sup> Indian Nations Conference

Developing a Tribal  
TRIAD Program

Denise Lackey and Steve Wilson

Tulsa, Oklahoma 1999



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7<sup>th</sup> Indian Nations Conference

## Peacemaker Courts

Honorable Robert Yazzie

Tulsa, Oklahoma 1999





## 7<sup>th</sup> Indian Nations Conference

### **"Peacemaker Courts"** **Honorable Robert Yazzie**


#### **Learning Objectives:**

1. To understand that traditional Indian law persists into modern times.
2. To learn some of the fundamental principles of Navajo peacemaking.
3. To consider how the principles of peacemaking compares with other traditional systems.

This workshop will give an overview of Navajo peacemaking as one example of traditional Indian justice, and how that kind of justice fits into the modern world.

Tulsa, Oklahoma 1999





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7<sup>th</sup> Indian Nations Conference

Non-Traditional and New Organizations:  
Boys and Girls Clubs on Reservations

Rick Robinson

Tulsa, Oklahoma 1999



## 7<sup>th</sup> Indian Nations Conference

### **"Non-Traditional and New Organizations: Boys and Girls Clubs on Reservations" Rick Robinson**


#### **Learning Objectives:**

1. Provide an overview of the National Boys and Girls Clubs of America Organization.
2. Inform audience of the rapid development of Native American clubs on Indian lands.
3. Showcase Boys and Girls Clubs programs for kids.

Boys and Girls Clubs on Indian lands have become a reality for 45 Indian tribes. What are they all about and how can they be started? Come meet the kids who go there and the founding Native American Executive Director.





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**FINAL PROGRAM GUIDELINES  
VICTIMS OF CRIME ACT FFY 1997 VICTIM  
ASSISTANCE PROGRAM**



(PUBLISHED IN THE FEDERAL REGISTER OF APRIL 22, 1997)



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**FINAL PROGRAM GUIDELINES**  
**VICTIMS OF CRIME ACT FFY 1997 VICTIM ASSISTANCE PROGRAM**  
**(PUBLISHED IN THE FEDERAL REGISTER OF APRIL 22, 1997)**

**DEPARTMENT OF JUSTICE**

**Office of Justice Programs**

**Victims of Crime Act Victim Assistance Grant Program**

**AGENCY:** Office of Justice Programs, Office for Victims of Crime, Justice.

**ACTION:** Final Program Guidelines.

**SUMMARY:** The Office for Victims of Crime (OVC), Office of Justice Programs (OJP), U.S. Department of Justice (DOJ), is publishing Final Program Guidelines to implement the victim assistance grant program as authorized by the Victims of Crime Act of 1984, as amended, 42 U.S.C. 10601, et seq. (hereafter referred to as VOCA).

**EFFECTIVE DATE:** These guidelines are effective from October 1, 1996 (Federal Fiscal Year 1997 VOCA grant program), until further revised by OVC.

**FOR FURTHER INFORMATION CONTACT:** Jackie McCann Cleland, Director, State Compensation and Assistance Division, 633 Indiana Avenue, N.W., Washington, D.C. 20531-0001; e-mail address: Jackie@OJP.USDOJ.GOV; telephone number 202/307-5983. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** VOCA authorizes federal financial assistance to states for the purpose of compensating and assisting victims of crime, providing funds for training and technical assistance, and assisting victims of federal crimes. These Program Guidelines provide information on the administration and implementation of the VOCA victim assistance grant program as authorized in Section 1404 of VOCA, Public Law 98-473, as amended, codified

at 42 U.S.C. 10603, and contain information under the following headings: Summary of the Comments to the Proposed Program Guidelines; Background; Allocation of VOCA Victim Assistance Funds; VOCA Victim Assistance Application Process; Program Requirements; Financial Requirements; Monitoring; and Suspension and Termination of Funding. The Guidelines are based on the experience gained and legal opinions rendered since the inception of the grant program in 1986, and are in accordance with VOCA. These Final Program Guidelines are all inclusive. Thus, they supersede any Guidelines previously issued by OVC.

OVC, in conjunction with DOJ's Office of Policy Development, and the Office of Information and Regulatory Affairs within the Office for Management and Budget (OMB), has determined that these Guidelines do not represent a "significant regulatory action" for the purposes of Executive Order 12866 and, accordingly, these Program Guidelines were not reviewed by OMB.

In addition, these Program Guidelines will not have a significant economic impact on a substantial number of small entities; therefore, an analysis of the impact of these rules on such entities is not required by the Regulatory Flexibility Act, codified at 5 U.S.C. 601, et seq.

The program reporting requirements described in the Program Requirements section have been approved by OMB as required under the Paperwork Reduction Act, 44 U.S.C. 3504(h). (OMB Approval Number 1121-0014).

**SUMMARY OF THE REVISIONS TO THE 1997 FINAL PROGRAM GUIDELINES**

As a result of comments from the field, recent legislative amendments, and modifications of applicable federal regulations, substantive changes were made to four sections of the Proposed

Program Guidelines, including: the Availability of Funds, the Application Process, the Program Requirements, and the Financial Requirements. These changes are summarized in the paragraphs below, and incorporated into the complete text of the Final Program Guidelines for Crime Victim Assistance Grants. The Final Program Guidelines also include several technical corrections that are not listed in this summary because they do not affect policy or program implementation.

#### A. Comments from the Field

In the interest of reaching a more diverse audience and making the review and comment process more convenient for victim service advocates and providers, OVC took several steps. In April, 1996, OVC asked the state VOCA victim assistance program administrators for their comments on the effective edition of the VOCA Victim Assistance Final Program Guidelines (published in October 27, 1995). On the basis of their comments and the suggestions of several other victim advocates, OVC developed Proposed VOCA Victim Assistance Program Guidelines. Throughout the year, the OVC Director and staff met individually and in groups with VOCA administrators and subgrantees to discuss revisions to the Guidelines. In November of 1996, OVC mailed copies of the Proposed Guidelines directly to all of the state VOCA victims assistance and victim compensation program administrators, as well to the representatives of approximately 20 national crime victim advocacy organizations. In early December, the Proposed Guidelines were posted on the OVC Website for review and comment by all interested parties. Finally, the Proposed Guidelines were published in the Federal Register on February 18, 1997.

Since last Spring, OVC has received approximately 90 recommendations, comments, and questions from VOCA administrators, victim service providers, representatives of national victim organizations, and other victim advocates via telephone, mail, fax, and e-mail. The vast majority of the comments supported the proposed changes to the Guidelines.

OVC received comments from experts in elder services that helped OVC redefine "elder abuse" and include specific direction regarding respite care for elders, emergency nursing home shelter for victims of elder abuse, and inclusion of adult care providers in community cooperation efforts. These comments were made by state and national organizations, including the U.S. Department of Health and Human Services Administration on Aging and the National Association of State Units on Aging.

OVC also received comments from state and national domestic violence organizations, such as the Pennsylvania Coalition Against Domestic Violence and AYUDA, supporting the proposal to expand VOCA-funded emergency legal assistance to include child custody and visitation when such assistance is from providers with a demonstrated history of advocacy on behalf of domestic violence victims.

All of the comments received were invaluable in helping OVC prepare the Final Victim Assistance Program Guidelines. A summary of the changes occurring as a result of comments from the field are listed below in the order in which they appear in the Final Program Guidelines.

- 1. Definition of Crime Victim to Include Financial Harm.** In Section I., Background, the definition of crime victim has been modified to specifically include victims of financial exploitation. Although VOCA-funded programs cannot restore the financial losses suffered by victims of fraud, victims are eligible for the counseling, criminal justice advocacy, and other support services offered by VOCA-funded victim assistance programs.

- 2. Training of Adult Protective Services Personnel.** The section on the VOCA Victim Assistance Application Process (III.B.2.c.), which lists allowable uses of the administrative cost provision, has been modified to specifically include training for aging and adult protective service providers.

**3. Submission of Administrative Cost Provision Budget.** Previous editions of the Guidelines required state grantees to submit a budget itemizing projected administrative fund expenditures and a statement describing the types of activities they would support and how the expenditure was expected to improve the administration of the VOCA program.

The State Grantee Application Process section (III.B.2.), which describes the administrative cost provision, has been modified to lessen the burden on state grantees. Those states that use administrative funds must submit a statement to OVC that reports only the amount of the total grant that will be used as administrative funds. A special condition will be added to the award document, and periodic OJP financial reviews will be conducted to ensure states' compliance with the Program Guidelines and OJP Financial Guide to determine whether administrative funds have been used for allowable purposes.

**4. Training for Non-VOCA Funded Personnel.** The State Grantee Application Process section (III.C.), which outlines the allowable use of training funds, has been expanded to specifically include non-VOCA funded staff in addition to VOCA-funded personnel.

**5. Submission of Training Cost Provision Budget.** In previous editions of the Guidelines, state grantees were required to submit a budget itemizing projected training expenses and a statement describing the needs of the providers and the goals of the training. The section on the State Grantee Application Process (III.C.), has been modified to lessen the burden on states. States using the VOCA training funds must only report the amount of the total grant that will be used for training. States still must comply with OVC the 20% match requirement and other guidance defining allowable uses for training funds.

**6. Definition of Victims of Federal Crime.** In response to requests for clarification, the Program Requirements section (IV.A.4.), has

been modified to include a definition of "victims of federal crime." For the purposes of this program, a victim of federal crime is a victim of an offense that violates a federal criminal statute or regulation. Federal crimes also include crimes that occur in an area where the federal government has jurisdiction, such as Indian reservations, some national parks, some federal buildings, and military installations.

**7. Definition of Elder Abuse.** The Program Requirements section (IV.A.4.) describing grantee eligibility requirements, has been modified so that the definition of "elder abuse" now focuses on describing the offense, rather than on characterizing the victim. Hence, the definition, "abuse of vulnerable adults," has been expanded to include "the mistreatment of older persons through physical, sexual, or psychological violence; neglect; or economic exploitation and fraud."

**8. Identifying Underserved Victims of Crime.** The Program Requirements section (IV.A.4.) describing the state grantee eligibility requirements, has been modified to encourage states to identify gaps in available services, not just by the types of crimes committed, but also by victims' demographic characteristics. Thus, these Final Guidelines ask grantees to examine the possibility that in a given state, "underserved" victims may also be defined by demographic characteristics such as their status as senior citizens, non-English speaking residents, disabled persons, members of racial or ethnic minorities, or by virtue of the fact that they are residents of rural or remote areas, or inner cities.

**9. Funding New Programs.** There was confusion about OVC's intention regarding the funding of new crime victim programs. Hence, language has been added to Section IV, the Program Requirements (IV.B.3.), clarifying that new programs that have not yet demonstrated a record of providing services may be eligible to receive VOCA funding if they can demonstrate that 25-50 percent of their financial support comes from non-federal sources. States are

responsible for establishing the base level of non-federal support required within the 25-50 percent range.

**10. Funding Unfunded Mandates.** Recently, many state legislatures have passed laws establishing important new rights for crime victims. OVC wishes to clarify that VOCA funds may be used for the purpose of implementing these laws. Therefore, restrictive language from the previous Guidelines has been eliminated. Please note that VOCA crime victim assistance funds still may not be used to supplant state and local funds that would otherwise be available for crime victim services.

**11. Child Abuse and Adult Protective Service Agencies.** Section IV., the Program Requirements section (IV.C.), which describes the criteria for eligible subrecipient organizations, has been modified to specifically include child abuse programs and treatment facilities and adult protective service agencies.

**12. Legal Service Agencies or Programs with Records of Serving Victims of Domestic Violence.** The Program Requirements section (IV.C.5.), which lists the local public agencies eligible to receive VOCA subgrant funds, has been modified to specifically include legal service agencies or programs with a demonstrated history of advocacy on behalf of domestic violence victims, including children.

**13. State Grantees as Subrecipients.** Section IV., the Program Requirements (IV.C.5), has been modified with regard to subgrants to state grantees. Since the intention of the VOCA grant program is to support and enhance the crime victim services provided by community agencies, state grantees that meet the definition of an eligible subrecipient organization may not award themselves more than 10 percent of their annual VOCA award. This limitation applies to all states and territories, except for the Northern Mariana Islands, Guam, American Samoa, and the Republic of Palau.

**14. Nursing Homes as Emergency Shelters.** Under the Program Requirements section (IV.E.1.a.), which lists the allowable costs for direct services, the Guidelines have been modified to clarify that emergency shelter includes short-term nursing home shelter for elder abuse victims for whom no other safe, short-term residence is available.

**15. Emergency Legal Assistance.** The Program Requirements section (IV.E.1.a.), which lists the allowable services, activities, and costs at the subrecipient level, has been modified to allow subgrantees discretion in providing victims of domestic violence with legal assistance such as child custody and visitation proceedings "when such actions are directly connected to family violence cases and are taken to ensure the health and safety of the victim." The allowable "Contracts for Professional Services" section (IV.E.2.g.) also has been modified to include assistance with emergency custody and visitation proceedings from providers with a demonstrated history of advocacy on behalf of domestic violence victims.

**16. Cost of Respite Care.** The Program Requirements, section (IV.E.1.c.), has been modified to specifically state that assistance with participation in criminal justice proceedings may include the cost of caring for a dependent adult when this enables a victim to attend court.

**17. Cost of Restitution Advocacy on Behalf of Individuals.** The Program Requirement section (IV.E.1.c.), has been modified to state clearly that restitution advocacy on behalf of specific crime victims is an allowable activity.

**18. Restorative Justice.** In many cases, victims are not familiar with the nature and availability of restorative justice programs. Therefore, the Program Requirements section (IV.E.1.h.), has been modified to clarify that restorative justice opportunities, where crime victims meet with perpetrators, are allowable, if

such meetings are requested "or voluntarily agreed to" by the victim. In addition, since it is impossible to guarantee the therapeutic value of any activity, this section of the Guidelines has been further modified to state that restorative justice programs must have "possible beneficial or" therapeutic value to crime victims.

**19. Allowable Costs for Making Services Accessible to Victims with Disabilities.** The Program Requirements section (IV.E.2.d), listing allowable "non-direct" costs and services, has been modified to clarify that VOCA funds may be used to purchase items such as braille equipment for the blind or TTY/TTD machines for the deaf, or to make minor building improvements that make services more accessible to victims with disabilities. Additional guidance can be found in the Office of Justice Programs, Office of the Comptroller, Financial Guide.

**20. Advanced Technologies:** In the Program Requirements section (IV.E.2.f.), OVC offers the states clarification that all subrecipients receiving VOCA funds for advanced technologies such as computers and victim notification systems must meet the usual program eligibility requirements as set forth in the Guidelines.

**21. Electronic Submission of Subgrant Award Reports.** In the interest of meeting OVC's mandate to collect and maintain accurate and timely information on the disbursement of VOCA funds, the section describing the subgrant award report requirements (V.A.) has been modified. Beginning with the Federal Fiscal Year (FFY) 1997 VOCA grant award, state grantees are required to transmit their Subgrant Award Report information to OVC via the automated subgrant dial-in system within 90 days of the date of the subaward. Grantees can access the system without incurring a long distance telephone charge by utilizing the subgrant dial-in 1-800 number. OVC will no longer accept manual submission of the Subgrant Award Reports. States and territories outside of the continental U.S. are exempt from

the requirement to use the subdial system, but these grantees must complete and submit the Subgrant Award Report form, OJP 7390/2A, for each VOCA subrecipient.

## **B. Legislative Changes**

**1. The Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104-132).** The Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104-132) (hereafter, "The Antiterrorism Act"), was signed into law on April 24, 1996. This legislation contained a number of victim related provisions that amended VOCA, including four provisions concerning the "Availability of (VOCA victim assistance) Grant Funds."

**a. Higher Base Award (II.C.).** The Antiterrorism Act increases the base amount for victim assistance grants from \$200,000 to \$500,000. The territories of Northern Mariana Islands, Guam, and American Samoa will continue to receive a base amount of \$200,000, with the Republic of Palau's share governed by the Compact of Free Association between the U.S. and the Republic of Palau.

**b. OVC Reserve Fund (II.B.2.).** The Antiterrorism Act authorizes the OVC Director to establish a reserve fund, up to \$50 million. Reserve fund monies may be used for supplemental grants to assist victims of terrorist acts or mass violence occurring within or outside the U.S. The OVC Director may award reserve funds to the following entities:

1) States for providing compensation and assistance to their state residents, who, while outside of the borders of the U.S., become victims of a terrorist act or mass violence. The beneficiaries, however, cannot be persons who are already eligible for compensation under the Omnibus Diplomatic Security and Antiterrorism Act of

1986. Individuals covered under the Omnibus Diplomatic Security Act include those who are taken captive because of their relationship with the U.S. government as a member of the U.S. Civil Service, as well as other U.S. citizens, nationals, or resident aliens who are taken captive while rendering service to the U.S. similar to that of civil servants. Dependent family members of such persons also are covered under the Act.

2) Eligible state crime victim compensation and assistance programs for providing compensation and emergency relief for the benefit of victims of terrorist acts or mass violence occurring within the U.S.

3) U.S. Attorneys' Offices for use in coordination with state victim compensation and assistance efforts in providing relief to victims of terrorist acts or mass violence occurring within the U.S.

4) Eligible state compensation and assistance programs to offset fluctuation in the funds during years in which the Fund decreases and additional monies are needed to stabilize funding for state programs.

**c. Unobligated Grant Funds (II.B.4.)**

Beginning with FFY 1997 VOCA grants, funds not obligated by the end of the grant period, up to an annual national maximum of \$500,000, will be returned to the Fund, and not to the General Treasury, as was the practice in previous years. Returned funds in excess of \$500,000 in a given year shall be returned to the Treasury. Once any portion of a state's grant is returned to the Fund, the funds must be redistributed according to the formula established by VOCA and the Proposed Program

Guidelines. States are encouraged to monitor closely the expenditure of VOCA funds throughout the grant period to avoid returning grant monies to OVC and/or the Treasury.

**d. Grant Period Extended (II.B.3.)** The Antiterrorism Act extended the VOCA victim assistance grant period from the year of award plus one, to the year of award plus two. Subsequent legislation further extended the grant period to the year of award plus three.

**2. Omnibus Appropriations Act of 1997.**

The Omnibus Appropriations Act of 1997 (P.L. 104-208) was passed by Congress and signed into law by President Clinton in September, 1996. This Act further extended the grant period to the year of award plus three. This change is effective for all FFY 1997 grants. The Final Program Guidelines clarify that funds are available for obligation beginning October 1 of the year of the award, through September 30 of the FFY three years later. For example, grants awarded in November, 1996 (FFY 1997) are available for obligation beginning October 1, 1996 through September 30, 2000. This modification is contained in the "Availability of Funds" section (II.B.3) of the Final Program Guidelines.

**C. Changes in Applicable Federal Regulations**

**1. Mandatory Enrollment in U.S. Treasury Department's Automated Clearing House (ACH) Vendor Express Program.** In accordance with the Debt Collection Improvement Act of 1996, the U.S. Treasury Department revised its regulations regarding federal payments. The Final Program Guidelines have been modified to require that, effective July 26, 1996, all federal payments to state VOCA victim assistance and compensation grantees must be made via electronic funds transfer.

States that are new award recipients or those that have previously received funds in the form

of a paper check from the U.S. Treasury must enroll in the Treasury Department's ACH Vendor Express program through OJP before requesting any federal funds. This means that VOCA grantees can no longer receive drawdowns against their awards via paper check mailed from the Treasury. Grant recipients must enroll in ACH for Treasury to electronically transfer drawdowns directly to their banking institutions. States that are currently on the Letter of Credit Electronic Certification System (LOCES) will be automatically enrolled in the ACH program. Enrollment forms will be included in the award packet. Enrollment in ACH need only be completed once. This modification is included in the "Application Process" section (III.A.6.) of the Final Program Guidelines.

**2. Higher Audit Threshold.** In response to suggestions made by many recipients of federal grant awards, including VOCA grant recipients, OMB Circular A-133 is being revised. Until the revisions are final, state and local government agencies that receive \$100,000 or more in federal funds during their state fiscal year are required to submit an organization-wide financial and compliance audit report. Recipients of \$25,000 to \$100,000 in federal funds are required to submit a program- or organization-wide audit report as directed by the granting agency. Recipients receiving less than \$25,000 in federal funds are not required to submit a program- or organization-wide financial and compliance audit report for that year. Nonprofit organizations and institutions of higher education that expend \$300,000 or more in federal funds per year shall have an organization-wide financial and compliance audit. Grantees must submit audit reports within 13 months after their state fiscal year ends.

Previously, states that received \$100,000 or more in federal financial assistance in any fiscal year were required to have a single audit for that year. States and subrecipients receiving at least \$25,000, but less than \$100,000, in a fiscal year had the option of performing a single audit

or an audit of the federal program, and state and local governments receiving less than \$25,000 in any fiscal year were exempt from audit requirements. This modification is contained in the "Financial Requirements" section (IV.A.) of the Proposed Program Guidelines.

## GUIDELINES FOR CRIME VICTIM ASSISTANCE GRANTS

### I. BACKGROUND

In 1984, VOCA established the Crime Victims Fund (Fund) in the U.S. Treasury and authorized the Fund to receive deposits of fines and penalties levied against criminals convicted of federal crimes. This Fund provides the source of funding for carrying out all of the activities authorized by VOCA.

OVC makes annual VOCA crime victim assistance grants from the Fund to states. The primary purpose of these grants is to support the provision of services to victims of crime throughout the Nation. For the purpose of these Program Guidelines, services are defined as those efforts that (1) respond to the emotional and physical needs of crime victims; (2) assist primary and secondary victims of crime to stabilize their lives after a victimization; (3) assist victims to understand and participate in the criminal justice system; and (4) provide victims of crime with a measure of safety and security such as boarding-up broken windows and replacing or repairing locks.

For the purpose of the VOCA crime victim assistance grant program, a crime victim is a person who has suffered physical, sexual, financial, or emotional harm as a result of the commission of a crime.

VOCA gives latitude to state grantees to determine how VOCA victim assistance grant funds will best be used within each state. However, each state grantee must abide by the minimal requirements outlined in VOCA and these Program Guidelines.

## II. ALLOCATION OF VOCA VICTIM ASSISTANCE FUNDS

### A. Distribution of the Crime Victims Fund

OVC administers the deposits made into the Fund for programs and services, as specified in VOCA. The amount of funds available for distribution each year is dependent upon the total deposits into the Fund during the preceding Federal Fiscal Year (October 1 through September 30).

Pursuant to Section 1402 (d) of VOCA, deposits into the Fund will be distributed as follows:

1. The first \$3,000,000 deposited in the Fund in each fiscal year is available to the Administrative Office of the U.S. Courts (AOUSC) for administrative costs to carry out the functions of the judicial branch under Sections 3611 and 3612 of Title 18 U.S. Code. (Legislation is being drafted to repeal this provision. If passed by Congress and signed by the President, AOUSC will no longer receive an allocation from the Fund.)
2. Of the next \$10,000,000 deposited in the Fund in a particular fiscal year,
  - a. 85% shall be available to the Secretary of Health and Human Services for grants under Section 4(d) of the Child Abuse Prevention and Treatment Act for improving the investigation and prosecution of child abuse cases;
  - b. 15% shall be available to the Director of the Office for Victims of Crime for grants under Section 4(d) of the Child Abuse Prevention and Treatment Act for assisting Native American Indian tribes in developing, establishing, and operating programs to improve the investigation and prosecution of child abuse cases.
3. Of the remaining amount deposited in the Fund in a particular fiscal year,

a. 48.5% shall be available for victim compensation grants;

b. 48.5% shall be available for victim assistance grants; and

c. 3% shall be available for demonstration projects and training and technical assistance services to eligible crime victim assistance programs and for the financial support of services to victims of federal crime by eligible crime victim assistance programs.

### B. Availability of Funds

1. **VOCA Victim Assistance Grant Formula.** All states, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, Northern Mariana Islands, and Palau (hereinafter referred to as "states") are eligible to apply for, and receive, VOCA victim assistance grants. See Section 1404(d)(1) of VOCA, codified at 42 U.S.C. 10603(d)(1).

2. **Reserve Fund.** As the result of provisions in the Antiterrorism Act amending VOCA, the OVC Director is authorized to retain funds in a reserve fund, up to \$50 million. The Director may utilize the reserve funds in order to:

a. **Award supplemental grants to assist victims of terrorist acts or mass violence outside or within the U.S.** The OVC Director may grant reserve funds for such purposes to the following entities:

- 1) States for providing compensation and assistance to their state residents, who while outside of the U.S. become victims of a terrorist act or mass violence. The beneficiaries, however, cannot be persons who are already eligible for compensation under the Omnibus Diplomatic Security and Antiterrorism Act of 1986.



Individuals covered under the Omnibus Diplomatic Security and Antiterrorism Act include persons who are taken captive because of their relationship with the U.S. Government as a member of the U.S. Civil Service, as well as other U.S. citizens, nationals, or resident aliens who are taken captive while rendering service to the U.S. similar to that of civil servants. Dependent family members of such persons also are covered under the Omnibus Diplomatic Security Act

2) Eligible state crime victim compensation and assistance programs for providing emergency relief, including crisis assistance, training, and technical assistance for the benefit of victims of terrorist acts or mass violence occurring within the U.S.

3) U.S. Attorney's Offices for use in coordination with state victim compensation and assistance efforts in providing relief to victims of terrorist acts or mass violence occurring within the U.S.

b. Offset Fluctuations in Fund. The Director of OVC may also use the reserve fund to offset fluctuations in Fund deposits for state compensation and assistance programs in years in which the Fund decreases and additional monies are needed to stabilize programs.

3. Grant Period. Federal legislation passed in 1996 also makes victim assistance grant funds available for expenditure throughout the FFY of award as well as in the next three fiscal years. The FFY begins on October 1 and ends on September 30. For example, grants awarded in December, 1996 (FFY 1997) are available for obligation beginning October 1, 1996 through September 30, 2000.

4. Grant Deobligations. VOCA grant funds not obligated at the end of the award period

will be returned to the Crime Victims Fund. In a given fiscal year, no more than \$500,000 of the remaining unobligated funds can be returned to the Fund. Amounts in excess of \$500,000 shall be returned to the Treasury. Once any portion of a state's grant is returned to the Fund, the funds must be redistributed according to the rules established by VOCA and the Final Program Guidelines, so states are encouraged to monitor closely the expenditure of VOCA funds throughout the grant period to ensure that no funds are returned.

#### C. Allocation of Funds to States

From the Fund deposits available for victim assistance grants, each state grantee receives a base amount of \$500,000, except for the territories of Northern Mariana Islands, Guam, and American Samoa, which are eligible to receive a base amount of \$200,000. The Republic of Palau's share is governed by the Compact of Free Association between the U.S. and the Republic of Palau. The remaining Fund deposits are distributed to each state, based upon the state's population in relation to all other states, as determined by current census data.

#### D. Allocation of Funds within the States

The Governor of each state designates the state agency that will administer the VOCA victim assistance grant program. The designated agency establishes policies and procedures, which must meet the minimum requirements of VOCA and the Program Guidelines.

VOCA funds granted to the states are to be used by eligible public and private nonprofit organizations to provide direct services to crime victims. States have sole discretion for determining which organizations will receive funds, and in what amounts, as long as the recipients meet the requirements of VOCA and the Program Guidelines.

State grantees are encouraged to develop a VOCA program funding strategy, which should consider the following: the range of victim services

throughout the state and within communities; the unmet needs of crime victims; the demographic profile of crime victims; the coordinated, cooperative response of community organizations in organizing services for crime victims; the availability of services to crime victims throughout the criminal justice process; and the extent to which other sources of funding are available for services.

State grantees are encouraged to expand into new service areas as needs and demographics of crime change within the state. For example, when professional training, counseling, and de-briefings are made available to victim assistance providers, dispatchers, and law enforcement officers in rural or other remote areas, services to victims in these areas improve dramatically. Victim services in rural or remote areas can also be improved by using VOCA funds to support electronic networking through computers, police radios, and cellular phones.

Many state grantees use VOCA funds to stabilize victim services by continuously funding selected organizations. Some state grantees end funding to organizations after several years in order to fund new organizations. Other state grantees limit the number of years an organization may receive VOCA funds. These practices are within the state grantee's discretion and are supported by OVC, when they serve the best interests of crime victims within the state.

State grantees may award VOCA funds to organizations that are physically located in an adjacent state, when it is an efficient and cost-effective mechanism available for providing services to victims who reside in the awarding state. When adjacent state awards are made, the amount of the award must be proportional to the number of victims to be served by the adjacent-state organization. OVC recommends that grantees enter into an interstate agreement with the adjacent state to address monitoring of the VOCA subrecipient, auditing federal funds, managing noncompliance issues, and reporting requirements. States must notify OVC of each VOCA award made to an organization in another state.

### **III. VOCA VICTIM ASSISTANCE APPLICATION PROCESS**

#### **A. State Grantee Application Process**

Each year, OVC issues a Program Instruction and Application Kit to each designated state agency. The Application Kit contains the necessary forms and information required to apply for VOCA grant funds, including the Application for Federal Assistance, Standard Form 424. The amount for which each state may apply is included in the Application Kit. At the time of application, state grantees are not required to provide specific information regarding the subrecipients that will receive VOCA victim assistance funds.

Completed applications must be submitted on or before the stated deadline, as determined by OVC.

In addition to the Application for Federal Assistance, state grantees shall submit the following information:

1. **Single Audit Act Information**, specifically, the name and address of the designated cognizant federal agency, the federal agency assigned by OMB, and the dates of the state fiscal year.
2. **Certifications Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters; Drug-Free Workplace requirements; Civil Rights Compliance**, and any other certifications required by OJP and OVC. In addition, states must complete a disclosure form specifying any lobbying activities that are conducted.
3. **An assurance that the program will comply with all applicable nondiscrimination requirements.**
4. **An assurance that in the event a federal or state administrative agency makes a finding of discrimination after a due process hearing, on the grounds of race, color, religion, origin, sex, or disability against the program,**

the program will forward a copy of the finding to OJP, Office for Civil Rights (OCR).

**5. The name of the Civil Rights contact person who has lead responsibility for ensuring that all applicable civil rights requirements are met and who shall act as liaison in civil rights matters with OCR.**

**6. Enrollment in Automated Clearing House (ACH).** State agencies that are new award recipients, or those that have previously received funds in the form of a paper check from the U.S. Treasury, must enroll in the Treasury Department's ACH Vendor Express program through OJP before any federal funds will be disbursed. States that are currently on the Letter of Credit Electronic Certification System (LOCES) will be automatically enrolled in the ACH program. Enrollment in ACH need only be completed once.

**7. Administrative Cost Provision Notification.** States must indicate in a letter transmitting their annual grant application whether they intend to use the administrative cost provision. Additional information about the administrative cost provision is set forth in the following section.

#### **B. Administrative Cost Provision for State Grantees**

Each state grantee may retain up to, but not more than, 5% of each year's grant for administering the VOCA victim assistance grant at the state grantee level with the remaining portion being used exclusively for direct services to crime victims or to train direct service providers in accordance with these Program Guidelines, as authorized in Section 1404(b)(3), codified at 42 U.S.C. 10603 (b)(3). Administrative funds must be expended during the project period for which the grant was awarded. States are not authorized to roll-over administrative funds from one project period to the next. The administrative cost provision is available only to the state grantee and not to VOCA subrecipients. State grantees are not required to match the portion of the grant that is

used for administrative purposes. The state administrative agency may charge any federally approved indirect cost rate to this grant. However, any indirect costs requested must be paid from the 5 percent administrative funds.

This administrative cost provision is to be used by the state grantee to expand, enhance, and/or improve the state's previous level of effort in administering the VOCA victim assistance grant program at the state level and to support activities and costs that impact the delivery and quality of services to crime victims throughout the state. Thus, grantees will be required to certify that VOCA administrative funds will not be used to supplant state funds. This information will assist OVC in evaluating requests to use administrative funds.

State grantees will not be in violation of the nonsupplantation clause if there is a decrease in the state's previous financial commitment towards the administration of the VOCA grant programs in the following situations: 1) A serious loss of revenue at the state level, resulting in across-the-board budget restrictions. 2) A decrease in the number of "state-supported" staff positions used to meet the state's "maintenance of effort" in administering the VOCA grant programs.

States are required to notify OVC if there is a decrease in the amount of its previous financial commitment to the cost of administering the VOCA program.

State grantees are not required to match the portion of the grant that is used for administrative purposes.

**1. The following are examples of activities that are directly related to managing the VOCA grant and can be supported with administrative funds:**

a. Pay salaries and benefits for staff and consultant fees to administer and manage the financial and programmatic aspects of VOCA;

b. Attend OVC-sponsored and other relevant technical assistance meetings that address issues and concerns to state administration of victims' programs;

c. Monitor VOCA Victim Assistance subrecipients, and potential subrecipients, provide technical assistance, and/or evaluation and assessment of program activities;

d. Purchase equipment for the state grantee such as computers, software, fax machines, copying machines;

e. Train VOCA direct service providers;

f. Purchase memberships in crime victims organizations and victim-related materials such as curricula, literature, and protocols; and

g. Pay for program audit costs;

h. Pay for indirect costs at a federally approved indirect cost rate that when applied, does not exceed the 5 percent administrative cost allowance.

**2. The following activities impact the delivery and quality of services to crime victims throughout the state and, thus, can be supported by administrative funds:**

a. Develop strategic plans on a state and/or regional basis, conduct surveys and needs assessments, promote innovative approaches to serving crime victims such as through the use of technology;

b. Improve coordination efforts on behalf of crime victims with other federally funded programs and with federal, state, and local agencies and organizations;

c. Provide training on crime victim issues to state, public, and nonprofit organizations that serve or assist crime victims such as law enforcement officials, prosecutors, judges,

corrections personnel, social service workers, child and youth service providers, aging and adult protective service providers, and mental health and medical professionals;

d. Purchase, print, and/or develop publications such as training manuals for service providers, victim services directories, and brochures;

e. Coordinate and develop protocols, policies, and procedures that promote systemic change in the ways crime victims are treated and served; and

f. Train managers of victim service agencies.

Each state grantee that chooses to use administrative funds is required to submit a statement to OVC reporting the amount of the total grant that will be used as administrative funds. State grantees may notify OVC when the decision is made to exercise this option or at the time the Application for Federal Assistance is submitted. In addition, the grantee must maintain adequate documentation to support the expenditure of these funds.

A state may modify projections set forth in their application by notifying OVC, in writing, of the revised amount of the total grant that will be used as administrative funds. Failure to notify OVC of modifications will prevent the state from meeting its obligation to reconcile its State-wide Report with its Final Financial Status Report.

Administrative grant funds can only support that portion of a staff person's time devoted to the VOCA assistance program. If the staff person has other functions, the proportion of their time spent on the VOCA assistance program must be documented using regular time and attendance records. The documentation must provide a clear audit trail for the expenditure of grant funds.

State grantees may choose to award administrative funds to a "conduit" organization that assists in

selecting qualified subrecipients and/or reduces the state grantee's administrative burden in implementing the grant program. However, the use of a "conduit" organization does not relieve the state grantee from ultimate programmatic and financial responsibilities.

### **C. Use of Funds for Training**

State grantees have the option of retaining a portion of their VOCA victim assistance grant for conducting state-wide and/or regional trainings of victim services staff. The maximum amount permitted for this purpose is one percent of the state's grant. State grantees that choose to sponsor statewide or regional trainings are not precluded from awarding VOCA funds to subrecipients for other types of staff development.

Statewide or regional training supported with training funds should target a diverse audience of victim service providers and allied professionals, including VOCA funded and non-VOCA funded personnel, and should provide opportunities to consider issues related to types of crime, gaps in services, coordination of services, and legislative mandates.

Each training activity must occur within the grant period, and all training costs must be obligated prior to the end of the grant period. VOCA grant funds cannot be used to supplant the cost of existing state administrative staff or related state training efforts.

Each state grantee that chooses to use training funds is required to submit a statement to OVC reporting the amount of the total grant that will be used to pay for training. Grantees must maintain adequate documentation to support the expenditure of these funds.

A state may modify projections set forth in their application by notifying OVC of the revised amount of the total grant that will be used as training funds. Failure to notify OVC of modifications will prevent the state from meeting its obligation to reconcile its State-wide Report with its Final Financial Status Report.

The VOCA funds used for training by the state grantee must be matched at 20 percent of the total project cost, cash or in-kind, and the source of the match must be described. For further information regarding match requirements, see the section on Subrecipient Organization Eligibility Requirements (IV.B.).

## **IV. PROGRAM REQUIREMENTS**

### **A. State Grantee Eligibility Requirements**

When applying for the VOCA victim assistance grant, state grantees are required to give assurances that the following conditions or requirements will be met:

- 1. Must Be an Eligible Organization.** States should ensure that only eligible organizations receive VOCA funds, and that these funds are used only for services to victims of crime, except those funds that the state grantee uses for training victim service providers and/or administrative purposes, as authorized by Section 1404(b) codified at 42 U.S.C. 10603(b). See section E. Services, Activities, and Costs at the Subrecipient Level for examples of direct services to crime victims.
- 2. Nonsupplantation.** VOCA crime victim assistance grant funds will be used to enhance or expand services and will not be used to supplant state and local funds that would otherwise be available for crime victim services. See Section 1404(a)(2)(c), codified at 42 U.S.C. 10603(a)(2)(C). This supplantation clause applies to state and local public agencies only.
- 3. Priority Areas.** Priority shall be given to victims of sexual assault, domestic abuse, and child abuse. Thus, a minimum of 10% of each FFY's grant (30% total) will be allocated to each of these categories of crime victims. This grantee requirement does not apply to VOCA subrecipients.

Each state grantee must meet this requirement, unless it can demonstrate to OVC that: (1) a

"priority" category is currently receiving significant amounts of financial assistance from the state or other funding sources; (2) a smaller amount of financial assistance, or no assistance, is needed from the VOCA victim assistance grant program; and (3) crime rates for a "priority" category have diminished.

**4. "Previously Underserved" Priority Areas.** An additional 10% of each VOCA grant will be allocated to victims of violent crime (other than "priority" category victims) who were "previously underserved." These underserved victims of either adult or juvenile offenders may include, but are not limited to, victims of federal crimes; survivors of homicide victims; or victims of assault, robbery, gang violence, hate and bias crimes, intoxicated drivers, bank robbery, economic exploitation and fraud, and elder abuse.

For the purposes of this program, a victim of federal crime is a victim of an offense that violates a federal criminal statute or regulation. Federal crimes also include crimes that occur in an area where the federal government has jurisdiction, such as Indian reservations, some national parks, some federal buildings, and military installations.

For the purposes of this program, elder abuse is defined as the mistreatment of older persons through physical, sexual, or psychological violence, neglect, or economic exploitation and fraud.

To meet the underserved requirement, state grantees must identify crime victims by the types of crimes they have experienced (e.g., drunk driving, sexual assault, or domestic violence). States are encouraged to also identify gaps in available services by victims' demographic characteristics. For example, in a given state, "underserved" victims may be best defined according to their status as senior citizens, non-English speaking residents, persons with disabilities, members of racial or ethnic minorities, or by virtue of the fact that they are

residents of rural or remote areas, or inner cities. Each state grantee has latitude for determining the method for identifying "previously underserved" crime victims, which may include public hearings, needs assessments, task forces, and meetings with state-wide victim services agencies.

Each state grantee must meet this requirement, unless it can justify to OVC that (a) services to these victims of violent crime are receiving significant amounts of financial assistance from the state or other funding sources; (b) a smaller amount of financial assistance, or no assistance, is needed from the VOCA victim assistance grant program; and (c) crime rates for these victims of violent crime have diminished.

**5. Financial Record Keeping and Program Monitoring.** Appropriate accounting, auditing, and monitoring procedures will be used at the grantee and subrecipient levels so that records are maintained to ensure fiscal control, proper management, and efficient disbursement of the VOCA victim assistance funds, in accordance with the OJP Financial Guide, effective edition.

**6. Compliance with Federal Laws.** Compliance with all federal laws and regulations applicable to federal assistance programs and with the provisions of Title 28 of the Code of Federal Regulations (CFR) applicable to grants.

**7. Compliance with VOCA.** Compliance by the state grantee and subrecipients with the applicable provisions of VOCA and the Final Program Guidelines.

**8. Required Reports Submitted to OVC.** Programmatic and financial reports shall be submitted. [See Program Requirements (Section IV.) and Financial Requirements (Section V.) for reporting requirements and timelines.]

**9. Civil Rights. Prohibition of Discrimination for Recipients of Federal Funds.** No person in any state shall, on the grounds of race, color, religion, national origin, sex, age, or disability be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or denied employment in connection with any program or activity receiving federal financial assistance, pursuant to the following statutes and regulations: Section 809(c), Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. 3789d, and Department of Justice Nondiscrimination Regulations, 28 CFR Part 42, Subparts C, D, E, and G; Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, *et seq.*; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794; Subtitle A, Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. 12101, *et seq.* and Department of Justice regulations on disability discrimination, 28 CFR Part 35 and Part 39; Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681-1683; and the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101, *et seq.*

**10. Obligation to Report Discrimination Finding.** In the event a federal or state court or administrative agency makes a finding of discrimination on the grounds of race, color, religion, national origin, sex, age, or disability against a recipient of VOCA victim assistance funds, state grantees are required to forward a copy of the finding to the Office for Civil Rights (OCR) for OJP.

**11. Obligation to Report Other Allegations/Findings.** In the event of a formal allegation or a finding of fraud, waste, and/or abuse of VOCA funds, state grantees are required to immediately notify OVC of said finding. State grantees are also obliged to apprise OVC of the status of any on-going investigations.

**12. Coordination with State VOCA Compensation Program and Federal Law Enforcement.** OVC encourages state grantees to coordinate their activities with their state's VOCA compensation program and the U.S. Attorneys' Offices and FBI Field Offices within their state. Only with an emphasis on coordination will a continuum of services be ensured for all crime victims. Coordination strategies could include inviting Compensation Program Directors and Federal Victim-Witness Coordinators to serve on subgrant review committees; providing Compensation Program Directors and Federal Victim-Witness Coordinators with a list of VOCA-funded organizations; attending meetings organized by Compensation Program Directors and Federal Victim-Witness Coordinators regarding the provision of victim assistance services; providing training activities for subrecipients to learn about the compensation-program; developing joint guidance, where applicable, on third-party payments to VOCA assistance organizations; and providing training for compensation program staff on the trauma of victimization, particularly for victims of economic crime and survivors of homicide victims.

#### **B. Subrecipient Organization Eligibility Requirements**

VOCA establishes eligibility criteria that must be met by all organizations that receive VOCA funds. These funds are to be awarded to subrecipients only for providing services to victims of crime through their staff. Each subrecipient organization shall meet the following requirements:

**1. Public or Nonprofit Organization.** To be eligible to receive VOCA funds, organizations must be operated by public or nonprofit organization, or a combination of such organizations, and provide services to crime victims.

**2. Record of Effective Services.** Demonstrate a record of providing effective services to crime victims. This includes having the support and approval of its services by the community, a history of providing direct services in a cost-effective manner, and financial support from other sources.

**3. New Programs.** Those programs that have not yet demonstrated a record of providing services may be eligible to receive VOCA funding, if they can demonstrate that 25-50 percent of their financial support comes from non-federal sources. It is important that organizations have a variety of funding sources besides federal funding in order to ensure their financial stability. States are responsible for establishing the base level of non-federal support required within the 25-50 percent range.

**4. Program Match Requirements.** The purpose of matching contributions is to increase the amount of resources available to the projects supported by grant funds. Matching contributions of 20% (cash or in-kind) of the total cost of each VOCA project (VOCA grant plus match) are required for each VOCA-funded project and must be derived from non-federal sources, except as provided in the OJP Financial Guide, effective edition (Part III. Post Award Requirements, Chapter 3. Matching or Cost Sharing). All funds designated as match are restricted to the same uses as the VOCA victim assistance funds and must be expended within the grant period. Match must be provided on a project-by-project basis. Any deviation from this policy must be approved by OVC.

For the purposes of this program, in-kind match may include donations of expendable equipment, office supplies, workshop or classroom materials, work space, or the monetary value of time contributed by professionals and technical personnel and other skilled and unskilled labor, if the services they provide are an integral and necessary part of a funded project. The value placed on donated services must be consistent with the rate of compensation paid for similar work in the

subrecipient's organization. If the required skills are not found in the subrecipient's organization, the rate of compensation must be consistent with the labor market. In either case, fringe benefits may be included in the

valuation. The value placed on loaned or donated equipment may not exceed its fair market value. The value of donated space may not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in private, -owned buildings in the same locality.

**a. Record Keeping.** VOCA recipients and their subrecipients must maintain records that clearly show the source, the amount, and the period during which the match was allocated. The basis for determining the value of personal services, materials, equipment, and space must be documented. Volunteer services must be documented, and to the extent feasible, supported by the same methods used by the subrecipient for its own paid employees. The state has primary responsibility for subrecipient compliance with the requirements. State grantees are encouraged not to require excessive amounts of match.

**b. Exceptions to the 20% Match.** OVC sets a lower match requirements for:

**1) Native American Tribes/Organizations Located on Reservations.** The match for new or existing VOCA subrecipients that are Native American tribes/organizations located on reservations is 5% (cash or in-kind) of the total VOCA project. For the purpose of this grant, a Native American tribe/organization is defined as any tribe, band, nation, or other organized group or community, which is recognized as eligible for the special programs and services provided by the U.S.



to Native Americans because of their status as Native Americans. A reservation is defined as a tract of land set aside for use of, and occupancy by, Native Americans.

2) The U.S. Virgin Islands, and all other territories and possessions of the U.S., except Puerto Rico, are not required to match VOCA funds. See 48 U.S.C. 1469a(d).

3) OVC may waive the match requirement if extraordinary need is documented by State VOCA administrators.

5. **Volunteers.** Subrecipient organizations must use volunteers unless the state grantee determines there is a compelling reason to waive this requirement. A "compelling reason" may be a statutory or contractual provision concerning liability or confidentiality of counselor/victim information, which bars using volunteers for certain positions, or the inability to recruit and maintain volunteers after a sustained and aggressive effort.

6. **Promote Community Efforts to Aid Crime Victims.** Promote, within the community, coordinated public and private efforts to aid crime victims. Coordination may include, but is not limited to, serving on state, federal, local, or Native American task forces, commissions, working groups, coalitions, and/or multi-disciplinary teams. Coordination efforts also include developing written agreements that contribute to better and more comprehensive services to crime victims. Coordination efforts qualify an organization to receive VOCA victim assistance funds, but are not activities that can be supported with VOCA funds.

7. **Help Victims Apply for Compensation Benefits.** Such assistance may include identifying and notifying crime victims of the availability of compensation, assisting them

with application forms and procedures, obtaining necessary documentation, and/or checking on claim status.

8. **Comply with Federal Rules Regulating Grants.** Subrecipients must comply with the applicable provisions of VOCA, the Program Guidelines, and the requirements of the OJP Financial Guide, effective edition, which includes maintaining appropriate programmatic and financial records that fully disclose the amount and disposition of VOCA funds received. This includes: financial documentation for disbursements; daily time and attendance records specifying time devoted to allowable VOCA victim services; client files; the portion of the project supplied by other sources of revenue; job descriptions; contracts for services; and other records which facilitate an effective audit.

9. **Maintain Civil Rights Information.** Maintain statutorily required civil rights statistics on victims served by race, national origin, sex, age, and disability, within the timetable established by the state grantee; and permit reasonable access to its books, documents, papers, and records to determine whether the subrecipient is complying with applicable civil rights laws. This requirement is waived when providing a service, such as telephone counseling, where soliciting the information may be inappropriate or offensive to the crime victim.

10. **Comply with State Criteria.** Subrecipients must abide by any additional eligibility or service criteria as established by the state grantee including submitting statistical and programmatic information on the use and impact of VOCA funds, as requested by the grantee.

11. **Services to Victims of Federal Crimes.** Subrecipients must provide services to victims of federal crimes on the same basis as victims of state/local crimes.

**12. No Charge to Victims for VOCA-Funded Services.** Subrecipients must provide services to crime victims, at no charge, through the VOCA-funded project. Any deviation from this provision requires prior approval by the state grantee. Prior to authorizing subrecipients to generate income, OVC strongly encourages administrators to carefully weigh the following considerations regarding federal funds generating income for subrecipient organizations.

a. The purpose of the VOCA victim assistance grant program is to provide services to all crime victims regardless of their ability to pay for services rendered or availability of insurance or other third-party payment resources. Crime victims suffer tremendous emotional, physical, and financial losses. It was never the intent of VOCA to exacerbate the impact of the crime by asking the victim to pay for services.

b. State grantees must ensure that they and their subrecipients have the capability to track program income in accordance with federal financial accounting requirements. All VOCA-funded program and match income, no matter how large or small, is restricted to the same uses as the VOCA grant.

Program income can be problematic because of the required tracking systems needed to monitor VOCA-funded income and ensure that it is used only to make additional services available to crime victims. For example: VOCA often funds only a portion of a counselor's time. Accounting for VOCA program income generated by this counselor is complicated, involving careful record keeping by the counselor, the subrecipient program, and the state.

**13. Client-Counselor and Research Information Confidentiality.** Maintain confidentiality of client-counselor information, as required by state and federal law.

**14. Confidentiality of Research Information.** Except as otherwise provided by federal law, no recipient of monies under VOCA shall use or reveal any research or statistical information furnished under this program by any person and identifiable to any specific private person for any purpose other than the purpose for which such information was obtained in accordance with VOCA. Such information, and any copy of such information, shall be immune from legal process and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceeding. See Section 1407(-d) of VOCA codified at 42 U.S.C. 10604.

These provisions are intended, among other things, to ensure the confidentiality of information provided by crime victims to counselors working for victim services programs receiving VOCA funds. Whatever the scope of application given this provision, it is clear that there is nothing in VOCA or its legislative history to indicate that Congress intended to override or repeal, in effect, a state's existing law governing the disclosure of information which is supportive of VOCA's fundamental goal of helping crime victims. For example, this provision would not act to override or repeal, in effect, a state's existing law pertaining to the mandatory reporting of suspected child abuse. See Pennhurst School and Hospital v. Halderman, et al., 451 U.S. 1 (1981). Furthermore, this confidentiality provision should not be interpreted to thwart the legitimate informational needs of public agencies. For example, this provision does not prohibit a domestic violence shelter from acknowledging, in response to an inquiry by a law enforcement agency conducting a missing person investigation, that the person is safe in the shelter. Similarly, this provision does not prohibit access to a victim service project by a federal or state agency seeking to determine whether federal and state funds are being utilized in accordance with funding agreements.

### **C. Eligible Subrecipient Organizations**

VOCA specifies that an organization must provide services to crime victims and be operated by a public agency or nonprofit organization, or a combination of such agencies or organizations in order to be eligible to receive VOCA funding. Eligible organizations include victim services organizations whose sole mission is to provide services to crime victims. These organizations include, but are not limited to, sexual assault and rape treatment centers, domestic violence programs and shelters, child abuse programs, centers for missing children, mental health services, and other community-based victim coalitions and support organizations including those who serve survivors of homicide victims.

In addition to victim services organizations, whose sole purpose is to serve crime victims, there are many other public and nonprofit organizations that have components which offer services to crime victims. These organizations are eligible to receive VOCA funds, if the funds are used to expand or enhance the delivery of crime victims' services. These organizations include, but are not limited to, the following:

- 1. Criminal Justice Agencies.** Such agencies as law enforcement organizations, prosecutors' offices, courts, corrections departments, and probation and paroling authorities are eligible to receive VOCA funds to help pay for victims' services. For example, prosecutor-based victim services may include victim-witness programs, victim notification, and victim impact statements, including statements of pecuniary damages for restitution. Corrections-based victim services may include victim notification, restitution advocacy, victim-offender mediation programs, and victim impact panels. Police-based victim services may include victim crisis units or victim advocates, victim registration and notification, and cellular phone and alarm services for domestic abuse victims. In general, VOCA funds may be used to provide crime victim services that exceed a law enforcement official's normal duties. Regular law enforcement duties such as crime scene

intervention, questioning of victims and witnesses, investigation of the crime, and follow-up activities may not be paid for with VOCA funds.

- 2. Religiously-Affiliated Organizations.** Such organizations receiving VOCA funds must ensure that services are offered to all crime victims without regard to religious affiliation and that the receipt of services is not contingent upon participation in a religious activity or event.

- 3. State Crime Victim Compensation Agencies.** Compensation programs, including both centralized and decentralized programs, may receive VOCA assistance funds if they offer direct services to crime victims that extend beyond the essential duties of compensation staff such as claims investigations, distribution of information about compensation and referral to other sources of public and private assistance. Such services would include assisting victims in identifying and accessing needed services and resources.

- 4. Hospitals and Emergency Medical Facilities.** Such organizations must offer crisis counseling, support groups, and/or other types of victim services. In addition, state grantees may only award VOCA funds to a medical facility for the purpose of performing forensic examinations on sexual assault victims if (1) the examination meets the standards established by the state, local prosecutor's office, or state-wide sexual assault coalition; and (2) appropriate crisis counseling and/or other types of victim services are offered to the victim in conjunction with the examination.

- 5. Others.** State and local public agencies such as mental health service organizations, state/local public child and adult protective services, state grantees, legal services agencies and programs with a demonstrated history of advocacy on behalf of domestic violence victims, and public housing authorities that have components specifically trained to serve

crime victims. Since the intention of the VOCA grant program is to support and enhance the crime victim services provided by community agencies, state grantees that meet the definition of an eligible subrecipient organization may not subaward themselves more than 10 percent of their annual VOCA award. This limitation applies to all states and territories, except for the Northern Mariana Islands, Guam, American Samoa, and the Republic of Palau.

#### **D. Ineligible Recipients of VOCA Funds**

Some public and nonprofit organizations that offer services to crime victims are not eligible to receive VOCA victim assistance funding. These organizations include, but are not limited to, the following:

1. **Federal Agencies.** This includes U.S. Attorneys Offices and FBI Field Offices. Receipt of VOCA funds would constitute an augmentation of the federal budget with money intended for state agencies. However, private nonprofit organizations that operate on federal land may be eligible subrecipients of VOCA victim assistance grant funds.
2. **In-Patient Treatment Facilities.** For example, those designed to provide treatment to individuals with drug, alcohol, and/or mental health-related conditions.

#### **E. Services, Activities, and Costs at the Subrecipient Level**

1. **Allowable Costs for Direct Services.** The following is a listing of services, activities, and costs that are eligible for support with VOCA victim assistance grant funds within a subrecipient's organization:

- a. **Immediate Health and Safety.** Those services which respond to the immediate emotional and physical needs (excluding medical care) of crime victims such as crisis intervention; accompaniment to hospitals for medical examinations; hotline counseling;

emergency food, clothing, transportation, and shelter (including emergency, short-term nursing home shelter for elder abuse victims for whom no other safe, short-term residence is available); and other emergency services that are intended to restore the victim's sense of security. This includes services which offer an immediate measure of safety to crime victims such as boarding-up broken windows and replacing or repairing locks. Also allowable is emergency legal assistance such as filing restraining orders and obtaining emergency custody/visitation rights when such actions are directly connected to family violence cases and are taken to ensure the health and safety of the victim.

b. **Mental Health Assistance.** Those services and activities that assist the primary and secondary victims of crime in understanding the dynamics of victimization and in stabilizing their lives after a victimization such as counseling, group treatment, and therapy. "Therapy" refers to intensive professional psychological/psychiatric treatment for individuals, couples, and family members related to counseling to provide emotional support in crises arising from the occurrence of crime. This includes the evaluation of mental health needs, as well as the actual delivery of psychotherapy.

c. **Assistance with Participation in Criminal Justice Proceedings.** In addition to the cost of emergency legal services noted above in section a. "Immediate Health and Safety", there are other costs associated with helping victims participate in the criminal justice system that also are allowable. These services may include advocacy on behalf of crime victims; accompaniment to criminal justice offices and court; transportation to court; child care or respite care to enable a victim to attend court; notification of victims regarding trial dates, case disposition information, and parole consideration

procedures; and assistance with victim impact statements. State grantees may also fund projects devoted to restitution advocacy on behalf of specific crime victims. VOCA funds cannot be used to pay for non-emergency legal representation such as for divorces, or civil restitution recovery efforts.

**d. Forensic Examinations.** For sexual assault victims, forensic exams are allowable costs only to the extent that other funding sources (such as state compensation or private insurance or public benefits) are unavailable or insufficient and, such exams conform with state evidentiary collection requirements. State grantees should establish procedures to monitor the use of VOCA victim assistance funds to pay for forensic examinations in sexual assault cases.

**e. Costs Necessary and Essential to Providing Direct Services.** This includes pro-rated costs of rent, telephone service, transportation costs for victims to receive services, emergency transportation costs that enable a victim to participate in the criminal justice system, and local travel expenses for service providers.

**f. Special Services.** Services to assist crime victims with managing practical problems created by the victimization such as acting on behalf of the victim with other service providers, creditors, or employers; assisting the victim to recover property that is retained as evidence; assisting in filing for compensation benefits; and helping to apply for public assistance.

**g. Personnel Costs.** Costs that are directly related to providing direct services, such as staff salaries and fringe benefits, including malpractice insurance; the cost of advertising to recruit VOCA-funded personnel; and the cost of training paid and volunteer staff.

**h. Restorative Justice.** Opportunities for crime victims to meet with perpetrators, if such meetings are requested or voluntarily

agreed to by the victim and have possible beneficial or therapeutic value to crime victims.

State grantees that plan to fund this type of service should closely review the criteria for conducting these meetings. At a minimum, the following should be considered: (1) the safety and security of the victim; (2) the benefit or therapeutic value to the victim; (3) the procedures for ensuring that participation of the victim and offender are voluntary and that everyone understands the nature of the meeting, (4) the provision of appropriate support and accompaniment for the victim, (5) appropriate "debriefing" opportunities for the victim after the meeting or panel, (6) the credentials of the facilitators, and (7) the opportunity for a crime victim to withdraw from the process at any time. State grantees are encouraged to discuss proposals with OVC prior to awarding VOCA funds for this type of activity. VOCA assistance funds cannot be used for victim-offender meetings which serve to replace criminal justice proceedings.

**2. Other Allowable Costs and Services.** The services, activities, and costs listed below are not generally considered direct crime victim services, but are often a necessary and essential activity to ensure that quality direct services are provided. Before these costs can be supported with VOCA funds, the state grantee and subrecipient must agree that direct services to crime victims cannot be offered without support for these expenses; that the subrecipient has no other source of support for them; and that only limited amounts of VOCA funds will be used for these purposes. The following list provides examples of such items:

**a. Skills Training for Staff.** VOCA funds designated for training are to be used exclusively for developing the skills of direct service providers including paid staff and volunteers, so that they are better able to offer quality services to crime victims.

An example of skills development is training focused on how to respond to a victim in crisis.

VOCA funds can be used for training both VOCA-funded and non-VOCA-funded service providers who work within a VOCA recipient organization, but VOCA funds cannot be used for management and administrative training for executive directors, board members, and other individuals that do not provide direct services.

**b. Training Materials.** VOCA funds can be used to purchase materials such as books, training manuals, and videos for direct service providers, within the VOCA-funded organization, and can support the costs of a trainer for in-service staff development. Staff from other organizations can attend in-service training activities that are held for the subrecipient's staff.

**c. Training Related Travel.** VOCA funds can support costs such as travel, meals, lodging, and registration fees to attend training within the state or a similar geographic area. This limitation encourages state grantees and subrecipients to first look for available training within their immediate geographical area, as travel costs will be minimal. However, when needed training is unavailable within the immediate geographical area, state grantees may authorize using VOCA funds to support training outside of the geographical area. For example, VOCA grantees may benefit by attending national conferences that offer skills building training workshops for victim assistance providers.

**d. Equipment and Furniture.** VOCA funds may be used to purchase furniture and equipment that provides or enhances direct services to crime victims, as demonstrated by the VOCA subrecipient. VOCA funds cannot support the entire cost of an item that is not used exclusively for victim-related

activities. However, VOCA funds can support a prorated share of such an item. In addition, subrecipients cannot use VOCA funds to purchase equipment for another organization or individual to perform a victim-related service. Examples of allowable costs may include beepers; typewriters and word processors; video-tape cameras and players for interviewing children; two-way mirrors; and equipment and furniture for shelters, work spaces, victim waiting rooms, and children's play areas.

The costs of furniture, equipment such as braille equipment or TTY/TTD machines for the deaf, or minor building alterations/improvements that make victims services more accessible to persons with disabilities are allowable. Refer to the OJP Financial Guide, effective edition, before these types of decisions are made.

**e. Purchasing or Leasing Vehicles.** Subrecipients may use VOCA funds to purchase or lease vehicles if they can demonstrate to the state VOCA administrator that such an expenditure is essential to delivering services to crime victims. The VOCA administrator must give prior approval for all such purchases.

**f. Advanced Technologies.** At times, computers may increase a subrecipient's ability to reach and serve crime victims. For example, automated victim notification systems have dramatically improved the efficiency of victim notification and enhanced victim security.

In order to receive a grant for advanced technologies, each subrecipient must meet the program eligibility requirements set forth in section IV.B. of the Guidelines, Subrecipient Organization Eligibility Requirements. In making such expenditures, VOCA subrecipients must describe to the state how the computer equipment will enhance services to crime

victims; how it will be integrated into and/or enhance the subrecipient's current system; the cost of installation; the cost of training staff to use the computer equipment; the ongoing operational costs, such as maintenance agreements, supplies; and how these additional costs will be supported. Property insurance is an allowable expense as long as VOCA funds support a prorated share of the cost of the insurance payments.

State grantees that authorize equipment to be purchased with VOCA funds must establish policies and procedures on the acquisition and disbursement of the equipment, in the event the subrecipient no longer receives a VOCA grant. At a minimum, property records must be maintained with the following: a description of the property and a serial number or other identifying number; identification of title holder; the acquisition date; the cost and the percentage of VOCA funds supporting the purchase; the location, use, and condition of the property; and any disposition data, including the date of disposal and sale price. (See OJP Financial Guide, effective edition.)

**g. Contracts for Professional Services.** VOCA funds generally should not be used to support contract services. At times, however, it may be necessary for VOCA subrecipients to use a portion of the VOCA grant to contract for specialized services. Examples of these services include assistance in filing restraining orders or establishing emergency custody/visitation rights (the provider must have a demonstrated history of advocacy on behalf of domestic violence victims); forensic examinations on a sexual assault victim to the extent that other funding sources are unavailable or insufficient; emergency psychological or psychiatric services; or sign and/or interpretation for the deaf or for crime victims whose primary language is not English.

Subrecipients are prohibited from using a majority of VOCA funds for contracted

services which contain administrative, overhead, and other indirect costs included in the hourly or daily rate.

**h. Operating Costs.** Examples of allowable operating costs include supplies; equipment use fees, when supported by usage logs; printing, photocopying, and postage; brochures which describe available services; and books and other victim-related materials. VOCA funds may support administrative time to complete VOCA-required time and attendance sheets and programmatic documentation, reports, and statistics; administrative time to maintain crime victims' records; and the pro-rated share of audit costs.

**i. Supervision of Direct Service Providers.** State grantees may provide VOCA funds for supervision of direct service providers when they determine that such supervision is necessary and essential to providing direct services to crime victims. For example, a state grantee may determine that using VOCA funds to support a coordinator of volunteers or interns is a cost-effective way of serving more crime victims.

**j. Repair and/or Replacement of Essential Items.** VOCA funds may be used for repair or replacement of items that contribute to maintaining a healthy and/or safe environment for crime victims, such as a furnace in a shelter. In the event that a vehicle is purchased with VOCA funds, related items, such as routine maintenance and repair costs, and automobile insurance are allowable. State grantees are cautioned to scrutinize each request for expending VOCA funds for such purposes to ensure the following: (1) that the building or vehicle is owned by the subrecipient organization and not rented or leased, (2) all other sources of funding have been exhausted, (3) there is no available option for providing the service in another location, (4) that the cost of the repair or

replacement is reasonable considering the value of the building or vehicle, and (5) the cost of the repair or replacement is pro-rated among all sources of income.

**k. Public Presentations.** VOCA funds may be used to support presentations that are made in schools, community centers, or other public forums, and that are designed to identify crime victims and provide or refer them to needed services. Specifically, activities and costs related to such programs including presentation materials, brochures, and newspaper notices can be supported by VOCA funds.

**3. Non-Allowable Costs and Activities.** The following services, activities, and costs, although not exhaustive, cannot be supported with VOCA victim assistance grant funds at the subgrantee level:

**a. Lobbying and Administrative Advocacy.** VOCA funds cannot support victim legislation or administrative reform, whether conducted directly or indirectly.

**b. Perpetrator Rehabilitation and Counseling.** Subrecipients cannot knowingly use VOCA funds to offer rehabilitative services to offenders. Likewise, VOCA funds cannot support services to incarcerated individuals, even when the service pertains to the victimization of that individual.

**c. Needs Assessments, Surveys, Evaluations, Studies.** VOCA program funds may not be used to pay for efforts conducted by individuals, organizations, task forces, or special commissions to study and/or research particular crime victim issues.

**d. Prosecution Activities.** VOCA funds cannot be used to pay for activities that are directed at prosecuting an offender and/or improving the criminal justice system's effectiveness and efficiency, such as witness

notification and management activities and expert testimony at a trial. In addition, victim witness protection costs and subsequent lodging and meal expenses are considered part of the criminal justice agency's responsibility and cannot be supported with VOCA funds.

**e. Fundraising activities.**

**f. Indirect Organizational Costs.** The costs of liability insurance on buildings; capital improvements; security guards and body guards; property losses and expenses; real estate purchases; mortgage payments; and construction may not be supported with VOCA funds.

**g. Property Loss.** Reimbursing crime victims for expenses incurred as a result of a crime such as insurance deductibles, replacement of stolen property, funeral expenses, lost wages, and medical bills is not allowed.

**h. Most Medical Costs.** VOCA funds cannot pay for nursing home care (emergency short-term nursing home shelter as described in section IV.E.1.a. is allowable), home health-care costs, in-patient treatment costs, hospital care, and other types of emergency and non-emergency medical and/or dental treatment. VOCA victim assistance grant funds cannot support medical costs resulting from a victimization, except for forensic medical examinations for sexual assault victims.

**i. Relocation Expenses.** VOCA funds cannot support relocation expenses for crime victims such as moving expenses, security deposits on housing, ongoing rent, and mortgage payments. However, VOCA funds may be used to support staff time in locating resources to assist victims with these expenses.

**j. Administrative Staff Expenses.** Salaries, fees, and reimbursable expenses



associated with administrators, board members, executive directors, consultants, coordinators, and other individuals unless these expenses are incurred while providing direct services to crime victims.

**k. Development of Protocols, Interagency Agreements, and Other Working Agreements.** These activities benefit crime victims, but they are considered examples of the types of activities that subrecipients undertake as part of their role as a victim services organization, which in turn qualifies them as an eligible VOCA subrecipient.

**l. Costs of Sending Individual Crime Victims to Conferences.**

**m. Activities Exclusively Related to Crime Prevention.**

## V. PROGRAM REPORTING REQUIREMENTS

State grantees must adhere to all reporting requirements and timelines for submitting the required reports, as indicated below. Failure to do so may result in a hold being placed on the drawdown of the current year's funds, a hold being placed on processing the next year's grant award, or can result in the suspension or termination of a grant.

### A. Subgrant Award Reports

A Subgrant Award Report is required for each organization that receives VOCA funds and uses the funds for such allowable expenses including employee salaries, fringe benefits, supplies, and rent. This requirement applies to all state grantee awards including grants, contracts, or subgrants and to all subrecipient organizations.

Subgrant Award Reports are not to be completed for organizations that serve only as conduits for distributing VOCA funds or for organizations that provide limited, emergency services, on an hourly rate, to the VOCA subrecipient organizations. Services and activities that are purchased by a

VOCA subrecipient are to be included on the subrecipient's Subgrant Award Report.

**1. Reporting Deadline.** State grantees are required to submit to OVC, within 90 days of making the subaward, Subgrant Award Report information for each subrecipient of VOCA victim assistance grant funds.

**2. Electronic Submission.** State grantees shall transmit their Subgrant Award Report information to OVC via the automated subgrant dial-in system. By utilizing the subgrant dial-in number (1-800/838-0106), grantees can access the system without incurring a long distance telephone charge. States and territories outside of the continental U.S. are exempt from the requirement to use the subdial system, but these grantees must complete and submit the Subgrant Award Report form, OJP 7390/2A, for each VOCA subrecipient.

**3. Changes to Subgrant Award Report.** If the Subgrant Award Report information changes by the end of the grant period, state grantees must inform OVC of the changes, by revising the information via the automated subgrant subdial system. The total of all Subgrant Award Reports submitted by the state grantee must agree with the Final Financial Status Report (Standard Form 269A) that is submitted at the end of the grant period.

### B. Performance Report

**1. Reporting Deadline.** Each state grantee is required to submit specific grant performance data on the OVC-provided Performance Report, form No. OJP 7390/4, by December 31 of each year.

**2. Administrative Cost Provision.** For those state grantees who opt to use a portion of the VOCA victim assistance grant for administrative costs, the Performance Report will be used to describe how the funds were actually used and the impact of the 5% administrative funds on the state grantee's

ability to expand, enhance, and improve services to crime victims. State grantees who choose to use a portion of their VOCA victim assistance grant for administrative costs must maintain a clear audit trail of all costs supported by administrative funds and be able to document the value of the grantee's previous commitment to administering VOCA.

## VI. FINANCIAL REQUIREMENTS

As a condition of receiving a grant, state grantees and subrecipients shall adhere to the financial and administrative provisions set forth in the OJP Financial Guide and applicable OMB Circulars and Common Rules. The following section describes the audit requirements for state grantees and subrecipients, the completion and submission of Financial Status Reports, and actions that result in termination of advance funding.

### A. Audit Responsibilities for Grantees and Subrecipients

Audits of non-profit institutions and institutions of higher education must comply with the organizational audit requirements of OMB Circular A-133, which states that recipients who expend \$300,000 or more during their fiscal year in federal funds during their fiscal year, are required to submit an organization-wide financial and compliance audit report within 13 months after the close of each fiscal year during the term of the award to their cognizant federal agency.

State and local units of government must comply with the organizational audit requirements of OMB circular A-128, which states that recipients of \$25,000 of federal funds during their fiscal year, are required to submit an audit report to their cognizant agency. Recipients who receive less than \$25,000 in federal funds are exempt from the audit requirement.

### B. Audit Costs

Audit costs incurred at the grantee (state) level are determined to be an administrative expense, and

may be paid with the allowable five percent for administration. Subrecipients may use VOCA funds to support the pro-rated share audit costs.

### C. Financial Status Report for State Grantees

Financial Status Reports (269A) are required from all state agencies. A Financial Status Report shall be submitted to the Office of the Comptroller for each calendar quarter in which the grant is active. This Report is due even though no obligations or expenditures were incurred during the reporting period. Financial Status Reports shall be submitted to the Office of the Comptroller, by the state, within 45 days after the end of each calendar quarter. Calendar quarters end March 31, June 30, September 30, and December 31. A Final Financial Status Report is due 120 days after the end of the VOCA grant.

### D. Termination of Advance Funding to State Grantees

If the state grantee receiving cash advances by direct Treasury deposit demonstrates an unwillingness or inability to establish procedures that will minimize the time elapsing between cash advances and disbursements, OJP may terminate advance funding and require the state to finance its operations with its own working capital. Payments to the state will then be made to the state by the ACH Vendor Express method to reimburse the grantee for actual cash disbursements. It is essential that the grantee organization maintain a minimum of cash on hand and that drawdowns of cash are made only when necessary for disbursements.

## VII. MONITORING

### A. Office of the Comptroller

The Office of the Comptroller conducts periodic reviews of the financial policies, procedures, and records of VOCA grantees and subrecipients. Therefore, upon request, state grantees and subrecipients must allow authorized representatives to access and examine all records, books, papers,

case files, or documents related to the grant, use of administrative funds, and all subawards.

### B. Office for Victims of Crime

OVC conducts on-site monitoring in which each state grantee is visited a minimum of once every three years. While on site, OVC personnel will review various documents and files such as (1) program manuals and procedures governing the VOCA grant program; (2) reports for the grantee and all VOCA subrecipients; (3) the state grantee's VOCA application kit, procedures, and guidelines for subawarding VOCA funds; and (4) all other state grantee and subrecipient records and files.

In addition, OVC will visit selected subrecipients and will review similar documents such as (1) reports; (2) policies and procedures governing the organization and the VOCA funds; (3) programmatic records of victims' services; and (4) timekeeping records and other supporting documentation for costs supported by VOCA funds.

### VIII. SUSPENSION AND TERMINATION OF FUNDING

If, after notice and opportunity for a hearing, OVC finds that a state has failed to comply substantially with VOCA, the OJP Financial Guide (effective edition), the Final Program Guidelines, or any implementing regulation or requirement, OVC may suspend or terminate funding to the state and/or take other appropriate action. At such time, states may request a hearing on the justification for the suspension and/or termination of VOCA funds. VOCA subrecipients, within the state, may not request a hearing at the federal level. However, VOCA subrecipients who believe that the state grantee has violated a program and/or financial requirement are not precluded from bringing the alleged violation(s) to the attention of OVC.



**FINAL PROGRAM GUIDELINES  
VICTIMS OF CRIME ACT  
FFY 1997 VICTIM COMPENSATION GRANT PROGRAM  
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**FINAL PROGRAM GUIDELINES**  
**VICTIMS OF CRIME ACT FFY 1997 VICTIM COMPENSATION PROGRAM**  
**(PUBLISHED IN THE FEDERAL REGISTER OF FEBRUARY 14, 1997)**

**DEPARTMENT OF JUSTICE**

**Office of Justice Programs**

**Victims of Crime Act Victim Compensation Grant Program**

**AGENCY:** Office of Justice Programs, Office for Victims of Crime, Justice.

**ACTION:** Final Program Guidelines.

**SUMMARY:** The Office for Victims of Crime (OVC), Office of Justice Programs (OJP), U.S. Department of Justice (DOJ) is publishing Final Program Guidelines to implement the victim compensation grant program as authorized by the Victims of Crime Act of 1984, as amended, 42 U.S.C. 10601, et seq. (hereafter referred to as VOCA).

**EFFECTIVE DATE:** From October 1, 1996 (Federal Fiscal Year 1997 VOCA grant program), until further revised by OVC.

**FOR FURTHER INFORMATION CONTACT:** Jackie McCann Cleland, Director, State Compensation and Assistance Division, 633 Indiana Avenue N.W., Washington, D.C. 20531; telephone number (202) 307-5983. (This is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** VOCA provides federal financial assistance to states for the purpose of compensating and assisting victims of crime, providing funds for training and technical assistance, and assisting victims of federal crimes.

These Final Program Guidelines provide information on the administration and implementation of the VOCA victim compensation grant program as authorized in Section 1403 of VOCA, Public Law 98-473, as amended, codified at 42 U.S.C. 10602 and 10603b, and contain the following information:

Summary of the Comments on the Proposed Program Guidelines; Background; Funding Allocation and Application Process; Program Requirements; Financial Requirements; Monitoring; and Suspension and Termination of Funding. These Final Program Guidelines are based on the experience gained and legal opinions rendered since the inception of the grant program in 1986, and are in accordance with VOCA. These Final Program Guidelines are all inclusive. Thus, they supersede any Guidelines previously issued by OVC.

The Office of Justice Programs, Office for Victims of Crime, in conjunction with the Office of Policy Development, DOJ, and the Office of Information and Regulatory Affairs, the Office of Management and Budget (OMB), has determined that this rule is not a "significant regulatory action" for purposes of Executive Order 12866 and, accordingly, these Final Program Guidelines were not reviewed by OMB.

In addition, it has been determined that these Final Program Guidelines will not have a significant economic impact on a substantial number of small entities; therefore, an analysis of the impact of these Guidelines on such entities is not required by the Regulatory Flexibility Act, 5 U.S.C. 601, et seq.

The program reporting requirements described in the Program Requirements section have been approved by the OMB as required under the Paperwork Reduction Act, 44 U.S.C. 3504(h). (OMB Approval Number 1121-0014.)

**SUMMARY OF THE REVISIONS TO THE 1997 PROPOSED PROGRAM GUIDELINES**

Proposed VOCA Victim Compensation Program Guidelines were distributed to interested individuals and organizations for the purpose of soliciting comments. In September, 1996, OVC asked the state VOCA victim compensation program administrators attending the annual conference of the National

Association of Crime Victim Compensation Boards (ACVCB) for their comments. In September, OVC so mailed copies of the Proposed Guidelines to all the state VOCA victim compensation and assistance program administrators, as well as to the executive directors of national victim organizations.

OVC received comments from state VOCA victim compensation and assistance administrators, representatives of national victim organizations, and the state legislator. In total, over 18 different recommendations, questions, and comments were received.

As a result of the comments from the field, recent legislative amendments, and modifications of applicable federal regulations, substantive changes were made to four sections of the Proposed Program Guidelines, including: the Availability of Funds, the Application Process, the Program Requirements, and Financial Requirements. These changes are summarized in the paragraphs below, and incorporated into the complete text of the Final Program Guidelines for Crime Victim Compensation. The Final Program Guidelines also include several technical corrections that are not listed in this summary because they do not affect policy or implementation of the Guidelines.

#### Comments from the Field

##### Administrative Cost Provision.

1. Indirect Cost. Some respondents questioned OVC's prohibiting the use of these funds for indirect cost and noted that this was inconsistent with rules governing other OJP formula grant programs. Thus, this restriction has been eliminated from the "Availability of Funds" section of the Final Program Guidelines.

2. Delivery and Quality of Services. Respondents also noted that VOCA compensation programs, like VOCA assistance programs need to measure the impact of their activities on the delivery and quality of services to crime victims

throughout their state. Thus, the following activities can now be supported by VOCA victim compensation administrative funds:

a. Improving coordination efforts on behalf of crime victims with other OJP Offices and Bureaus and with federal, state, and local agencies and organizations;

b. Providing training on crime victim compensation program issues such as application and eligibility requirements and range of compensable expenses, to state, public, and nonprofit organizations that serve or assist crime victims such as law enforcement officials, victim witness coordinators, corrections personnel, social service workers, victim service providers, and mental health and medical professionals;

c. Purchasing, printing, and/or developing applications, brochures and other relevant publications such as training manuals which describe the compensation application process, eligibility criteria, and range of benefits, available for crime victims; and

d. Developing protocols, policies, and procedures that promote coordination of victim compensation and victim assistance services and improve the ways crime victims are treated and served;

B. Victim Cooperation with Law Enforcement. OVC received numerous inquiries concerning the VOCA provision which requires, as a condition of eligibility, that a program promote victim cooperation with the reasonable requests of law enforcement.

Many victims of crime cannot qualify for compensation because they have not complied with reporting and cooperating requirements found in most state statutes. There are many reasons for this,



including fear of reprisal, a belief by the victim that the police are insensitive, ineffective, or biased, and other reasons. Historically, the most under reported crimes were rape, sexual assault, and domestic violence. Moreover, when many of these victims do report, they frequently miss the 72-hour reporting requirement used as a condition of eligibility in most state compensation programs.

In light of these facts, and in response to comments from VOCA program administrators and other crime victim advocates, OVC has modified the Final Program Guidelines. Although state crime victim compensation programs maintain the authority and discretion to establish their own standards for "reasonable cooperation," OVC encourages state compensation program staff to meet with victims and victim service providers to carefully review whether state statutes, program guidelines, and policies are responsive to the needs of crime victims and to determine possible barriers that might impede a victim's cooperation with law enforcement.

Possible impediments include compelling health or safety reasons, such as apprehension regarding personal safety, fear of retaliation, and intimidation by the offender or others. For example, some victims may be reluctant to cooperate fully with law enforcement after receiving threats of violence or even death against themselves and their children from the offender.

Age, psychological, cultural, or linguistic barriers may also influence the extent of victim cooperation with law enforcement. For instance, there may be special barriers deterring a young child or senior citizen from "reasonable cooperation." Likewise, embarrassment and shame may delay the reporting of sexual assault, and cultural and language differences may diminish a victim's access to the criminal justice system.

In setting the standard for victim cooperation with law enforcement, the state program should determine how much weight to give to these considerations.

VOCA's "cooperation with the reasonable requests of law enforcement" requirement may be fulfilled by

utilizing the following criteria or any other criteria the state believes is necessary to encourage victim cooperation with law enforcement. For example, a state may:

1. Require a victim to report the crime to a law enforcement agency;
2. Require a victim to report the crime to an appropriate governmental agency, such as child and/or adult protective services, family or juvenile court; or
3. Accept proof of the completion of a medical evidentiary examination, such as medical reports, x-rays, medical photographs, as well as other clinical assessments as evidence of cooperation with law enforcement in cases involving sexual assault or abuse.

Modifications to the "victim cooperation with law enforcement" language are contained in the "Program Requirements" section of the Final Program Guidelines.

## II. Legislative Changes

A. The Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104-132). The Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104-132) (hereinafter "The Antiterrorism Act"), signed into law on April 24, 1996, contained a number of victim related provisions that amended VOCA. Listed below are three provisions that resulted in changes to the "State Eligibility Criteria" section of the Final Program Guidelines.

1. **State Eligibility Criteria/Mandatory Coverage of Terrorism Victims in State Compensation Statutes.** The Antiterrorism Act provides for a new VOCA-eligibility requirement that each state must include "crimes involving terrorism" in their definition of "compensable crimes". Thus, the state must offer compensation benefits to:

a. Residents and non-residents who are injured or killed by a crime involving terrorism occurring within the state;

b. Its own residents who are injured or killed in terrorist attacks occurring outside the United States or in a state that does not have an eligible crime victim compensation program.

The law gives states until April 24, 1997 (Federal Fiscal Year 1998 grant application) to come into compliance with this new eligibility requirement for receiving federal VOCA compensation grants.

2. Means Testing. The Antiterrorism Act also prohibits any federal, state, or local government program that uses federal funds from including victim compensation benefits when determining income eligibility for an applicant, if the applicant needs such assistance (medical or otherwise), in full or in part, because of the commission of a crime against the applicant.

3. Prohibition Against Awards To Convicted Persons Owing Fines. The Antiterrorism Act prohibits states from awarding victim compensation benefits to any person convicted of a federal crime who is delinquent in paying a fine, monetary penalty, or restitution imposed for the offense. This provision, however, will not become effective until the U.S. Attorney General and the Director of the Administrative Office of the U.S. Courts issue a written determination that the entities administering federal victim programs have access to accurate and efficient criminal debt payment information. As of this date, no such determination has been made, and states are under no obligation to investigate or make determinations on whether a victim owes a federal criminal debt before awarding compensation benefits.

The Antiterrorism Act also resulted in three changes to the "Availability of Funds" section.

4. OVC Reserve Fund. The Anti-terrorism Act authorizes the OVC Director to establish a reserve fund, up to \$50 million, from current year Crime Victims Fund (Fund) deposits which are in excess of 110 percent of the total amount deposited in the Fund during the preceding fiscal year. Reserve fund monies may be used for supplemental grants to assist victims of terrorist acts or mass violence occurring within or outside the U.S. The OVC Director may award reserve funds to the following entities:

a. States for providing compensation and assistance to their state residents, who, while outside of the borders of the United States, become victims of a terrorist act or mass violence. The beneficiaries, however, cannot be persons who are already eligible for compensation under the Omnibus Diplomatic Security and Antiterrorism Act of 1986. Individuals covered under this Act include those who are taken captive because of their relationship with the U.S. government as a member of the U.S. Civil Service, as well as other U.S. citizens, nationals, or resident aliens who are taken captive while rendering service to the U.S. similar to that of civil servants. Dependent family members of such persons also are covered under the Omnibus Diplomatic Security Act.

b. States' eligible crime victim compensation and assistance programs for providing compensation and emergency relief for the benefit of victims of terrorist acts or mass violence occurring within the U.S.; and

c. U.S. Attorney's Offices for use in coordination with state victim compensation and assistance efforts in

providing relief to victims of terrorist acts or mass violence occurring within the U.S.

d. The Director of OVC may also award OVC reserve funds to eligible state compensation and assistance programs to offset fluctuation in the funds during years in which the Fund decreases and additional monies are needed to stabilize funding for state programs.

5. **Unobligated Grant Funds.** Beginning with FFY 1997 VOCA grants, funds not obligated by the end of the grant period, up to a maximum of \$500,000, will be returned to the Fund, and not to the General Treasury, as was the practice in previous years. Returned funds in excess of \$500,000 in a given year shall be returned to the Treasury. Once any portion of a state's grant is returned to the Fund, the funds must be redistributed according to the formula established by VOCA and the Final Program Guidelines. States are encouraged to closely monitor the expenditure of VOCA funds throughout the grant period to avoid returning unobligated balances at the end of the grant period.

6. **Grant Period Extended.** The Antiterrorism Act extended the VOCA victim compensation grant period from the year of award plus one, to the year of award plus two. (Subsequent legislation further extended the grant period to the year of award, plus three.)

B. **Omnibus Appropriations Act of 1997.** This legislation was passed by Congress and signed into law by President Clinton in September, 1996. This Act further extended the grant period to the year of award plus three. This change is effective for all FFY 1997 grants. The Final Program Guidelines clarify that funds are available for obligation beginning October 1 of the year of the award, through September 30 of the FFY three years later. For example, grants awarded in November, 1996 (FFY

1997) are available for obligation beginning October 1, 1996 through September 30, 2000.

This modification is contained in the "Availability of Funds" section of the Final Program Guidelines.

### III. Changes in Applicable Federal Regulations.

A. **Mandatory Enrollment in U.S. Treasury Department's Automated Clearing House (ACH) Vendor Express Program.** In accordance with the Debt Collection Improvement Act of 1996, the U.S. Treasury Department revised its regulations regarding federal payments. The Final Program Guidelines have been modified to require that, effective July 26, 1996, all federal payments to VOCA victim compensation grantees must be made via electronic funds transfer.

States that are new award recipients, or those that have previously received funds in the form of a paper check from the U.S. Treasury, must enroll in the Treasury Department's ACH Vendor Express program before requesting any federal funds. This means that VOCA grantees can no longer receive drawdowns against their awards via paper check mailed from the Treasury. Grant recipients must enroll in ACH for Treasury to electronically transfer drawdowns directly to their banking institutions. States that are currently on the Letter of Credit Electronic Certification System (LOCES) will be automatically enrolled in the ACH program. This modification is included in the "Application Process" section of the Final Program Guidelines.

B. **Higher Audit Threshold.** In response to suggestions made by many recipients of federal grant awards, including VOCA grant recipients, OMB Circular, A-133 was revised, raising the audit threshold to \$300,000 for all organizations receiving federal grants. This means that those state compensation programs that expend \$300,000 or more in federal funding within the state fiscal year must have an audit made in accordance with OMB Circular A-133, as amended. This rule is effective for all fiscal years that began on or after July 1, 1996.

Previously, states that received \$100,000 or more in federal financial assistance in any fiscal year were required to have a single audit for that year. States and subrecipients receiving at least \$25,000, but less than \$100,000, in a fiscal year had the option of performing a single audit or an audit of the federal program, and state and local governments receiving less than \$25,000 in any fiscal year were exempt from audit requirements. This modification is contained in the "Financial Requirements" section of the Final Program Guidelines.

## **GUIDELINES FOR CRIME VICTIM COMPENSATION GRANTS**

### Background

In 1984, VOCA established the Crime Victims Fund (Fund) in the U.S. Treasury and authorized the Fund to receive deposits from fines and penalties levied on criminals convicted of federal crimes. This Fund provides the source of funding for carrying out all of the activities mandated by VOCA.

OVC makes annual VOCA crime victim compensation grants from the Fund to eligible states. The primary purpose of these grants is to supplement state efforts to provide financial assistance and reimbursement to crime victims throughout the Nation for costs associated with being a victim of a crime, and to encourage victim cooperation and participation in the criminal justice system. State crime victim compensation programs may use VOCA compensation grant funds to pay for eligible expenses provided by the state compensation statute except for property damage and property losses.

States have the responsibility for establishing guidelines and procedures for applying for crime victim compensation benefits which meet the minimal statutory requirements outlined in VOCA and the requirements in these Final Program Guidelines.

### I. Funding Allocation and Application Process

**A. Distribution of Crime Victim Fund.** OVC administers the deposits made into the Fund for programs and services, as specified in VOCA. The

amount of funds available for distribution each year is dependent upon the total deposits into the Fund in the preceding Federal Fiscal Year.

The Federal Courts Administration Act of 1992 removed the cap on the Fund, beginning with FFY 1993 deposits. This Act also eliminated the need for periodic reauthorization of VOCA and the Fund. Thus, under current legislation, the Fund will continue to receive deposits.

The Violent Crime Control and Law Enforcement Act of 1994 provides that the deposits into the Fund are to be distributed as follows:

1. The first \$3,000,000 deposited in the Fund in each fiscal year is available to the Administrative Office of United States Courts for administrative costs to carry out the functions of the judicial branch under Sections 3611 of Title 18, U.S. Code.
2. The next \$10,000,000 deposited in the Fund in a particular fiscal year:
  - a. 85% shall be available to the Secretary of Health and Human Services for grants under Section 4(d) of the Child Abuse Prevention and Treatment Act for improving the investigation and prosecution of child abuse cases;
  - b. 15% shall be available to the Director of the Office for Victims of Crime for grants under Section 4(d) of the Child Abuse Prevention and Treatment Act for Assisting Native American Indian Tribes in developing, establishing, and operating programs to improve the investigation and prosecution of child abuse cases.
3. The remaining Fund deposits are distributed as follows:
  - a. 48.5 percent is available for victim compensation grants;

b. 48.5 percent is available for victim assistance grants;

c. Three percent is available for support of services to federal crime victims and for demonstration, training, and technical assistance grants to eligible crime victim programs.

## B. Availability of Funds.

### 1. VOCA Victim Compensation Grant Formula.

The Director of OVC will make an annual grant to eligible state crime victim compensation programs equal to 40 percent of the amounts awarded by the state program to victims of crime from state sources of revenue during the fiscal year preceding the year of deposits in the Fund (two years prior to the grant year). Note: Amounts paid to compensate victims for property damage or property loss cannot be included in a state's certification for a VOCA victim compensation grant award. If the amount in the Fund is insufficient to award each state 40 percent of its prior year's compensation payout, Section 1403(a)(2) of VOCA provides that all states will be awarded the same reduced percentage of their prior year payout from the available funds.

2. Reserve Fund. As the result of the provisions in the Antiterrorism Act amending VOCA, the OVC Director is authorized to retain funds in a reserve fund, up to \$50 million. The Director may utilize the reserve funds in order to:

a. Award supplemental grants to assist victims of terrorist acts or mass violence outside or within the U.S. The OVC Director may grant reserve funds for such purposes to the following entities:

1) States for providing compensation and assistance to their state residents, who, while inside their state borders or outside of the borders of the United States, become victims of a terrorist act or mass violence. The beneficiaries, however, cannot be persons who are already eligible for compensation under The Omnibus

Diplomatic Security and Antiterrorism Act of 1986.

Individuals covered under the Omnibus Diplomatic Security and Antiterrorism Act of 1986 include persons who are taken captive because of their relationship with the U.S. Government as a member of the U.S. Civil Service, as well as other U.S. citizens, nationals, or resident aliens who are taken captive while rendering service to the U.S. similar to that of civil servants. Dependent family members of such persons also are covered under the Omnibus Diplomatic Security Act.

2) States' eligible crime victim compensation and assistance programs for providing emergency relief, including crisis response efforts, training, and technical assistance for the benefit of victims of terrorist acts or mass violence occurring within the U.S.

3) U.S. Attorney's Offices for use in coordination with state victim compensation and assistance efforts in providing emergency relief to victims of terrorist acts or mass violence occurring within the U.S.

b. Offset Fluctuations in Fund. The OVC director may also use the reserve fund to offset fluctuations in Fund deposits for state compensation and assistance programs in years in which the Fund decreases and additional monies are needed to stabilize programs.

3. Grant Period. Federal legislation passed in 1996 also makes victim compensation grant funds available for expenditure throughout the FFY of award as well as in the next three fiscal years. The FFY begins on October 1 and ends on September 30. State crime victim compensation

programs may pay compensation claims retroactively from October 1, even though the VOCA grant may not be awarded until later in the grant period.

**4. Grant Deobligations.** Funds not obligated by the end of the grant period, up to a total of \$500,000, will be returned to the Fund. Once any portion of a state's grant is returned to the Fund, the funds must be redistributed according to the rules established by VOCA and the Final Program Guidelines, so states are encouraged to monitor closely the expenditure of VOCA funds throughout the grant period.

### **C. Administrative Costs**

**1. Purpose of Administrative Cost Allowance.** Since FFY 1995, the VOCA has allowed up to five percent of crime victim compensation grant funds to be used for administering the state crime victim compensation grant program(s). It is in the state's discretion to use the allowable five percent for program administration. However, any part of the allowable five percent which is not used for administrative purposes must be used for awards of compensation to crime victims.

The intent of this provision of VOCA is to support and advance program administration in all operational areas including claims processing, staff development and training, public outreach, and program funding by supporting those activities that will improve program effectiveness and service to crime victims. If a state elects to use up to five percent of their VOCA compensation grant for administrative purposes, only those costs directly associated with administering the program, enhancing overall program operations such as training and public outreach regarding eligibility requirements and available benefits, and ensuring compliance with federal requirements, can be paid with limited administrative grant funds. Further, states must certify that VOCA funds used for administrative purposes will not be used to supplant state or local funds but will be used to increase the amount of state funds that are available for administering the compensation program. For

the purpose of establishing a baseline level of effort, states should maintain documentation as to the overall administrative commitment of the state prior to their use of VOCA administrative grant funds.

**2. Allowable Costs.** Allowable administrative costs include but are not limited to the following: program personnel, salary and benefits; travel costs for attendance at state, regional, and national compensation training conferences; computer equipment and support services; audit costs; costs involved in the production and distribution of program brochures and posters, and other program outreach activities; professional fees for computer services and peer review of compensation claims; agency membership dues for victim compensation organizations; program enhancements such as toll-free numbers; special equipment and materials to facilitate service to persons with disabilities, and other reasonable costs directly related to administering a compensation program.

The following activities impact the delivery and quality of compensation services to crime victims throughout the state and, thus, can be supported by administrative funds:

- a. Improving coordination efforts on behalf of crime victims with other OJP Offices and Bureaus and with federal, state, and local agencies and organizations;
- b. Providing training on crime victim compensation program issues such as application and eligibility requirements and range of compensable expenses, to state, public, and nonprofit organizations that serve or assist crime victims such as law enforcement officials, victim witness coordinators, corrections personnel, social service workers, victim service providers, and mental health and medical professionals;
- c. Purchasing, printing, and/or developing applications, brochures and other relevant publications such as training manuals which

describe the compensation application process, eligibility criteria, and range of benefits, available for crime victims;

d. Developing protocols, policies, and procedures that promote coordination of victim compensation and victim assistance services and improve the ways crime victims are treated and served; and

**3. Salary Costs.** Staff supported by administrative funds under the VOCA crime victim compensation grant must work directly for the compensation program in the same proportion as their level of support from VOCA grant funds. If the staff have other functions, the proportion of time working on the compensation program must be documented using some reasonable method at regular intervals such as time and attendance records on all funded staff which demonstrate the portion of staff time spent on compensation related activities. The documentation must provide a clear audit trail for the expenditure of grant funds.

Only staff activities directly related to compensation functions can be funded with VOCA administrative funds. Similarly, any equipment purchases or other expenditures charged to the VOCA compensation grant should only be charged proportionate to the percentage of time utilized by the compensation program.

Temporary or periodic personnel support, such as qualified peer reviewers for medical and mental health claims, and data processing support services are also allowable. These services may be obtained through contract using VOCA administrative funds.

**4. Requirement to Notify OVC of Use of Administrative Funds.** Those states that elect to utilize administrative funds under the VOCA compensation grant, are required to include with their annual application the following information:

a. The amount of the total grant that will be used for program administration;

b. An itemization of the state's projected expenditures and a general description of the activities that will be supported;

c. How these activities will improve the administration of the VOCA program and/or improve services to crime victims.

A state may modify projections set forth in their application by providing OVC a revised description of their planned use of administrative funds : writing, subsequent to submitting their annual application. However, the revised description must be reviewed prior to the obligation of any federal funds. Failure to notify OVC of modifications will prevent the state from meeting its obligation to reconcile its State-wide Report with its Final Financial Status Report.

#### **D. Application Process**

**1. Application for Federal Assistance.** Each year, OVC issues to each eligible state a Program Instruction and Application Kit, which contains the necessary forms and detailed information required to make application for VOCA crime victim compensation grant funds. The amount for which each state may apply is included in the Application Kit. States shall use the Standard Form 424, Application for Federal Assistance, and its attachments to apply for VOCA victim compensation grant funds. Applications for VOCA crime victim compensation grants may only be submitted by the state agency designated by the Governor to administer the VOCA grant.

Completed applications must be submitted on or before the stated deadline, as determined by OVC. If an eligible state fails to apply for its crime victim compensation allocation by the prescribed deadline, OVC will redistribute federal VOCA crime victim compensation dollars to the VOCA victim assistance grant program as provided by Section 1404(a)(1) of VOCA (42 U.S.C. 10603 (a)(1)), assuming all states have received the statutorily prescribed 40% (percent) of their prior years payouts.

**2. Required Attachments to Application.** In addition to submission of the Application for Federal Assistance, states shall submit the following information:

- a. A description of their arrangements for complying with the audit provisions of Circular A-133, as amended.
- b. Certifications Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters; Drug-Free Workplace requirements; Civil Rights Compliance, and any other certifications required by OJP and OVC. Additionally, states must complete a disclosure form specifying any lobbying activities that are conducted.
- c. Crime Victim Compensation Eligible State Payments Certification Form which is furnished by OVC. The amount certified on this Form is used by OVC to determine the annual federal grant award to each eligible state in the following year. This form must be completed and signed by the authorized individual within the agency designated by the Governor to administer the VOCA crime victims compensation grant. For further information concerning the state certification, see the Program Requirements section.
- d. An assurance that the program will comply with all applicable nondiscrimination requirements;
- e. An assurance that in the event a federal or state court or federal or state administrative agency makes a finding of discrimination after a due process hearing, on the grounds of race, color, religion, national origin, sex, or disability against the program, the program will forward a copy of the finding to the Office of Justice Programs, Office for Civil Rights (OCR);
- f. The name of the civil rights contact person who has lead responsibility for ensuring that all

applicable civil rights requirements are met and who shall act as liaison in civil rights matters with OCR;

g. An assurance that programs will maintain information on crime victims receiving services by race, national origin, sex, age, and disabilities, where such information is voluntarily furnished by claimants. A state may, at its discretion, use the following language when soliciting claimant responses: "The submission of information regarding race/ethnic background or disabilities is strictly voluntary. A decision to not supply this information will not affect your eligibility for compensation benefits information. However, this information is important. We use it to study the extent to which members of minorities and persons with disabilities are recipients of compensation benefits and to determine the extent to which outreach efforts should be enhanced to ensure access and services to these populations."

h. A copy of the state statute authorizing the state's crime victim compensation program.

**3. Enrollment in Automated Clearing House.** In addition to yearly submission of the grant application and the above-mentioned information and assurances, states must be enrolled in the automated clearing house (ACH) so that the U.S. Department of Treasury can electronically transfer the VOCA victim compensation grant directly to the grantee's banking institution. States that are new award recipients, or those that have previously received funds in the form of a paper check from the U.S. Treasury, must enroll in the Treasury Department's ACH Vendor Express program before requesting any federal funds. This means that VOCA grantees can no longer receive drawdowns against their awards via paper check mailed from the Treasury. Grant recipients must enroll in ACH for Treasury to electronically transfer drawdowns directly to their banking institutions. States that are currently on the Letter of Credit Electronic Certification System (LOCES) will be automatically enrolled in the ACH program. Enrollment in ACH need only be completed once.



### III. Program Requirements

#### A. State Eligibility Criteria

The fundamental criteria for eligibility is the grantee must be an operational state-administered crime victim compensation program. The term "state" includes the District of Columbia, the Virgin Islands, and any other possession or territory of the United States. Although an authorized program that has not actually paid out compensation benefit would be technically eligible under Section 1403(b)(1) of VOCA, the program would not be entitled to a VOCA grant because it had not awarded any benefits that could be matched under Section 1403(a)(1). VOCA compensation grant funds may not be used as "start-up" funds for a new state program.

Section 1403 of VOCA prescribes the conditions and eligibility criteria related to crime victim compensation grants. In order for a state to meet or maintain eligibility for a crime victims compensation grant, it must satisfy the following eligibility requirements:

**1. State Operated Compensation Program for Victims.** The program must be operated by a state and offer compensation to victims and survivors of victims of "compensable crimes," including crimes involving terrorism, drunk driving, and domestic violence. The Amendments to VOCA contained in the Antiterrorism Act of 1996 gives states until April 24, 1997 (FFY 1998 grant application) to come into compliance with the new eligibility conditions for receiving federal VOCA compensation grants.

The term "compensable crime" means a crime, the victims of which are eligible for compensation under the state's eligible crime victim compensation program statute or rule. The range of expenses for which states may award crime victims compensation varies nationwide, although all states must award compensation for medical expenses, including mental health counseling and care; loss of wages; and funeral expenses.

**2. Means Testing.** The Antiterrorism Act prohibits any federal, state, or local government program that uses federal funds from including victim compensation benefits when determining income eligibility for an applicant, if the applicant needs such assistance (medical or otherwise), in full or in part, because of the commission of a crime against the applicant.

**3. Prohibition Against Awarding Compensation to Those Delinquent in Paying Federal Criminal Fines.** The Antiterrorism Act prohibits states from awarding victim compensation benefits to any person convicted of a federal crime who is delinquent in paying a fine, monetary penalty, or restitution imposed for the offense.

This provision, however, will not become effective until the U.S. Attorney General and the Director of the Administrative Office of the U.S. Courts issue a written determination that the entities administering federally-funded victim compensation programs have access to accurate and efficient criminal debt payment tracking information. As of this date, no such determination has been made, and states are under no obligation to investigate or make determinations on whether a victim owes a federal criminal debt, before awarding compensation benefits.

**4. Victim Cooperation with Law Enforcement.** Encouraging victims to cooperate with law enforcement and to report the crime is important to the effective functioning of the criminal justice system and to preventing further victimization.

Although state crime victim compensation programs maintain the authority and discretion to establish their own standards for "reasonable cooperation," OVC encourages state compensation program staff to meet with victims and advocates to carefully review whether state statutes and state program guidelines and policies are responsive to the needs of crime victims and to determine possible barriers that might impede a victim's cooperation with law enforcement.

Possible impediments include compelling health or safety reasons, such as apprehension regarding personal safety, fear of retaliation, and intimidation by the offender or others. For example, some victims may be reluctant to cooperate fully with law enforcement after receiving threats of violence or even death against themselves and their children from the offender.

Age, psychological, cultural, or linguistic barriers may also influence the extent of victim cooperation with law enforcement. For instance, there may be special barriers deterring a young child or senior citizen from complying fully with law enforcement. Embarrassment and shame may delay the reporting of sexual assault, and cultural and language differences may diminish a victim's access to the criminal justice system.

In setting the standard for victim cooperation with law enforcement, the state program should determine how much weight to give to these considerations.

VOCA's "cooperation with the reasonable requests of law enforcement" requirement may be fulfilled by utilizing the following criteria or any other criteria the state believes is necessary to encourage victim cooperation with law enforcement. For example, a state may:

- a. Require a victim to report the crime to a law enforcement agency;
- b. Require a victim to report the crime to an appropriate governmental agency, such as child and/or adult protective services, family court, or juvenile court; or
- c. Accept proof of the completion of a medical evidentiary examination, such as medical reports, x-rays, medical photographs, as well as other clinical assessments as evidence of cooperation with law enforcement in cases involving sexual assault or abuse.

**5. Nonsupplantation.** The state must certify that grants received under this section will not be used

to supplant state funds otherwise available to provide crime victim compensation or to administer the state crime victim compensation program.

The nonsupplantation provision is intended to assure that states use VOCA funds to augment, not replace, otherwise available state funding for crime victim compensation. More specifically, the states may not decrease their financial commitment to crime victim compensation solely because they are receiving VOCA funds for the same purpose.

**6. Compensation for Residents Victimized Outside Their Own State.** The state must provide compensation to residents of the state who are victims of crimes occurring outside the state, if the crimes would be compensable had they occurred inside that state; and the crimes occurred in a state not having an eligible crime victim compensation program, or occurred outside the U.S. (If the compensable crime is terrorism as defined in Section 2331 of title 18 of the U.S. Code). The state must make these awards according to the same criteria used to make awards to those who are victimized while in the state.

This provision is intended to cover those residents of a state who are victimized in a state which does not have an eligible crime victims compensation program for which the victim qualifies. In such instances, the victim would be eligible to apply for crime victim compensation from the State in which he or she resides.

**7. Compensation for Non-residents of a State.** The state must make compensation awards to victims who are non-residents of the state according to the same criteria used to make awards to victims who are residents of such state.

Eligibility for VOCA funds requires the state program to extend its coverage to all non-residents victimized in the state. Note: For the purposes of this provision, the term "non-resident" must, at a minimum, include anyone who is a resident in one

state but victimized in another. A state may, at its discretion, broaden its definition of non-resident to include anyone victimized in the state regardless of whether the victim is a United States resident.

This provision is intended to ensure that non-residents of a state, who are victimized in a state that has an eligible compensation program, are provided the opportunity to apply for and receive the same compensation benefits that are available to residents of the state. The provision of reciprocal agreements with certain other states will not suffice to meet these criteria.

**8. Victims of Federal Crime.** The state must provide compensation to victims of federal crimes occurring within the state on the same basis that such program provides compensation to victims of state crimes.

For example, a victim of a rape, occurring on a federal installation or Indian reservation inside the state, must be afforded the same benefits that would be available to the victim if the rape were classified as a crime against the state. This provision is intended to cover those individuals victimized on military installations, national parks and highways, Native American reservations, and under other circumstances where Federal jurisdiction exists since there is no federal compensation program which provides benefits to victims covered under federal jurisdiction.

**9. Unjust Enrichment.** Except pursuant to rules issued by the compensation program to prevent unjust enrichment of the offender, the state cannot deny compensation to any victim because of that victim's familial relationship to the offender, or because of the sharing of a residence by the victim and the offender.

Unjust enrichment, as the basis for denying crime victims compensation, must be based upon written rules issued by the state crime victims compensation program. "Rules" mean either written policies or directives developed and distributed by state crime victim compensation programs or rules adopted by legislative or

administrative bodies. Such rules cannot have the effect of denying compensation to a substantial percentage of domestic violence victims. The rules relating to unjust enrichment should be applicable to all claims for compensation although it is recognized that domestic violence cases have the greatest potential for unjust enrichment.

In general, programs must balance the goals of making compensation benefits available to victims and preventing unjust enrichment of offenders. State programs are strongly encouraged to work with domestic violence coalitions and representatives to this end.

In developing rules, the states are encouraged to consider the following:

a. Legal responsibilities of the offender to the victim under the laws of the state and collateral resources available to the victim from the offender. For example, legal responsibilities may include court-ordered restitution or requirements for spouse and/or family support under the domestic or marital property laws of the state. Collateral resources may include insurance or pension benefits available to the offender to cover the costs incurred by the victim as a result of the crime. However, as with other crimes, victims of domestic violence should not be penalized when collateral sources of payment are not viable, e.g., when the offender refuses to, or cannot, pay restitution or other civil judgments within a reasonable period of time or when the offender otherwise impedes direct or third party (i.e., insurance) payments.

b. Payments to victims of domestic violence which benefit offenders in only a minimal or inconsequential manner would not be considered unjust enrichment. To deny payments, in some instances, could serve to further victimize the claimant. For example, denial of medical or dental expenses solely because the offender has legal responsibility

for the charges, but is unwilling, or unable to pay them, could result in the victim's inability to receive treatment.

c. Consultation with social services and other concerned governmental entities, as well as with private organizations that support and advocate on behalf of domestic violence victims.

d. The special needs of child victims of criminal violence especially when the perpetrator was the parent who may or may not have lived in the same residence.

**10. Other Information Requested by the OVC Director.** The state must provide such other information and assurances as the Director of OVC may reasonably require.

**11. Payor of Last Resort.** When a victim is eligible to receive benefits from a federal program or federally financed state or local program, such as Medicaid, the state compensation program shall not pay the costs that the federal or federally financed programs covers. Additionally, the federal or federally financed program shall make its payments without regard to the existence of the crime victim compensation program. The compensation program is the payor of last resort with regard to federal or federally financed programs.

OVC encourages state grantees to coordinate their VOCA assistance and compensation activities to ensure a continuum of services for crime victims. Coordination may include activities such as: planning meetings; training activities for direct service providers on the general parameters of the state compensation agency's program (e.g., eligibility criteria, completion of claims, and time frames for receiving compensation); providing information on VOCA-funded victim assistance services within the state; and developing joint guidance, where applicable, on third-party payments to VOCA assistance organizations.

OVC also requires state grantees to coordinate their activities with the Victim/Witness Coordinator staff

within U.S. Attorney Offices to ensure that the Coordinators are aware of available resources for victims of federal crime.

**B. State Certifications.** Guidelines on amounts to be included as well as amounts to be excluded in a state's certification of payments of crime victims compensation from state funding sources are furnished below:

**1. Program Revenue.** States must report on the certification form all sources of state revenue available to the crime victims compensation program during the Federal Fiscal Year. In some instances, funds are made available to the crime victims compensation program from other departments or agencies, from supplemental appropriations, donations, or unspent funds carried over from prior years. All state funds which are available during the Federal Fiscal Year should be reported. The amount of certified revenue, excluding VOCA funds, but including all other sources, including carried over funds, must meet or exceed the amount of certified payments to crime victims.

**2. Amounts to Be Included.** The total amount to be certified by the state program must include only those amounts paid from state funding sources to or on behalf of crime victims during the Federal Fiscal Year (October 1 to September 30).

**3. Compensable Expenses.** The range of expenses for which states may award crime victims compensation varies nationwide, although all states must award compensation for medical expenses, including mental health counseling and care; loss of wages; and funeral expenses. Note: The term "medical expenses" includes, to the extent provided under the state crime victim compensation program statute, expenses for eyeglasses and other corrective lenses; dental services, devices, and prosthetic devices; and for services rendered in accordance with a method of healing recognized by the law of the state. "Mental health counseling and care" means the assessment, diagnosis, and treatment of an individual's mental and emotional functioning that

is required to alleviate psychological trauma resulting from a compensable crime. Such intervention must be provided by a person who meets such standards as may be set by the state for victim mental health counseling and care.

Compensable expenses to be included in the annual certification must be authorized by state statute or rule, providing there is rule making authority in state law. States may include expenses, not specifically identified in VOCA, such as pain and suffering; crime scene clean up; replacement costs for clothing and bedding held as evidence; annuities for child victims for loss of support; medically-necessary building modification; medically-necessary devices; and attorney fees related to a victim's claim for compensation.

States may also include payments related to forensic sexual assault examinations, even if the victim did not report the crime to law enforcement if such payments are made from funds administered by the compensation program and are allowable under the state's statute or administrative rules.

**4. Amounts to Be Excluded.** States must exclude, in the certification, VOCA grant funds, compensation for property losses or property damage, audit costs, personnel costs, and any other program administrative costs.

**5. Applicable Credits.** Any "applicable credits" must be deducted from the state certification. The term "applicable credits" refers to those receipts or reduction of expenditures, which offset or reduce expense items that are allocable to a particular crime victim compensation claim. Typical examples of applicable credits in state crime victims compensation programs include funds received through a state's subrogation interest in a claimant's civil law suit recovery, restitution, refunds, or other reimbursements. Refunds include amounts from overpayment, erroneous payments made to claimants, uncashed checks, etc. Additional guidance regarding applicable credits can be found in OMB Circular A-87, "Cost Principles for State and Local Governments."

States must determine how to account for both the receipt and expenditure of restitution and refunds. Note: A state is not required to reduce its certified payment figure by the amount of restitution recoveries received by the state which are not directly related to the payment of crime victim compensation benefits, nor when such reimbursements were from payments to victims prior to receiving a VOCA award.

**6. Recovery Costs.** Salary costs for personnel directly involved in recovery efforts which are directly attributable to the recovery of restitution, refunds, and other reimbursements, may be offset against the amount of income received from such reimbursement. Expenses shall be limited to the percentage of those salaries incurred by the state for employees whose primary responsibilities (not less than 75 percent of their time) are directly and specifically related to recovering restitution and other reimbursements. Recovery costs can not be claimed for employees whose salary is derived from federal administrative grant funds.

**7. Source of Payments to Crime Victims.** There is no financial requirement that state compensation programs identify the source of individual payments to crime victims as either federal or state dollars, nor is there any requirement that restitution recoveries or other refunds be tracked to federal or state dollars paid out to the victim.

**C. Incorrect Certifications.** If it is determined that a state has made an incorrect certification of payments of crime victims compensation from state funding sources and a VOCA crime victim compensation grant is awarded in error, one of the following two courses of action will be taken:

**1. Over Certification.** In the event that an over certification comes to the attention of OVC or the Office of the Comptroller, OJP, the necessary steps will be taken to recover funds which were awarded in error. OVC does not have the authority to permit states to keep amounts they were not entitled to as a result of overcertification.

2. **Under Certification.** If a state under-certifies amounts paid to crime victims, OVC will not supplement payments to the state in a subsequent year to correct the state's error. Once OVC awards funds in a given FFY, there are no excess funds available to remedy errors of this nature.

**D. Program Reporting Requirements. Annual Performance Report.** States receiving VOCA crime victims compensation grant funds are required to submit an Annual Performance Report that is provided by OVC. The Report requests specific information about claims for compensation, such as types of crimes compensated, including terrorism, drunk driving and domestic violence, disposition of claims, payments for compensable expenses, and use of administrative and training funds. The Performance Report covers the Federal Fiscal Year ending September 30 and is due to OVC by December 30 of the same year.

#### E. Additional Requirements

1. **Civil Rights - Prohibition of Discrimination for Recipients of Federal Funds.** No person in any state shall, on the grounds of race, color, religion, national origin, sex, or disability be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or denied employment in connection with any program or activity receiving federal financial assistance, pursuant to the following statutes and regulations: Section 809(c), Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. 3789d, and Department of Justice Nondiscrimination Regulations, 28 CFR Part 42, Subparts C, D, E, and G; Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, *et seq.*; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794; Subtitle A, Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. 12101, *et seq.*; and Department of Justice regulations on disability discrimination, 28 CFR Part 35 and Part 39; Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681-1683; and the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101, *et seq.*

2. **Confidentiality of Research Information.** Except as otherwise provided by law, no recipient of monies under VOCA shall use or reveal any research or statistical information gathered under this program by any person, and identifiable to any specific private person, for any purpose other than the purpose for which such information was obtained, in accordance with VOCA. Such information, and any copy of such information, shall be immune from legal process and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceeding. [See Section 1407(d) of VOCA, codified at 42 U.S.C. 10604(d)].

This provision is intended, among other things, to assure the confidentiality of information provided by crime victims to employees of VOCA-funded victim compensation programs. However, there is nothing in VOCA or its legislative history to indicate that Congress intended to override or repeal, in effect, a state's existing law governing the disclosure of information, which is supportive of VOCA's fundamental goal of helping crime victims. For example, this provision would not act to override or repeal, in effect, a state's existing law pertaining to the mandatory reporting of a suspected child abuse. See Pennhurst State School and Hospital v. Halderman, et al., 451 U.S. 1 (1981).

#### IV. Financial Requirements

As a condition of receiving a grant, states agree to insure adherence to the general and specific requirements as set forth in the "OJP Financial Guide" and applicable OMB Circulars and Common Rules. This includes the maintenance of books and records in accordance with generally accepted government accounting principles. States further agree to identify their state fiscal year and federal cognizant audit agency. This section describes the payment of grant funds, termination of advanced funding; financial status reports, and audit requirements.

**A. Audit Responsibilities for States.** State compensation programs that expend \$300,000 or more in federal financial assistance within the state's fiscal year are required to have an audit in accordance with OMB Circular A-133, as amended. State and local governments expending less than \$300,000 in their fiscal year are exempt from audit requirements. This rule is effective for all fiscal years that began on or after July 1, 1996.

**B. Audit Costs.** Although under OMB Circular A-133 audit costs are generally allowable charges under federal grants, audit costs incurred at the grantee level are determined to be an administrative expense and may be paid with the allowable five percent for administration. Any of the VOCA grant monies used for administrative purposes cannot be included in the state-certified payout.

**C. Financial Status Report for States.** Financial Status Reports (269A) are required from all state agencies. A Financial Status Report shall be submitted to the Office of the Comptroller for each calendar quarter in which the grant is active. This Report is due even when no obligations or expenditures were incurred during the reporting period. Financial Status Reports shall be submitted to the Office of the Comptroller, by the state, within 45 days after the end of each calendar quarter. Calendar quarters end March 31, June 30, September 30, and December 31. A Final Financial Status Report is due 120 days after the end of the VOCA grant, no later than January 31.

**D. Termination of Advance Funding.** If the state grantee receiving cash advances by direct Treasury deposit demonstrates an unwillingness or inability to establish procedures that will minimize the time elapsing between cash advances and disbursements, OJP may terminate advance funding and require the state to finance its operations with its own working capital. Payments to the state will then be made to the state by the ACH Vendor Express method to reimburse the grantee for actual cash disbursements. It is essential that the grantee organization maintain a minimum of cash on hand and that drawdowns of cash are made only when necessary for disbursements.

## V. Monitoring

**A. Office of the Comptroller/General Accounting Office/Office of the Inspector General.** The Office of the Comptroller, the General Accounting Office, and the Office of the Inspector General conduct periodic reviews of the financial policies and procedures and records of VOCA state grantees. Therefore, upon request, states must give authorized representatives the right to access and examine all records, books, papers, case files, or other documents related to the grant.

**B. Office for Victims of Crime.** OVC conducts on-site monitoring in which each state grantee is visited a minimum of once every three years. While on site, OVC personnel will review various documents and files such as (1) financial and program manuals and procedures governing the crime victim compensation grant program; (2) financial records, reports, and audit reports for the state grantee; (3) the state's compensation application, procedures, and guidelines for awarding compensation benefits; (4) a random sampling of victim compensation claim files; and (5) all other applicable state records and files.

## VI. Suspension and Termination of Funding

If, after notice to the grantee, OVC finds that a state has failed to comply substantially with VOCA, the OJP Financial Guide (effective edition), the Final Program Guidelines, or any implementing regulation or requirement, OVC may suspend or terminate funding to the state and/or take other appropriate action. Under the procedures of 28 CFR Part 18 (7-1-96-Edition), states may request a hearing on the justification for the suspension and/or termination of VOCA funds.





Alternative Justice in Indian Country:  
*Indigenous Restorative Principles Lead the  
Way to a More Meaningful Approach to  
Handling Victim Cases*

Ada Pecos Melton

Tulsa, Oklahoma 1999



## 7<sup>th</sup> Indian Nations Conference

### **"Alternative Justice in Indian Country: *Indigenous Restorative Justice Principles Lead the Way to a More Meaningful Approach to Handling Victim Cases*"**

**Ada Pecos Melton**

#### **Learning Objectives:**

1. To provide information on the differences between indigenous justice systems and adversarial justice systems and the mainstream society's notion of restorative justice.
2. To provide information on ways indigenous concepts of law, justice and approaches can be used to address child victimization cases.
3. To understand the weaknesses and challenges of using indigenous systems.

This presentation will provide information to discuss the historical foundations of indigenous justice systems and understand the ways in which these systems can be used in handling violence against Indian children, youth and families and to discuss the problems, strengths, barriers and possible solutions for using indigenous approaches, traditions and sanctions in contemporary times.

Tulsa, Oklahoma 1999





# OJJDP FACT SHEET

Shay Bilchik, Administrator

April 1999 #105

## Training and Technical Assistance for Indian Nation Juvenile Justice Systems

by Ada Pecos Melton and Elizabeth Bird

### Background

Due to the unique government-to-government relationship the United States has with Indian Nations, the Federal government and its agencies have an important role to play in assisting Indian Nations to address youth crime, violence, and victimization in their communities. In response to the rise in American Indian juvenile crime, violence, and victimization, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) funded four Indian Nations between fiscal years (FY's) 1992 and 1995 to develop culturally relevant community-based programs to address the needs of young Indian offenders and their families. Additionally, OJJDP funded a technical assistance program to assist Indian Nations in the design, development, and implementation of such programs. The experience of this initiative has provided OJJDP with insight into the needs and problems that Indian governments and communities face in dealing with juvenile delinquency, violence, and victimization.

### Purpose

The success of this initiative resulted in an expansion of technical assistance by OJJDP in FY 1996. As a result, OJJDP funded a 3-year training and technical assistance program seeking to increase the capacity of Indian Nations to provide adequate and appropriate juvenile justice responses to youth crime, violence, and victimization. The goal of this ongoing technical assistance program is to help equip Indian Nation governments with the necessary information and tools to develop or enhance comprehensive, systemwide approaches to reduce juvenile delinquency, violence, and victimization and increase the safety of their communities.

### American Indian Development Associates

In FY 1997, American Indian Development Associates (AIDA) was awarded a 3-year cooperative agreement to provide training and technical assistance to American Indian and Alaskan Native governments to develop or enhance their juvenile justice systems. Under the cooperative agreement, AIDA is working to

develop a more comprehensive approach to address juvenile delinquency, violence, and victimization in Indian communities. AIDA delivers training and technical assistance in the context of the complex and varying relationships that Indian Nations have with local and State governments and the Federal government. Equipped with this understanding, AIDA provides training and technical assistance that supports a cooperative and collaborative approach by each of these levels of government to address the needs of Indian youth and their families.

AIDA provides assistance at the request of Indian Nation governments and agencies that serve Indian Nations and Indian youth and families. Once technical assistance requests are categorized, reviewed, and approved, AIDA develops a comprehensive training and technical assistance delivery plan. A primary goal of all training and technical assistance is to aid communities in developing culturally appropriate and effective ways of dealing with problems faced by Indian youth and their families. Technical assistance is delivered through onsite visits, telephone consultations, and regional training seminars. Technical assistance has included:

- ◆ Juvenile justice and detention needs assessments and program reviews.
- ◆ Seminars on comprehensive juvenile justice planning.
- ◆ Policy and procedure development for coordinated service delivery and referral systems.
- ◆ Development of community-based alternatives to incarceration.
- ◆ Training on indigenous justice approaches and processes to handle juvenile delinquency cases.
- ◆ Training on qualitative data collection and analysis to obtain community perspectives on juvenile delinquency, violence, and victimization.
- ◆ Training and competency development of juvenile justice practitioners, administrators, and tribal leaders in juvenile justice management and probation systems.

## For Further Information

For further information regarding available technical assistance, contact Bob Hubbard, OJJDP Program Manager, 202-616-3567; or Ada Pecos Melton, President, American Indian Development Associates, 2401 12th Street NW., Suite 212, Albuquerque, NM 87104, 505-842-1122 (phone); 505-842-9652 (fax); aidainc@flash.net (e-mail).

Ada Pecos Melton is the President of American Indian Development Associates (AIDA). Elizabeth Bird is the Program Manager for AIDA.

*The Office of Juvenile Justice and Delinquency Prevention is a component of the Office of Justice Programs, which also includes the Bureau of Justice Assistance, the Bureau of Justice Statistics, the National Institute of Justice, and the Office for Victims of Crime.*

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Fact Sheet



PRESORTED STANDARD  
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## OVERVIEW OF JUSTICE ISSUES FOR INDIAN PEOPLE

Justice issues for Indian Nations are based in the struggle to find a balance between the demands of the Federal government and the needs of the community. The demands of the Federal government fall into two categories: Federal standards of justice and Federal funding of Indian government including judicial programs. The needs of Indian Nations are threefold: financing for Indian programs, providing for systems that ensure justice and resolve conflict, and ensuring that the Indian customary or traditional mores and values are included in the administration of justice. As one can see, there is a great deal of opportunity for conflict and contradiction for Indian Nations as they wrestle with the administration of justice in their communities.

Culturally there are a number of issues that arise in the administration of justice. Indian Nations were relatively free to administer justice within the mores and values of the Indian culture prior to 1968. With a series of Supreme Court cases indicating that the provisions of the U.S. Bill of Rights do not apply to Indian governments and courts, Indian Nations could use traditional dispute resolution processes and handle criminal cases under traditional or customary law. But in 1968, Congress passed the Indian Civil Rights Act (ICRA), 25 U.S.C.A. §§ 1301-13032 (1968, Suppl. 1986), which made certain provisions of the U.S. Bill of Rights applicable to Indian court proceedings. As a result, there were many concerns that the imposition of American standards of due process and other judicial notions would place traditional Indian jurisprudence in jeopardy. The ICRA amended P.L. 83-280, in that it required states to obtain tribal consent before assuming jurisdiction over Indians in Indian Country. As a result of the ICRA, cases such as *In re Gault* in which juvenile delinquents were entitled to many of the same rights as adult defendants must be filtered through the ICRA to be applicable in tribal settings.

For the Pueblos of New Mexico, for example, ICRA represented a major threat to the traditional Indian court. Concerns were that certain aspects of the ICRA, especially the clauses relating to religion, jury trials, and right to counsel would cause a disruption in the centuries old methods of maintaining community harmony. Additionally, aspects of the statutory law that have been refined through decades of court decisions also posed a threat to traditional justice systems. Due process and equal protection are concepts that have been defined by the American court system. Important questions arise, such as does the ICRA include the various interpretations that the federal courts have concluded or are the Indian Nations free to apply Indian traditional law to develop their own definitions of the provisions in the ICRA? Examples would include the application of what constitutes due process in an Indian Nation court and a federal or state court. These issues were very threatening to the Indian Nations who have strong traditional bases for

the administration of justice that are drastically different from the those that govern state and federal courts.

In recent years, Indian Nations have been increasingly concerned with the rising number of violent crimes resulting in some type of victimization occurring in their communities. Violent crimes range from misdemeanor assault and battery, to serious criminal and delinquent offenses such as domestic violence, child abuse, aggravated assault and gang-related offenses; to violent felony crimes such as assault with a deadly weapon, drive-by shootings, sexual assaults, child sexual abuse, and homicides. While all the problems and issues victims face have not been clearly identified or examined there are many indicators that validate the concerns of Indian Nation governments. A 1999 report on American Indians and Crime prepared by the Bureau of Justice Statistics (BJS) provide the following insights into victimization experienced by American Indians. The BJS data was derived from American Indian households throughout the U.S. in urban, rural, reservation and off-reservation settings.

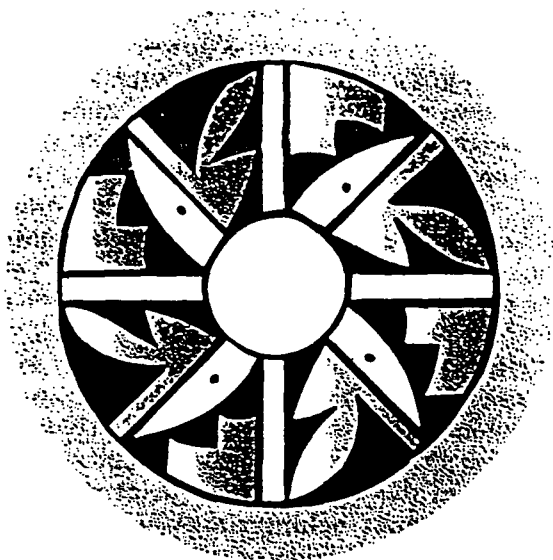
- Although American Indians and Alaska Natives represent less than one percent (2.3 million) of the U.S. population, American Indians are victimized by violent crime at a rate more than twice that of the general U.S. population.
- At least 70% of violence experienced by American Indians is committed by persons not of the same race, a substantially higher rate of interracial violence than experienced by white or black victims.
- Violence against Indian women is particularly severe in that it is nearly 50% higher than that reported by black males. American Indians suffered seven rapes or sexual assaults per 1,000 compared to three per 1,000 among blacks two per 1,000 among whites, and one per 1,000 among Asians.
- Nearly a third of all American Indian crime victims were between the ages of 18 and 24 years old. This group experienced the highest per capita rate of violence by any racial group.
- In 55% of violent crimes against American Indians, the victims reported the offender was under the influence of alcohol, drugs or both.
- The arrest rate among American Indians for alcohol related offenses in 1996 was more than double of that among all races.
- An estimated 63,000 American Indians, about four percent age 18 or older are under the care, custody or control of the criminal justice system on an average day. At the end of 1996, about 16,000 American Indians were held in local jails, a rate of 1,083 per 100,000 adults, the highest of any racial group. Over 65% of the youth in Federal custody are Indian youth.

The above data provides an understanding of the magnitude of crime victimization problems faced by Indian people of all ages. Many Indian Nations are limited in resources to adequately respond to the problems and to identify the gaps in services to victims, and how to effectively



hold offenders accountable for their actions and obligations to victims and the community. Victims of crime, and often their families and friends, undergo a traumatic experience and disruption in their lives as a result of the crime inflicted upon them. Sometimes the trauma is exacerbated by the way they are treated by the tribal police and tribal justice system, which may appear to victims to be uncaring, insensitive institutions that have no interest in addressing their need for redress and safety and ensuring their rights. Important aspects of victim empowerment are for victims to be in control of their healing and for tribal institutions, such as tribal courts to be visibly and affirmatively engaged in addressing victim issues and needs.





## Indigenous justice systems and tribal society

*Indigenous justice systems are based on a holistic philosophy. Law is a way of life, and justice is a part of the life process.*

*by Ada Pecos Melton*

In many contemporary tribal communities, dual justice systems exist. One is based on what can be called an American paradigm of justice, and the other is based on what can be called an indigenous paradigm.

The American paradigm has its roots in the world view of Europeans and is based on a retributive philosophy that is hierarchical, adversarial, punitive, and guided by codified laws and written rules, procedures, and guidelines.<sup>1</sup> The vertical power structure is upward, with decision making limited to a few. The retributive philosophy holds that because the victim has suffered, the criminal should suffer as well. It is premised on the notion that criminals are wicked people who are responsible for their actions and deserve to be punished.<sup>2</sup> Punishment

offer a reduction in future crime or reparation to victims.

In the American paradigm, the law is applied through an adversarial system that places two differing parties in the courtroom to determine a defendant's guilt or innocence, or to declare the winner or loser in a civil case. It focuses on one aspect of a problem, the act involved, which is discussed through adversarial fact finding. The court provides the forum for testing the evidence presented from the differing perspectives and objectives of the parties. Interaction between parties is minimized and remains hostile throughout. In criminal cases, punitive sanctions limit accountability of the offender to the state, instead of to those he or she has harmed or to the community.

The indigenous justice paradigm is based on a holistic philosophy and the

world view of the aboriginal inhabitants of North America. These systems are guided by the unwritten customary laws, traditions, and practices that are learned primarily by example and through the oral teachings of tribal elders.<sup>3</sup> The holistic philosophy is a circle of justice that connects everyone involved with a problem or conflict on a continuum, with everyone focused on the same center. The center of the circle represents the underlying issues that need to be resolved to attain peace and harmony for the individuals and the community. The continuum represents the entire process, from disclosure of problems, to discussion and resolution, to making amends and restoring relationships. The methods used are based on concepts of restorative and reparative justice and the principles of healing and living in harmony with all beings and with nature.<sup>4</sup>

ADA PECOS MELTON is director of the American Indian and Alaskan Native Desk at the Office of Justice Programs, U.S. Department of Justice.

is used to appease the victim, to satisfy society's desire for revenge, and to reconcile the offender to the community by paying a debt to society. It does not

Points of view or opinions expressed in this article are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice.

1. Yazzie, *Life Comes From It: Navajo Justice Concepts*, LEGAL EDUCATION SERIES, ALTERNATIVES IN DISPUTE RESOLUTION AND TRADITIONAL PEACEMAKING (Petaluma, Calif.: National Indian Justice Center, 1993) and Falk, *International Jurisdiction: Horizontal and Vertical Conceptions of Legal Order*, 32 TEMPLE L. Q. 295 (1959).

2. Travis, INTRODUCTION TO CRIMINAL JUSTICE, SECOND EDITION (Cincinnati: Anderson Publishing Co., 1995) and Neubauer, AMERICA'S COURTS AND THE CRIMINAL JUSTICE SYSTEM, SECOND EDITION (Monterey: Brooks/Cole Publishing Company, 1984).

3. Yazzie, *supra* n. 1; Tso, *Decision Making in Tribal Courts*, 31 ARIZONA L. REV. (1989); and Zion, *Searching for Indian Common Law*, in Morse and Woodman, (eds.), INDIGENOUS LAW AND THE STATE (Forum Publications, 1988).

4. Yazzie, *supra* n. 1, at 4.



Tribal Judge Franklin James hugs Tlingit Indian Adrian Guthrie (facing camera). In October 1995, the Snohomish County (Washington) Superior Court sentenced Guthrie and a robbery accomplice to prison after the two spent a year banished to the Alaska wilderness by a tribal court.

Restorative principles refer to the mending process for renewal of damaged personal and communal relationships. The victim is the focal point, and the goal is to heal and renew the victim's physical, emotional, mental, and spiritual well-being. It also involves deliberate acts by the offender to regain dignity and trust, and to return to a healthy physical, emotional, mental, and spiritual state. These are necessary for the offender and victim to save face and to restore personal and communal harmony.

Reparative principles refer to the process of making things right for oneself and those affected by the of-

fender's behavior. To repair relationships, it is essential for the offender to make amends through apology, asking forgiveness, making restitution, and engaging in acts that demonstrate a sincerity to make things right. The communal aspect allows for crime to be viewed as a natural human error that requires corrective intervention by families and elders or tribal leaders. Thus, offenders remain an integral part of the community because of their important role in defining the boundaries of appropriate and inappropriate behavior and the consequences associated with misconduct.

In the American justice paradigm,

separation of powers and separation of church and state are essential doctrines to ensure that justice occurs uncontaminated by politics and religion. For many tribes, law and justice are part of a whole that prescribes a way of life. Invoking the spiritual realm through prayer is essential throughout the indigenous process. Restoring spirituality and cleansing one's soul are essential to the healing process for everyone involved in a conflict. Therefore, separation doctrines are difficult for tribes to embrace; many find it impossible to make such distinctions. Whether this is good or bad is not the point. It is, however, an example of the

resistance of indigenous people to accept doctrines or paradigms that contradict their holistic philosophy of life.

### Law as a way of life

The concept of law as a way of life makes law a living concept that one comes to know and understand through experience. Law, as life, is linked to the elaborate relationships in many tribal communities. In some tribes it is exemplified by tribal divisions that represent legal systems prescribing the individual and kin relationships of members and the responsibilities individual and group members have to one another and to the community.<sup>5</sup> For example, in several Pueblo tribes, one is born into one of two moieties, or tribal divisions, decided by patrilineal lines. A woman can change membership only through marriage, when she joins her husband's moiety. Males generally cannot change their moiety, unless it is done during childhood through adoption or if their mother remarries into the opposite moiety. This illustrates how tribal law becomes a way of life that is set in motion at birth, and continues through an individual's life and death.

The indigenous approach requires problems to be handled in their entirety. Conflicts are not fragmented, nor is the process compartmentalized into pre-adjudication, pretrial, adjudication, and sentencing stages. These hinder the resolution process for victims and offenders and delay the restoration of relationships and communal harmony. All contributing factors are examined to address the underlying issues that precipitated the problem, and everyone affected by a problem participates in the process. This distributive aspect generalizes individual misconduct or criminal behavior to the offender's wider kin group, hence there is a wider sharing of blame and guilt. The offender, along with his or her kinsmen, are held accountable and responsible for correcting behavior and repairing relationships.<sup>6</sup>

### Indigenous systems today

The status of tribes as sovereign nations are both preconstitutional and extraconstitutional. Tribes continue to possess four key characteristics of

their sovereign status: a distinctive permanent population, a defined territory with identifiable borders, a government exercising authority over territory and population, and

the capacity to enter into government-to-government relationships with other nation-states.<sup>7</sup>

The administration of justice, law, and order is a function of government



## Differences in justice paradigms

### **AMERICAN Justice Paradigm**

Vertical

Communication is rehearsed

English language is used

Written statutory law derived from rules and procedure, written record

Separation of powers

Separation of church and state

Adversarial and conflict oriented

Argumentative

Isolated behavior, freeze-frame acts

Fragmented approach to process and solutions

Time-oriented process

Limits participants in the process and solutions

Representation by strangers

Focus on individual rights

Punitive and removes offender

Prescribed penalties by and for the state

Right of accused, especially against self-incrimination

Vindication to society

This figure represents differences noted by Judge Christine Zuni, with additional differences outlined by the author.

5. Connors and Brady, "Alaska Native Traditional Dispute Resolution," paper presented at the National Conference on Traditional Peacemaking and Modern Tribal Justice Systems in Albuquerque, New Mexico. Tribal Justice Center, (1986)  
 "Indian Jurisprudence and Mediation the Indian Way: A Case Review of the Saddle Lake Tribal Justice System," paper presented at the Conference on Mediation in Winnipeg, Manitoba.  
 6. Melton, "Traditional and Contemporary

Tribal Law Enforcement: A Comparative Analysis." Paper presented at the Western Social Science Association, 31st Annual Conference in Albuquerque, New Mexico, (1989).  
 7. Valencia-Weber and Zuni, pre-publication draft, (1995), "Domestic Violence and Tribal Protection of Indigenous Women in the United States." to be published by *St. John's University Law Review*.



## **INDIGENOUS Justice Paradigm**

Holistic

Communication is fluid

Native language is used

Oral customary law learned as a way of life by example

Law and justice are part of a whole

The spiritual realm is invoked in ceremonies and prayer

Builds trusting relationships to promote resolution and healing

Talk and discussion is essential

Reviews problem in its entirety, contributing factors are examined

Comprehensive problem solving

No time limits on the process, long silences and patience are valued

Inclusive of all affected individuals in the process and solving problems

Representation by extended family members

Focus on victim and communal rights

Corrective, offenders are accountable and responsible for change

Customary sanctions used to restore victim-offender relationship

Obligation of accused to verbalize accountability

Reparative obligation to victims and community, apology and forgiveness

retained by the tribes as sovereign nations. It is within this realm that indigenous justice systems exist. Although there have been many efforts to limit the jurisdiction of tribal justice sys-

tems,<sup>8</sup> tribes retain the authority to determine the legal structure and forums to use in administering justice and to determine the relationship of the legal structure with other gov-

8. See, the establishment of the Court of Indian Offenses in 1885; the unilateral imposition of law and order codes in 1884; passage of the Major Crimes Act, 18 U.S.C. §1153 (1885, Supp. 1986); the Indian Country Crimes Act, 18 U.S.C. §1152 (1817); the Assimilative Crimes Act, 30 STAT. 717 (1898); Public Law 83-280, Indians—Criminal Offenses and Civil Causes—State Jurisdiction, 18 U.S.C. §1162, 25 U.S.C. §§1321-1326, 28 U.S.C. §1360; the Indian Civil Rights Act, 25 U.S.C. §1301

1303 (1968, Suppl. 1986); and Supreme Court decisions such as *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191; and *Duro v. Reina, et al.*, 110 S.Ct. 2953.

9. Indian Civil Rights Act, *id.* at 18, imposes certain protections and limitations on tribal authority and as amended in 1986 limits criminal punishment to one year imprisonment and a \$5,000 fine.

10. Major Crimes Act, *supra* n. 8, at 18.

erning bodies. Tribes have personal jurisdiction over their members and non-member Indians, territorial jurisdiction over their lands, and subject-matter jurisdiction over such areas as criminal, juvenile, and civil matters. While limited by the Indian Civil Rights Act in sentencing,<sup>9</sup> tribes have concurrent jurisdiction over the felony crimes enumerated under the Major Crimes Act.<sup>10</sup>

The forums for handling disputes differ for each tribe, which may use varying combinations of family and community forums, traditional courts, quasi-modern courts, and modern tribal courts.

Family forums, such as family gatherings and talking circles, are facilitated by family elders or community leaders. Matters usually involve family problems, marital conflicts, juvenile misconduct, violent or abusive behavior, parental misconduct, or property disputes. Customary laws, sanctions, and practices are used. Individuals are summoned to these gatherings following traditional protocols initiated by the chosen elder. For example, in Pueblo communities the gathering is convened by the aggrieved person's family, which must personally notify the accused and his or her family of the time and place of the gathering.

Generally, elders are selected as spokespersons responsible for opening and closing the meetings with prayers. During the meeting, each side has an opportunity to speak. The victim may speak on his or her own behalf, and the family may assist in conveying the victim's issues. Extended family members often serve as spokespersons if the victim is very young or vulnerable. Similarly, a spokesperson may be designated to speak on behalf of the accused, especially if the accused is a juvenile or if other circumstances prevent the accused from speaking. When the family forum cannot resolve a conflict, the matter may be pursued elsewhere. Offender compliance is obligatory and monitored by the families involved. It is discretionary for decisions and agreements to be recorded by the family.

Community forums require more formal protocols than family forums, but draw on the families' willingness to

discuss the issues, events, or accusations. These are mediated by tribal officials or representatives. Some tribes have citizen boards that serve as peace makers or facilitators. Customary laws, sanctions, and practices are used. Personal notice is made by tribal representatives to the individuals and families involved. Usually, this is all that is necessary to compel individuals to meet in both the family and community forums. When necessary, a personal escort to the gathering place may be provided by tribal officials. In some tribal communities notice may be by mail.

In the community forum, the tribal representative acts as facilitator and participates in the resolution process along with the offender and victim and their families. As with the family forum, prayers are said at the beginning and at closure. An unresolved matter may be taken to the next level, however, but tribes may or may not offer an appeal process for the community forum. In the Navajo peacemaker system, formal charges in the Navajo district court may be filed. In some Pueblo communities, matters may be pursued through the traditional court. Offender compliance is obligatory and monitored by the families involved and tribal officials.

Traditional courts incorporate some modern judicial practices to handle criminal, civil, traffic, and juvenile matters, but the process is similar to community forums. These courts exist in tribal communities that have retained an indigenous government structure, such as the Southwest Pueblos. Matters are initiated through written criminal or civil complaints or petitions. Defendants are often accompanied by relatives to the hearings. Generally, anyone with a legitimate interest in the case is allowed to participate from arraignment through sentencing. Heads of tribal government preside and are guided by customary laws and sanctions. In some cases written criminal codes with prescribed sanctions may be used. Offender compliance is mandated and monitored by the tribal offi-

cial with assistance from the families. Noncompliance by offenders may result in more punitive sanctions such as arrest and confinement.

Defendants are notified in writing. Although rare, matters may be appealed to the tribal council. In some tribes where a dual system exists, interaction between the modern American court and traditional court are prohibited. That is, one may not pursue a matter in both lower-level courts. However, an appeal from either court may be heard by the tribal council, which

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*The indigenous approach  
to justice requires  
problems to be handled  
in their entirety.*

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cial serves as the appellate court. Generally, these courts record proceedings and issue written judgment orders.

Quasi-modern tribal courts are based on the Anglo-American legal model. These courts handle criminal, civil, traffic, domestic relations, and juvenile matters. Written codes, rules, procedures, and guidelines are used, and lay judges preside. Some tribes limit the types of cases handled by these courts. For instance, land disputes are handled in several Pueblo communities by family and community forums. Like traditional courts, noncompliance by offenders may result in more punitive sanctions such as arrest and confinement. These are courts of record, and appellate systems are in place.

Modern tribal courts mirror American courts. They handle criminal, civil, traffic, domestic relations, and juvenile matters and are guided by written codes, rules, procedures, and guidelines. They are presided over by law-trained judges and often exist in tribal communities that have a constitutional government. Like traditional courts and quasi-modern tribal courts, non-

compliance by offenders may result in more punitive sanctions such as arrest and confinement. Like quasi-modern tribal courts, these are courts of record, and appellate systems are in place.

Some of the quasi-modern and modern courts incorporate indigenous justice methods as an alternative resolution process for juvenile delinquency, child custody, victim-offender cases, and civil matters. The trend of tribal courts is to use the family and community forums for matters that are highly interpersonal, either as a diversion alternative, as part of sentencing, or for victim-offender mediation. Some are court-annexed programs such as the Alternatives For First Time Youth Offenders Program sponsored by the Laguna Pueblo tribal court in New Mexico. Under this program, juvenile offenders are referred to the village officers, who convene a community forum. Recommendations for resolving the matter may be court-ordered, or the resolution may be handled informally by the the village officers. This joint effort by the court and village officers allows them to address the problem at the local village level and to intervene early to prevent further delinquency.

**Characteristics of indigenous law**  
Common terms or references to the law of indigenous societies include customary law, indigenous law, native law, and tribal or native law ways. All refer to the same concept.

Customary law is generally derived from custom. Custom in this sense means a long-established practice that has acquired the force of law by common adoption or acquiescence; it does not vary.<sup>11</sup>

Tribal common law is based on the values, mores, and norms of a tribe and expressed in its customs, traditions, and practices. In some tribes, the tribal common law has been set

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11. Zuni, "Justice Based on Indigenous Concepts." Paper presented at the Indigenous Justice Conference: Justice Based on Indian Concepts, (1992).



out in different court decisions and written opinions over time and has become case law.<sup>12</sup> Among several Pueblo communities, the matrilineal system holds that property belongs to the female. In a divorce or separation, property is divided according to the matrilineal definitions of property ownership and is written into the decisions of the traditional or tribal court. Similarly, Navajo courts incorporate Navajo common law in decisions in probate, criminal, and child custody cases, and marital conflicts.<sup>13</sup>

For many tribes along the Northwest coast such as the Yurok, customary laws dictate the areas where families can conduct their fishing, hunting, and gathering. These areas are passed down from one generation to the next. When someone fishes in another family's area, it is considered an affront to the entire family. By custom, the

wronged family convenes a family forum as the proper way to handle the matter and to request compensation. Compensation may be with fish, fishing gear, feathers, hides, beadwork, traditional clothing, or other forms of payment.

Among several Pueblo communities, it is customary for discipline to be administered by the *fiscale*, who is responsible for maintaining the peace and overseeing the welfare of children and youth. It is a general practice for parents to summon the *fiscale* when their children are unruly or misbehaving. The *fiscale* advises the children about the consequences of their misconduct and may reprimand them or refer them and their parents to services such as counseling.

In many tribes, information, beliefs, and customs are handed down orally or by example from one generation to another.<sup>14</sup> For example, in the Minto Tribal Court of Alaska the resolution process involves a segment dedicated to "traditional counseling" by the facilitator or presiding judge. There is a general practice of "advising giving"

in the traditional courts of the Pueblos and the "talking to" in the Navajo peace making system. This segment is traditionally set aside for the spokespersons or tribal officials to speak of community values, mores, and the consequences of misbehavior or misconduct. Often these are conveyed in parables or creation narratives and beliefs. Advice is given about harboring vengeful feelings, and everyone is encouraged to renew relationships.

#### The indigenous justice process

Indigenous methods of conflict resolution include traditional dispute resolution, peace making, talking circles, family or community gatherings, and traditional mediation, described only by the language of the tribal community. All these refer to the methods of resolving problems and to the methods of restorative and reparative justice.

The structure of relationships in many tribal communities is paramount to a legal system exemplified by the clan system. Tribal law determines clan identification, which is often matrilineal. Among Pueblo communi-

12. Austin, "Incorporating Tribal Customs and Traditions into Tribal Court Decisions." Paper presented at the Federal Indian Bar Association: Indian Law Conference in Albuquerque, New Mexico, (1992).

13. Zuni, *supra* n. 11, at 25.

14. *Id.*



ties, moiety and clan affiliations determine for which group an individual will dance, sing, or hunt in social activities, which religious or medicine groups one may join, which political positions one may hold, whom one may court or marry, or what property one may own. The clan system regulates the behavior of its members. The interlocking relationships in tribal communities often determines the flow of how problems are handled.

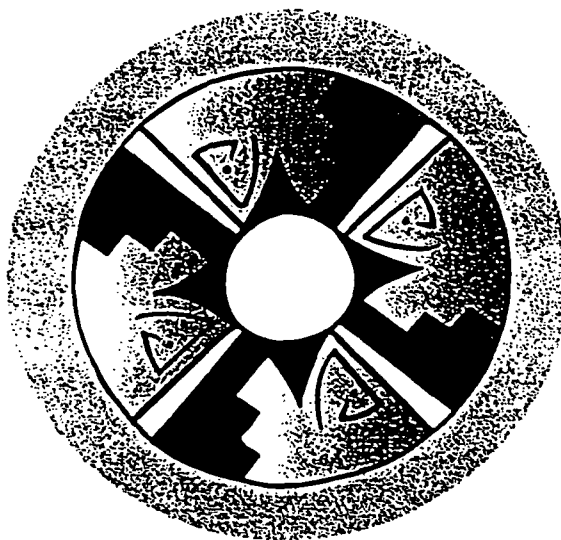
For example, in many tribal communities, parents and the extended family are expected to nurture, supervise, and discipline their children. When parental misconduct occurs, such as with physical or sexual abuse or neglect, the parents and extended family convene through the leadership of an elder to address the matter. In a minor case of physical abuse or neglect, the family forum is used. The distributive aspect is invoked extensively to ensure protection of the children and to monitor and enforce proper parental behavior and responsibility, which is regulated by the family. More serious cases may involve tribal officials.

In the family and community forums and the traditional courts, those accused of wrongdoing are required to give a verbal account of their involvement in an incident, whether or not they admit to the accusations.<sup>15</sup> This verbal account is key in discovering the underlying factors precipitating the problem. It requires participation by the offender's family and relatives who may have to explain the offender's misconduct, especially when some type of victimization has occurred. For example, parents may be admonished for not providing proper discipline and supervision for their children who vandalized or destroyed property. Relatives may be criticized for allowing a son or brother to abuse his wife or children.

Verbal accountability by the offender and the offender's family is essential to express remorse to the victim and the victim's family. Face-to-face exchange of apology and forgiveness empowers victims to confront their offenders and convey their pain and anguish. Offenders are forced to be ac-

countable for their behavior, to face the people whom they have hurt, to explain themselves, to ask forgiveness, and to take full responsibility for making amends. Observing and hearing the apology enables the victim and family to discern its sincerity and move toward forgiveness and healing. Forgiveness is strongly suggested, but not essential for the victim to begin healing.

The restorative aspect frequently involves the use of ritual for the offender to cleanse the spirit and soul of the bad forces that caused the offender to behave offensively. Ceremonial sweats, fastings, purifications, and other meth-



ods are used to begin the healing and cleansing process necessary for the victim, the offender, and their families to regain mental, spiritual, and emotional well-being and to restore family and communal harmony.<sup>16</sup>

The agreements reached in family and community forums are binding. Participants are compelled to comply through the same interlocking obligations established in individual and community relationships. Compliance and enforcement are important aspects of indigenous systems because there is little coercion. Accepting punishment does not guarantee that an offender will be accountable. Therefore, it is essential that offenders perform outward acts to demonstrate their responsibility for correcting behavior. Offender accountability is essential to ensure compliance with de-

terminations and to prevent further criminality or relapse into deviant behavior. Equally important is for punitive sanctions to be decided and applied by individuals who were affected by the offender's behavior.

Historically, there is little evidence of penal systems in tribal communities. This fact remains today, although there are many who express the need for secure confinement facilities to address serious and violent crimes. Many customary sanctions to appease victims and to safeguard against vengeance are still in use. These include public ridicule, public shaming, whippings, temporary and permanent banishment, withdrawal of citizenship rights, financial and labor restitution, and community service. Some tribes still temporarily or permanently banish individuals who commit serious or violent crimes. Among the Warm Springs Tribes in Oregon, it is customary to refer lawbreakers to the "whipman," who may whip a person for misconduct. In the Laguna Alternatives for First Time Youth Offenders Program, community service is used extensively.

The indigenous process is also used in offenses where there are no victims, such as problems between parents and children, individual misconduct, or alcohol consumption. Family members affected by the offender's behavior or who are concerned with the offender's welfare may participate. Many tribal people view crime, delinquency, and other deviant behaviors as symptoms of bigger family problems. Widening the affected target group to include the offender, parents, siblings, and other extended family members enlists help from those most familiar with the situation to assist in correcting and preventing more serious crime.

The indigenous process can often be extremely uncomfortable and emotional because it involves participation by everyone affected, but great care is

15. Melton, *supra* n. 6, at 16.

16. Bluehouse and Zion. *Hozhooji Naati'annii: The Navajo Justice and Harmony Ceremony*. 10 *MEDIATION Q.* 327 (1993).

taken to provide a safe environment for matters to be discussed. The distributive nature of this process uses the extended family as a resource for the offender, the victim, and the community to resolve problems, to ensure compliance, to provide protection, and to retain ownership of the problems.<sup>17</sup>

### Preserving indigenous systems

Tribes are faced with the inevitable conflict created by two justice paradigms competing for existence in one community. Many Americans believe the law is something to be applied and justice is something to be administered. In contrast, tribes traditionally believe law is a way of life and justice is a part of the life process. For one paradigm to exist, it must convert people to follow it. Although it appears that tribal courts follow the Anglo-American legal system, many adhere to the traditional values of the tribal justice system. This is largely because tribes have been

wary of the ethnocentric view of the Western colonizers who devalued their legal structures and wanted to replace them with an imported Western system.<sup>18</sup> Tribes were also required to participate in the Anglo-American legal system in order to protect their lands and people, but they did so without trusting or believing it. This foreign system was imposed by the federal government, thereby thwarting their efforts to convert the tribes.

Attempts to strengthen and re-traditionalize tribal justice systems stem from discontent with the efforts of modern tribal courts to address the crime, delinquency, social, and economic problems in tribal communities. It is joined by the dominant culture's current disillusionment with justice in

this country, which causes doubt about retributive justice and a move toward a more restorative framework.<sup>19</sup> This emerging restorative perspective for the American justice system is illustrated by the following values:

All parties should be included in the response to crime—offenders, victims, and the community. Government and local communities should play complementary roles in that response. Accountability is based on offenders understanding the harm caused by their offense, accepting responsibility for that harm, and repairing it. ...[R]estorative justice guides

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*The strong adversarial features  
of the American justice paradigm  
will always conflict with the  
communal nature of most tribes.*

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professionals in the appropriate and equitable use of sanctions to ensure that offenders make amends to victims and the community.<sup>20</sup>

Conversion to the American justice paradigm is a difficult choice for tribes, particularly those with a functional indigenous justice system. For many, full conversion is not possible because the indigenous justice paradigm is too powerful to abandon. The strong adversarial features of the American justice paradigm will always conflict with the communal nature of most tribes. For this reason, the inherent restorative and reparative features of the indigenous justice paradigm will continue to be more appealing to the majority of tribal people.

Nonetheless, it is important for

tribes to identify their community strengths and views on justice, law, and order. The role of non-Indians is to assist and support the tribes in strengthening their justice systems and to suppress the urge to take over or replace them. It is the sovereign and cultural right of tribes to explain, interpret, change, enact, and apply their own laws, oral and written, through whatever mechanisms they choose. It is their responsibility to teach the knowledge and skills embedded in their indigenous paradigm to their young.

American Indian and Alaskan Native people have the clearest understanding of their indigenous law ways because they live them. They must be the messengers of this law to preserve its integrity, authority, power, and meaning to the people.

The many intrusions to the tribal way of life have interfered with the natural evolution of the indigenous justice paradigm, but while slowed, it has never stopped. The tribal resurgence to strengthen and re-traditionalize their judiciaries has rejuvenated the evolutionary process. While mainstream society is in the midst of shifting from a retributive justice model to a restorative one, many tribes are strengthening their indigenous paradigm. In doing so, they are empowering themselves to provide a justice system that has meaning to the people they serve and the power to perpetuate what was preserved by the ancestors and passed on by the elders as testimony of their commitment to the future of tribes. Contemporary American Indian and Alaskan Native people are now faced with making the same commitment to preserve the indigenous justice system the elders maintained and find ways to perpetuate it. ☪☪

17. Canadian Institute for Conflict Resolution, "Report to the Council of Akwesasne Concerning a Peacemaking Process," in Ottawa, Canada (1990).

18. Mohawk, *Prologue*, in Wallace, *THE WHITE ROOTS OF PEACE* (Philadelphia: University of Pennsylvania Press, 1946).

19. Umbreit, *Victims Seeking Fairness, Not Revenge: Toward Restorative Justice*, FEDERAL PROBATION (Sep-

tember, 1989). Van Ness, *Restorative Justice*, Galaway and Hudson, eds. *CRIMINAL JUSTICE, RESTITUTION, AND RECONCILIATION* (Monsey, N.J.: Willow Tree Press, 1990).

20. Brazemore and Umbreit, "Balanced and Restorative Justice: Program Summary," Office of Juvenile Justice and Delinquency Prevention, October (1994).

7<sup>th</sup> Indian Nations Conference

# Jail Based Batterer's Program

Beverly Wilkins and Chris Martin

Tulsa, Oklahoma 1999



## 7<sup>th</sup> Indian Nations Conference


### **"Jail Based Batterers Programs" Beverly Wilkins and Chris Martin**

#### **Learning Objectives:**

1. To understand the dynamics of domestic violence as an important component of batterer's programs.
2. To understand the value of connecting to domestic violence programs for victims.
3. Safety planning as a foundation for curriculum development.
4. Describe strategies for developing a jail based batterers program.

Recent research indicates that individuals who are motivated to change have greater success in court imposed batterers treatment and are less inclined to re-offend. Appropriate jail programs can play a significant role in shaping the motivation of offenders. While jail administrators used to measure success by the level of safety and security afforded inmates and staff, there is an increasing demand upon jails to become agents in crime prevention. This workshop will describe an innovative domestic violence crime prevention program developed in the Sacramento Main Jail. The program is for pre-trial offenders to address the need to increase the offender's motivation to change and succeed in reducing violence. The audience will learn the value of a victim-centered curriculum and focus when working with batterers and the value of understanding the dynamics from the victim perspective.





HANDOUTS FOR THIS  
PRESENTATION MAY OR  
MAY NOT BE AVAILABLE  
DURING THIS SESSION





## PROFILE OF ABUSER

1. PUBLIC vs. PRIVATE BEHAVIOR;
2. NEED TO CONTROL: EXTREME JEALOUSY AND MANIPULATION;
3. THE EXCUSES:
  - a. PROJECTING BLAME (pushed my buttons),  
Not good accepting responsibility gen;
  - b. CLAIMING LOSS OF CONTROL (I lost it),  
No! = planned pattern of coercive control
  - c. ATTRIBUTING TO SUBSTANCE ABUSE,  
No! lots of sober batterers. . . (give alcoholics a bad name);
  - d. MINIMIZING OR DENYING THE ABUSE;
4. SENSE OF ENTITLEMENT;
5. RIGID ROLE EXPECTATIONS;
6. EXTERNAL MOTIVATION; and
7. 80% grew up in violent home.

Dr. David Adams



4 NECESSARY COMPONENTS OF  
A BATTERER'S INTERVENTION PROGRAM

1. AT LEAST ONE YEAR
2. BEHAVIOR- BASED MODEL --  
not anger management!!!
3. SANCTIONS FOR FAILURE TO  
COMPLY
4. PARTNER CONTACTS

Dr. David Adams  
Dr. Vicki Boyd  
Dr. Anne Ganley



## Working With Victims of Color

1. Recognize not all victims of color are alike, even if they look similar to you. An "Asian" woman may be Korean, Vietnamese, Chinese, Japanese, etc.
2. Learn about other cultures by reading\*, visiting, asking: increases your knowledge and credibility.
3. Learn to LISTEN: values & options differ
4. Develop community contacts & knowledge of services, such as Spanish-speaking support group
5. Ensure staff reflects diversity of community; not just tokens, e.g. Seattle Family Violence Project
6. Offer to share information & receive training.

\* Wm Monroe Trotter Institute: 85% info about people of color put out by major media outlets is negative. Thus, must read publications coming out of communities of color, e.g. Essence, Ebony, Emerge, Jet, Hispanic, El Mundo, Asian American, and local materials + books for adults and children.



## VICTIM PRESENTATIONS

1. SUBSTANCE ABUSE
2. MULTIPLE INJURY SITES
3. FREQUENT HEADACHES
4. GASTROINTESTINAL PROBLEMS
5. EATING & SLEEP DISORDERS
6. PSYCHOLOGICAL DISTRESS: DEPRESSION, SUICIDAL IDEATION, HIGH ANXIETY
7. EVIDENCE OF SEXUAL ASSAULT OR RAPE
8. PREGNANT WOMEN WITH ANY INJURY, ESPECIALLY TO ABDOMEN AND BREASTS
9. PATIENT'S EXPLANATION OF INJURY INCONSISTENT WITH TYPE/LOC OF INJURY
10. DELAY BETWEEN ONSET OF INJURY AND ARRIVAL AT HOSPITAL OR COURT
11. BRUISES, CUTS OR FRACTURES AT DIFFERENT STAGES OF HEALING
12. HYPERVIGILANCE





# Pre-Trial Release Considerations

Subject to local restrictions or prohibitions, the court may want to consider the following factors when determining whether to release a domestic violence defendant from custody.

- History of domestic violence as documented by police reports, and/or convictions
- Whether the frequency and/or severity of violence appears to be escalating
- Threats of retaliation by the defendant, either directly towards the victim or indirectly towards the children
- Use or threatened use of a weapon
- Defendant's prior criminal history
- Danger posed to public, including threats to victim's family or co-workers
- Defendant's alleged use or possession of alcohol or a controlled substance
- Defendant's access to the victim
  - Does the defendant intend to return to a residence shared with the victim?
  - Do arrangements for child visitation take the victim's safety into consideration?
  - Has the defendant ever gone to the victim's place of employment and threatened the victim or co-workers?
- Defendant's mental and physical health
- Defendant's threats of suicide



The court may want to consider ordering the offender to pay restitution to the victim for the following losses:

- lost wages
- medical bills
- damaged property
- costs of counseling for victim and traumatized children
- replacement of locks
- transportation expenses to escape the violence
- motel or hotel lodging
- relocation and moving expenses
- costs of staying at a battered women's shelter
- costs of obtaining a civil restraining order.



# Assessment of Treatment Programs for Domestic Violence Offenders

(This list was adapted from the County of Los Angeles Domestic Violence Council's publication, *"Batterer's Treatment Program Guidelines,"* June, 1988).

## Does the program's philosophy:

- Clearly define domestic violence as a crime, rather than as a pathology or mental disorder.
- Define domestic violence as a learned and socially sanctioned set of behaviors, which can be changed by the offender.
- Hold the offender accountable for the violence in a manner that does not collude with the offender in blaming the victim's behavior for the violence, or the batterer's use of alcohol or drugs as the cause.
- Make stopping the violence the primary goal of the program, taking priority over keeping the couple together or resolving other relationship issues.
- Define violence as part of a pattern of coercive control that includes physical, emotional, sexual and economic abuse.

## Do program components include:

- Initial and on-going assessments of the danger posed to the victim by the offender, and procedures for alerting both the victim and appropriate authorities should the victim's safety become a concern.
- Adequate initial assessment of significant factors that may influence the offender's ability to benefit from treatment (i.e. psychosis, organic impairment).
- A minimum of one year of weekly sessions, with additional sessions available within the program or through referrals when indicated.
- The use of group counselling as the treatment of choice. This approach decreases the batterer's isolation and dependency on the partner and ensures the offender is accountable to the group.
- Procedures for conducting an ongoing assessment of the offender's violent propensities throughout the course of treatment, such as informing the offender at the beginning of the program that the victim and others will be contacted periodically to assess whether the violence has stopped.



7<sup>th</sup> Indian Nations Conference

# Conflict Resolution

Judith Alexander, PsyD

Tulsa, Oklahoma 1999





## 7<sup>th</sup> Indian Nations Conference

### **"Conflict Resolution"** **Judith Alexander, PsyD**

#### **Learning Objectives:**

1. Participants will develop an understanding of the process of conflict.
2. Participants will be able to identify statements and words that escalate conflict.
3. Participants will learn various ways to resolve conflict in a positive manner.

Conflict is not always negative! This workshop will introduce the problems that are at the sources of most conflict. Participants will also learn skills and information about identifying, dealing with and resolving conflict, whether at home or in the workplace. Conflict and its resolution can be an opportunity for growth.



7<sup>th</sup> Indian Nations Conference

## Conflict Resolution

Judith Alexander, PsyD

Tulsa, Oklahoma 1999



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Use Conflict as an OPPORTUNITY!



### Cooling off Conflict

What is the Perception?  
(YOURS & THEIRS)

Communication  
(BREAKDOWN IS USUALLY IN RECEIVING)

Most people will not deliberately harm you!  
(PEOPLE ATTACK ONLY WHEN  
THEY ARE ON THE DEFENSIVE)

Do you NEED to be liked?  
(YOU WILL FIGHT,  
IF BEING WRONG MAKES YOU BAD)

All Communications should be like a DANCE!  
(DON'T STEP ON TOES!)



# DON'T FORGET YOUR IS AND CS!

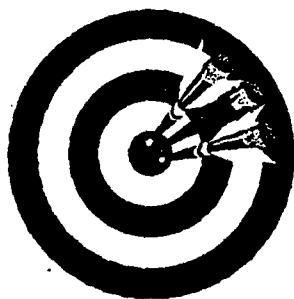
## **SPEAK**

**Clearly**

**Calmly**

**Carefully**

**Correctly**



## **USE I Statements**

**I Need**

**I Want**

**I Feel**



# Fighting Words!

**BUT**

**HOWEVER**

**YOU SHOULD HAVE!**

**YOU COULD HAVE!**

**YOU MADE ME!**

**YOU NEVER!**

**YOU ALWAYS!**

**I CAN'T!**



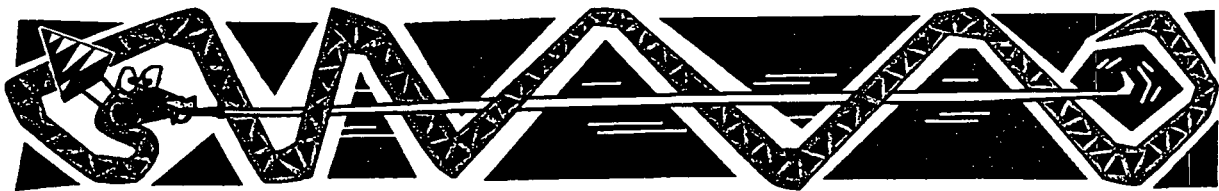
# Conflict Resolution

**Problems are like HOT  
Potatoes**

**We BLAME others!**

**We Pass it on!**

**Just WHO owns the  
PROBLEM?**



# BREAKING THE ICE



## Identify

Who has the problem?

What is the triggering event?

Make a list of all possible outcomes (good & bad).

## Communicate

How will I communicate?

## Explore

Can I come up with a WIN-WIN solution?



7<sup>th</sup> Indian Nations Conference

## Circles of Care Project

Deborah Jones-Saumty  
And  
Deanna Chancellor

Tulsa, Oklahoma 1999



## 7<sup>th</sup> Indian Nations Conference

**"Circle of CARE Project"  
Deborah Jones-Saumty  
Deanna Chancellor**

**Learning Objectives:**


1. Present lessons learned through the Chi Hullo Li Childrens Program.
2. Present data showing success of program.
3. Present CARES program, approach and philosophy.

This workshop will present the lessons learned and data from the Chi Hullo Li Residential Treatment Center funded through the Center for Substance Abuse Treatment. The approach and philosophy of the Choctaw Nation CARES program will also be presented.

Tulsa, Oklahoma 1999







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7<sup>th</sup> Indian Nations Conference

Standing Up for Victim's Rights Even if  
You're Standing Alone

Lisa Thompson

Tulsa, Oklahoma 1999



## 7<sup>th</sup> Indian Nations Conference


### **"Standing Up for Victim's Rights Even if You're Standing Alone"** **Lisa Thompson**

#### **Learning Objectives:**

1. Participants will learn the role of a victim advocate.
2. Participants will learn how to empower versus rescue.
3. Participants will learn how to maintain confidentiality in Indian Country.

This workshop will look at the role of the advocate. Presenter will discuss how to empower while providing respectful services and maintain confidentiality in Indian Country. Presenter will also provide for discussion on facing community criticism and how to turn this into an opportunity to educate the community.



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7<sup>th</sup> Indian Nations Conference

Family Violence, Depression and Suicide in  
American Indian Youth

Rick Miller, MD

Tulsa, Oklahoma 1999



## 7<sup>th</sup> Indian Nations Conference

### **"Family Violence, Depression and Suicide in American Indian Youth"**

**Rick Miller, MD**


#### **Learning Objectives:**

1. Presenter will review domestic violence and its effects on the family.
2. Participants will learn to identify children at risk for depression.
3. Participants will better be able to consider intervention possibilities for suicidal or depressed children.

This workshop will review data on family violence and will consider the contribution that family violence makes to depression and suicidal ideations of children and adolescents.

Tulsa, Oklahoma 1999





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MAY NOT BE AVAILABLE  
DURING THIS SESSION



7<sup>th</sup> Indian Nations Conference

Healing After Sexual Assault  
by Spiritual Leaders

Bonnie Clairmont

Tulsa, Oklahoma 1999





## 7<sup>th</sup> Indian Nations Conference


### **"Healing After Sexual Assault by Spiritual Leaders" Bonnie Clairmont**

#### **Learning Objectives:**

1. Truthtelling: Sexual abuse by Native spiritual leaders.
2. Exploring/identifying healing options for survivors.
3. Creating appropriate community responses.

This workshop will explore one of the most insidious well kept secrets in Indian Country, "sexual abuse perpetrated by Native spiritual leaders/medicine men." Presenter will discuss the impact on victims and community; explore contributing factors; and, identify healing options and what communities can do to create safety.





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PRESENTATION MAY OR  
MAY NOT BE AVAILABLE  
DURING THIS SESSION



7<sup>th</sup> Indian Nations Conference

# Effects of Domestic Violence on Children

Beverly Wilkins

Tulsa, Oklahoma 1999



## 7<sup>th</sup> Indian Nations Conference

### **"Effects of Domestic Violence on Children"**

**Beverly Wilkins**

#### **Learning Objectives:**


1. Audience will learn the many ways children who witness violence in their homes are hurt; physically, emotionally and psychologically.
2. Will review ways to assist children to heal from witnessing violence
3. Review a systems approach to protecting children and preventing violence.

This workshop will provide information on the many ways children are hurt when they witness abuse in their homes and how various programs and services can collaborate to assist them to heal from the trauma.

Tulsa, Oklahoma 1999







HANDOUTS FOR THIS  
PRESENTATION MAY OR  
MAY NOT BE AVAILABLE  
DURING THIS SESSION



# Children of Domestic Violence: Risks and Remedies

Barbara J. Hart, Esq., Staff Counsel, PCADV, 1992

This paper will examine two issues - the risk to children posed by domestic violence and strategies for intervention to protect children from violent homes and their battered parents. It is imperative that the legal, medical and child abuse prevention communities join together to identify children at risk and to employ strategies that will both protect and heal the innocent victims of domestic violence, especially those most powerless, the children from violent homes.

## Risks posed to children from violent homes.

1. **Child Abuse.** Men who batter their wives are likely to assault their children. The battering of women who are mothers usually predates the infliction of child abuse (Stark & Flitcraft, 1988). At least half of all battering husbands also batter their children (Pagelow, 1989). The more severe the abuse of the mother, the worse the child abuse (Bowker, Arbitell, and McFerron, 1988). Abuse of children by a batterer is more likely when the marriage is dissolving, the couple has separated, and the husband/father is highly committed to continued dominance and control of the mother and children (Bowker, Arbitell, and McFerron, 1988). Since women and child abuse by husbands and fathers is instrumental, directed at subjugating, controlling and isolating, when a woman has separated from her batterer and is seeking to establish autonomy and independence from him, his struggle to control and dominate her may increase and he may turn to abuse and subjugation of the children as a tactic of dominance and control of their mother (Stark and Flitcraft, 1988; Bowker, Arbitell and McFerron, 1988).

Older children are frequently assaulted when they intervene to defend and protect their mothers (Hilberman and Munson, 1977-78). Daughters are more likely than sons to become victims of the battering husband

(Dobash and Dobash, 1979). Woman abuse is also the context for sexual abuse of female children. Where the mother is assaulted by the father, daughters are exposed to a risk of sexual abuse 6.51 times greater than girls in non-abusive families (Bowker, Arbitell, and McFerron, 1988). Where a male is the perpetrator of child abuse, one study demonstrated that there is a 70 percent chance that any injury to the child will be severe and 80 percent of child fatalities within the family are attributable to fathers and their surrogates (Bergman, Larsen, and Mueller, 1986). Data gleaned from PCADV from newspaper clippings in 1990 reveals that every three days a woman or child is killed in the Commonwealth (Pennsylvania) by a batterer/father (Yupcavage, 1991).

Mothers who are battered are more likely to physically abuse their children than are non-battered women (Walker, 1984; Roy, 1977; Gayford, 1975).

2. **Child abduction.** Battering men use custodial access to the children as a tool to terrorize battered women or to retaliate for separation. Custodial interference is one of the few battering tactics available to an abuser after separation; thus, it is not surprising that it is used extensively.

Each year more than 350,000 children are abducted by parents in this country; that is, 40.4 children are abducted per hour. Fifty four percent of these abductions are short-term manipulations around custody orders, but 46 percent involve concealing the whereabouts of the child or taking the child out of state. Most of these abductions are perpetrated by fathers or their agents. Fully 41 percent occur between the separation of the parents and the divorce. Yet another 41 percent happen after the parents are separated or divorce for more than two years. Three of ten of the abducted children will suffer mild to severe mental harm as a



result of the abductions (Finkelhor, Hotaling, and Sedlak, 1990). More than half of these abductions occur in the context of domestic violence (Greif and Heger, 1992).

3. **Observation of violence against mothers.** The majority of the children from violent homes observe the violence inflicted by their fathers upon their mothers; most research suggests as many as 90 percent of children from violent homes witness their fathers battering their mothers (Pagelow, 1990; Walker, 1984). One study demonstrated that some fathers deliberately arrange for the children to witness the violence (Dobash and Dobash, 1979), and other empirical work suggests that the violence occurs only when the children are present (Wallerstein and Kelly, 1980). Children witnessing the violence inflicted on their mothers evidence behavioral, somatic, or emotional problems similar to those experienced by physically abused children (Jaffe, Wolfe, and Wilson, 1990). Psychosomatic illness is prominent. Boys become aggressive, fighting with siblings and schoolmates, and have temper tantrums. Girls are more likely to become passive, clinging, and withdrawn (Hiberman and Munson, 1977-78). Male children who witness the abuse of mothers by fathers are more likely to become men who batter in adulthood than those male children from homes free of violence (Rosenbaum and O'Leary, 1981).

Research has only begun to examine the relative effects on children of witnessing parental violence as contrasted to being a victim of child abuse. It appears that children who are both witnesses of their fathers' violence toward their mothers and victims of child abuse experience the most profound adverse effects. But the children who observe the violence perpetrated on their mothers manifest similar behavioral and emotional sequelae (Hughes et al., 1985). In comparing children not exposed to violence as contrasted to children who witness violence and children who both witness and are abused, data suggest that the latter two groups are most comparable and have heightened behavioral and emotional distress as compared to the former (Hughes et al., 1989).

4. **Separation violence.** Many professionals believe that the most effective thing that a battered mother can do to protect her children is to leave the battering husband. As a culture we believe that if women leave, they will be safe, as will their children. Leave-taking alone does not protect battered women and children. Safety is only assured by strong legal and community protections.

Research confirms that battering men often escalate violence to re-capture battered women and children who have sought safety in separation. Battered women seek medical attention for injuries sustained as a consequence of domestic violence significantly more often after separation (Stark and Flitcraft, 1988). One investigation demonstrated that about 75 percent of the calls to law enforcement for intervention and assistance in domestic violence occur after separation from batterers (Langen & Innes, 1986). Another study revealed that half of the homicides of female spouses and partners were committed by men after separation or divorce (Barnard, et al., 1982). A study in Philadelphia showed that one quarter of the women killed by their partners were killed after separation, and a significant number were killed while trying to separate from the assailant (Casanave & Zahn, 1986).

The risk to children in the context of domestic violence is substantial. Yet, the risk is virtually invisible. For example, the most recent edition of the journal of the Family Law Section of the American Bar Association, which contains an annual survey of family case law across the country, is silent about the risk that domestic violence poses to children. The editors chose not to include the cases and commentary which address this issue. Similarly medical publications, while identifying the danger of domestic violence to women, have not squarely addressed the nexus between domestic violence and child maltreatment. While the impact of domestic violence on women has "come out of the closet" over the course of the last fifteen years, the impact and risk of domestic violence for children remains a closely held secret.



## Strategies to protect children from violent homes.

Having identified the jeopardy to which children may be exposed in the context of domestic violence, it is imperative that professionals identify strategies to safeguard against these risks.

### 1. Risk identification and safety planning.

A critical strategy for child protection is protocol development by the medical, legal and social service communities to help women recognize that they may be battered and that their children may be at risk for abuse. Once battered women have identified that abuse inflicted on them and the risk for child abuse, they can then design strategic plans to avert violence whether they elect to remain in residence with the batterer or separate from him. To accomplish this, professionals, including lawyers, doctors and social workers, must consistently identify domestic violence and talk about safety planning with battered women clients/patients. Informed battered women who are engaged with professionals in evaluating strategies to safeguard themselves and their children will best be able to make decisions that protect their children.

In fact, there is strong evidence that battered women's efforts to utilize community resources to end the violence are greater when child abuse is present, demonstrating that battered women may be most motivated to change their circumstances when they conclude that it is critical to protect their children from the risks of abuse (Bowker, 1988). Research further reveals that child abuse, whether by fathers or mothers, is likely to diminish once the battered mother has been able to access safety services and achieve separation from the violent father (Giles-Sims, 1985; Walker, 1984).

2. Supervised visitation centers. The second strategy is a very practical and feasible solution - supervised visitation centers. Much of separation violence is an attempt to coerce reconciliation. Since battering husbands/fathers have limited access to battered women to

attempt to compel reconciliation, they often choose the visitation arena as a place in which to attempt coerced reconciliation or to penalize the battered partner for refusal to reconcile. As a consequence, visitation must be a very protected circumstance both for the children from violent homes and battered women.

The Domestic Abuse Intervention Project of Duluth, Minnesota began a supervised visitation center project several years ago. The facility offers supervised exchange, on-site visits and monitored visits, as well as education and counseling for fathers on parenting and the impact of domestic violence on children. Services and education are accommodated in a spacious and attractive, but secure, environment. Participants in the program are referred by the courts or child protection services. The center is open twice a week, one weekend day and one day and evening during the week. The program safeguards battered women and children from violence and child abduction, while providing fathers access to their children in an environment where they can begin to learn and practice appropriate parenting.

3. Safety planning for unsupervised visits. Planning for unsupervised visits can help children not only manage fear and anxiety, but can also enable them to develop safety skills and realistic safety plans to minimize the risk of violence during visitation. The process of safety planning further allows children of battered women to understand and manage the multitude of conflicting feelings they may be experiencing associated with visiting their fathers. It is critical that professionals help children identify safety issues and build problem-solving, safety skills. Safety planning for unsupervised visits may be initiated by professionals but should always be undertaken in consultation with the non-abusive parent.

Any safety plan must be realistic. The plan should be simple. It must be age appropriate. The child must be competent to undertake the strategies designed. Perhaps only children above 8 years of age can be active participants in safety strategies.





## Conclusion

Too often professionals do not identify domestic violence in the lives of female clients and are uncertain about remedial strategies even if abuse is identified (Hansen & Harway, 1992). Other professionals seek to penalize and blame battered women for failing to protect their children (Erickson, 1991). The inadequacy of professional endeavors endangers and isolates mothers and often interrupts the potential for strong alliance between mothers and children in the pursuit of safety. Professional initiatives to empower women so that they can seek lives free of violence and achieve the legal authority to protect their children and themselves from recurrent violence are preferred. Early intervention by professionals can avert the risks posed to children and their mothers in the context of domestic violence and can assist women in establishing stable and secure households independent of battering men. Prevention efforts may offer children the best hope for violence-free and loving families.

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7<sup>th</sup> Indian Nations Conference

# Effective Grantwriting Techniques

Eidell Wasserman, PhD  
and  
Rose Mary Shaw, LCSW

Tulsa, Oklahoma 1999



## 7<sup>th</sup> Indian Nations Conference

### **"Effective Grantwriting Techniques"**

**Eidell Wasserman, PhD and Rosemary Shaw, LCSW**

#### **Learning Objectives:**

1. Participants will learn the components of an effective grant proposal.
2. Participants will be able to identify potential funding sources for victim assistance services.
3. Participants will be able to understand the components of grant budgets.

This workshop will provide a basic overview of grantwriting. The session will explore each of the sections of a typical grant proposal with special emphasis on the "goals and objectives" and "budget" sections. Workshop participants will learn tips on writing grant proposals, how to evaluate their proposals, and how to justify the costs within the budget. Potential funding sources for victim assistance services will also be discussed.



## GENERAL OUTLINE FOR GRANT PROPOSAL

### Introduction

Approximately three sentences - one paragraph. This is a very brief summary of your proposal. In one to two sentences outline the basic purpose of your proposal. For example: "The proposed project will provide child sexual abuse treatment services to 30 youth ages 3 - 17 on the Hopi Reservation.

One sentence should include the amount you are requesting. "The proposed project requests \$50,000 for provision of treatment services." Or, you may wish to outline how the money will be used: "The proposed project requests \$50,000 to hire two professional therapists to provide counseling services to child victims."

### The Problem Statement or Statement of Need

Why is this Project needed? Give some background to justify your request. If there are unique problems in your area, identify and justify them.

If there are some services available in your area, how are they deficient? How will the funding you are requesting impact the problem? You want to just mention this here, you'll go into detail in the Methods section.

Most grants will have page limits for all sections. The Problem Statement sets the stage. The information in each section should logically flow from section to section. You will introduce your needs in this section, then you'll outline the goals of your project (which should address the needs you described), then you'll describe how you will meet your goals in the Methods section. The final two sections, Evaluation and Budget, will address how you will evaluate whether you met your goals and how the money you are requesting will allow you to do what you are proposing to do.

A grant proposal is a story with a beginning, middle, and end, all of which are connected. Get your reader to care about the "plot." Get them involved, but keep your description simple. Don't use jargon or terms an outsider might not understand.

### Goals & Objectives

What are you going to do to address the problem(s) you've just described? Be specific. Make sure the problem statement and the goals are related. If you spent your time describing the impact of child sexual abuse on teenagers, don't propose a treatment program for elementary age children.





to the GOALS section. Make sure that you have a means of evaluating what you said you were going to do.

If your goals can't be evaluated, change your goals. Vagueness in your goals may become apparent when you try to explain how you will evaluate your goals. This section offers you the opportunity to insure that you have clearly defined, measurable goals.

### **Budget**

Your budget should reflect the funds needed to meet your goals, as outlined in the Methods section. Following a brief budget summary you should include a detailed budget justification. The justification allows you the opportunity to explain any "unusual" expenditures. For example, many Reservations include vast geographic distances. In order to provide effective services you may need to travel large distances which means that you will need to rent a vehicle, pay for gasoline, and vehicle maintenance. In an urban setting, such expenditures may be unnecessary. You can use the budget justification to briefly explain the need for line items to cover these expenses.

Make sure that you've introduced the major expenditures earlier in the proposal. There shouldn't be a surprise in the budget. Requesting funding for an Educator in the budget when you've spent your proposal talking about treatment doesn't make sense. So make sure that the funds you request relate directly to information previously provided in your proposal.

This outline provides a general overview of information needed for most types of grant applications, including VOCA applications. Prepare a generic grant proposal following this outline, and you should be prepared to respond to a Request For Proposals (REP) when you receive one. Preparation will help you avoid last minute rushing.

*GOOD LUCK!*

This outline was prepared by Eidell Wasserman, Ph.D. with assistance from Marji Stivers, Ph.D.



## HOW TO GET YOUR ORGANIZATION FUNDED

(How is your organization set up? Tribal or Private Non Private? Both?)

### *Twelve Possible Funding Sources*

1. Tribal Government
2. Federal Government
3. State Government
4. County Government
5. City Government
6. United Way: Preference check-offs at Public Health Services or Military Installations
7. Private Foundations: Local, Regional, National
8. Fund Raisers
9. Memberships
10. Individual Donors
11. Mass Funding Appeals: Telemarket, Direct Mail
12. Earned Income or Economic Development Strategies

### *Process to become federally tax exempt*

1. Incorporate in your state as a not for profit corporation: call the Sec. of State for form.
2. Apply for a 501 (c) (3) designation from the IRS: call the IRS for forms.

### *Process Outline to apply for private foundation grants*

1. RESEARCH: Get names and profiles of foundations via libraries or internet.  
Key search words are: Violence, Social Services, Women, Social Change, People of Color, Native Americans, Criminal Justice, Seed, Start Up, Domestic Violence, Rape, Criminal Justice, etc.
2. ELIMINATE: Restrictions on geography, budgets, funding categories or no uninvited.
3. RANK: Classify them into groups of "hot", "warm", "cool" or maybe.
4. SELECT: Six possibles and write brief request to get guidelines or annual reports.
5. OPEN THE MAIL: Read (twice) and highlight for eligibility, deadlines, fund maximums.
6. WRITE INQUIRIES: Carefully follow the guidelines and page restrictions.
7. INVITED TO SEND PROPOSAL? Keep it simple, use stories about real people, follow instructions exactly and make a copy of everything you send in.
8. BEGIN WITH #1 AGAIN.

### *Grants Administration*

Calendar: Write down deadline dates for progress reports, second year applications.

Files: Set up separate file for each funder. Separate file for clippings, newsletters, letters of support. Separate file for incorporation and IRS documents.

Develop a boiler plate: This contains your history, mission, accomplishments, budget and list of Board of Directors.



## GRANTS PLANNING

### Twelve Hints to Successful Grantsmanship

The twelve hints to successful grantsmanship are specific parts of a larger systems approach to securing funding for your projects.

#### 1. Develop and implement a Grant Readiness System.

Purpose: To develop a level of readiness with which your organization can respond to grant opportunities.

- Gather all relevant information on your organization;
- Develop the information into a presentable format, ie, a "prospectus" which outlines:
  - 0 Who you are (organization)
  - 0 Your history
  - 0 Your purpose
  - 0 Your achievements
  - 0 The financial picture of your organization.
- Conduct an honest internal review of your:
  - 0 Management capabilities
  - 0 Organizational credibility
  - 0 Overall fundability.

Underlying Question: Can you provide a clear, concise and effective presentation on your organization?

#### 2. Build your "Webbing" network.

Purpose: Build your network of supporters and advocates for your organization and your project.

- Develop information on:
  - 0 Who you know
  - 0 Who they know
  - 0 What can they do for you.

Underlying Question: Do you know for certain, where to get your letters of commitment and funding support for your ANA project?



6. Research the field.

Purpose: Identify and pinpoint the most likely grant prospects.

- Identify all other possible funding sources.

Underlying Question: Have you exhausted the search of all possible funding sources for your project or organization?

7. Effectively manage your initial contact with funding source.

Purpose: Develop a personal relationship with your potential funding source for your organization.

- Contact potential primary funding sources for your project.  
Utilize:

- Letters
- Personal visits
- Assistance from supporters and advocates
- Effective project presentations.

Underlying Question: Have you given your potential funding source an opportunity to get to know your organization and your project?

8. Review your information and determine proposal strategies.

Purpose: Tailor your approach for your funding source.

- Consider what you've accomplished during the first seven steps of this process.
- Evaluate the reactions of your funding prospects.
- Develop a winning project proposal strategy especially for your primary funding prospect.

Underlying Question: Have you given yourself an opportunity to reflect on what you've accomplished in the first seven steps?





7<sup>th</sup> Indian Nations Conference

# Hate and Bias Crimes in Indian Country

Timothy Johnson

Tulsa, Oklahoma 1999



## 7<sup>th</sup> Indian Nations Conference


### **"Hate and Bias Crimes in Indian Country"** **Timothy J. Johnson, MS**

#### **Learning Objectives:**

1. Participants will be able to define hate crimes and hate incidents
2. Participants will be able to describe a continuum of victim trauma as it relates to hate crime.
3. Participants will be able to articulate community response strategies to hate crime.

This workshop will focus on the participant's experiences with hate crime and hate incidents. The facilitator will create opportunities for active contributions. The group will create specific plans of actions to take in response to hate crimes, and actions to take to prevent hate crimes and hate incidents.





HANDOUTS FOR THIS  
PRESENTATION MAY OR  
MAY NOT BE AVAILABLE  
DURING THIS SESSION



7<sup>th</sup> Indian Nations Conference

Child Abuse Investigations: Who the Players  
are and What They do

John J. Ellis

Tulsa, Oklahoma 1999





## 7<sup>th</sup> Indian Nations Conference


### **"Child Abuse Investigations: Who the Players Are and What They Do"** **John J. Ellis**

#### **Learning Objectives:**

1. Participants will learn how a child abuse investigation is conducted.
2. Who will be interviewed during the investigation and why.
3. How the investigation, and the findings, affect all of the parties involved.

This workshop is geared to those who will be involved, or have an interest in, child abuse investigations, from an investigator's point of view. You will learn what to expect, who will be interviewed and why, who has information that is potentially relevant, and what affect this investigation will have on the investigators, the witnesses, the prosecutors, the judicial officers or judges, and others in the system. This workshop is designed primarily for non-law enforcement personnel who are involved in the care of child victims, judges and prosecutors, and those who provide services and support to child victims, such as social service personnel, medical personnel, foster parents, educators, domestic violence volunteers and other program volunteers.





HANDOUTS FOR THIS  
PRESENTATION MAY OR  
MAY NOT BE AVAILABLE  
DURING THIS SESSION



7<sup>th</sup> Indian Nations Conference

Native Justice and Batterer's Re-Education

Don Chapin

Tulsa, Oklahoma 1999



## 7<sup>th</sup> Indian Nations Conference

### **"Native Justice and Batterer's Re-education" Don Chapin**

#### **Learning Objectives:**

1. To develop an understanding of the importance of the relationship between the court system and batterer's re-education groups.
2. To comprehend and execute a Memorandum of Understanding between the court system and batterer's re-education groups.

A formal relationship between court systems and batterer's re-education programs is remarkably important. It provides the basis for ensuring accountability for the men in the program, as well as safety for the women who have been battered. This 1.5 hour workshop will focus on developing such a relationship. One strategy that will be discussed is the Memorandum of Understanding, a contract outlining the responsibilities and protocols for holding batterers accountable within the tribal justice system. Traditional and culturally specific penalties will also be explored as methods of ensuring compliance.





HANDOUTS FOR THIS  
PRESENTATION MAY OR  
MAY NOT BE AVAILABLE  
DURING THIS SESSION



7<sup>th</sup> Indian Nations Conference

Mental Health Resources for Indian Children  
with Complex Needs

Kathy McGregor, MSW

Tulsa, Oklahoma 1999



## 7<sup>th</sup> Indian Nations Conference

### **"Mental Health Resources for Indian Children with Complex Needs"**

**Kathy McGregor, MSW**

#### **Learning Objectives:**

1. Definition of system of care.
2. Provide examples of the wrap-around model of service delivery.
3. How technical assistance is used by the recipients of the grants.

This workshop will provide information about a unique federal grant project. Give Native American sites have received grants to develop a system of care in order to serve Indian families and their children who have serious emotional disorders.

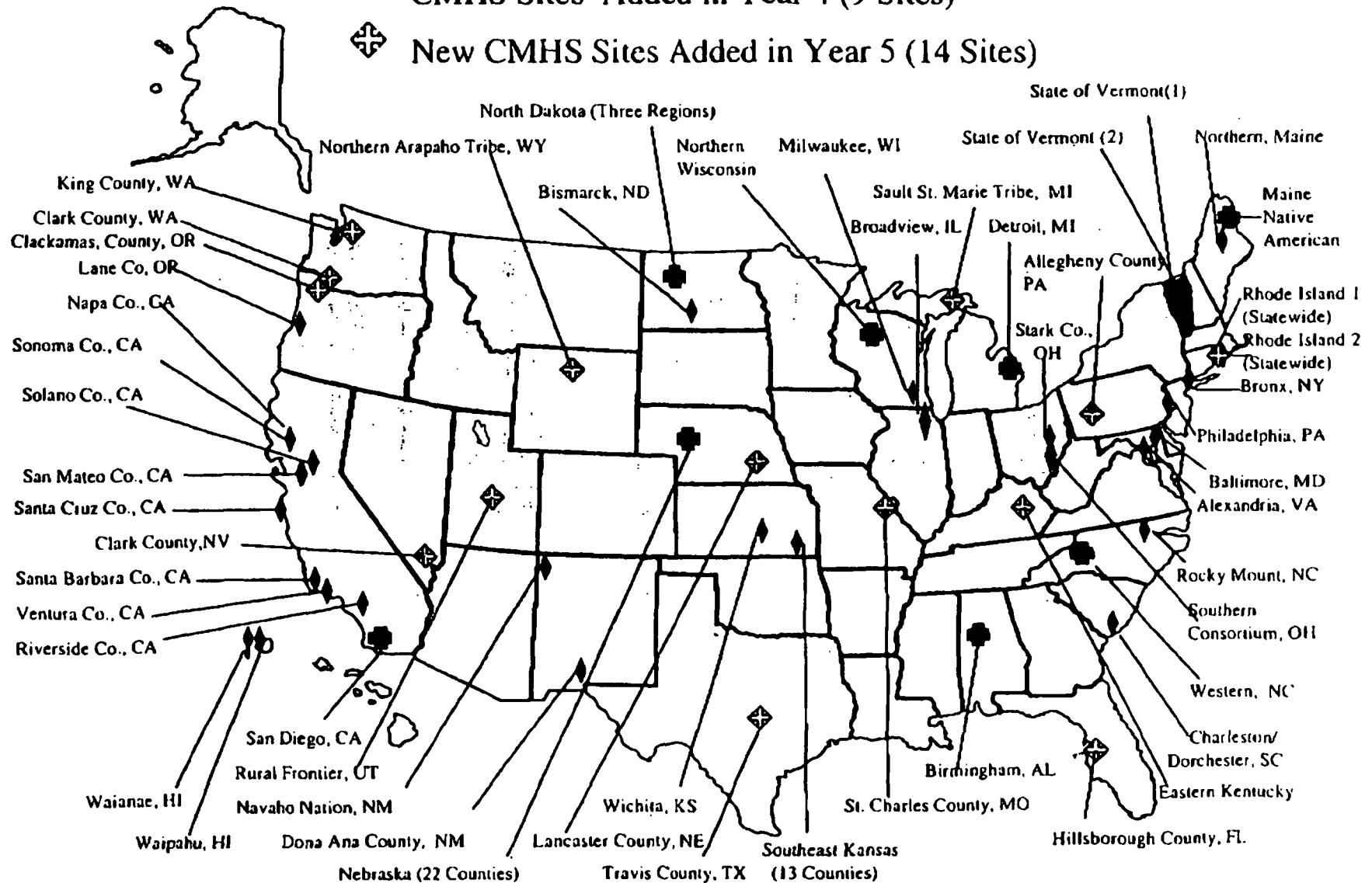
Tulsa, Oklahoma 1999



◆ Federal Center for Mental Health Services (CMHS) - Comprehensive Community  
Mental Health Services for Children and Their Families - 22 Original Sites

■ CMHS Sites Added in Year 4 (9 Sites)

⊕ New CMHS Sites Added in Year 5 (14 Sites)



## What Is NICWA?

The National Indian Child Welfare Association (NICWA) is a non-profit organization that provides technical assistance to the Native American sites for the Comprehensive Community Mental Health Services for Children and Their Families Program grantees. NICWA coordinates its efforts with the National Resource Network (NRN). Like the National Resource Network, NICWA's technical assistance is field-driven to meet the needs of the communities and the expectations of the grant.

The Native American projects are diverse in population size served, geographical area covered and number of Nations included in the scope of the grant. Each project seeks to improve outcomes for children with complex needs (or serious emotional disturbances) and their families through child-centered, family-focused, culturally appropriate services.

The special mix of services involves collaboration with, among others, individuals in education, juvenile justice, mental health, substance abuse, spiritual healers, public health and will change over time.

The Child and Family Mental Health Services project sites are grouped into four hubs: the Urban, the Small City/County, the Rural and the Native American Hubs. The first three provide technical assistance through the National Resource Network. The Native American Hub receives technical assistance from NICWA.

### National Hubs Directors:

- |  |   |
|--|---|
| <b>Urban Hub</b><br>Patricia Sokol<br>(215) 504-9293     | <b>Small City/County Hub</b><br>Elleen Deck<br>(503) 231-8950               |
| <b>Rural Hub</b><br>Wm. Martin Hydaker<br>(505) 541-5291 | <b>Native American Hub</b><br>Kathy McGregor<br>(503) 222-4044 extension 24 |

## Native American Hub Grantees

**K'e Project/Children and Families' Advocacy Corporation**  
P. O. Box 309  
Tohatchi, NM 87325  
(505) 733-2482  
fax (505) 733-2545

**Kmihqitahasultipon Program**  
Indian Township Health Center  
P. O. Box 97  
Indian Township, ME 04668  
(207) 796-2321  
fax (207) 796-2422

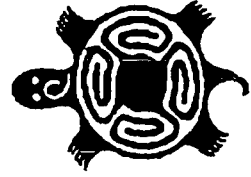
**Sacred Child Project**  
United Tribes Technical College  
3315 University Drive, Building 30  
Bismark, ND 58504  
(701) 530-0610 extension 389  
fax (701) 530-0610

**Mno Bmaadzid Endaad Program**  
Sault Ste. Marie Tribe of Chippewa Indians  
1022 E. Portage  
Sault Ste. Marie, MI 49783  
(906) 632-7468  
fax (906) 632-7476

**With Eagle's Wings**  
Northern Arapaho Tribe  
P. O. Box 160  
St. Stephens, WY 82524  
(307) 857-5940  
fax (307) 857-5932

## NICWA's Approach

- \* A consultant database includes individuals experienced in working collaboratively across cultures and agencies both within and beyond Indian Country.
- \* Technical assistance and training are provided on a site specific and a multi-site basis.
- \* Sites identify, prioritize and implement activities necessary to ensure that an effectively functioning system of care is responsive to the changing needs of the child, family and community.
- \* Family and extended family drive the mental health process as partners, advocates and leaders in the system of care on behalf of children with complex needs.
- \* NICWA acts as a team to provide or broker training, networking, mediation, consultants and an array of other technical assistance on behalf of the sites.
- \* Sites engage families, community, other professionals and stakeholders in implementing their long and short term plans to make steps toward sustainability.





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#### Native American Hub

Kathy McGregor  
(503) 222-4044 extension 24

## Native American Hub Grantees

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P. O. Box 309

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## NICWA's Approach

\* A consultant database includes individuals experienced in working collaboratively across cultures and agencies both within and beyond Indian Country.

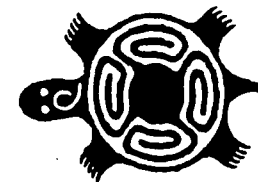
\* Technical assistance and training are provided on a site specific and a multi-site basis.

\* Sites identify, prioritize and implement activities necessary to ensure that an effectively functioning system of care is responsive to the changing needs of the child, family and community.

\* Family and extended family drive the mental health process as partners, advocates and leaders in the system of care on behalf of children with complex needs.

\* NICWA acts as a team to provide or broker training, networking, mediation, consultants and an array of other technical assistance on behalf of the sites.

\* Sites engage families, community, other professionals and stakeholders in implementing their long and short term plans to make steps toward sustainability.



## NICWA promotes

*... Community collaboration in support of children with special needs and their families. ...*

In several key Native American communities across the country, agencies and entities are dissolving barriers to bring an array of services to children with complex needs and their families. NICWA stands in the gap to promote the development of collaborative, culturally competent, child-centered systems of care.

*... Knowledge development and sharing*

As sites develop and implement successful strategies and interventions, NICWA collects and disseminates that new knowledge through a variety of mediums and collaboration with other technical assistance and resource centers.

*... Family leadership and involvement*

Families, including the extended family, are at the heart of this project. When family is more empowered within the process, the response by the system is more effective. NICWA is committed to ensuring family involvement in systems of care for children with serious emotional disturbances. To guarantee leadership roles for families within the project sites, NICWA works in partnership with the Federation of Families for Children's Mental Health.

## Who Should You Know At NICWA?

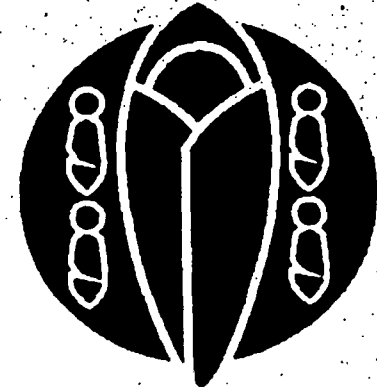
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## National Indian Child Welfare Association

*In cooperation with*

**The National Resource Network**

*at the*

**Washington Business Group  
on Health**

A federal project funded by the Child, Adolescent  
and Family Branch,  
Center for Mental Health Services,  
Substance Abuse and Mental Health Services  
Administration

*Technical assistance provided in cooperation with*  
**Indian Health Service  
Mental Health/Social Services Programs Branch  
Headquarters West**

optimal nature of the system of care. The values and principles are displayed in Table 1.1, and each principle is briefly discussed below.

**1. Children with emotional disturbances should have access to a comprehensive array of services that address their physical, emotional, social, and educational needs.** It is axiomatic that children and their families should have access to comprehensive services across physical, emotional, social, and educational domains. The Joint Commission on the Mental Health of Children (1969), the President's Commission on Mental Health (1978), and innumerable child mental health experts and advocates have stressed the conviction that a complete and comprehensive network of ser-

Table 1.1. Values and principles for the system of care

<b>Core Values</b>	
1.	The system of care should be child centered and family focused, with the needs of the child and family dictating the types and mix of services provided.
2.	The system of care should be community based, with the locus of services as well as management and decision-making responsibility resting at the community level.
3.	The system of care should be culturally competent, with agencies, programs, and services that are responsive to the cultural, racial, and ethnic differences of the populations they serve.
<b>Guiding Principles</b>	
1.	Children with emotional disturbances should have access to a comprehensive array of services that address their physical, emotional, social, and educational needs.
2.	Children with emotional disturbances should receive individualized services in accordance with the unique needs and potentials of each child and guided by an individualized service plan.
3.	Children with emotional disturbances should receive services within the least restrictive, most normative environment that is clinically appropriate.
4.	The families and surrogate families of children with emotional disturbances should be full participants in all aspects of the planning and delivery of services.
5.	Children with emotional disturbances should receive services that are integrated, with linkages between child-serving agencies and programs and mechanisms for planning, developing, and coordinating services.
6.	Children with emotional disturbances should be provided with case management or similar mechanisms to ensure that multiple services are delivered in a coordinated and therapeutic manner and that they can move through the system of services in accordance with their changing needs.
7.	Early identification and intervention for children with emotional disturbances should be promoted by the system of care in order to enhance the likelihood of positive outcomes.
8.	Children with emotional disturbances should be ensured smooth transitions to the adult service system as they reach maturity.
9.	The rights of children with emotional disturbances should be protected, and effective advocacy efforts for children and adolescents with emotional disturbances should be promoted.
10.	Children with emotional disturbances should receive services without regard to race, religion, national origin, sex, physical disability, or other characteristics, and services should be sensitive and responsive to cultural differences and special needs.

From Stroul, B., & Friedman, R. (1986). *A system of care for children and youth with severe emotional disturbances* (rev. ed., p. 17). Washington, DC: Georgetown University Child Development Center, National Technical Assistance Center for Children's Mental Health; reprinted by permission.



**C H A P T E R 1**

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## The System of Care Concept and Philosophy

Beth A. Stroul and Robert M. Friedman

From the time of the Joint Commission on the Mental Health of Children in 1969, there has been a great deal of discussion about a system of care for children and adolescents with serious emotional disturbances and their families. However, until recently there was little clarity about such systems of care—how they might be organized, which agencies should be involved, what services should be provided, and what values and principles should guide service delivery. A project sponsored by the Child and Adolescent Service System Program (CASSP), formerly part of the National Institute of Mental Health and currently within the Center for Mental Health Services, was undertaken to define the system of care concept and philosophy in order to provide states and communities with a conceptual framework and model for planning and developing service systems for this population.

### SYSTEM OF CARE VALUES AND PRINCIPLES

One of the most important results from this effort is the recognition that the concept of a system of care represents more than a network of individual service components. Rather, the system of care represents a *philosophy* about the way in which services should be delivered to children and their families. The actual components and organizational configuration of the system of care may differ from state to state and from community to community. Despite such differences, the system of care should be guided by a set of basic values and operational philosophies. It is critical that these values be clearly articulated so that they may be used to guide the character and quality of the system of care.

Not surprisingly, there is general agreement in the field and in the literature as to the values and philosophy that should be embodied in the system of care for children with serious emotional disturbances. With input and consultation from the field, including policy makers, parents, administrators, researchers, advocates, and providers, two core values and a set

of 10 principles were selected to provide a philosophical framework for the system of care model.

Since the selection of the original core values, the field has moved to a greater recognition of the central role of cultural competence in the development of a system of care. A monograph describing the concept of cultural competence and establishing a framework for it was published in 1989 (Cross, Bazron, Dennis, & Isaacs, 1989) and has played a major role in promoting the development of culturally competent systems of care. In recognition of the importance of cultural competence, a third core value that specifically addresses this area has been added to the original two.

#### Core Values

The core values are central to the system of care and its operation. The first value is that the system of care must be driven by the needs of the child and his or her family. In other words, the system of care must be *child centered and family focused*, with the needs of the child and family dictating the types and mix of services provided. This child-centered and family-focused approach is seen as a commitment to adapt services to the child and family, rather than expecting children and families to conform to pre-existing service configurations. It is also seen as a commitment to providing services in an environment and a manner that enhances the personal dignity of children and families, respects their wishes and individual goals, and maximizes opportunities for involvement and self-determination in the planning and delivery of services.

Implicit in this value is a commitment to serving the child in the context of the family. In most cases, parents are the primary caregivers for children with serious emotional disturbances, and the system of care should support and assist parents in this role as well as involve parents in all decisions regarding service delivery. The system of care should also have a strong and explicit commitment to preserve the integrity of the family unit whenever possible. In many cases, intensive services involving the child and family can minimize the need for out-of-home treatment. Thus, a child-centered system of care is also a family-focused system of care.

The second core value holds that the system of care for children with emotional disturbances should be *community based*. Historically, services for this population have been limited to state hospitals, training schools, and other restrictive institutional facilities. There has been increasing interest and progress in serving such children in community-based programs that offer less restrictive, more normative environments. The system of care embraces the philosophy of a community-based network of services for youth with emotional disturbances and their families. Although "institutional" care may be indicated for certain children at various points in time, in many cases appropriate services can be provided in other, less restrictive settings within or close to the child's home community.

The notion of a community-based system of care extends beyond the actual services and includes the control and management of the system. Decisions about the mix of services to be offered, service coordination mechanisms, and use of resources should be made at the community level in cooperation with state government. Such flexibility and decision-making authority encourages communities to accept responsibility for serving their youngsters.

The third core value asserts that the system of care should be *culturally competent*, with agencies, programs, and services that are responsive to the cultural, racial, and ethnic differences of the populations they serve. Most child-serving agencies and systems have not addressed the structural barriers and value differences encountered by ethnic minorities, resulting in frustration, anger, and disappointment for children of color and their families (Isaacs & Benjamin, 1991). The need to create culturally competent systems of care assumes greater urgency in view of the changing demographics of the American population, with whites continuing to decline as a proportion of the population and ethnic minorities growing. Furthermore, a number of external stressors have been found to place ethnic minority children at increased risk for emotional disorders. Thus, children of color are likely to comprise an increasing proportion of the country's population of youth and an even larger proportion of youngsters receiving mental health and other services from child-serving agencies.

The concept of cultural competence is inherent in the concept of a system that emphasizes child-centered, family-focused, and community-based care. These values dictate that children and families be served within their own unique and specific contexts. Culture and ethnicity comprise a significant part of the context for children of color and their families. Isaacs and Benjamin (1991) emphasize that ethnicity shapes beliefs about what constitutes mental health and mental illness, manifestations of symptoms and patterns of coping, help-seeking patterns, and use of and response to treatment. Thus, the critical importance of culture and ethnicity necessitates the development of culturally competent systems of care.

The implementation of this value requires careful attention to such factors as location of services, culturally sensitive assessments, emphasis on the family, staffing patterns, training, and use of natural helpers. Achieving cultural competence is seen as a developmental process that involves adaptations at policy-making, administrative, and practice levels to ensure that the system of care is sensitive and responsive to the unique needs of the populations served (Cross et al., 1989).

#### Principles

In addition to these three fundamental values for the system of care, 10 principles have been identified that enunciate other basic beliefs about the

optimal nature of the system of care. The values and principles are displayed in Table 1.1, and each principle is briefly discussed below.

**1. Children with emotional disturbances should have access to a comprehensive array of services that address their physical, emotional, social, and educational needs.** It is axiomatic that children and their families should have access to comprehensive services across physical, emotional, social, and educational domains. The Joint Commission on the Mental Health of Children (1969), the President's Commission on Mental Health (1978), and innumerable child mental health experts and advocates have stressed the conviction that a complete and comprehensive network of ser-

vices is necessary to meet the multidimensional needs of children and families.

Although youngsters with emotional disorders require specialized mental health services, these services are insufficient to promote proper growth and development. Mental health services can be effective only within the context of a larger child-caring network that is responsible for meeting the child's health, educational, recreational, family support, and vocational needs. Thus, the scope and array of services included in the system of care must be sufficiently broad to account for the diverse needs of the developing child. As noted by Lourie and Katz-Leavy (1986), proper care relies on proper balance and integration of services in the various domains.

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Guiding Principles	
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5.	Children with emotional disturbances should receive services that are integrated, with linkages between child-serving agencies and programs and mechanisms for planning, developing, and coordinating services.
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7.	Early identification and intervention for children with emotional disturbances should be promoted by the system of care in order to enhance the likelihood of positive outcomes.
8.	Children with emotional disturbances should be ensured smooth transitions to the adult service system as they reach maturity.
9.	The rights of children with emotional disturbances should be protected, and effective advocacy efforts for children and adolescents with emotional disturbances should be promoted.
10.	Children with emotional disturbances should receive services without regard to race, religion, national origin, sex, physical disability, or other characteristics, and services should be sensitive and responsive to cultural differences and special needs.

From Siraui, B., & Friedman, R. (1986). *A system of care for children and youth with severe emotional disturbances* (rev. ed., p. 17). Washington, DC: Georgetown University Child Development Center, National Technical Assistance Center for Children's Mental Health; reprinted by permission.

**2. Children with emotional disturbances should receive individualized services in accordance with the unique needs and potentials of each child and guided by an individualized service plan.** Each child and family served by the system of care has unique and changing needs. These needs are related to differences in age, developmental stage, level of functioning or degree of impairment, and include special needs resulting from physical disabilities, racial or ethnic background, or other factors. Thus, the types, mix, and intensity of services must be determined for each child and family. Again, one of the basic philosophical tenets of the system of care is that children should not be expected to conform to the service system, but that services should be designed and configured to fit the child's needs.

In order to individualize services, a comprehensive diagnostic and assessment process must be an integral part of the delivery of services. The assessment process offers the opportunity to consider the child's strengths and problems, level of functioning, age and developmental stage, and any special needs that bear on service delivery. The assessment process should be "ecological," considering the child in the context of the family, school, and other relevant environments.

The culmination of the assessment process should be an individualized service plan that identifies problems, establishes goals, and specifies appropriate interventions. The individualized service plan should address the child's needs across all the major systems of care dimensions—mental health, social, educational, health, substance abuse, vocational, recreational, and operational services. Some communities have begun using multiagency teams convened by the case manager to develop a comprehensive service plan that applies across agencies and does not narrowly focus on one dimension.

The individualized service plan should be developed with the full participation of the child, family, providers, and significant others. Children and families should retain the greatest possible degree of control over their

own lives, participating in the setting of their own treatment goals and in the planning and evaluation of interventions to reach those goals. Additionally, goals and expectations developed in the assessment and service planning process should be realistic and based on a thorough knowledge and acceptance of the child and family. Unrealistic goals may doom the interventions to failure and cause needless frustration for the child and family. Service goals should be regularly reassessed and revised based on the dynamic nature of the strengths, weaknesses, and needs of the child and family.

The concept of individualized services has been given new meaning over the past several years based on experiments in states including Alaska, Vermont, Washington, and Idaho (Katz-Leavy, Lourie, Stroul, & Zeigler-Dendy, 1992). The approach has involved constructing a service plan for a child and family and using flexible funds to develop a package of services and supports that are specifically tailored to address each child's and family's unique needs. This may involve enlisting existing resources in the community as well as purchasing or designing services and supports for one particular child and family. The concept of providing individualized services, also referred to as "wraparound" services, has been used in many types of environments but has been particularly successful in rural areas where services are scarce. The types of wraparound services and supports that can be provided through this approach are constrained only by the limits of the creativity of those developing the service plan. Examples of the types of wraparound services provided include training an aide in a remote village in Alaska to provide day treatment for one youngster; hiring behavioral aides, professional roommates, or mentors for the home or classroom; providing special recreational or vocational services; and purchasing reinforcers. These individually tailored service packages, designed to "surround" the child and family with a full network of resources based on their needs and wishes, are increasingly being used for youngsters with the most serious disorders.

**3. Children with emotional disturbances should receive services within the least restrictive, most normative environment that is clinically appropriate.** Children and adolescents should be served in as normal an environment as possible. Preferred interventions are those that provide the needed services and, at the same time, are minimally intrusive in the normal day-to-day routine of the child and family. An implicit goal of the system of care is to maintain as many children as possible in their own homes by providing a full range of family-focused and community-based services and supports. In too many cases, children are removed from their homes or placed in environments that are more restrictive than they actually need. Although out-of-home or protective placements may be indicated some of the time, frequently they are used because less restrictive, community-based alternatives are not available. Accumulating evidence indi-

cates that, when a comprehensive system of care is available, many children with serious emotional disturbances can be maintained within their own homes and communities (Behar, 1985, 1986; Friedman & Street, 1985; Stroul, 1988, 1993).

It also is evident that the needs of a small percentage of youth with emotional disturbances cannot always be met in the less restrictive settings. In these cases, even intensive nonresidential services may not meet the therapeutic needs of the child and family, and it may not be in the child's best interest to remain with the family. Residential services should be employed *only* when more normative, nonresidential options are not effective. In these situations, residential services should be provided in the least restrictive setting possible, with the goal of rapid reintegration into the family or achievement of a stable, permanent placement.

Within the residential arena, there are a range of more normative options that attempt to approximate the child's natural environment. For example, therapeutic foster homes and family-style group homes create a family-type atmosphere and allow children to attend public schools and to remain involved in community activities. According to Friedman, these services have more potential for helping youngsters realize the goal of returning to their own family and school than do residential services that cut youngsters off from normalized family and educational environments (Friedman, 1983; Stroul, 1989).

By the same token, residential services, when indicated, should be located as close as possible to the child's home in order to cause the least disruption of the child's links to family, friends, agencies, school, and community. Services located close to home maximize the possibility of family involvement in the treatment process and are more likely to prepare the child for successful reintegration into the natural environment.

It must be acknowledged that there may be situations in which treatment in institutional settings is appropriate. In these cases, a child may need highly specialized services that are not reproducible in a community setting. Behar reported, however, that in North Carolina less than 7% of the most difficult target population (those certified as belonging to the "Willie M." class, which includes children and adolescents with serious mental, emotional, or neurological disabilities who are also violent and assaultive) is in secure treatment settings, including public and private hospitals and secure residential treatment centers, and that these placements are considered appropriate to the needs of the youngsters. The North Carolina data suggest that the vast majority of youth with serious emotional disturbances can be served in less restrictive, community-based settings, given the appropriate continuum of services and supports (Behar, 1985, 1986).

**4. The families and surrogate families of children with emotional disturbances should be full participants in all aspects of the planning and delivery of services.** The system of care for children with emotional



disturbances should promote and encourage the involvement of families, be they natural or surrogate families. Parents and families should not be passive participants, but should be actively consulted and involved in all decision making about the child and services. Thus, the system of care should have a strong family orientation.

The President's Commission on Mental Health (1978) concluded that

Mental health services for children must also be delivered within a system of care that insofar as possible promotes and maintains a continuing relationship between child and family. . . . We recommend that parents be partners with providers in determining a plan of treatment for every severely disturbed or handicapped child. (p. 615)

Similarly, Lourie and Katz-Leavy (1986) noted that parents are the most important resource for the child and must be given the necessary support to fulfill that role.

In order to establish parents as partners in the system of care, they should be involved in all phases of service delivery for their children, including assessment, development of the individualized service plan, service provision, service coordination, and evaluation of progress. In addition, an array of services and supports should be offered to parents and families to enhance their coping skills and their ability to care for their children effectively. These services include parent support, parent education, counseling, respite services, home aid services, and others. Recently, a number of innovative models have been developed for providing these services and supports to families. There is increasing evidence that, when adequate family support is available, many families are able to maintain children with serious emotional disturbances at home and avoid placement in residential or institutional settings.

Even when children are in out-of-home placements, the participation and involvement of parents should be encouraged. In fact, family needs are most often neglected when children are in residential settings as a result of distance or other factors. Outreach efforts should be made to contact families and engage them constructively in the service delivery process. By involving and providing supports to families, the opportunities for successful return of the child to the family are maximized. Furthermore, families should not be forced to relinquish legal custody in order to obtain expensive but needed residential treatment for their children.

Although family involvement is the goal, no child should be denied services because he or she has no traditional family or the family refuses participation. When the natural family is not involved, the system of care should engage the surrogate or substitute family in services. When this is not possible, a strategy appropriate to the youngster's particular situation should be devised.

The principle of family involvement applies not only to participation in planning and delivering services for the family's own children but to participation of the family at the system level as well. Families should be involved as full partners in policy making, planning, priority setting, and evaluating the overall system of care for children with emotional disturbances in their communities. Only when parents are active participants in decision making both for their own youngsters *and* for the overall service system will they be full partners in the system of care.

**5. Children with emotional disturbances should receive services that are integrated, with linkages between child-serving agencies and programs and mechanisms for planning, developing, and coordinating services.** Although states and communities may be developing more comprehensive services for children and adolescents with serious emotional disturbances, this does not ensure coordination of services or continuity of care. Nor does it ensure that the system will be able to respond to the changing service needs of children and their families. Coordination, continuity, and movement within the system are critical for youth with serious emotional disturbances who have multiple needs that cut across agency boundaries. In order to best meet the needs of children and families, *integrated, multiagency networks of services* are needed to blend the services provided by mental health, education, child welfare, health, substance abuse, juvenile justice, and other agencies. In short, the various components must be interwoven into a coherent and effective system.

In order to achieve the goal of an integrated, community-based system of care, a range of functions should be shared among the key child-serving systems. Planning, program development, administration, funding, delivering, coordinating, and evaluating services are some of the functions that should be coordinated among the agencies and programs linking together to serve children with serious emotional disturbances and their families. Furthermore, the system should be flexible in decision making and funding to allow it to respond to changing programmatic needs in the community. Many communities have created interagency entities comprised of the executives of the major child-serving systems to fulfill these system-level coordination functions. These groups focus on matters of policy, planning, resource distribution, program development, problem solving, and other strategic issues to improve the system of care for troubled children and families (Stroul, Lourie, Goldman, & Katz-Leavy, 1992).

Another critical system-level coordination function is the capacity to review difficult cases that cannot be resolved through other mechanisms within the system of care. This interagency case review and problem-solving function may be handled by the same executive level interagency entities or by other interagency structures created in communities for this particular purpose.

**6. Children with emotional disturbances should be provided with case management or similar mechanisms to ensure that multiple services are delivered in a coordinated and therapeutic manner and that they can move through the system of services in accordance with their changing needs.** Case management has been called the backbone of the system of care and is essential to the success of the service system. Case management, therapeutic case advocacy, and a variety of similar approaches are intended to ensure that children and families receive the services they need, that services are coordinated, and that services are appropriate to their changing needs over time. Lourie and Katz-Leavy (1986) assert that without "a primary service person responsible for the coordination of the treatment plan, it is nearly impossible to assure adequate services and proper placement for an individual severely emotionally disturbed child or adolescent" (p. 169). Clearly, the case management function is critical for the effective operation of the system of care.

The organizational location of the case manager or service coordinator cannot be predetermined. It should be determined by the needs of individual children and families and by the structure and resources of the system of care within a particular community. The role of the case manager, however, has been more clearly articulated and includes a number of essential functions:

- Coordinating the comprehensive interagency assessment of the child's needs
- Planning for services to address the needs of the child and family
- Arranging for needed services
- Linking the various parts of the child's system, including family, agencies, school, and significant others
- Monitoring the adequacy and appropriateness of services
- Ensuring continuity of service provision
- Advocating for the child and family
- Establishing linkages with the adult service system to facilitate transition

These functions are essential, unifying factors in service delivery. Behar (1984) contends that case management is

the element of planning and coordinating that has held together the workings of all the agencies concerned with the child, the energizing factor that has propelled the service plan into the reality of service delivery, the case advocacy strength that has sustained a commitment to each child and an optimism about each child's capability to change. (p. 40)

**7. Early identification and intervention for children with emotional disturbances should be promoted by the system of care in order to enhance the likelihood of positive outcomes.** Emerging evidence in-

dicates that early identification and intervention can have a significant effect on the course of emotional disorders in children (Cowen et al., 1975; Friedman, 1984). Such early intervention can, in some cases, reverse early maladaptive patterns and prevent problems from reaching serious proportions. Thus, early identification and intervention efforts have the potential for a major impact on serious emotional disturbances in children.

One of the goals of the system of care should be to reduce the prevalence and severity of emotional disturbance through effective early identification and intervention. Although there is increasing interest in screening and intervention programs to identify and assist high-risk children and families, these services often are neglected in favor of much-needed services for children who are already demonstrating serious problems. The challenge to the system of care is to achieve an appropriate balance between early identification and intervention services and services designed for youth with serious and persistent problems.

**8. Children with emotional disturbances should be ensured smooth transitions to the adult service system as they reach maturity.** The transition from the system of care for children and adolescents with emotional disturbances to the adult service system is fraught with problems. Children who "age out" of the system of care become young adults who often are in need of long-term mental health care, vocational services, and a range of other support services. However, a number of factors complicate a smooth transition and make it difficult for these young adults to receive appropriate services.

First, there may be difficulties in obtaining the mental health and other needed services from the adult service system. Aging out of the system of care for children generally means moving to an entirely new set of agencies and programs. Identifying, applying to, and becoming established with the adult agencies may be a complex and cumbersome task. A second complication results from the transition from school to the world of work. Many of these youth have no prevocational or vocational skills and may not be employable. Furthermore, they may not be viewed positively by vocational rehabilitation agencies, which require substantial promise of successful outcomes. These young adults may therefore be left in a void without school, job, or opportunities to enhance their employability.

Philosophical differences also complicate the transition from the child to the adult service system. Although systems of care for children and adolescents are based on a growth-promoting, "habilitative" philosophy, adult service systems are based on the philosophy of disability and rehabilitation. This philosophical difference may present problems for aging out youth and their families, possibly discouraging their use of needed adult services.

Finally, adult agencies may be ill prepared to serve many of the youth who have been served by the system of care for children. The adult agencies have been developing programs to serve persons with serious and persis-

tent mental illnesses. However, only a small percentage of the aging-out youth would fit the definition of adults with serious and persistent mental illnesses. Many have not met the hospitalization criteria, and many evidence conduct disorders rather than overt psychotic disorders. Their problems often include drug and alcohol abuse. The programs offered by adult mental health and other agencies may be inappropriate to the needs and characteristics of this "youth-in-transition" population.

Clearly, the system of care for youth with serious emotional disturbances cannot address all the issues related to transition to the adult service system. Nevertheless, the system of care should establish functional linkages with relevant adult agencies. These linkages should be used to ensure continuity of services for individual youth and families as well as to work with the adult system to become responsive to the needs of youth in transition.

**9. The rights of children with emotional disturbances should be protected, and effective advocacy efforts for children and adolescents with emotional disturbances should be promoted.** The system of care should be an advocate for the child. The "child advocacy" function of the system of care should be evident in several areas (Friedman, Duchnowski, & Henderson, 1989). First, the system of care should adopt mechanisms to ensure the protection of client rights. Such mechanisms may include statutes, statements of the rights of children, grievance procedures, case review committees, and protection and advocacy systems.

Such mechanisms are needed to protect the rights of children in several respects. One basic right of all children is to be treated in the least restrictive, most appropriate setting. Safeguards may be necessary to ensure that this right is upheld, as well as rights on admission to hospitals and other facilities, rights of children within facilities, rights related to removal from homes, and the like. A complicating factor in protecting the rights of children occurs when the rights of the child and the rights of the parents may be in conflict.

In addition to rights protection, the system of care should actively promote advocacy activities on behalf of children and adolescents with emotional disorders. Case advocacy is defined as efforts on behalf of an individual child to ensure that the child and his or her family receive appropriate services, benefits, or protections. Class advocacy involves efforts to seek improvements in services, benefits, or rights on behalf of all children and adolescents with emotional disturbances (Knitzer, 1989). Both case advocacy and class advocacy are vital to the success of the system of care. A strong and vocal network to advocate for the needs of children with emotional disorders has been notably lacking in the past. Knitzer (1989) emphasized that the growing recognition of the need for systems of care

creates a challenge and an opportunity to strengthen advocacy for children and adolescents with emotional disorders.

Currently, efforts to build support for children's mental health issues are increasing. A broad-based constituency of parents, professionals, and child advocates is growing and beginning to provide the much-needed voice in support of system of care development. Existing advocacy groups are increasingly championing the children's mental health agenda, and two national advocacy groups (the Federation of Families for Children's Mental Health and the National Alliance for the Mentally Ill-Child and Adolescent Network) are devoted exclusively to issues related to children with emotional disturbances. Similar advocacy coalitions are developing at the state and community levels and are becoming an integral part of the system of care.

**10. Children with emotional disturbances should receive services without regard to race, religion, national origin, sex, physical disability, or other characteristics, and services should be sensitive and responsive to cultural differences and special needs.** The system of care should uphold a policy of nondiscrimination in the delivery of services. All children with emotional disorders and their families, including minority children and children with special needs such as physical disabilities, should have access to quality services. Additional efforts and arrangements are needed in order to be responsive to the special needs of children and families. Without such efforts, the system of care could not truly be child centered. The President's Commission on Mental Health (1978) emphasized this principle:

Clearly services should respect ethnic differences and preferences. Quality of services should be independent of the socioeconomic or ethnic groups being served. Services should be adapted to suit the life styles, language, and expectations of the children and families being served. (p. 615)

This principle means that services should be accessible to children and family members with physical disabilities, that interpreters should be available to those with hearing impairments, translation services should be provided for those with language barriers, and the system of care should be sufficiently flexible to remove any barriers to service delivery for children and families with special needs or from diverse ethnic groups.

**Summary** The task of developing a comprehensive system of care for children with serious emotional disturbances is both complex and difficult. These principles describe the characteristics of such a system of care and the values on which it is based--comprehensiveness, individualization, least restrictive setting, family orientation, service integration, case management, early intervention, smooth transitions, rights protection and advocacy, and nondiscrimination.

### SYSTEM OF CARE FRAMEWORK AND COMPONENTS

A system of care is defined as a comprehensive spectrum of mental health and other necessary services that are organized into a coordinated network to meet the multiple and changing needs of children and adolescents with serious emotional disturbances and their families. The system of care model presented in this chapter represents one approach to a system of care. The model is designed to be a guide and is based on the best available empirical data and clinical experience to date. It is offered as a starting point for states and communities as they seek to build their systems, as a baseline from which changes can be made as additional research, experience, and innovation dictate.

The system of care model is graphically presented in Figure 1.1 and is organized in a framework consisting of eight major dimensions of service, each composed of a range of service components:

1. *Mental health services*, including a range of nonresidential services and a range of residential services
2. *Social services*, including protective services, financial assistance, home aid services, respite care, shelter services, foster care, and adoption
3. *Educational services*, including assessment and planning, resource rooms, self-contained special education, special schools, home-bound instruction, residential schools, and alternative programs

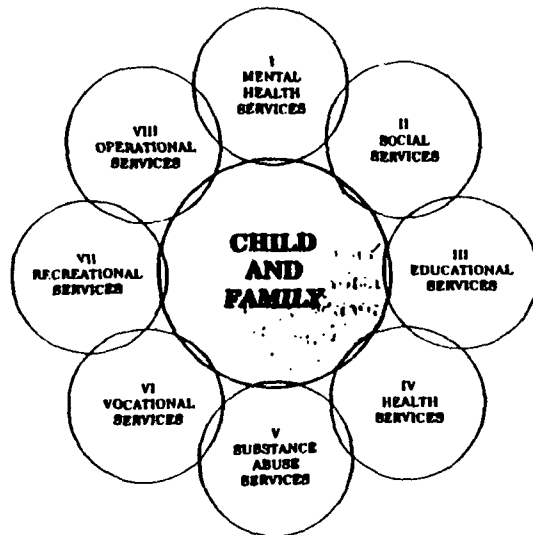


Figure 1.1 System of care framework (From Stroul, B., & Friedman, R. [1986]. *A system of care for children and youth with severe emotional disturbances* [rev. ed., p. 30]. Washington, DC: Georgetown University Child Development Center, National Technical Assistance Center for Children's Mental Health; reprinted by permission.)

4. *Health services*, including health education and prevention, screening and assessment, primary care, acute care, and long-term care
5. *Substance abuse services*, including prevention, early intervention, assessment, outpatient services, day treatment, ambulatory detoxification, relapse prevention, residential detoxification, community residential treatment and recovery services, and inpatient hospitalization
6. *Vocational services*, including career education; vocational assessment; job survival skills training; vocational skills training; work experiences; job finding, placement and retention services; and supported employment
7. *Recreational services*, including relationships with significant others, after-school programs, summer camps, and special recreational programs
8. *Operational services*, including case management, juvenile justice services, family support and self-help groups, advocacy, transportation, legal services, and volunteer programs

Each service dimension addresses an area of need for children and families, a set of functions that must be performed in order to provide comprehensive services to meet these needs. The model is *not* intended to specify which type of agency should perform any of the particular functions. Certainly, particular agencies typically provide certain of these services. Educational services, for example, are most often provided by school systems, and social services are generally associated with child welfare or social welfare agencies. One might assume that the mental health services should be provided by mental health agencies. This, however, is often not the case.

All of the functions included in the system of care dimensions may be performed by a variety of agencies or practitioners in both the public and private sectors. Therapeutic group care, a component in the mental health dimension, is often provided by juvenile justice agencies and social service agencies as well as by mental health agencies. Day treatment is another mental health function that is frequently supplied by educational agencies, ideally in close collaboration with mental health providers. Similarly, home-based services are provided by social service agencies, mental health agencies, or jointly by both systems.

Although the roles and responsibilities of specific agencies are acknowledged, many of the services can be, and are, provided by different agencies in different communities. Furthermore, many of these services are provided not through the efforts of any single agency but through multi-agency collaborative efforts. Such collaborations are important not only in identifying needs and planning services but also in developing, funding, and operating services. It should also be recognized that services are not always provided by agencies. Some functions within the system of care may

be performed by families, parent cooperatives, or other arrangements. Private-sector facilities and practitioners can play a pivotal role in the system of care, providing a wide range of services within each of the major dimensions. Additionally, juvenile justice agencies play an important role in the system of care by providing a wide range of services to children and adolescents who have broken the law (Shore, 1985).

Of primary importance is the dimension of mental health services, because these are critical services for all children with serious emotional disorders. These services are divided into seven nonresidential and seven residential categories, as displayed in Table 1.2. In the nonresidential category, many communities provide outpatient mental health services but do not offer services such as day treatment or home-based services. Emerging evidence indicates that these intensive services for youngsters and their families often can avert the need for out-of-home placement. Within the residential category, states and communities typically have concentrated on developing the more restrictive services provided in facilities such as residential treatment centers and hospitals. It is only recently that states and communities have begun to experiment with services such as therapeutic foster care. These types of programs have proven successful in treating youngsters with serious emotional disturbances in more natural family settings within the community.

When considering the individual services, it should be recalled that these are component parts of an overall system of care. Although they are listed individually, the system of care dimensions and service components cannot be operated in isolation. Only when the services are enmeshed in a coherent, well-coordinated system will the needs of youngsters with emotional disorders and their families be met in an appropriate and effective manner.

A critical characteristic of an effective system is an appropriate balance between the components, particularly between the more restrictive and less

restrictive services. If such a balance is not present, then youngsters and families will not have a chance to receive less restrictive services before moving to more restrictive services. For example, if within a community there are no intensive home-based services, only 20 day treatment slots, and 50 residential treatment slots, the system is not in balance. Youngsters and families most likely will not have the opportunity to participate in home-based or day treatment services because of their relative unavailability, and the residential components of the system will be overloaded with youngsters, some of whom might have been diverted from residential treatment had there been more nonresidential services available.

At the present time there are no clear, empirically based guidelines about the appropriate capacity within each component of a system of care. Implicit within a model system of service, however, is the expectation that more youngsters will require the less restrictive services than the more restrictive ones, and that service capacity should therefore diminish as one proceeds from less to more restrictive options within the system. As additional research and field experience are accumulated with respect to systems of care for children with emotional disturbances, it is becoming more feasible to define the optimal ratios of capacities in the different system components (Behar, Holland, & MacBeth, 1987; Friedman, 1987; Pires, 1990).

The operational services dimension is somewhat different from the other system of care dimensions. This dimension includes a range of support services that can make the difference between an effective and an ineffective system of care but do not fall into a specific category. Instead, they cross the boundaries between different types of services. They are called "operational services" because of their importance to the overall effective operation of the system.

Case management is a service within this dimension that can play a critical role in the system of care. Behar (1985) calls case management "perhaps the most essential unifying factor in service delivery" (p. 194). The important role that case management can play in a system of service has been increasingly recognized in recent years but has been operationalized in only a few states. Case management can be provided to youngsters in both residential and nonresidential programs. It involves brokering services for individual youngsters, advocating on their behalf, ensuring that an adequate treatment plan is developed and implemented, reviewing client progress, and coordinating services. Case management involves aggressive outreach to the child and family and working with them and with numerous community agencies and resources to ensure that all needed services and supports are in place. One important trend in serving children with emotional disorders is to combine specialized case management with the availability of flexible funds used to secure the specific mix of services and

Table 1.2. Dimension I: Mental health services

Nonresidential services	Residential services
Prevention	Therapeutic foster care
Early identification and intervention	Therapeutic group care
Assessment	Therapeutic camp services
Outpatient treatment	Independent living services
Home-based services	Residential treatment services
Day treatment	Crisis residential services
Emergency services	Inpatient hospitalization

From Stroul, B., & Friedman, R. (1986). *A system of care for children and youth with severe emotional disturbances* (rev. ed., p. 31). Washington, DC: Georgetown University Child Development Center, National Technical Assistance Center for Children's Mental Health; reprinted by permission.

supports needed by each individual child and family on a case-by-case basis (Update, 1986-1987).

## CONCLUSION

The system of care model presented in this chapter can be used as a guide in planning and policy making and provides a framework for assessing present services and planning improvements. The model can be conceptualized as a blueprint for a system of care that establishes directions and goals.

This model should not be seen as the only way to conceptualize systems of care. States and communities should revise and adapt the model to conform with their needs, environments, and service systems. The model must also be regarded as flexible, with room for additions and revisions as experience and changing circumstances dictate. Furthermore, it is important to note that not every community is expected to have every service; some highly specialized services might be made available on a regional basis. States and communities must establish priorities and identify a core set of services as a focus for their system improvement activities.

Most important is the acknowledgment that conceptualizing a system of care represents only a *preliminary step* in the service system improvement process. Development of a system of care model is a planning task that must be followed by implementation activities. Although designing a system of care is an essential and challenging task, the real challenge for states and communities is to transform their system of care plans into reality.

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## Framework for a Culturally Competent System of Care

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Children of color—that is, children of African American, Latino/Hispanic, Asian American/Pacific Islander, and Native American/Alaskan Native descent—are the fastest growing population within the United States. According to the Children's Defense Fund (1991), these children comprised 30% of the population under the age of 19 years in 1990 and will comprise 33% by the year 2000. This trend is expected to continue so that, by the year 2020, children of color will constitute approximately 40% of the child population in the country. These changing demographics portend tremendous reliance on these youth for America's continued growth and prosperity in the 21st century.

The importance of children of color to our future, however, is overshadowed by the challenges they face in growing into productive and healthy citizens in a society where they are at a considerable disadvantage. For example, poverty disproportionately impacts children of color. According to the Children's Defense Fund (1994), the poverty rate for children in young families (i.e., families headed by someone younger than age 30), is 29.3% for Caucasian children, 69.3% for African American children, and 52% for Latino children. In addition, the grim litany of problems facing children of color is all too familiar. Higher proportions of children of color die before birth or during infancy; have learning, emotional, and/or physical disabilities; have higher school dropout rates and fewer higher education opportunities; become parents at an early age; enter the child welfare system and are placed out of their homes and communities; are incarcerated in youth detention facilities and "rehabilitated" into adult correctional systems; or die as a result of homicide, suicide, or unintentional injuries before reaching adulthood (Isaacs, 1993).

Any one of these conditions can have a significant impact on the emotional well-being of children and adolescents. Yet youth of color often have

limited access to mental health services. The chances are good that an African American adolescent with a serious emotional disturbance will end up in the juvenile justice system rather than in the treatment setting to which his or her Caucasian counterpart would be referred (Comer & Hill, 1985; Gibbs, 1988; Hawkins & Salisbury, 1983; Lewis, Lovely, Yeager, & Femina, 1989; Lewis, Shanok, Cohen, Kligfeld, & Frisone, 1980). A Native American child with serious emotional disturbance will likely go without treatment or be removed legally and geographically from his or her family and tribe (Berlin, 1983; Blum, Harmon, Harris, Bergeisen, & Resnick, 1992; LaFromboise & Low, 1989). A Hispanic child with serious emotional disturbance will likely be assessed in a language not his or her own (Inclan & Herron, 1989; Morales, Ferguson, & Munford, 1986; Ramirez, 1989). An Asian American adolescent with a serious emotional disturbance will likely never come to the attention of the mental health system (Meinhardt, Tom, Tse, & Yu, 1986; Nagata, 1989).

In short, children and adolescents of color often do not get their needs met in the present system (Gibbs & Huang, 1989). Yet, they are more likely to be diagnosed as seriously emotionally disturbed than their Caucasian counterparts. When they do enter the system, they will experience more restrictive interventions and fewer community-based alternatives. Cultural traits, behaviors, and beliefs will likely be interpreted as weaknesses and as dysfunctional. The data are clear: Current systems of care provide differential treatment to children of color (Cummins, 1986; Katz-Leavy, Lourie, & Kaufman, 1987; Ortiz & Maldonado-Colon, 1986; Stehno, 1982). By and large, our child-serving systems, including education, have been dismal failures in meeting the needs of youth of color and helping them grow into productive adults. Those who continue to blame the "victims" rather than fix our systems are pursuing a course that is myopic, costly, and perilous (McLoyd, 1990). McLoyd and others suggest that, in order to fix child-serving systems, there is a need to understand the cultural, ecological, and structural forces that enhance or impede the healthy development of children of color.

This chapter presents a philosophical framework for improving service delivery to children of color. Although the emphasis is on those youth who suffer from serious emotional disturbances, the framework for a culturally competent system of care can be useful to any child-serving system. The framework grows out of increasing recognition that children and adolescents of color are *unserved, underserved, or inappropriately served* by most public and private sector mental health systems within the United States (Isaacs & Benjamin, 1991). This framework emphasizes an understanding of the importance of culture and building service systems that recognize, incorporate, and value diversity—a *cultural competence* model.

## DEFINITION OF CULTURAL COMPETENCE

Cultural competence provides systems, agencies, and practitioners with the capacity to respond to the unique needs of populations whose cultures are different from that which might be called Eurocentric or "mainstream" American (Cross, Bazron, Dennis, & Isaacs, 1989). The word "culture" is used and defined as "the integrated pattern of human behavior that includes thoughts, communication styles, actions, customs, beliefs, values, and institutions of a racial, ethnic, religious, or social group"; the word "competence" is defined as "the capacity to function in a particular way"—the skills and abilities to perform a set of tasks successfully (Cross et al., 1989, p. 3). Thus, cultural competence can be defined as *a set of congruent behaviors, attitudes, practices, and policies that come together in a system or agency or among professionals and enable that system or agency or those professionals to work effectively in cross-cultural situations.*

As defined here, cultural competence should lead to the development of culturally appropriate prevention and treatment strategies. According to Marin (1989), such strategies should 1) be based on the cultural values of the targeted group; 2) reflect the subjective cultural characteristics of the members of the targeted group (i.e., their attitudes, expectancies, and norms regarding a particular behavior); and 3) reflect the behavioral preferences and expectations of the members of the group.

Five essential elements contribute to a system, agency, or professional becoming more culturally competent (Cross et al., 1989; Isaacs & Benjamin, 1991): valuing diversity, undertaking cultural self-assessment, understanding the dynamics of difference, institutionalization of cultural knowledge, and adaptation to diversity.

### Valuing Diversity

The first essential element is to value diversity. To value diversity is to see and respect its worth. A mental health service is strengthened when it accepts that the people it serves are from very different backgrounds and will make different choices based on culture. Although all people share common basic needs, there are vast differences in how people of various cultures go about meeting those needs. These differences are as important as the similarities. We must begin to see differences as something positive and as something that has value. In valuing diversity, we acknowledge cultural differences and become aware of how these differences affect the helping process.

Because American society operates predominantly out of a Eurocentric framework, and its institutions—including those for mental health—are established based on the values inherent in such a framework, it has been particularly difficult for children and families of color, who often have a



differing value base, to be effectively served and assisted by American institutions. There are assumptions of cultural blindness and assimilation inherent in these institutional values and practices that fail to recognize the richness and values of other cultures. An approach that values diversity would assure that these differences between groups, as well as within groups, are acknowledged and incorporated into programs and services.

#### Cultural Self-Assessment

In order to understand the role that culture plays in another's life, it is important that each individual become aware of the role it plays in his or her own life. Many people never acknowledge how their day-to-day behaviors and attitudes have been shaped by their own cultural values and reinforced by families, peers, and social institutions.

Agencies and systems also have cultures that are reflected in the way they are structured, the kinds of staff they seek, and the policies and practices that are implemented. Thus, agencies also must undertake a self-assessment process to gain a clearer understanding of the values and attitudes that are at the roots of the organization. When personnel understand how their agency is shaped by its culture, then it is easier for them to assess how the agency interfaces with other cultures. For example, if "family" refers to immediate families in one culture and in another culture denotes extended family or kinship networks, then concepts such as "family involvement" will mean something different. Recognition and involvement of kinship networks will require some adjustments in agency policies and interventions for an agency that thinks "immediate" when family is discussed. Otherwise, their services simply will not work for populations that conceptualize family in a different way.

Thus, in order to provide sensitive and competent care to clients from cultures that are different from one's own, there must be 1) an awareness of one's own cultural values and beliefs and a recognition of how these influence one's attitudes and behaviors, and 2) an understanding of the cultural values and beliefs of one's clients and how these influence their attitudes and behaviors (Randall-David, 1990).

It should be noted that often staff from the same ethnic group as a client assume that they understand the client's culture and that there is no need for this type of cultural self-assessment. However, cultural competence is not a given because there are as many variations *within* cultures as *between* cultures. For example, in African American professional-client relationships, there are cultural differences based on geographical locations as well as on socioeconomic and educational differences. Although there is a tendency to "lump" all Asian Americans or Hispanics into one category, there are many different cultures and languages represented within these groups. Therefore, this need for cultural self-assessment must occur at the individ-

ual and agency levels even when there is a common ethnicity with the client/consumer groups.

#### Dynamics of Difference

The third essential element of cultural competency is that of understanding and acknowledging the dynamics of difference. When professionals of one culture interact with a population from another, both may misjudge the other's actions based on learned expectations. Each brings to the relationship unique histories and the influence of current political relationships between the two groups. Both will bring culturally prescribed patterns of communication, etiquette, and problem solving. Both may bring stereotypes or underlying feelings about serving or being served by someone who is different. African Americans, for example, may exhibit behaviors expressing stress, anger, and frustration that may make the agency staff uncomfortable. The agency and its staff must be constantly vigilant about the dynamics of difference in order to avoid misinterpretation and misjudgment.

Historical distrust is one such dynamic that often occurs between a helper from the dominant culture and a client from an ethnic minority community. Historical discrimination and racism are some of the core underpinnings of the relationship between people of color and the dominant Eurocentric culture. Nickens (1990) states that "many minority communities feel substantial mistrust of the government, its agents and its information" (p. 134). For example, just as Native Americans view the introduction of alcohol into their culture as a form of genocide, so do many African Americans view the level and types of illegal drugs in their communities as a modern-day form of genocide. They often distrust those who preach a "war on drugs" because the war seems to result in a disproportionate number of deaths and incarcerations for young African American males and females (Isaacs, 1993).

Such dynamics of difference must be clearly understood so that effective strategies can be developed to mitigate the impact of historical distrust and other dynamics of difference that can significantly impede a positive interaction between groups from different cultures. It is important to note that the dynamics of difference are always a two-way process in a cross-cultural situation. By incorporating an understanding of these dynamics and their origins into service systems, the chances for productive cross-cultural interventions are enhanced.

#### Institutionalization of Cultural Knowledge

An agency must sanction, and in some instances mandate, the incorporation of cultural knowledge into the service delivery framework. This knowledge must be available at every level of the organization. This knowledge base should include information about a culture, such as critical attitudes, values, communication patterns, and history. It is also important to explore

how cultural values are related to mental health and help-seeking patterns, concepts of health and wellness, and attitudes toward services and programs.

Agencies can institutionalize cultural knowledge through such approaches as required in-service training for staff; collection of journal articles and other print resources; use of consultants, natural helpers, healers, key community leaders, and advisory committees; and linkages with advocacy groups. In other words, an agency must develop specific mechanisms to secure the cultural knowledge it requires to be effective in its interactions with clients. The development of knowledge through culturally competent research and demonstration projects must also be included in strategies to institutionalize cultural knowledge.

#### Adaptation to Diversity

The final element of a culturally competent delivery system is the adaptation of services and programs to reflect cultural specificity and diversity. The first four elements mean little if organizations do not change the way they work with people or the ways in which they provide services. Agencies can adapt or adjust their helping approaches to compensate for and acknowledge cultural differences. Styles of interviewing, focusing on strengths rather than deficits, changing and accepting other definitions of "family," and changing approaches and types of services offered are all ways that agencies can adapt in order to become more culturally competent.

#### THE CULTURAL COMPETENCE CONTINUUM

Mason (1989), Cross (1992), and others have developed cultural competence assessment instruments that can be used by individuals and agencies to assess their levels of cultural competence, based on the five essential elements previously discussed. It is important to understand that cultural competence is a developmental process. In our society, everyone must work toward this goal, and there is little that prepares us to acknowledge or appreciate multiculturalism. Rather, the primary goal in American society has been assimilation and acculturation. Thus, cultural competence is not something that occurs because one reads a book, or attends a workshop, or goes to an ethnic festival, or happens to be a member of an ethnic group. It is a process born of a commitment to provide quality services and to make a positive difference for clients and communities of color.

To better understand where one is in the process of becoming more culturally competent, it is useful to think of the possible ways of responding to cultural differences. If one imagines a continuum that ranges from cultural destructiveness to cultural proficiency, there are a variety of possibilities between these two extremes. Cross et al. (1989) describe six points

along the continuum and the characteristics that might be exhibited by an agency or an individual at each level of the continuum.

#### Cultural Destructiveness

The most negative end of the continuum is represented by attitudes, policies, and practices that are destructive to cultures and consequently to the individuals within these cultures. The most extreme example of this orientation is programs and policies that promote or actively participate in cultural genocide—the purposeful destruction of a culture. The institution of American slavery is a dominant example for African Americans. Another example is the Exclusion Laws of 1885–1965 (Hune, 1977), which prohibited Asians from bringing spouses to this country, imposed immigration quotas, and denied them basic human rights on the state and federal levels. Equally destructive is the process of dehumanizing or subhumanizing clients of color. Historically, some agencies have been actively involved in services that have denied people of color access to their natural helpers or healers, removed children of color from their families on the basis of race, or purposely risked the well-being of minority individuals in social or medical experiments without their knowledge or consent.

A system that adheres to this extreme assumes that one race is superior and should eradicate "lesser" cultures because of their perceived subhuman position. Bigotry coupled with vast power differentials allows the dominant group to disenfranchise, control, exploit, or systematically destroy the minority population. Although such overt practices had disappeared from the American scene, there is increasing concern that this type of approach is again on the upswing (e.g., the resurgence of the Ku Klux Klan, white supremacy groups, skinheads).

#### Cultural Incapacity

The next position on the continuum is one at which the system or agencies do not intentionally or consciously seek to be culturally destructive but rather lack the capacity to help clients and communities of color. At this level, the agency or individual remains extremely biased, believes in the racial superiority of the dominant group, and assumes a paternal posture toward "lesser" races. These agencies may disproportionately apply resources, discriminate against people of color on the basis of whether they "know their place," and believe in the supremacy of dominant culture helpers. Such agencies may support segregation as a desirable policy. They may act as agents of oppression by enforcing racist policies and maintaining stereotypes. Such agencies often are characterized by ignorance and an unrealistic fear of people of color. The characteristics of cultural incapacity include discriminatory hiring practices, subtle messages to people of color

that they are not valued or welcome, and generally lower expectations of minority clients.

#### Cultural Blindness

At the midpoint on the continuum, the system and its agencies provide services with the express philosophy of being unbiased. They function with the belief that color, race, or culture make no difference and that we are all the same. Culturally blind agencies are characterized by the belief that helping approaches traditionally used by the dominant culture are universally applicable; if the system worked as it should, all people—regardless of race or culture—would be served with equal effectiveness. This view reflects a well-intentioned liberal philosophy. However, the consequences of such a belief are to make services so ethnocentric as to render them virtually useless to all but the most assimilated people of color. Ethnocentrism refers to misinterpretation and misjudgment based on looking at another person's behavior from one's own cultural reference point and a belief that one's culture is the best and only way to interpret reality.

Such services ignore cultural strengths, encourage assimilation, and blame the victims for their problems. Members of minority communities are viewed from the cultural deprivation model, which asserts that problems are the result of inadequate cultural resources. Outcome is usually measured by how closely the client approximates a middle-class nonminority existence. Institutional racism restricts minority access to professional training, staff position, and services.

These agencies may participate in special projects with minority populations when monies are specifically available or with the intent of "rescuing" people of color. Unfortunately, such projects are often conducted without community guidance and are the first casualties when funds run short. Culturally blind agencies suffer from a deficit of information and often lack the avenues through which they can obtain needed information. Although these agencies often view themselves as unbiased and responsive to minority needs, their ethnocentrism is reflected in attitude, policy, and practice.

#### Cultural Precompetence

As agencies move toward the positive end of the scale, they reach a position called "cultural precompetence," a term chosen because it implies movement. The precompetent agency realizes it has weaknesses in serving people of color and attempts to improve some aspect of its services to a specific population. Such agencies try experiments, hire minority staff, explore how to reach people of color in their service areas, initiate training for their workers on cultural sensitivity, enter into needs assessments concerning minority communities, and recruit minority individuals for their boards of directors or advisory committees. Precompetent agencies are characterized

by the desire to deliver quality services and a commitment to civil rights. They respond to minority communities' cry for improved services by asking, "What can we do?"

One danger at this level is a false sense of accomplishment or of failure that prevents the agency from moving forward along the continuum. An agency may believe that the accomplishment of one goal or activity fulfills its obligation to minority communities or may undertake an activity that fails and is therefore reluctant to try again.

Another danger is tokenism. Agencies sometimes hire one or more (usually assimilated) workers of color and believe they are then equipped to meet the need. Although hiring staff of color is very important, it is no guarantee that services, access, or sensitivity will be improved. Because professionals of color are trained in the dominant society's frame of reference, they may be little more competent in cross-cultural practice than their co-workers. These professionals, like all others, need training on the function of culture and its impact on client populations. The precompetent agency, however, has begun the process of becoming culturally competent and often only lacks information on what is possible and how to proceed.

#### Basic Cultural Competence

Culturally competent agencies are characterized by acceptance and respect for difference, continuing self-assessment regarding culture, careful attention to the dynamics of difference, continuous expansion of cultural knowledge and resources, and a variety of adaptations to service models in order to better meet the changing needs of minority populations. The culturally competent agency works to hire unbiased employees, seeks advice and consultation from the minority community, and actively decides what it is and is not capable of providing to clients of color. Often, there is ongoing dialogue and input from the minority community at all levels of the organization and a network with other formal and informal supports within the community.

#### Advanced Cultural Competence or Cultural Proficiency

The most positive end of the scale is advanced cultural competence or proficiency. This point on the continuum is characterized by holding culture in high esteem. The culturally proficient agency seeks to add to the knowledge base of culturally competent practice by conducting research, developing new therapeutic approaches based on culture, evaluating and disseminating the results of demonstration projects, and experimenting with changes in organizational structures that support critical cultural values and beliefs. The culturally proficient agency hires staff who are specialists in culturally competent practice. Such an agency advocates for cultural competence throughout the system and for improved relations between cultures throughout society.

## Summary

The degree of cultural competence an agency achieves is not dependent on any one factor. Attitudes, policies, and practices are three major arenas where development can and must occur if an agency is to move toward cultural competence. Attitudes change to become less ethnocentric and biased. Policies change to become more flexible and culturally sensitive. Practices become more congruent with the culture of the client from initial contact through termination.

## MAJOR CULTURAL COMPETENCE PRINCIPLES

A core set of principles underlie the concept of cultural competence and act as guidelines for developing culturally competent delivery systems (Cross et al., 1989; Isaacs & Benjamin, 1991):

- The family as defined by each culture is the primary system of support and preferred intervention.
- The system must recognize that minority populations must be at least bi-cultural and that this status creates a unique set of psychological/emotional issues to which the system must be equipped to respond.
- Individuals and families make different choices based on cultural forces; these choices must be considered if services are to be helpful.
- Practice is driven by culturally preferred choices, not by culturally blind or culture-free interventions.
- Inherent in cross-cultural interactions are dynamics that must be acknowledged, adjusted to, and accepted.
- The service system must sanction, and in some cases mandate, the incorporation of cultural knowledge into practice and policy-making activities.
- Cultural competence involves determining a client's cultural location in order to apply the helping principle of "starting where the client is" and includes understanding the client's level of acculturation and assimilation.
- Cultural competence involves working in conjunction with natural, informal support and helping networks within the minority community (e.g., neighborhood organizations, churches, spiritual leaders, healers, community leaders).
- Cultural competence embraces and extends the concept of "self-determination" to services offered in communities of color.
- Culturally competent services seek to match the needs and help-seeking behavior of the client population.
- Beyond services, culturally competent agencies recognize that they also have a role of advocacy and empowerment in relationship to their clients and the minority community in which they attempt to deliver highly responsive services. (Isaacs & Benjamin, 1991, pp. 52-54).

## BARRIERS TO CULTURAL COMPETENCE

Although cultural competence appears to be a natural and effective approach to the increasing concern about providing acceptable and quality services to clients of color in a cost-effective manner, there are many resis-

tances and barriers to agencies adopting a cultural competence philosophy and framework. Bernard (1992) and other authors have identified several major barriers to implementation of cultural competence in health and human services agencies. These include

- The "isms"—racism, sexism, classism, and other such "isms"
- "It's not culture, it's poverty"—the inability to accept culture as a factor and arguing against giving it prominence, although there is also great inertia in addressing poverty as well. This attitude keeps discussion on an intellectual and conceptual level so that actions to address either are not taken
- Cultural blindness—that is, the belief that color or culture makes no difference in assessment and treatment and, therefore, there is no need for change
- "What's in it for me?"—insufficient motivation or will to initiate or participate in changes
- "Full plate"—the claim of a lack of time
- "Too many demands"—jumping from crisis to crisis, with a lack of energy to deal with new changes
- "No extra funding"—viewing bilingual, bicultural, and ethnic-specific services as "luxury" items
- "Too much, too fast"—being overwhelmed and paralyzed by the dramatic increase of many groups of color; there is an inability to set priorities or know "where to begin"
- "Too difficult to change"—insufficient leadership in the organization and inadequate management skills to cope with change
- "Powerless"—a lack of political support and/or resources to implement change

Some of these barriers and resistances will be recognized through the cultural self-assessment process; others will only become visible when the agency embarks on a course of action to increase its level of cultural competence. It is usually helpful to provide outside facilitation and consultation regarding known and unknown resistances to change. It has become very clear that, in order for cultural competence to occur, there must be buy-in from the top leaders in the agency, and there should be specific activities undertaken so that buy-in by lower-level staff occurs.

## INFUSING CULTURAL COMPETENCE AT ALL LEVELS OF AN AGENCY

When many people think of cultural competence, they think only in terms of the direct service provider-client relationship. Although this is certainly an extremely important relationship, most direct service providers do not work in a vacuum. Rather, they work in agencies that have policy makers

and administrators who play a very important role in setting the policies and program directions for the agency. If direct service providers are expected to be the only staff to incorporate cultural competence in their practice, without supportive policies, supervision, and program adaptations, then they are being set up to fail. To be effective, cultural competence must have commitment and attention from all levels of an organization: its policy makers, its administrators/managers, its direct service providers, and its consumers/clients.

#### Policy-Making Level

The policy makers or planners of services may be board members of private agencies, public agency officials, legislators, commissioners, and/or task force or advisory board members. Anyone who has a voice in the shaping of policy might be included. At this level, there are a number of actions that would enhance cultural competence. These actions may include the following:

1. *Involve communities of color.* Persons of color, living within the affected community, can be recruited and asked to serve on boards, advisory committees, and commissions that already exist in the agency or system. The agency could also create special task forces or advisory groups that are representative of the minority community to study and address issues of that particular community.
2. *Set standards for cross-cultural services.* An agency board may develop standards it expects its employees to follow. Standard-setting bodies can incorporate cultural competence into existing standards for services. States having licensing requirements for professionals might add cultural competence to the required skills of a profession.
3. *Sanction, and in some cases require, participation in training that builds cultural knowledge and skills.* It is not enough to require that direct service providers receive training; it is also important that policy makers themselves receive and participate in such training as well.
4. *Incorporate cultural competence into executive orders and legislation at the state and local government levels.* Policy can be both integrated into existing laws and formulated in new laws.
5. *Use research and data to guide decision making.* Policies can be implemented that ensure that adequate and accurate data and information are collected on groups of color, that research is monitored to avoid cultural bias or intrusion, that minority researchers are utilized and supported, and that the minority community is involved in the research and data-collection process and receives feedback about results and findings.
6. *Create a decision-making structure that allows minority participation in the process.* A decision-making structure that is flexible and empowers less

powerful segments of the community contributes to the minority voice being heard.

7. *Use funding mechanisms to improve service access and incentives for developing culturally competent programs.* Through the use and expansion of contracting, more funding can be directed at minority service providers and agencies. Funding agencies also can develop service and staffing requirements (through performance contracting) that provide incentives for agencies to become more culturally competent.
8. *Develop written mission statements that specifically address a commitment to cultural competence at all levels.* Actions such as incorporating cultural competence development into an agency's 5-year plan can help the policy maker break the process into manageable parts with reasonable timelines. There also may be a need to develop a specific cultural competence action plan.
9. *Participate in resource development and program fostering.* Agencies can actively work in conjunction with communities of color to enable the creation and healthy growth of a service. Established agencies can assist in the start-up and nurturance of new specialized programs for groups of color and then spin them off to full community self-control.

#### Administrative/Management Level

The administrative level of service delivery is composed of agency directors, managers, department heads, supervisors, and a variety of other people in both public and private organizations. This level interprets and implements policy in addition to creating it. It is at the administrative level of an organization that cultural competence must be fully embraced. The administrator's primary role is to set the context for the development of cultural competence. Some of the actions that can be taken at this level include

1. Establishing and sanctioning some form of agency self-assessment
2. Ensuring that persons of color are recruited and retained on staff
3. Ensuring that cultural competence training and skill development are included in the agency's staff orientation and in-service training
4. Adapting personnel policies to make an agency more culturally competent
5. Developing program evaluation mechanisms that specifically target clients of color to determine their perceptions of the agency's effectiveness and their satisfaction with services offered
6. Adapting physical facilities to be more inviting to clients of color
7. Ensuring that adequate and accurate data regarding services to clients of color are collected and used in planning and evaluation
8. Using the capacity to develop new approaches or adjust existing ones

Although actions at the administrative level alone cannot bring an agency to cultural competence, administrators are in key positions to jump start the process.

#### Direct Service Provider Level

Sound cross-cultural practice begins with a commitment from the direct service provider to offer culturally competent services. Throughout the intake, assessment, diagnosis, treatment, referral, and termination process, the cultural competence of the worker is crucial for determining the success of the intervention.

Wilson (1982) listed personal attributes, knowledge, and skills that are essential for a culturally competent service provider:

#### 1. Personal Attributes

- Personal qualities that reflect genuineness, accurate empathy, nonpossessive warmth, and a capacity to respond flexibly to a range of possible solutions
- Acceptance of ethnic differences between people
- A willingness to work with clients of different ethnic minority groups
- Articulation and clarification of personal values, stereotypes, and biases related to one's own and others' ethnicity and social class, and ways these may accommodate or conflict with the needs of minority clients
- Personal commitment to change racism and poverty
- Resolution about one's professional image in fields that have systematically excluded people of color

#### 2. Knowledge

- Knowledge of the culture (history, traditions, values, family systems, artistic expressions) of minority clients
- Knowledge of the impact of class and ethnicity on behavior, attitudes, and values
- Knowledge of the help-seeking behaviors of minority groups
- Knowledge of the role of language, speech patterns, and communication styles in ethnically distinct communities
- Knowledge of the impact of social policies on minority clients
- Knowledge of the resources (agencies, persons, informal helping networks, research) that can be utilized on behalf of minority clients and communities
- Knowledge of power relationships within the community, agency, or institution and their impact on minority clients

#### 3. Skills

- Techniques for learning the cultures of minority client groups
- Ability to communicate accurate information on behalf of minority clients and their communities
- Ability to openly discuss racial and ethnic differences and issues and to respond to culturally based cues
- Ability to assess the meaning ethnicity has for individual clients
- Ability to differentiate between the symptoms of intrapsychic stress and stress arising from the social structure
- Interviewing techniques reflective of the worker's understanding of the role of language in the client's culture

- Ability to utilize the concepts of empowerment on behalf of minority clients and communities
- Capability of using resources on behalf of minority clients and their communities
- Ability to recognize and combat racism, racial stereotypes, and myths in individuals and in institutions
- Ability to evaluate new techniques, research, and knowledge as to their validity and applicability in working with minorities

The direct care provider can gain these skills and this knowledge through training and experience. The personal attributes can be developed through exposure to the positive aspects of cultures. Information is a strong tool in the development of cultural competence, and workers should avail themselves of every opportunity to build their cultural knowledge. Such knowledge must, however, be coupled with a willingness to let clients and cultural groups determine their own future.

#### Client/Consumer Level

Families, as service consumers, also have a role in the development of the cultural competence of the system. Families can become more effective advocates for their children when they gain the skills to articulate the importance of their culture. Families also can be resources in the system's training process by talking about the natural networks and insisting that significant parts of their networks be included in the helping process for their children. Families encountering insensitive services can turn to each other for aid in interfacing with the system. Families linked with other families can provide mutual support and help define issues from their perspectives.

#### CONCLUSION

There are many challenges associated with the development of more effective systems of care for responding to the mental health needs of children and adolescents of color and their families. We must begin to meet these challenges through more thoughtful attention to cultural variations (even within our own cultural groups), increased cultural knowledge, attitudinal changes, and the development of more effective programs.

Cultural competence has a critical role to play in systems of care and the agencies and services that comprise them. Unless our systems devise a more appropriate way to prevent and intervene in mental health problems among youth of color, we will continue to hinder and restrict healthy development. We must begin to direct our energies and resources toward the development of interventions that work for the populations we need to reach. We cannot develop effective mental health services for children and families of color until we understand the important role that culture plays and until we examine our own attitudes and those of the agencies in which we work. Therefore, it is imperative that we all become more culturally competent.

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7<sup>th</sup> Indian Nations Conference

## New Leaders of Tomorrow

Northern Cheyenne Boys and Girls Club:  
Omar Littlewhiteman  
LaNada Peppers  
Ebony Spotted Elk  
Shane Shot Gunn

Tulsa, Oklahoma 1999





HANDOUTS FOR THIS  
PRESENTATION MAY OR  
MAY NOT BE AVAILABLE  
DURING THIS SESSION



7<sup>th</sup> Indian Nations Conference

Federal Jurisdiction in  
Child Sexual Abuse Cases

Arvo Mikkanen, JD

Tulsa, Oklahoma 1999



## 7<sup>th</sup> Indian Nations Conference

### **"Federal Jurisdiction in Child Sexual Abuse Cases"**

**Arvo Mikkanen, JD**

#### **Learning Objectives:**

1. Provide an understanding of Federal laws relating to sexual assault, including offenses and prohibitive acts.
2. Describe how federal cases, including cases from Indian lands are investigated and prosecuted.
3. Describe tips to assist in prosecution of the offender.

This workshop will explain the offenses contained in Chapter 109A of Title 18 U.S. Code which concern sexual assault, including child sexual abuse. Federal investigation techniques and jurisdiction will be explained, as well as the types of charges which may be brought in federal court. The workshop will focus on cases which occur within Indian Country.

Tulsa, Oklahoma 1999





# INDIAN COUNTRY CRIMINAL JURISDICTIONAL CHART

*[crime committed within Indian Country as defined by 18 U.S.C. § 1151 (a), (b) & (c) -  
(a) tribal trust lands, (b) dependent Indian communities & (c) Indian allotments held in trust.]*

**Indian Offender:** *enrolled or recognized as Indian by community of origin*

**1) VICTIM CRIMES (AN OFFENSE AGAINST THE PERSON OR PROPERTY OF A VICTIM):**

<u>Who is the victim?</u>	<u>What was the crime?</u>	<u>Jurisdiction</u>
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<b>Indian</b> <i>(enrolled or recognized as Indian by community of origin)</i>	<b>Major Crimes Act Crimes:</b> murder, manslaughter, kidnapping, maiming, sexual abuse, incest, assault with a dangerous weapon, assault resulting in serious bodily injury, assault on a person less than 16 yrs. old, arson, burglary, robbery, theft under 18 USC § 661 <i>(Authority: 18 USC § 1153)</i>	<b>FEDERAL</b>
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	<b>All remaining crimes contained in tribal code:</b> <i>(Authority: tribal code or 25 CFR Pt. 11, if no tribal code)</i>	<b>TRIBAL</b>
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<b>Non-Indian</b>	<b>Major Crimes Act Crimes:</b> murder, manslaughter, kidnapping, maiming, sexual abuse, incest, assault with a dangerous weapon, assault resulting in serious bodily injury, assault on a person less than 16 yrs. old, arson, burglary, robbery, theft under 18 USC § 661 <i>(Authority: 18 USC § 1152)</i>	<b>FEDERAL</b>
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	<b>All remaining crimes contained in tribal code:</b> <i>(Authority: tribal code or 25 CFR Pt. 11, if no tribal code)</i>	<b>TRIBAL</b>
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	<b>All remaining crimes contained in state code (where there is no federal statute for the offense) under the Assimilative Crimes Act: (Authority: 18 USC § 1152 &amp; 13)</b>	<b>FEDERAL</b>
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**2) VICTIMLESS CRIMES (NO VICTIM'S PERSON OR PROPERTY INVOLVED IN CRIME) (e.g. traffic offenses, disorderly conduct, prostitution, etc.)**

<b>a. Crimes in state code (where there is no federal statute for the offense) under the Assimilative Crimes Act: (Authority: 18 USC § 1152 &amp; 13)</b>		<b>FEDERAL</b>
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<b>b. Crimes in tribal code</b> <i>(Authority: tribal code or 25 CFR Pt. 11, if no tribal code)</i>		<b>TRIBAL</b>
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**3) GENERAL FEDERAL CRIMES (OTHER FEDERAL CRIMES OF GENERAL APPLICABILITY) (e.g. drug offenses, bank robbery, felon in possession of firearm, mail fraud, child pornography, theft from tribal organization, failure to report child abuse, etc.) (Authority: individual federal statute)**

**FEDERAL**



Non-Indian Offender:

1) VICTIM CRIMES (AN OFFENSE AGAINST THE PERSON OR PROPERTY OF A VICTIM) :

<u>Who is the victim?</u>	<u>What was the crime?</u>	<u>Jurisdiction</u>
Indian (enrolled or recognized as Indian by community of origin)	Indian Country Crimes Act (Federal Enclaves Act) Crimes: murder, manslaughter, kidnapping, maiming, sexual abuse, incest, assault with a dangerous weapon, assault resulting in serious bodily injury, assault on a person less than 16 yrs. old, arson, burglary, robbery, theft under 18 USC § 661 and other crimes which apply to the "special maritime and territorial jurisdiction of the United States under the U.S. Code." (Authority: 18 USC § 1152)	FEDERAL
	All remaining crimes contained in state code (where there is no federal statute for the offense) under the Assimilative Crimes Act: (Authority: 18 USC § 13)	FEDERAL
Non-Indian	All crimes contained in state code (Authority: U.S. v. McBramey)	STATE
2) VICTIMLESS CRIMES	(NO VICTIM'S PERSON OR PROPERTY INVOLVED IN CRIME ) (e.g. traffic offenses, disorderly conduct, prostitution, etc.)	STATE ONLY
3) GENERAL FEDERAL CRIMES	(OTHER FEDERAL CRIMES OF GENERAL APPLICABILITY) (e.g. drug offenses, bank robbery, felon in possession of firearm, mail fraud, child pornography, theft from tribal organization, failure to report child abuse, etc.) (Authority: individual federal statute)	FEDERAL




7<sup>th</sup> Indian Nations Conference

T/TAC: Federal Support for  
Victim Assistance Programs

Donna Ray

Tulsa, Oklahoma 1999





HANDOUTS FOR THIS  
PRESENTATION MAY OR  
MAY NOT BE AVAILABLE  
DURING THIS SESSION





7<sup>th</sup> Indian Nations Conference

The Talking Stick:  
Reclaiming Our Creative Voice  
Part I and II

Madeline Rugh, PhD and Janet Smith, MS

Tulsa, Oklahoma 1999



## 7<sup>th</sup> Indian Nations Conference

### **"The Talking Stick: Reclaiming Our Creative Voice"**

**Madeline Rugh, PhD and Janet Smith, MS**

#### **Learning Objectives:**

1. Participants will learn about the role of art in wellness.
2. Participants will learn to create symbols unique to their vision and voice.
3. Participants will learn how to bring elements of this workshop to their families or work situations.

A hands-on workshop in the ancient practice of art as medicine using natural sticks and the symbolism of colored yarns and fabric. The talking stick is a tool for listening, in this case, listening to your inner wisdom and the inner quality of your life experiences. Participants will begin with a brief conversation about the loss of voice they may have experienced as in individuals and as a people. We will examine the nature of the creative inner voice and how it has transformed painful or difficult experiences into wisdom, resilience and humor. Following the initial discussion, participants will be invited to select a stick and begin wrapping and winding the sticks with colored yarns and fabric as symbols of their struggles and strengths. Creating a "talking" stick provides a powerful way to carry the story of your courage and the uniqueness of your voice to the next generation. When the sticks are completed, an opportunity for discussion will be provided where participants may choose to share their stories and sticks in groups of two or three. There will be a final sharing all together and ideas will be exchanged about how the experience of the talking stick might be used with others, at work or at home. This is a 2 part session and participants are strongly encouraged to attend both sessions.



## The Talking Stick: Reclaiming our Creative Voice

The following material is from the book "Poetic Medicine" by John Fox

Is there an emotion or circumstance in your life, which has suppressed your voice? When you think about this question, what images arise? Write these on paper, or use the following questions as guides. Let the words flow, don't erase or worry about spelling. This information is for you alone and will be translated into the metaphors of color, texture and size when you create your talking stick.

Use the words that accurately name what must be named. Use details, your direct experience, metaphor and imagery, your imagination and the holiness of your heart to tell the story of:

1. How your inner voice was discouraged or suppressed.

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2. When your inner voice grew quiet.

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3. How you handled that loss.

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4. How you found your way in the world without that voice.

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5. What inner dreams and desires you want to reclaim.

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6. What passion you will bring to this process of reclaiming your desires and dreams.

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7. Your reclaimed creative self (voice).

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8. How you will move back into the world, changed in this way, and maintain this new voice.

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7<sup>th</sup> Indian Nations Conference

Helping Adolescents Control Their Anger:  
Assessment and Intervention

Dewey Ertz, PhD

Tulsa, Oklahoma 1999





## 7<sup>th</sup> Indian Nations Conference

### **"Helping Adolescents Control Their Anger: Assessment and Intervention"** **Dewey Ertz, PhD**

#### **Learning Objectives:**

1. Participants will develop an understanding that multiple areas of assessment are necessary for adolescents that act out anger.
2. Participants will gain knowledge of assessment methods for this population.
3. At the conclusion of the session, participants will be able to suggest interventions for adolescents that act out anger.

This session will focus on the choices individuals have to express anger. Factors such as genetic endowment, cultural influences, and previous learning will be introduced and discussed as variables that influence the anger expressions considered appropriate or inappropriate. Defining appropriate and inappropriate anger expression for the setting and developmental level of the person will be addressed as an assessment issue. A review will be presented of specific psychological and/or other testing that might be helpful in this process. Several intervention methods including relaxation, thought-stopping, and environmental controls or systems will be suggested for intervention.



## SEVENTH NATIONAL INDIAN NATIONS CONFERENCE

Helping Adolescents Control Their Anger: Assessment and Intervention  
Wednesday, 9/29/99, 3:30 p.m. to 5:00 p.m.

Dewey J. Ertz, Ed.D., Psychologist; The Manlove Psychiatric Group  
636 St. Anne Street; Rapid City, SD 57701 (605) 348-8000

### Learning Objectives:

1. Participants will develop an understanding that multiple areas of assessment are necessary for adolescents that act out anger.
2. Participants will gain knowledge of assessment methods for this population.
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### Description:

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- I. Cultural Syndromes and Anger
  - A. What is culture
    - 1) Shared cognitions
    - 2) Standard operating procedures for
      - a) Perceiving
      - b) Believing
      - c) Evaluating
      - d) Communicating
      - e) Acting
    - 3) Unexamined assumptions
    - 4) Common
      - a) Language
      - b) Period in time
      - c) Geographic location

Example "He doesn't look too good"

- B. What are "cultural syndromes"
  - 1) Shared attitudes
  - 2) Shared beliefs
  - 3) Shared norms
  - 4) Shared role and self definitions
  - 5) Organized around a theme

- 6) Can be sex specific
  - a) We think and act differently than our partners
  - b) We choose friends by how they are like us
  - c) We choose partners by how they are like us
- C. Anger expression is culturally determined
  - 1) All humans are ethnocentric
    - a) We use unexamined cultural assumptions
    - b) We can be unaware that our theories reflect our culture
  - 2) We believe that how we see the world is how others see it
  - 3) Each culture may have its own psychology
- D. Emotions in humans are
  - 1) Reflexes
  - 2) Neither right or wrong
  - 3) Influenced by how we judge situations and reach conclusions
- E. Anger is a powerful emotion or reflex and the expression of anger is determined by our culture

## II. Multiculturalism

- A. Current American society does not represent a single culture
  - 1) The Right who is ready to tell everyone how to behave and think
  - 2) The Left who tells everyone to make their own decision
  - 3) America has been seen as the “melting pot” of culture which would produce a new great whole using all the parts
  - 4) Prejudice is when some of the parts are given greater value
- B. To be multicultural, we must abandon sympathy for empathy
  - 1) Sympathy is seeing from your point – projecting how you would feel if you were in the other person’s position
  - 2) Empathy is searching to feel what the other person is feeling – it requires that you overcome your own perceptions
- C. Euro-American culture has positive traditions and ideals such as
  - 1) Individual rights
  - 2) Authenticity
  - 3) Respect
  - 4) Tolerance
- D. Multiculturalism projects the traditions and ideals of
  - 1) Individual equality, rights, and dignity
  - 2) Groups have the right to follow their own path
  - 3) A desire to reduce suffering for others
- E. The multiculturalism of American Indians
  - 1) Indian people reflect many different languages, periods in time, and geographic locations
  - 2) The solutions for those who are Indian
    - a) Those who want to “save” us – wantabees
    - b) Those who want to “wipe” us out – aggressors
    - c) Because of the oppression, we have become like both
- F. Anger expression has many forms in a Multicultural environment

III. Coping with society's stressors

A. We have become a "bipolar society"

- 1) Our hypomanic state
  - a) Grandiosity from the melting pot mentality
  - b) No time for sleep or rest
  - c) Everyone is talking – listen to late night or talk radio
  - d) Society's thoughts race
  - e) We are distractible and can't maintain consistent course
  - f) There is an increased emphasis on goals
  - g) We are consumed by pleasure seeking activities
- 2) Our depressed adolescent state
  - a) Irritable and acting out
  - b) Apathy and loss of interest
  - c) Weight problems, we are all too fat or too thin
  - d) Over sleeping or not sleeping
  - e) Our speed is either 0 mph or 120 mph
  - f) We become fatigued easily or do not have energy
  - g) High levels of guilt and blame are present
  - h) Society is often indecisive
  - i) We feel that our society is dying

B. American society's relationship with Indian people

- 1) The conservative point of view
  - a) You have equality, just use it
  - b) An agenda of taking resources away
  - c) A history of aggression
  - d) The treaty language: as long as the grass shall grow, the water shall flow, the wind shall blow, or 30 days whichever comes first
- 2) The liberal point of view
  - a) We have a new plan for you that you will like
  - b) An agenda of giving what we think you need
  - c) A history of "taking care of"
  - d) We want to be Indians, so teach us how

IV. Recognition of personality types

A. Characteristics and somewhat predictable behavior-response patterns

- 1) Compromise between
  - a) Inner drive and needs
  - b) Controls that regulate expression
    - (1) Internal inhibitions
    - (2) External social directives
- 2) Goal: Maintain stable reciprocal relationship between
  - a) Person
  - b) Environment
- 3) Set of habits that characterize
  - a) Managing day-to-day living
  - b) Are not seen as deviant or abnormal by the person

- c) The person's best way of avoiding tension and fulfilling potential
- d) Most people are unlikely to seek ways to alter personality
- B. Maladaptive habitual patterns
  - 1) Inflexible limits on optional potentials
  - 2) Personality or character disorders
    - a) Marked deviations from cultural expectations
    - b) Cognitive, affective, interpersonal and impulse control areas are considered
  - 3) Judgments must take into account issues regarding
    - a) Ethnic background
    - b) Cultural (family) background
    - c) Social background

V. Specific mechanisms to help control anger

- A. Acknowledge that many people learn that anger and aggression are a means to solve problems
  - 1) An individual who has control of his emotions has power
  - 2) We can't always choose the situation, we can choose our response
  - 3) Many times we harm others to release our anger and frustration
- B. Differences between assertive, passive and aggressive
  - 1) Assertive: Thinking first of oneself while taking others into account, expressing and showing honest feelings and opinions.
  - 2) Passive: Putting others before oneself – denying oneself and one's feelings
  - 3) Aggressive: Thinking only of oneself and hurting others
  - 4) Cultural differences need to be defined and remembered
- C. Specific cognitive activities
  - 1) Handling icebergs – most of the iceberg is below the surface
  - 2) Brainstorming other feelings that may be expressed as anger
  - 3) Identifying triggers that result in anger reactions
  - 4) Body relaxation
- D. Anger control – role play real life situations
  - 1) Thought-stopping and substitute a thought that redirects
    - a) Slow down
    - b) Chill out
    - c) Take it easy
    - d) Take a deep breath
    - e) Ignore it
  - 2) Taking a time out, with a commitment to return – then return as planned
  - 3) Deep breathing – taking a few slow, deep breaths to reduce tension
  - 4) Counting backwards silently from 25 to 1
  - 5) Imagining peaceful scenes with the color green
  - 6) Thinking of short- and long-term consequences
  - 7) Redirect yourself to view the humor in situations
- E. Rehearsal in imagery
  - 1) Review anger control methods
  - 2) Remember to listen to the other person(s)

- 3) Know how you show an understanding that another person is angry
- 4) Organize your thoughts and feelings about the situation without yelling or making threats
- 5) Develop plans expressed in terms of positive behaviors

VI. Avoidance of inappropriate confrontation

A. Evaluating social interactions

- 1) Consent – cooperation – compliance
  - a) Understanding the behavior
  - b) Knowing the standard for the behavior
  - c) Awareness of possible consequences
  - d) Respect for agreement/disagreement
  - e) Compliance – participation without regard to own desires
  - f) Cooperation – allowing without resistance
  - g) Cooperation or compliance does not equal consent
- 2) Equality – power and control
  - a) To confront, power and control must be in balance
  - b) This also involves issues of popularity and self-image
- 3) Coercion is inappropriate

B. Social skills needed to be effective in confrontation

- 1) Conversational skills
  - a) Starting the conversation
  - b) Keeping a conversation going by listening and acknowledging
  - c) Talking about yourself
  - d) Finding out about others
  - e) Reading signals
- 2) Listening skills
  - a) Use appropriate eye contact for cultural, social context
  - b) Avoid thinking of a reply while the other person is still talking
  - c) Avoid jumping to conclusions
  - d) Clarify thoughts and feelings for the other person
  - e) Pay attention to what the other person is saying
  - f) Do not interrupt
  - g) Nod, say “uh-huh” or “go on” to encourage the other person to continue
- 3) Non-verbal communication
  - a) Facial expressions
  - b) Eye contact
  - c) Affect/tone demonstration
  - d) Personal distance
    - (1) Intimate – 0 to 2 feet
    - (2) Social – 2 to 8 feet
    - (3) Formal – 8 to 12 feet
- 4) Challenging social situations
  - a) Expressing feelings
  - b) Embarrassment
  - c) Apologizing

- d) Dealing with teasing
- e) Being left out
- f) Feeling with internal pressure to be part of a group

## VII. Violence and the Effects of Trauma

### A. Sources and processes of Native American trauma and violence

- 1) Major Sources
  - a) Historical grief and loss of the grieving process
  - b) Poverty and violence
  - c) Racial prejudice
  - d) Cultural destruction
    - (1) Boarding schools
    - (2) Suppression of Native religion
    - (3) Governmental external control and regulations
    - (4) Educational indifference and expectancies of poor achievement
  - e) Parents with unresolved trauma putting their needs first
  - f) Substance abuse and addiction within environment
- 2) The process of childhood violence – taking the special protection and rights of a childhood away
  - a) Violence is when danger replaces safety
    - (1) Neglect
    - (2) Physical abuse
    - (3) Child sexual abuse
    - (4) Witnessing acts of statements of aggression
    - (5) Witnessing behavior they can not understand
  - b) Native American people often display horizontal violence

### B. Danger in the eyes of the child

- 1) Two definitions of danger
  - a) The likelihood that an individual will suffer injury
  - b) The feeling of impending harm
  - c) These definitions may be weakly correlated
- 2) Understanding and reacting to danger
  - a) Adults know what is dangerous and can reason abstractly
  - b) Young children
    - (1) Are at greater risk for injury because they are less powerful physically
    - (2) Are more easily shocked – psychic immaturity
    - (3) Believe in the reality of threats
    - (4) Need the reassurance that adults will protect them

### C. Effects of violence and danger

- 1) Suppressed intelligence
- 2) Repressive environments that
  - a) Stultify creativity
  - b) Foster rigid thinking
- 3) Settings that isolate from society's principle resources
- 4) Unable to meet the challenges of



- a) Forming attachments
    - b) Learning to trust
    - c) Developing confidence about self and social reality
  - 5) Parents who are
    - a) Angry
    - b) Frightened
    - c) Traumatized
    - d) Psychologically unavailable
- D. Processes under Maslow's hierarchy of needs
  - 1) Basic needs
    - a) Physiological needs
    - b) Psychological security
    - c) Belonging and love needs
    - d) Esteem needs
  - 2) Growth needs
    - a) Esthetic and cognitive needs
    - b) Self-actualization – the need to fulfill inherent potential
  - 3) Needs at each level require satisfaction before the next level is reached
  - 4) Expected levels of functioning on Maslow's hierarchy of needs
    - a) People in/from trauma operate at the physiological and safety needs levels
    - b) They are struggling with belonging and love needs
    - c) They have yet to reach esteem needs
- E. Balance between the experiencing and observing ego
  - 1) Definitions
    - a) Ego: The consciousness, intellectual and self-preservation functions of the psychic – The sum total of thoughts, ideas, feelings, memories, and sensory perceptions
    - b) Experiencing ego: When the ego becomes receptive and open to promptings from without to allow emotional learning
    - c) Observing ego: When the ego is active and attention is focused to allow intellectual learning
  - 2) In cases of trauma, especially unresolved, cumulative trauma, the ego is continually focused on the environment which blocks the opportunity for emotional learning
  - 3) Children from trauma do not play – the accommodate
- F. Trauma Reactions – choice between being lonely or being anxious
  - 1) Suppression of emotional response
    - a) Constant need to survive
    - b) Observe and not experience
    - c) Multiple symptom patterns
  - 2) If untreated, responses and actions are passed on to children

## VIII. Treatment Needs

- A. The steps which need to be faced
  - 1) Five stages in treatment processes

- a) Relating to the past dysfunction and becoming aware
  - b) Communicate this awareness to others
  - c) Understanding what this awareness means to you
  - d) Taking action to change the patterns
  - e) Behavior which is part of a new identity
- 2) Four needs to treat trauma
- a) Validation of the events
  - b) Support – person/system
  - c) Validation or mirroring of the emotions
  - d) Time
- 3) Psychological assessment
- B. Socialization – Knowing and modeling specific systems/knowledge
- 1) Daily routine
  - 2) Assisting each other and children
  - 3) Offering and accepting emotional support
  - 4) Expressing and allowing others to express emotions
  - 5) Showing and emphasizing ownership
  - 6) Providers need to complete the following tasks on a routine basis
    - a) Evaluate themselves on modeling in each area
    - b) Evaluate the patient’s progress in each area
    - c) Develop plans to meet specific needs noted from evaluations
- C. Behavioral Management
- 1) Differences exist between management and intervention
  - 2) Four alternatives for management
    - a) Positive Reinforcement
    - b) Time Out
    - c) Punishment
    - d) Negative Reinforcement
  - 3) The ABC of Behavior
    - a) Antecedents
      - (1) Making it easy to follow routine, difficult not to
      - (2) Preparing the children to display the desired behavior
      - (3) Intervention is based at this level with adult behavior being seen as the major antecedent
    - b) Behavior
      - (1) What is observed – Must be measurable
      - (2) Cause is different from relationship
      - (3) Judgments or conclusions are to be avoided
    - c) Consequences
      - (1) Reward and rewarding negative behavior
      - (2) Punishment
      - (3) This is the management level
    - d) Reasons for antecedent methods
      - (1) Children of trauma generally search the environment to determine what they need to survive next, thus they attend to

what is unknown (antecedents) not to what is already known (consequences)

- (2) Antecedent methods foster internal control and they are more likely to be generalized
- (3) Antecedent procedures recognize the need for a person to make choices and provide guidance to them in making such choices

#### D. Personal Adjustment

- 1) Defined as the development of an internal locus of control
- 2) General issues to be implemented
  - a) Knowledge and acceptance of culture and family
  - b) Balance between physical and spiritual self
  - c) Balance between cognitive and emotional functioning
  - d) Making choices
- 3) Balancing the experiencing and observing ego
  - a) The ego is active and attention is on allowing the child to survive
  - b) The environment needs to become "safe" to allow the opportunity for emotional learning to take place – In this way the ego is not suppressing one side of the conflict because no conflict exists
- 4) Rainbow of Recovery

#### E. Cognition

- 1) Cognitive factors support changes in emotional response
- 2) Changing affective knowledge
- 3) Learning the language of recovery

### IX. Stages of Recovery

#### A. The transition into recovery

- 1) Inpatient programs
- 2) Outpatient education
- 3) Support therapy and/or after care
- 4) Long term

#### B. Early recovery

- 1) Breaking the denial with primary defenses intact
- 2) Starting the processes of reconstruction
- 3) Changes in behavior
- 4) Providing a new attachment with threat of object loss

#### C. On-going recovery

- 1) Challenging the core beliefs
- 2) Break in attachment for new attachments
- 3) Understanding the emphasis on defensive adaptation
- 4) Formations of new identity
- 5) Changes in feeling

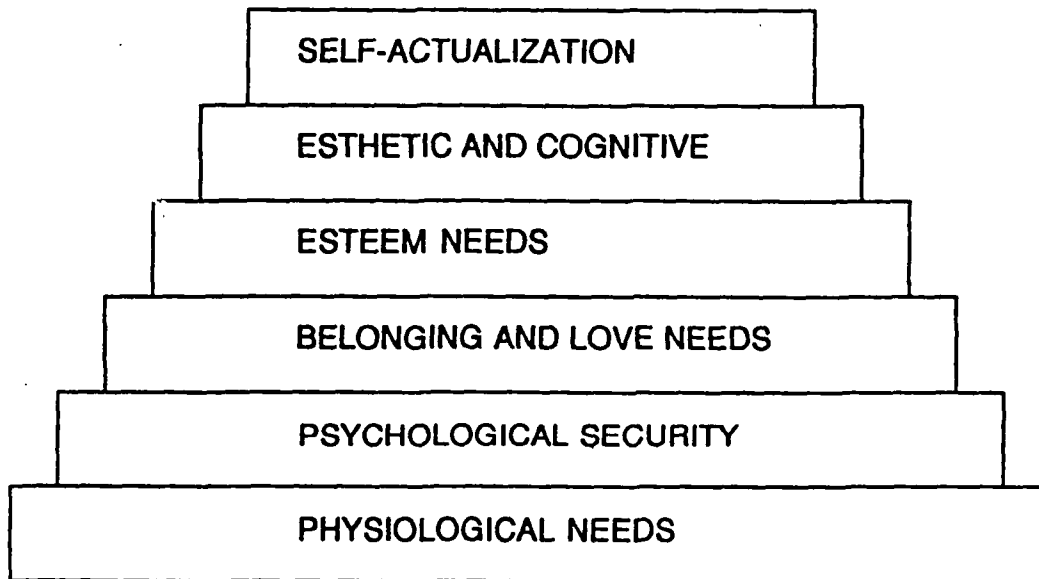
#### D. Later stages of recovery

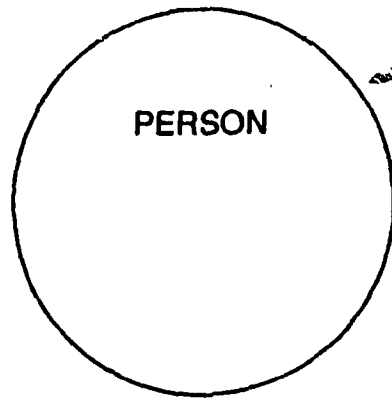
- 1) Cognitive maturity
- 2) Resolution paradox – what is problematic becomes so because of a distorted view of self and the world
- 3) Reestablishing a new relationship with the family/community

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## MASLOW'S HIERARCHY OF NEEDS





EGO

Experiencing - Emotional Learning

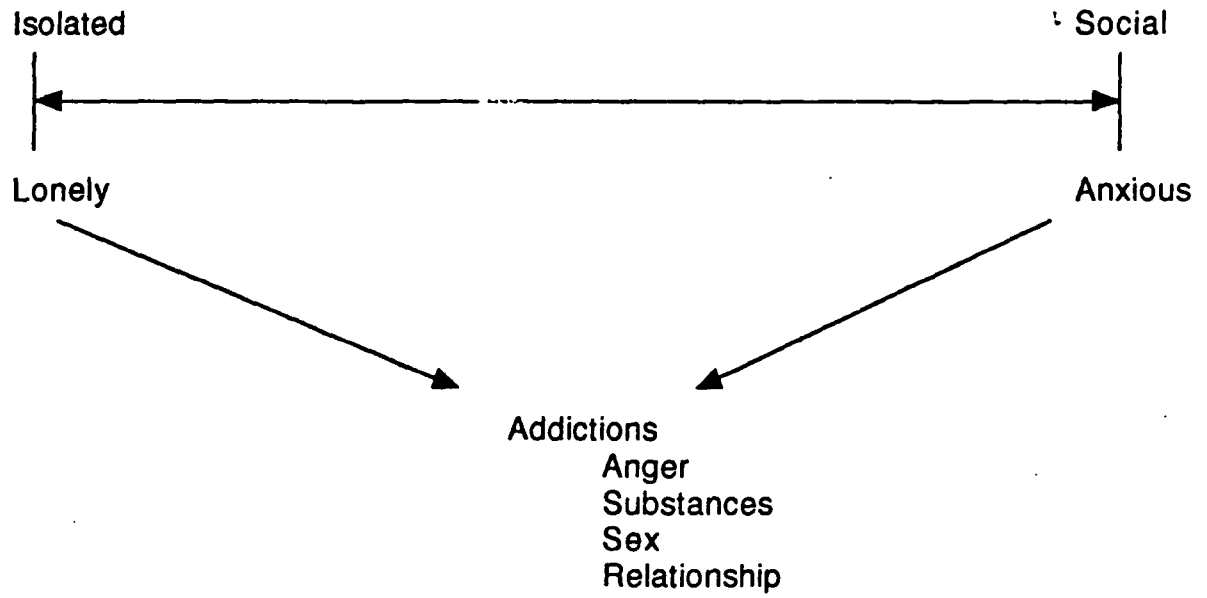
Observing - Intellectual Learning

In cases of trauma, especially unresolved, cumulative trauma, the ego is continually focused on the environment which blocks the opportunity for emotional learning and the development of spiritual functioning.

Children accommodate - they make themselves fit the environment, and they become hypervigilant

# TRAUMA REACTIONS

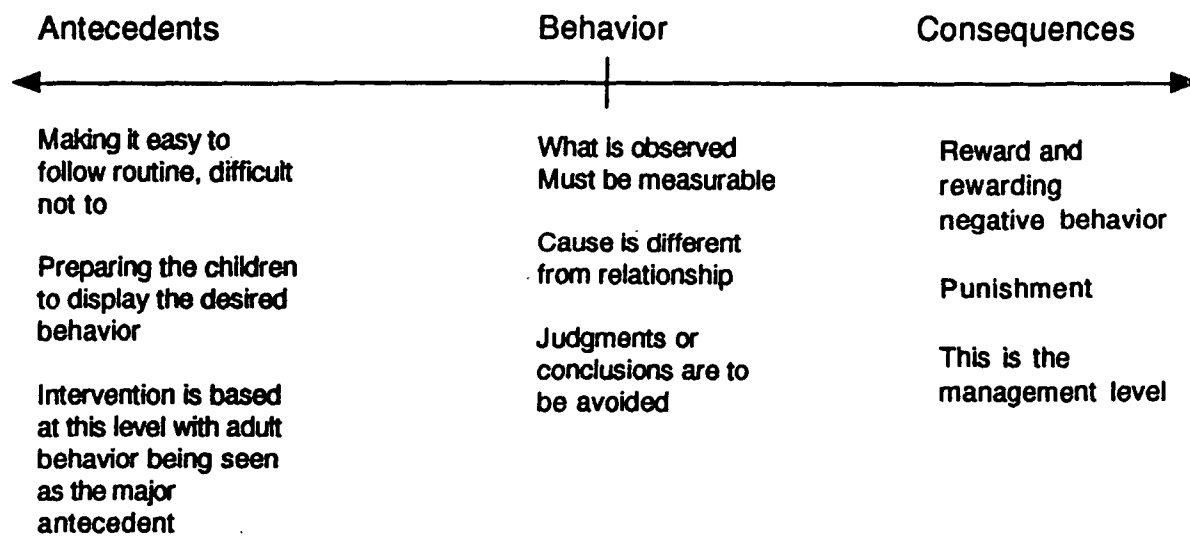
## CHOICE BETWEEN BEING LONELY AND BEING ANXIOUS



### Options for Management

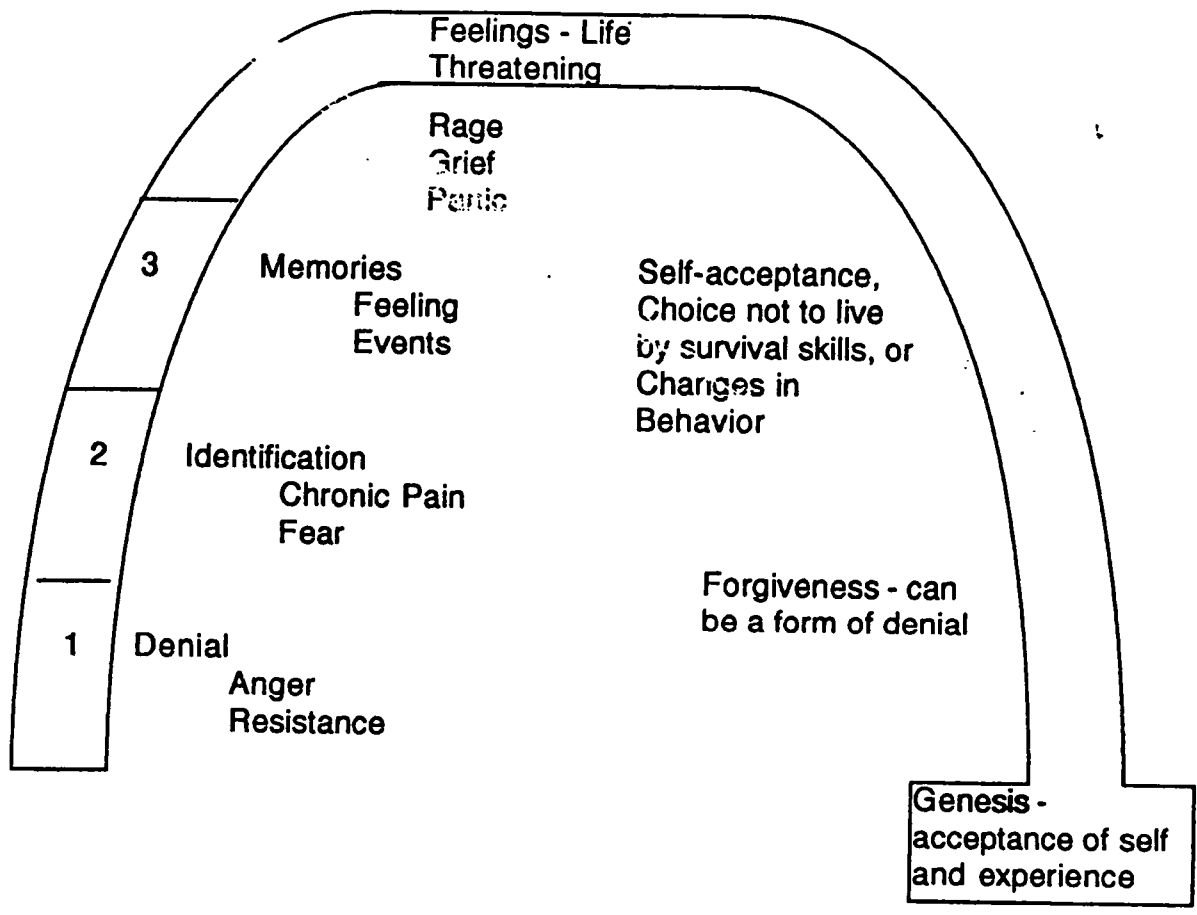
	Give	Take
Desired	Positive Reinforcement	Time-out
Undesired	Punishment	Negative Reinforcement

### The ABC's of Behavior

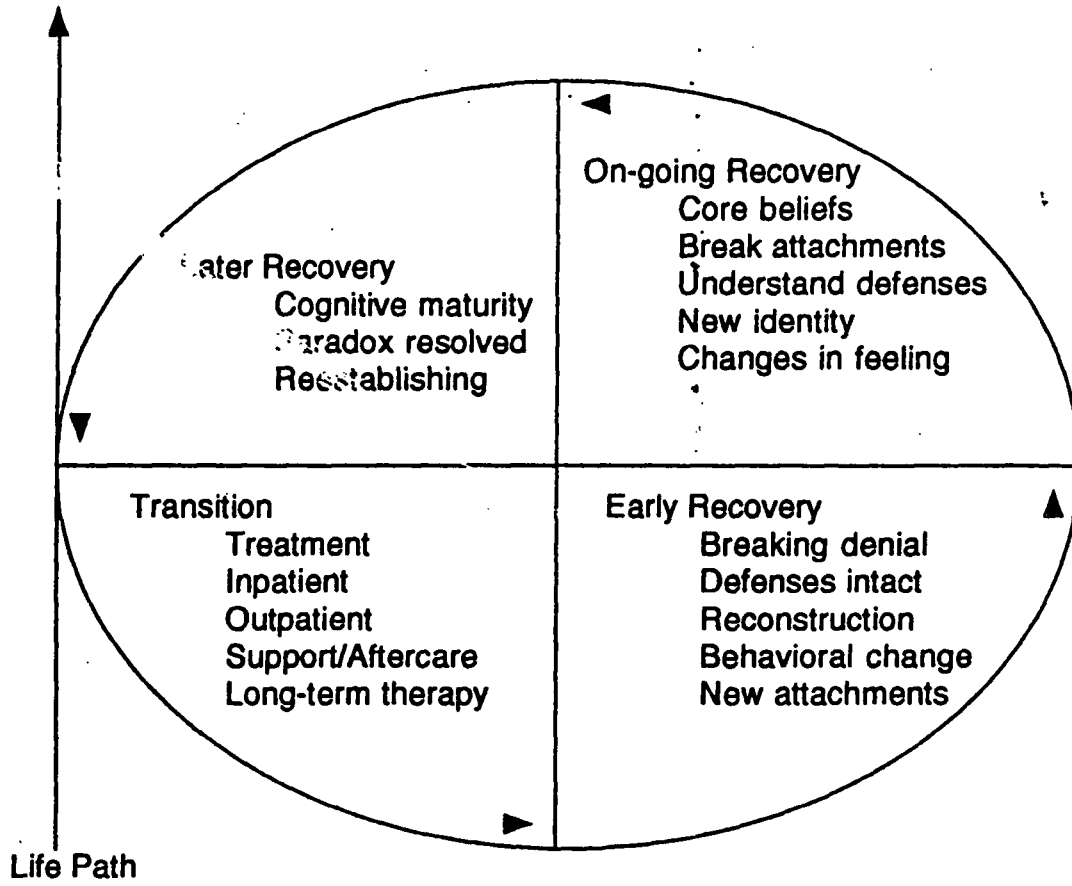




# RAINBOW OF RECOVERY



# STAGES OF RECOVERY



7<sup>th</sup> Indian Nations Conference

# Effective Grant Management

Jennifer Cramer

Tulsa, Oklahoma 1999



## 7<sup>th</sup> Indian Nations Conference

### **"Effective Grant Management Techniques"**

**Jennifer Cramer**


#### **Learning Objectives:**

1. Participants will learn basic budget preparation.
2. Participants will better understand the financial reporting requirements.
3. Payment systems will be clearly explained.

This workshop will be an interactive questions and answer period on grant management within the government system. Budgets, reporting requirements and the payment systems will be addressed and explained.

Tulsa, Oklahoma 1999



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HANDOUTS FOR THIS  
PRESENTATION MAY OR  
MAY NOT BE AVAILABLE  
DURING THIS SESSION





7<sup>th</sup> Indian Nations Conference

Identifying and Responding to  
Domestic Violence

Kathleen Waits, JD and Lisa Thompson

Tulsa, Oklahoma 1999



## 7<sup>th</sup> Indian Nations Conference

### **"Identifying and Responding to Domestic Violence"**

**Kathleen Waits, JD and Lisa Thompson**

#### **Learning Objectives:**

1. Screening tools for identifying domestic violence.
2. Common misconceptions about domestic violence.
3. How "the system" can interfere with victims' safety.

This workshop will cover some basic issues about domestic violence, but should be of value to both those relatively new to the field as well as those with extensive experience. Misconceptions about domestic violence are widespread and can lead to failure to identify victims and/or failure to deal with them properly and safely.

Tulsa, Oklahoma 1999



7<sup>th</sup> Indian Nations Conference

Involving Law Enforcement in a Coordinated  
Community Response

Ron Teel

Tulsa, Oklahoma 1999



## 7<sup>th</sup> Indian Nations Conference

### **"Involving Law Enforcement in a Coordinated Community Response to End Violence Against Native Women"**

**Ron Teel**


#### **Learning Objectives:**

1. To show how to involve law enforcement in a coordinated community response.
2. To explore ways to work with law enforcement.

The law enforcement community has unique needs when it comes to dealing with domestic violence. This workshop will elucidate some of those needs, in addition to showing effective ways of getting them involved and excited about a coordinated community response to domestic violence.







HANDOUTS FOR THIS  
PRESENTATION MAY OR  
MAY NOT BE AVAILABLE  
DURING THIS SESSION



FAMILY VIOLENCE INVESTIGATION CHECKLIST

Agency

Crime Case Number

I. VICTIM

- \_\_\_ Described the victim's location upon arrival.
- \_\_\_ Administered first aid to the victim.
- \_\_\_ Noted time dispatched, arrived and when victim spoke.
- \_\_\_ Recorded any spontaneous statements made by the victim.
- \_\_\_ Described the victim's emotional condition.
- \_\_\_ Described the victim's physical condition, incl. HT & WT
- \_\_\_ Documented the victim's injuries in detail (SIZE, LOCATION AND COLORATION) & if medical treatment sought.
- \_\_\_ Noted victim's relationship with suspect.
- \_\_\_ Recorded history of abuse.
- \_\_\_ Noted any restraining/court orders.
- \_\_\_ Gave victim notice of rights and services information card
- \_\_\_ Recorded any temporary address/ phone of victim.

II. SUSPECT

- \_\_\_ Described the suspect's location upon arrival.
- \_\_\_ Administered first aid to the suspect.
- \_\_\_ Recorded any spontaneous statements made by the suspect.
- \_\_\_ Described the suspect's emotional condition.
- \_\_\_ Described the suspect's physical condition, incl. HT & WT.
- \_\_\_ Described the suspect's injuries in detail.
- \_\_\_ Documented evidence of substance/chemical abuse by suspect.
- \_\_\_ Following Miranda asked suspect if wanted to make a statement, knew of restraining order and/or understood order.

III. WITNESSES

- \_\_\_ Interviewed the reporting party.
- \_\_\_ Identified all witnesses and interviewed them separately.
- \_\_\_ Recorded all witnesses' addresses and phone numbers.
- \_\_\_ Listed names and ages of all children present.
- \_\_\_ Interviewed the children.
- \_\_\_ Recorded names and addresses of emergency personnel.
- \_\_\_ Identified treating physician and hospital.
- \_\_\_ Recorded the "911" # \_\_\_\_\_ and incident # \_\_\_\_\_

IV. EVIDENCE

- \_\_\_ Photographed the crime scene.
- \_\_\_ Took "full body" photograph of suspect.
- \_\_\_ PHOTOGRAPHED THE VICTIM'S INJURIES.
- \_\_\_ Photographed the suspect's injuries.
- \_\_\_ Impounded & took into evidence all weapons used.
- \_\_\_ Impounded weapons for safekeeping.
- \_\_\_ Took into evidence any objects thrown or used in incident.
- \_\_\_ Attached related reports, photos and evidence tags.

REPORTING OFFICER

APPROVED BY

REPORT DATE & TIME



POLICE EVIDENCE COLLECTION

1. STATEMENTS OF VICTIMS & WITNESSES
2. DESCRIPTION OF THEIR DEMEANOR
3. DESCRIPTION OF INJURIES
4. PHOTOGRAPHS OF INJURIES



## Deciding Probable Cause & Primary Aggressor

1. FEAR: who talks & acts scared?
2. BODY LANGUAGE: aggressive stance?  
Size of parties?
3. HISTORY OF ABUSE: medical records,  
911 tapes, police reports, shelter stays,  
protection orders = paper trail
4. NEIGHBORS & WITNESSES: prior  
and typical behavior?
5. EXCITED UTTERANCES: adult &  
child statements blurted out at scene  
while still upset
6. Injuries





## Strangulation/ Choking Cases

1. ROUTINELY ASK, AS PART OF  
ABUSE HISTORY
2. DOCUMENT DETAILS:
  - a. with object? cords? plastic bag?  
bikini top?
  - b. for how long?
  - c. black out? lose consciousness?
  - d. how often?
3. 42% CASES NO VISIBLE INJURIES  
BUT DR. HOWARD MCLAINE SAYS  
OFTEN INTERNAL INJURIES +
4. 8 LBS. PRESSURE for 8 SECONDS  
= BRAIN INJURY



## TRAUMATIC HEAD INJURIES

H = HIT ON THE HEAD?

E = EMERGENCY RM TREATMENT?

L = LOSE CONSCIOUSNESS?

P = PROBLEMS AFTER HIT HEAD?\*

S = SIGNIFICANT SICKNESS?

\* headaches, dizziness, depression,  
difficulty concentrating, remembering,  
reading, writing, performing tasks

**\*\*SCREEN FOR DOMESTIC  
VIOLENCE + CHILD ABUSE**

**Call #202/296-6443 Nat'l Head Injury  
Foundation**

\* 1 Phoenix Hospital: 50% head injuries caused by domestic violence  
M.Picard, D. Scarisbrick, R. Paluck, Int'l Ctr for Disabled

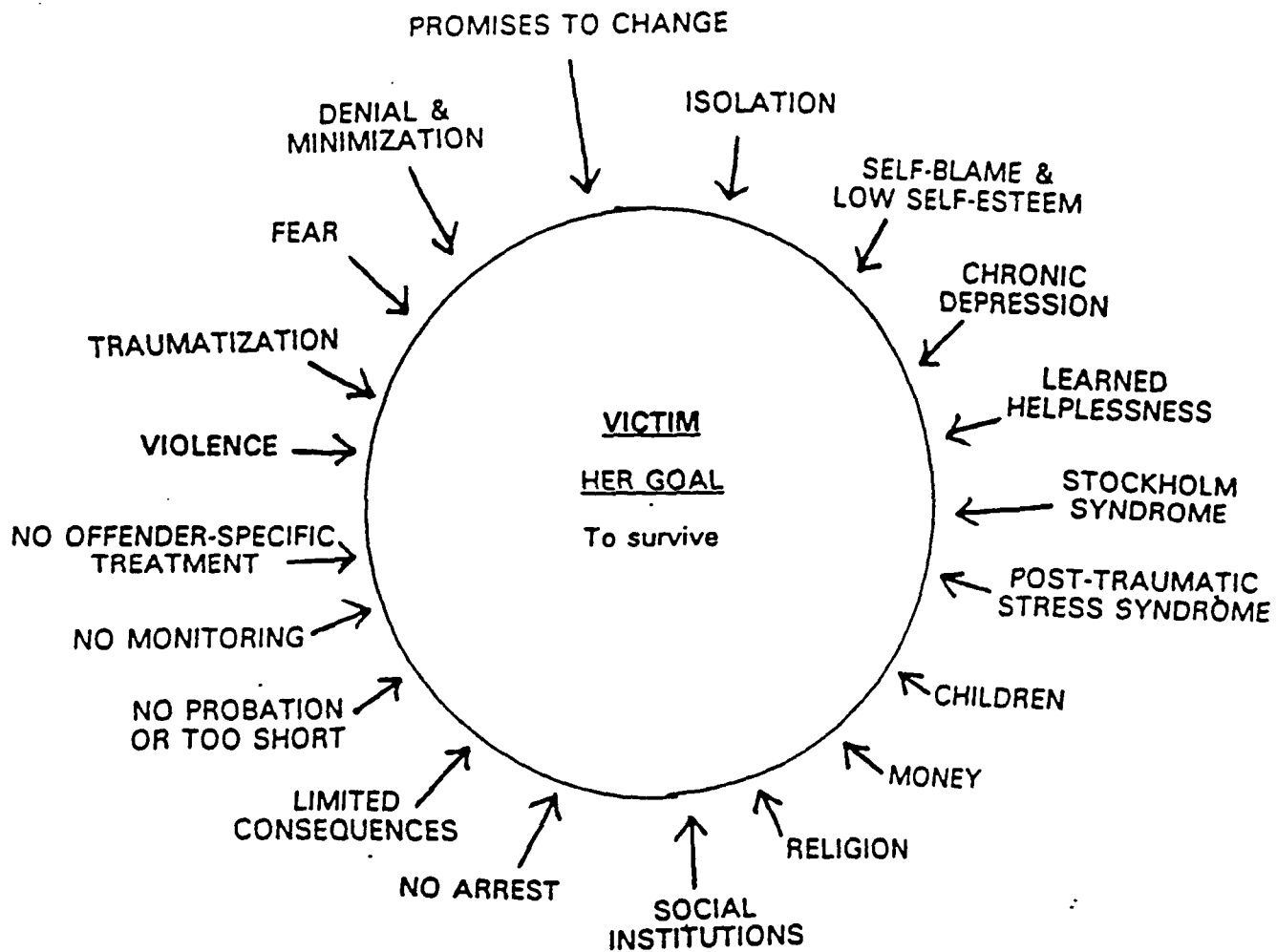


"Police Stalk the Stalkers"

1. SELF-CONTAINED PHONE TRAPS  
\*recorder plugs into phone w/ call ID
2. CELLULAR PHONES
3. MINI-VCR KIT w/ 2 mini-cams +  
7-day timer; attaches to home or car
4. GPS TRACKING SYSTEM "SHADOW"  
\*laptop grid tracks vehicle w/ 4 second intervals after shadow attached to perp's car; uses 12 military satellites to track all over world!
5. SILENT HOSTAGE ALARMS  
w/ voice-activated microphone on neck pendant; not req'd be near phone
6. PHONE BUGS PLACED ALL OVER HOME



# WHY SHE STAYS







5 THINGS SAY TO VICTIM  
WHO SAYS CANNOT LEAVE

1. I AM AFRAID FOR YOUR SAFETY.
2. I AM AFRAID FOR THE SAFETY OF YOUR CHILDREN.
3. IT WILL ONLY GET WORSE.
4. I AM HERE FOR YOU WHEN YOU ARE READY TO LEAVE.
5. YOU DON'T DESERVE TO BE ABUSED.



## STAGES IN A VICTIM'S EXPERIENCE

### MINIMIZATION AND DENIAL

In this stage, the victim denies the seriousness of the situation and excuses the abuser: "He doesn't know his own strength. He was out of control/drunk/high. It didn't hurt that much."

The abuser, who rarely gets beyond this stage, says: "I didn't really hurt her much. She made me angry. I didn't know what I was doing. I was out of control/drunk/ high."

### SELF-BLAME

This, as we have seen, is an inescapable feature of life with a batterer as well as being a recurring component in three of the stages of the Psychological Reactions to Trauma.

### SEEKING HELP

Law enforcement and social services agencies most often see victims seeking help at the third and fourth stages of the Progression of Abuse. A 1988 study by Dr. Gondolf indicated that helpseeking behavior increases when the positive aspects of a relationship decrease and the cost, in terms of abusiveness and injury, increases.

### AMBIVALENCE

The victim is irresolute at this stage, trying one alternative after another. It is at this point that she will respond to the batterer's attempts to reconcile, or initiate attempts at reconciliation herself. It is the victim's behavior during this stage which appears to cause the greatest frustration and anger in members of the helping professions. Most often, these attempts at reconciliation do not work, but rather, end in further abuse.

She may seek therapy for herself or for the abuser so she can stay in the relationship, or she may leave the relationship for a time and then return. Family therapy is a very common "solution" but it is not really a solution since psychotherapists who are trained to focus on the emotions and behaviors of their *client*, rather than the others in her life, often blame the victim and try to teach her what *she* can do to keep things quiet for him.

The victim is determined to make things work if there's ANY hope. Gondolf found that it was the batterer's being in counseling that was the most powerful predictor of whether the victim will return. This is why it is so dangerous to send batterers to pre-trial diversion. The prosecutor is satisfied, feeling that at least *something* is being done to help the family, and the victim feels safer, believing that counseling will stop him from abusing her. But both are being lulled into a false sense of security given the current extremely low "cure" rate of counseling for batterers. Pre-trial diversion means that there are no immediate sanctions imposed if — or, more likely, when — the abuser doesn't complete his contract. Months later, when and if the case comes to trial, the evidence is cold and the batterer has had months to intimidate the victim into not cooperating with the prosecution and/or to marshal a defense.



It is in recognition of the difficulty of this stage that the Legislature provided sole possession of the home as a form of relief from abuse. It is vital to provide the victim with a safe environment in which to make decisions. When victims go to court to terminate their Relief From Abuse Orders, some enlightened judges suggest that victims suspend the sole possession of the home provision while retaining the provision restraining the defendant from abusing her so batterers get the message that a return to the home does not mean that the violence can resume, and victims can learn that they no longer have to live with violence.

This stage can last for years as the victim slowly gets the strength and support from each voyage to the outer world, so to speak, to overcome her psychological restraints so she can move on to the final stage:

### LIVING WITHOUT VIOLENCE

Although a survivor of domestic abuse may live without violence after leaving an abusive relationship, as we have seen in the Psychological Reactions to Trauma, she may well suffer from long-term depression and P.T.S.S. along with a host of other stress reactions to the violence and trauma she has suffered.



# Domestic Violence Resource Network

**National Resource Center  
on Domestic Violence**

**800-537-2238  
fax: 717-545-9456**

**Pennsylvania Coalition Against Domestic Violence**

Providing comprehensive information and resources, policy development and technical assistance designed to enhance community response to and prevention of domestic violence.

**Battered Women's Justice Project**

**800-903-0111**

Providing training, technical assistance and other resources through a partnership of three nationally-recognized organizations:

- **Domestic Abuse Intervention Project of Duluth** *(fax 218-722-1545)*  
Addressing the criminal justice system's response to domestic violence including the development of batterers' programs
- **National Clearinghouse for the Defense of Battered Women** *(fax 215-351-0779)*  
Addressing battered women's self-defense issues
- **Pennsylvania Coalition Against Domestic Violence** *(fax 610-373-6403)*  
Addressing civil court access and legal representation issues of battered women

**Resource Center on  
Child Protection and Custody**

**800-527-3223  
fax: 702-784-6628**

**National Council of Juvenile and Family Court Judges  
Family Violence Project**

Providing information, consultation, technical assistance and legal research related to child protection and custody issues within the context of domestic violence.

**Health Resource Center  
on Domestic Violence**

**800-313-1310  
fax: 415-252-8991**

**Family Violence Prevention Fund**

Providing specialized information packets designed to strengthen the health care response to domestic violence, as well as technical assistance and library services to support health care-based domestic violence training and program development.





7<sup>th</sup> Indian Nations Conference

Confidentiality: A Right to Safety for Native  
Battered Women

Peggy Bird

Tulsa, Oklahoma 1999



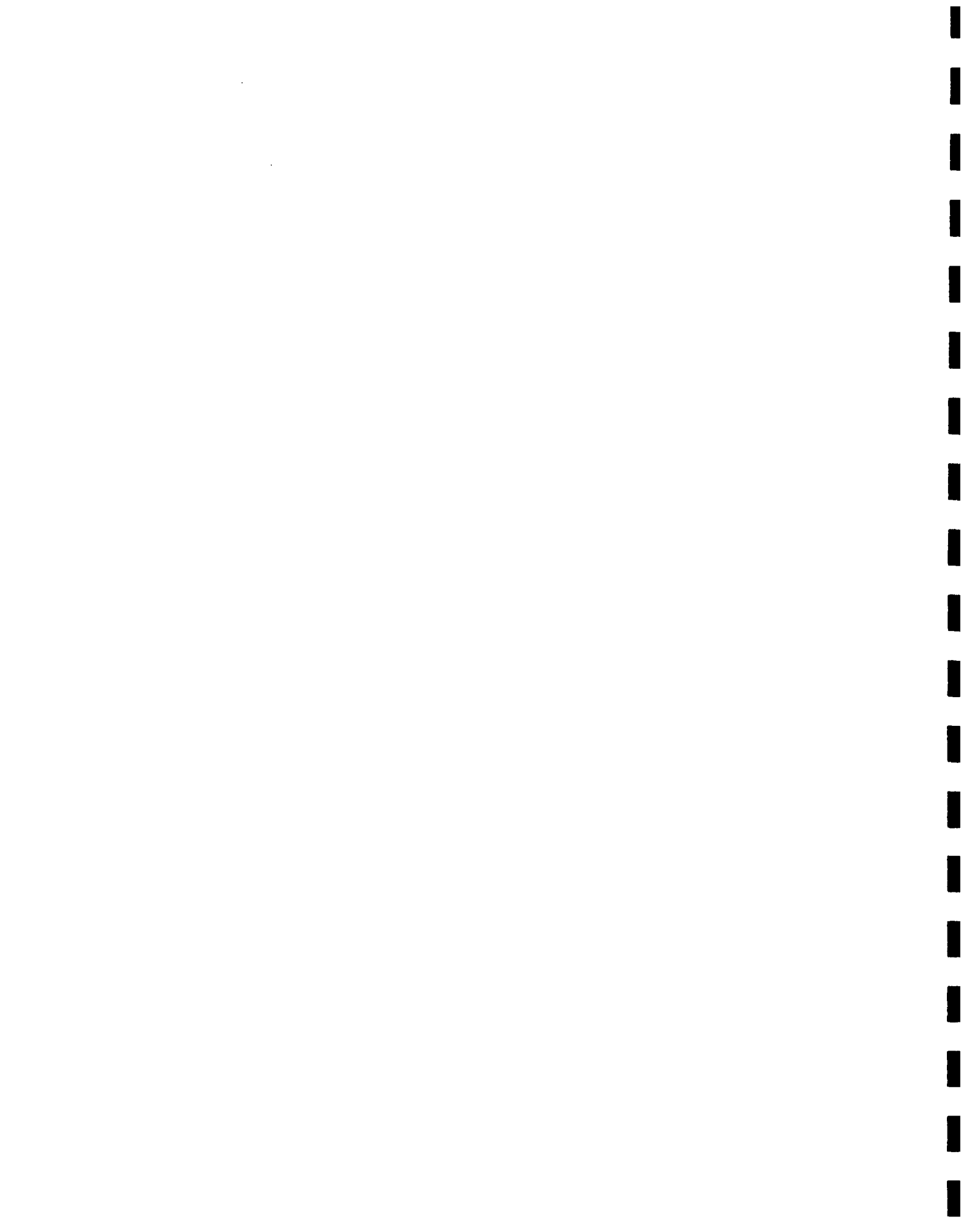
## 7<sup>th</sup> Indian Nations Conference


### **"Confidentiality: A Right to Safety for Native Battered Women"** **Peggy Bird**

#### **Learning Objectives:**

1. To explore the relationship between confidentiality and safety for battered women.
2. To demonstrate how the trust Native women have for tribal-based domestic violence programs is integral to the value of services.

In order for a domestic violence program to be useful for the women using it, it is essential that the confidentiality of the battered women be firmly established. Without that confidentiality, not only is the women's safety precarious, but her trust for the program will be compromised, thus rendering it useless. This workshop will examine how to develop tribal policy to ensure that the confidentiality of battered women is honored, as well as the application of federal data privacy and confidentiality laws that apply within tribal jurisdictions.





HANDOUTS FOR THIS  
PRESENTATION MAY OR  
MAY NOT BE AVAILABLE  
DURING THIS SESSION



7<sup>th</sup> Indian Nations Conference

## Tribal Drug Courts

Janna Walker and Jerry Gardner, JD

Tulsa, Oklahoma 1999





## 7<sup>th</sup> Indian Nations Conference

### **"Tribal Healing to Wellness Courts"**

**Jerry Gardner, JD**


**Janna Walker**

#### **Learning Objectives:**

1. To provide an understanding of the drug court concept and how it is being adapted to meet the needs of tribal communities.
2. To provide an understanding of the role of the victims in Tribal Healing to Wellness Courts.
3. To provide information concerning ways in which indigenous concepts of law, justice, and traditional approaches can be used to address alcohol and substance abuse cases.
4. To provide information concerning the current status of Tribal Healing to Wellness Courts, funding available for Tribal Healing to Wellness Courts, and available training and technical assistance services.
5. To provide information concerning the steps involved in establishing Tribal Healing to Wellness Courts.

Tribal Healing to Wellness Courts (or Drug Courts) are specialized court dockets given the responsibility to handle cases involving alcohol and other drug offenders through comprehensive supervision, drug testing, treatment services, and immediate sanctions and incentives. The drug court concept involved holding the offender accountable by leveraging the coercive power of the criminal justice system to achieve abstinence and alter criminal behavior. The drug court concept is a flexible concept which is consistent with traditional Native justice concepts and methods. Tribal courts have only recently adapted and implemented the drug court concept, but Tribal Healing to Wellness Courts are already achieving positive results.





HANDOUTS FOR THIS  
PRESENTATION MAY OR  
MAY NOT BE AVAILABLE  
DURING THIS SESSION



7<sup>th</sup> Indian Nations Conference

## Judicial Myths

Esther Yazzie-Lewis

Tulsa, Oklahoma 1999



## 7<sup>th</sup> Indian Nations Conference

### **"Judicial Myths"** **Esther Yazzie-Lewis, MPA**

#### **Learning Objectives:**

1. An awareness of the American court system.
2. The influence on law and the resulting change.
3. The contrast in the Navajo system with the Western system.

This workshop will discuss how the courts evolved and how it has an impact on Native Americans and felony charges.

Tulsa, Oklahoma 1999





## JUDICIAL MYTH

There are many myths which surround and support American courts and their methods of operation. The federal, state and local courts of the United States are built on structures developed in Europe. American judges pride themselves on being objective and rational; removed from subjectivity and the restraints of religion. They profess to give people justice regardless of race, creed, class or gender. Among the symbols which support such professions of impartiality is the figure of Justice, symbolized as a woman with a blindfold, holding out her scales of judgment. Although a woman is the symbol of justice, the American judicial system is in fact based upon patriarchal attitudes, and patriarchy is necessarily linked with the rise of Christianity. Patriarchy prompts control over women so that they are in fact treated adversely as a group. Such treatment is both subtle and overt, and the systematic oppression and genocide of women during the 15th and 16th centuries in witch burning exemplifies the judicial myths which support court systems.

Modern courts are tied to the rise of Christianity in the West, and most western court systems are directly or indirectly the product of received Roman law. Burning Times, a video, examines the fundamental relationship between the rise of Christianity and the resulting oppression of women. Women were healers and knew the art of medical treatment with herbs. By the time of consolidation of the modern nation-states in the fifteenth and sixteenth centuries, and modern nationalism, Christianity reached its apex. Male judges, guided and supported by male clergy, used witchcraft as a justification to torture and burn the woman healers, whom they called witches. Genocide directed against them was the manifestation of male domination entrenched in western law. (Genocide is destructive force directed against an identifiable class of people.)

The women of the time possessed non-Christian sacred knowledge which was used to heal.

At the same time, men went to the new medical schools which rediscovered healing methods from Greek and Roman times. The issue then became who would control the healing professions. The womens' knowledge came from non-Christian folklore, and the healing discourses in medical schools came from ancient male writers who received the endorsement of male-dominated Christianity. The most horrible disease of the time was the Black Plague. Previously, women sought herbal cures, but when the Black Plague scoured Europe, men turned to women for them. Woman healers knew herbs to cure the plague (Burning Times). That conflicted with the rise of male dominance in medicine.

To better understand how that conflict resulted in the burning of women as witches, there must be an examination of the transition from early matriarchal cultures, sanctioned by female deities, to the early patriarchal culture, dominated by a fierce male deity of the Old Testament. Barbara Mor, in The Great Cosmic Mother, establishes the existence of an original matriarchal system before the rise of patriarchal society:

[T]he period 6 - 4000 B.C. [was] the Magnus Annus of the Neolithic Great Goddess.... Women had been at the top of traditional, Neolithic society, but with the shift from religious, magical authority to masculine, military power, their influence collapsed and they became private property in the new trading and raiding society. Mesolithic society may have seen the domestication of animals, and Neolithic society may have seen the domestication of plants, but what the age after the Neolithic sees is the domestication of women by men.

*Id.*, at 240. Barbara Mor establishes the Bronze Age as the beginning of the Male Seed (*Id.*). Patriarchal religions, which knew God as a male, began around 2000 B.C. Mor called Him<sup>1</sup> the Olympian God; a god who was rigid. That Olympian God lost alchemical properties and was unable to transmute from one energy form to another. That made him rational, aloof and immortal. The mythology about him was that he was born of, or was a product of, his own will and not birth from

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<sup>1</sup> *Sic.* Note our perpetuation of the myth by using a capital letter for the male deity.

a woman. Concepts of rationality and authority, independent of feminine ties, are characteristics which also were the foundation of justice systems.

Male dominance in society in a patriarchal system of living was established at the expense of women:

In early patriarchy, women's ancient community tasks were turned into slave labor. Women produced the surplus products on which men based their secular power and control. In the next stage of economic development these slave tasks became the industrial occupations of the workers, while the ruling men (and their "wives") were exempt from labor. Women's forced labor, and later working-class labor, freed elite males to become lawyers, judges, doctors, artists, priests, and warriors--specialized, privileged occupations that all others are barred from. *Id.*, at p. 241.

Patriarchy produced a class system based on the belief that labor is secular and separate from religion.

In the early matriarchal societies, labor benefitted the Goddess Religion. In the secular patriarchal system, men utilized religion to suppress lower classes and women. Religious doctrine became "The Law" as it too lost its religious basis, and

... whole bodies of law, religious doctrine, and custom are then assembled to forcibly maintain these men in these positions of power. Patriarchal law, often called "the Will of God," is in fact a wholly secular cynical legal system designed purposely to maintain male power through institutional control of female energy. Under patriarchal legal, religious, and economic-social systems, some men dominate others. But all men benefit from their organized domination of the community of women. *Id.*

Even the source of food became secular and male-dominated. "Cattle herds took on a secular aspect: They became symbols of male wealth, power, and potency. (It cannot be an accident that the word "capitalism" comes from the Latin caput, or capitellum, originally referring to a head of cattle.)" *Id.*, at p. 238. Thus, religion, society and the economy fell under male control and those basic elements of group living were dominated by men who used them to control women and subordinate classes.

Men also dominated judicial systems. Systems of law come from and mimic the priesthood, another male institution. Mor also shows that the western church essentially shaped the common law of England and dominated legal process for centuries.

Before the early fourteenth century in England, lawyers and judges were priests. The clergy of the church became the clerks of the court. It was not until the late thirteenth century that the practice of law was secularized and regularized, and judges began to be selected from outside the church. One need only consider the similarities between a church hall and a court of justice to understand, at least on a superficial level, the influence of this religious institution.

The symbols of law, framed by its mythology, closely parallel religious symbols. Priests preside over a sacred altar, and judges announce law as prophets (i.e. as the "mouthpiece" of God) from sacred code books. The pomp, circumstance and ceremony of the church left their marks on legal proceedings: The bar of justice in courtrooms is like the communion rail in churches, where there is a dividing line between the audience and the sanctuary. When a judge enters the courtroom, everyone rises, just as everyone stands when the priest enters or he heads a procession to start the ceremony. Legal proceedings have predictable and prescribed forms, similar to religious rites. Judges, like priests, utter ritualized pronouncements which vary according to the proceeding or occasion for ceremony. In one instance, priests and judges may perform the same function, namely united a man and a woman in marriage. (Gonzalez, Vasquez, and Mikkelson, Fundamentals of Court Interpretation, p. 259).

In British courts, the wigs worn by judges and lawyers are symbols of their authority. Men shaved their heads due to lice, and wigs provided warmth and a replacement for a head of hair. The wigs for judges are long, falling down to their waists, to show high authority and power. Lawyers wear shorter wigs to show their subordination, but the wig is a symbol of special power and authority

not possessed by the laity. A British judge's wig has a hole at the back of the place over the head, and that perpetuates the tonsure of the clergy. The tonsure is a part of the skull which is shaved of hair to show priestly authority. The judicial symbol of office and authority specifically shows the religious and clerical origin of English common law. As it developed, only the clergy could read and write, and the clergy were the original judges and lawyers. There is an English judicial custom (now abandoned in England) which also shows the secularization of a process which was originally religious: When an English judge was about to pronounce the death penalty, a clerk would cover the hole in the back of the wig. That was due to a rule of canon law that a priest could not shed blood, so an English judge covered his "tonsure" to hide that symbol when ordering the death of a defendant. (Sgt. Pulling, Order of the Coif, p. 359.)

Roman law and canon law greatly influenced English law. The Catholic Church took its canon law from Roman law, and canon law was the first modern Western legal system. (Harold J. Berman, Law and Revolution, pp. 199-224.) Canon law had religious elements, including the requirement of marriage and jurisdiction over annulments, and it has secular components, including the foundations of Western political systems. Canon law was the culmination of the Roman Empire and its influence and the transmitter of the Roman legal system. (*Id.* p. 50.)

Another element which shows both the transition from religion to secular practice and the secularization of religious functions is language. Latin was the language of the Church, and it developed in seven periods: Late Latin, Medieval Latin, Low Latin, Vulgar Latin, New Latin, and Law Latin. Legal codes and documents were written in Latin for approximately one thousand years. Seventy-five percent of English words come from Latin. Legal terms still use non-Anglicized Latin phrases. They include "action" instead of lawsuit; "consideration" to mean a benefit to a "promisor;"

"counterpart" for a duplicate of a document; and "executed" instead of signed. While legal practitioners and scholars struggle to demystify the language of law, their efforts are to no avail. (Gonzales, *et al.*,<sup>2</sup> p. 259.)

A curious symbol of the transition from religious to secular discourse is the use of the symbol of justice: A blindfolded woman who holds up scales. Secular authorities adopted female goddess symbols of abstract qualities, such as history, the arts and law. The blindfold of goddess Justice is a symbol of fairness, impartiality and a lack of bias. Justice is seen as a female quality, because "justice depended on the feminine nature principle, which has a profounder kinship with the nature instum than does the male sex, with its greater susceptibility to the principle of domination." (Barbara G. Walker, The Woman's Encyclopedia of Myths and Secrets, p. 484.) An earlier incarnation of Justice was the Goddess Libra, who was worshipped in Carthage. "The blind-fold on today's Goddess of Justice was unknown in antiquity. She not only held the scales of every man's fate; she also had the All-Seeing Eye." *Id.*, p. 538. Libra's symbol, which is still used in astrology, is the scales, and today they represent the "weight" of an individual's case, with a winner and a loser. The blindfold put on Justice by patriarchy strips her of her power. Today, She is a representation of the fairness which is said to be the aspect of the American judicial system. The manipulation of a symbol which had its origins in female religion parallels other changes in gender relationships.

Prior to the Medieval era and the Inquisition, according to the video Burning Times, men and women worked side-by-side. Humans saw themselves as being in equality with nature and honored that kind of relationship by celebrating the change of seasons. They would dance to bring on spring and with it new crops and the renewal of life. Christmas has its origins in ancient recognition of the

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<sup>2</sup> *Sic.* We still use Latin for citation cues and academic communication.

return of longer days (as do many of today's Indian religious ceremonies in New Mexico and Arizona). There were oral traditions of equality in the social order. Originally, people did not believe in hierarchy or male supremacy. There were no elitist groups in egalitarian societies. The social order was tribal, with clan systems of law. (Berman, p. 52.) The original understandings of society as egalitarian were erased in the development of hierarchial systems of law, with class, power and authority wielded by male figures who look to their priestly origins. That hierarchial structure is inherent in the courts of the United States, which receive their authority from the Constitution of the United States. The Constitution is the "Law of the Land," and it is the source for the distribution and delegation of power to the federal government and the states. (Gonzalez, p. 96.) The "justice" which is administered in American courtrooms is the end product of a series of historical incidents which melted cultures, languages and traditions to create what we have today. (*Id.*, p. 258.) However, the American culture also took from other, non-European, cultures, languages and traditions and it continues to confront a system of law which retains original understandings: Indian law.

Donald A. Grinde and Bruce Johansen demonstrate, in their book, Exemplar of Liberty, that the "Founding Fathers" of the United States borrowed some Native American political concepts and symbols for the United States Constitution and the institutions of the American Republic. They frequently borrowed aspects and symbols of native cultures which suited the needs of the time and their desire for political liberty. Native American thought and institutions shaped American beliefs and resulting actions, whether or not the non-Indian founders understood native political and cultural systems in a scientific sense. (*Id.*, p. xviii.)

The Great Seal of the United States incorporates Indian elements, and it is a symbol of the federal judicial system. The seal shows an eagle clutching thirteen arrows and an olive branch. The

arrows have their source in a meeting between twelve colonies and leaders of the Iroquois Confederacy in 1775. The symbol comes from the Great Law of the Iroquois, which describes an eagle clutching five arrows to symbolize the power and unity of the Iroquois Confederacy. (*Id.*, p. xxi.) The eagle has twelve tail feathers, and twelve jurors sit to decide cases on trial. Twelve is an ancient symbol, shared by many cultures. There were twelve disciples of Christ, and Navajos believe there are twelve divine personages who come at dawn to bless those who are ready to receive the necessities for survival. Navajos also see the eagle as the symbol of the Law of Nature. Most Native Americans believe that the eagle represents foresight, prudence, wisdom and Indian sovereignty.

One of the borrowings from Indian culture in American government is that the "Americans shared the belief of the Iroquois that people should be governed under a fixed corpus of laws." (*Id.*, p. xxi.) While that is a mutual understanding and belief of American law, there is a great divergence in the application of law. American law is the product of patriarchy, while Indian law still retains its original matriarchal foundations to a large extent.

One of the continuing practices of patriarchy is code books. When witches, actually wise women, were burned, judges who presided in tribunals used hand books to prompt confessions and determine the degree of punishment. "The Inquisition's handbook, *Malleus Manficarum*, said the accused witch must be "often and frequently exposed to torture.'" (Walker, p. 442.) Today's hand book is the 1985 United States Sentencing Guidelines, which are used to determine the nature and length of sentence imposed on persons who are found guilty of a crime. Hand books were used to target women as "witches," and today's sentencing guidelines give the United States the highest imprisonment rate in the world, mostly members of racial and ethnic minorities.

There are two parallel systems of law in the United States: one is patriarchal and the other



is largely matriarchal. The patriarchal system is based upon power and authority; wealth and class. The matriarchal system is based upon deliberation and discussion; sharing and equality. The Navajo justice system demonstrates the differences.

As has been shown, Western law comes largely from male-dominated religious traditions which were secularized. In it, a powerful authority figure -a judge- hears the arguments of the parties and makes a decision for them. It is an absolute win-lose decision. Judgements are said to be guided by impartial standards, i.e. code books and printed legal case decisions. There is an unequal relationship between the judge and the parties before the court, and the judge holds all the power. The courts, which are institutions, are built on hierarchies of power. That is alien to Navajo thought.

A great deal of Navajo thought comes from the conceptualization of life as a female quality. The principle Navajo deity is Changing Woman, and through Her, Navajo justice is based upon egalitarian norms and principles. The teachings of Changing Woman stress equality, balance and reciprocity, and those elements are reflected in Navajo legal practice. In traditional Navajo law, the "judge" is the parties themselves, and decisions are reached through discussion, deliberation and consensus. They do not declare a "winner" or a "loser." Navajos speak of a conflict as a problem, and they call their judicial procedure "talking things out." They do not refer to code books. A decision is not made by a powerful authority figure, who relies upon supposedly objective standards published in a law book, but by the people themselves. The closest parallel to a "judge" in Navajo law is a community leader who guides and teaches parties. That leader does not make a decision for others, but uses the traditional wisdom which he or she possesses to teach those who are in conflict to help guide their decision.

This contrast in legal process is important to show the divergent origins and elements of legal

process. The Economic and Social Council of the United Nations is currently undertaking a study of the nature of treaties, agreements and other arrangements between states and their indigenous populations. The study, which is being conducted by Dr. Miguel Alfonso Martinez of Cuba, produced his First Progress Report (1992). In it, Martinez recognizes that the principle of reciprocity underlies indigenous law, government and economic relationships. (Dr. Miguel Alfonso Martinez, Study on Treaties, Agreements and Other Constructive Arrangements between States and Indigenous Populations: First Progress Report, pp. 16-17.) Unlike Western law and government, reciprocity, "the return of a counter value," "creates a relationship between persons or groups, while identifying the latter as separate members of that relationship." Reciprocity recognizes the diversity of individuals within the unity of the group. Capitalism is a central element of Western thought, but in indigenous economic organization, "reciprocity has been set off against redistribution (implying centralization) and market exchange (implying the establishment of prices), or conceived of by degrees." (*Id.*) Reciprocity, which is taught by Changing Woman, is essential in Navajo legal thought and process. Where reciprocal relationships are established and are as they should be, Navajos describe that state of being as *hozho*. Following the legal process of "talking things out," where disputants and their advisors reach consensus to solve the underlying problem, the parties reach that state and describe it as *hozho nahasdlii*, which recognizes that *hozho* has been reached. Navajos also believe in distributive justice, which means that available material goods are shared on the basis of availability and need in such reciprocal relationships.

Navajos do not rely upon code books. Everyone possesses the wisdom and knowledge which is used to guide a dispute. The wisdom is ceremonial, and the values of the Navajo culture are enshrined in its language, origin explanations, and stories. An individual who does not possess such

knowledge can learn it in the legal process from a guide; a civil leader called a *naat'aanii*. The institution of the *naat'aanii* is important, and it is an example of the inclusion of women in the institutional process, as contrasted with their exclusion from Western legal institutions up to modern times. A Navajo *naat'aanii* is chosen through the consensus of the community, often on the basis of the possession of religious knowledge. The people choose their leaders for wisdom and demonstrated ability to plan for group success and survival. Navajos understand that women possess special knowledge and wisdom. Women are also healers; most often "hand-tremblers" and herbalists. In Navajo belief, a female hand-trembler, who is a medical diagnostician and "trembles" her hand over a patient, is guided by a special Spirit who imparts the intuition needed for a successful diagnosis of an illness and advice on the proper healing ceremony or herb to be used to heal it. Similarly, women have always been understood to have leadership qualities based in intuition. They are often selected as *naat'aanii* out of recognition of the quality.

Intuition, a human quality which is valuable to solve problems, is part of the Navajo process of discussion for resolution in consensus. Intuition guides perception, and it is a quality which can be used to guide parties in conflict. Intuition is a filter to identify shared group values to apply to a problem. In the Navajo process of "talking things out," everyone present identifies the common values and understandings which all share. Navajos are practical. They honor tradition, but know that traditional understandings are based upon centuries of trial and error, and resulting understandings of successful ways of doing things. One such traditional concept is *k'e*, which has no adequate translation into English. Among many things, it means respect and reciprocity, and it is a value which prompts reciprocity in relationships. It too is among the teachings of Changing Woman. As a female deity figure is used in Western law as the symbol of Justice, Changing Woman is the

Navajo justice figure.

There is also a divergence in the use of symbols in Western and Navajo law. In Western law, "Justice" is only a symbol, and while a female figure is used to exemplify the application of law for justice, female knowledge does not guide the process. In contrast, Changing Woman is a symbol, but She is more than that. To Navajos, Changing Woman is Mother Earth. She is the source of knowledge and wisdom, including reciprocal relationships. Reciprocal relationships are egalitarian, and has been shown, Western law is based upon wealth and class distinctions and not equality.

How does Navajo law work in practice when it comes to the treatment of women and matriarchal understandings? Navajo women are recovering from over a century of patriarchal thought imposed upon Navajos in law and government. The traditional Navajo legal system was assaulted in 1892, when Western law was imposed upon the Navajo Nation. Despite the introduction of Western-styled forms and procedures, traditional Navajo law and procedure survived. They were reinstitutionalized in the Navajo Nation court system in 1982.

According to the Hon. Elbridge Coochise, president of the National American Indian Court Judges Association, most American tribal judges are women. In the Navajo Nation, half the trial judges are women and all the judges in the New Mexico portion of the Navajo Nation are women. There is a greater percentage of women in the Navajo Nation Bar Association than any other American bar organization. Navajo Nation court personnel say that most of the peacemakers in today's Navajo Peacemaker program are women. Additionally, they also report that in situations involving domestic violence, Navajo women prefer the traditional peacemaking procedure to recent Navajo Nation domestic violence legislation based upon general American procedures.

It is taking a long time for Navajos to recover from the imposed legacy of paternalistic law

and its symbols. Rape was once almost absent from Navajo society; today it is one of the largest categories of offenses prosecuted in the federal courts of the Southwest. Navajo traditional law strongly prohibits violence against women, yet today it is a common problem on the dockets of the Navajo Nation courts. The Navajo judicial system has imported code book provisions to deal with the social problems of sex offenses, domestic violence, alcohol-related crime (including behaviors which are destructive of others and self-destructive acts, such as suicide), gang activity and other social problems. The Navajo Nation courts use the paternalistic methods and symbols of Western law, but its judges and the Navajo People prefer their traditional and female-based law. That is shown by the popularity and increasing use of Navajo peacemaking in the court system.

While Western law is the core of most American tribal courts, it is not working. That is shown by the statistics of higher rates of homicide, family violence and suicide in Indian Country as compared to general American rates. (Ronet Bachman, Death and Violence on the Reservation.) It is difficult to interpret those rates, but one explanation may be that paternalistic law is not working. Traditional Indian law is based upon equality, consensus and reciprocal relationships; ideas which come from female traditions. Western law was introduced to destroy Indian traditional law, and perhaps it did its job too well. Western law substituted authoritarian structures and rules for egalitarian ones and it took power out of the hands of the people. It also stripped them of competence to solve their own problems.

We must examine the myths by which we live. The judicial myth of objectivity and equality before the law is exposed in an examination of its paternalistic origins and its disparate impact upon women. A comparison between the workings of Western law and the Law of Changing Woman shows that there are two systems of law which function in the United States: one is essentially

authoritarian, and the other is based in egalitarian process and thought.

The United States made a conscious choice of the law to be used in the new American Republic. It recognized the existence of Indian government and law and chose only a few elements and symbols of Indian law. As Grinde and Johansen relate, the American Founding Fathers consciously recognized the existence of Indian law, and some of its principles, but only took from it what suited them. America had Founding Fathers. The Navajo Nation had a Founding Mother, and the Navajo treaty negotiators spoke of Her when they concluded their Treaty of 1868 with the United States.

Grinde and Johansen hint that the American Founding Fathers flirted with the idea of rejecting English common law in favor of a system of Indian law. Thomas Jefferson, who despised Sir William Blackstone (whose Commentaries on the Law of England were the basis of the American system), talked about using Indian law for the United States. John Adams, who also spoke of his familiarity with Indian law, was not prepared to reject the authority-based law of Europe. His position may be due to his rearing in Puritan religion and principles. The American Revolution was conducted by male leadership, and the new Republic was formed and framed by men who were steeped in paternalistic European thought.

While there are many positive elements in Christian thought, the historical rejection of female deities and the ironic adoption of one of them as the symbol of justice resulted in genocide and atrocities against distinct groups of people. Women were the primary victims of paternalistic control in male-dominated authority structures, and they are still victimized by the law. While today women are not the primary occupants of prisons, minority males are. The class structure of American law is visible in the statistics which shows what happens when the law is applied to people.

There is an alternative. Navajo peacemaking has been taken around the world, and Navajo court officials have visited Australia, New Zealand, Papua New Guinea, Vanuatu, Fiji, Canada, Bolivia and South Africa to explain how it works. Recently, the United States Justice Department announced that there will be a major conference in Washington, D.C. in January 1996 to explore "restorative justice"<sup>3</sup> and how it works in traditional Indian law. The female traditions of equality and reciprocity are recognized in a major United Nations study of indigenous treaties.

Justice should not be a myth. Judicial systems should not function using mythology when they are in fact based upon paternalistic class distinctions. The problem with legal systems based upon authority is that they too easily become authoritarian. The Navajo experience shows that it is possible to return to original understandings of true equality and true justice, using procedures which prompt consensus and agreement. Navajo law comes from a woman, and She is not merely a symbol. Changing Woman is our law. In the United States, the myth continues.

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<sup>3</sup> Restorative justice is a recent theory that it is possible to deal with offenses using alternatives to punishment.





7<sup>th</sup> Indian Nations Conference

Overview of a Cross Cultural Curriculum  
for Federal Criminal Justice Personnel

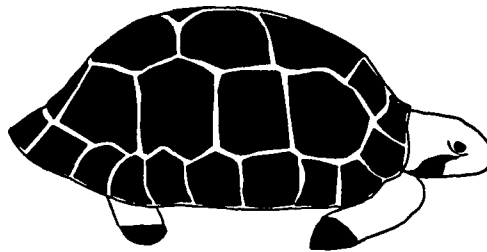
Dolores Subia BigFoot, PhD

Tulsa, Oklahoma 1999

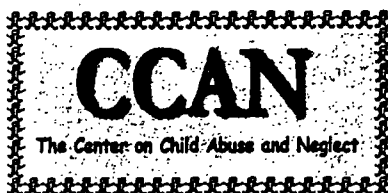


# Upon the Back of a Turtle...

*A Cross Cultural Training Curriculum  
for  
Federal Criminal Justice Personnel*



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Office for Victims of Crime

**OVC**

Advocating for the Fair

Treatment of Victims



Upon the Back of a Turtle... A Cross Cultural Training Curriculum for  
Federal Criminal Justice Personnel

# Upon the Back of a Turtle...

## *A Cross Cultural Curriculum for Federal Criminal Justice Personnel*

developed by:

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CCAN believes that the information contained herein is factual and that the opinions expressed are those of the author and consultants. The information is not however, to be taken as warranty or representations for which the Center on Child Abuse and Neglect assumes legal responsibility. Any use of this information must be determined by the user to be in accordance with policies within the user's organization and with applicable federal, state, and tribal laws and regulations.

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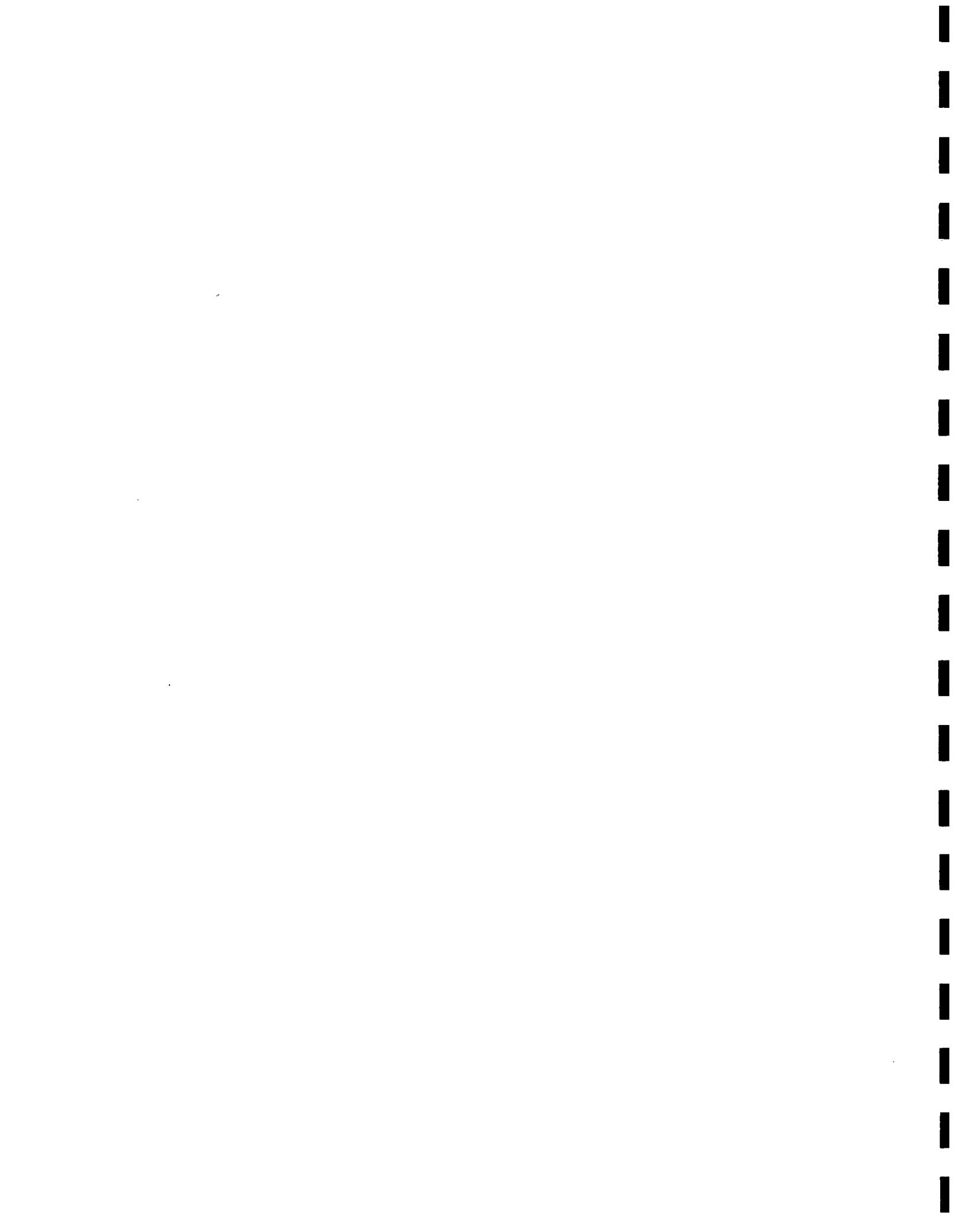
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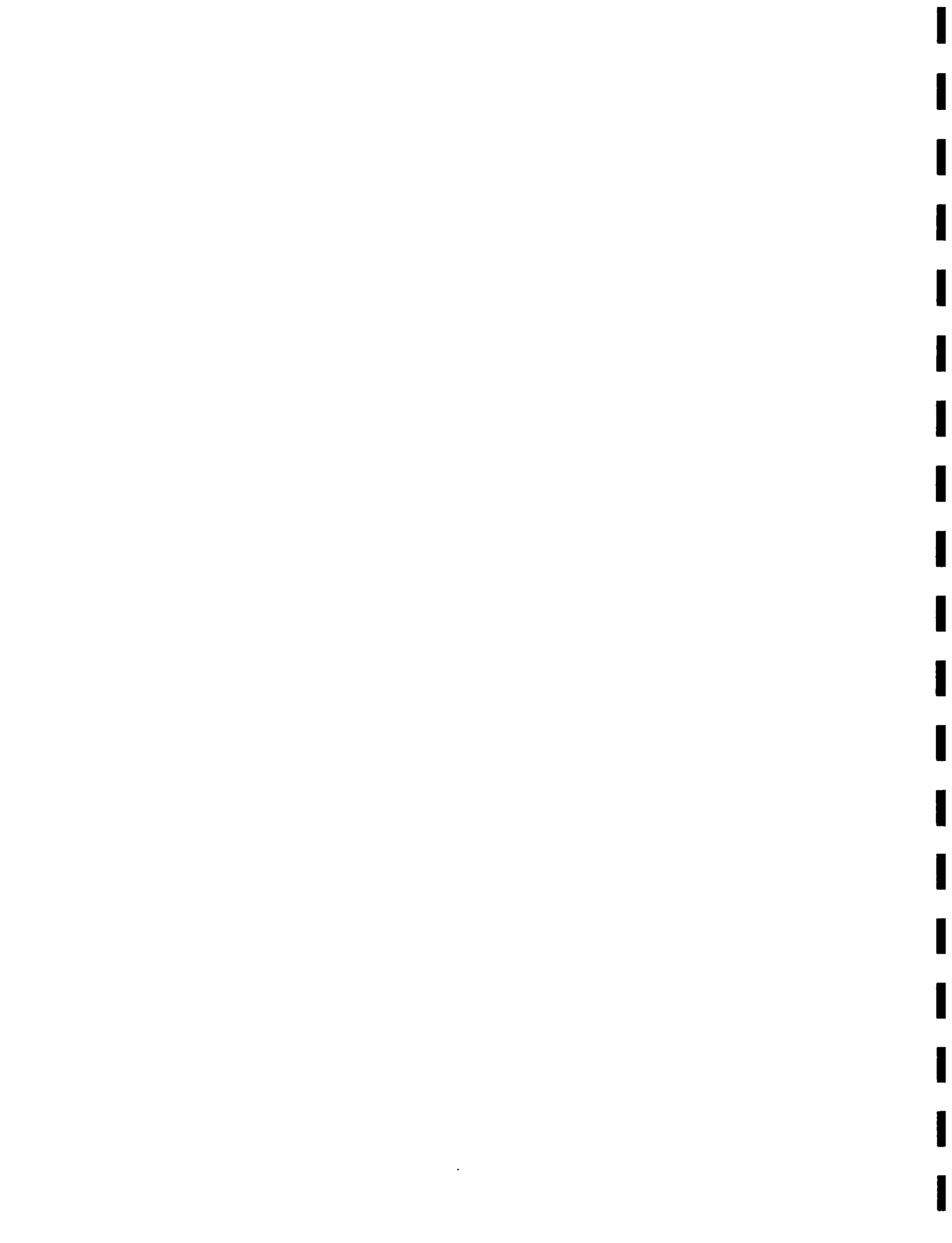
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## Purpose of Training

The materials and video of this curriculum is designed to assist federal government personnel in understanding the diversity within Indian communities and improve their abilities to provide culturally appropriate services to American Indian clients. The materials will assist federal criminal justice personnel in responding appropriately to American Indian victims of crime and their families and the provision of culturally sensitive services will be enhanced.

Upon the Back of a Turtle... comes from the rich oral tradition that Native people have for storytelling to teach principles and to convey ideas. Upon the Back of a Turtle uses the same concept of telling a variety of stories. The stories are not meant to portray a specific tribe or Native group, but are told to present different concepts used by Native families and their extended family members. These stories express family relationships, the viability of traditional ceremonies, the use of traditional teachings, methods of communication and other relevant themes. The vignettes are only short tales and are not one consistent story line, but they are the portrayal of concepts to generate discussion among the viewers and to convey a bit of teaching with the telling of the tale.

## Organization of the Manual

The contents of this curriculum have been organized in training modules that can be presented either as a series of workshops or as an individual module. The training modules have been designed so that the presenter has all necessary information for each session and in a format that can be easily presented. Each trainer's module includes a trainer's agenda, presentation information, master overheads, master handouts, and activity worksheets.

The **Trainer's Agenda** includes lecture presentation (overall goal of the session), objectives, activities for large and small groups, discussion questions and information that relates to the training video for each section. Each session can last from 1 - 3 hours, depending upon the activity selected and amount of discussion within the group. Suggested readings are included at the end of the manual that can be disseminated to participants and can also assist the presenter in preparing for the presentation.

Each module includes the **Presentation Information** with specific information on each topic to be covered during the session. Within the Presentation Information are master overheads that can be copied onto transparencies to be used during each session. Master handouts are provided which can be copied and distributed to







participants. Each handout corresponds with the overheads and Presentation Information.

In the Appendix **Sample Materials** are provided that can be used at the presenter's discretion. These include worksheets that can be used for small and large group activities, a sample certificate for completion of training, sample evaluations and a pre and post measure that can be used by participants before and after training.

The 30 minute **Video** includes information on cultural issues of Native Americans. The Video should be used to initiate and create discussion within the training group about cultural issues and is not intended to be specific to any one Native American tribe or culture. The video can be used at any point in this training program.

## Introduction

In recent years, federal employees have been working with Native American victims of crime in increasing numbers. In 1989, the Office for Victims of Crime (OVC) within the Department of Justice, Office of Justice Programs, began funding on-reservation programs through the Victim Assistance in Indian Country (VAIC) discretionary grant program. As increasing numbers of Indian victims of crime have come into the criminal justice system, U.S. Attorneys, Federal Victim/Witness Coordinators, FBI Agents, and other federal personnel who are predominantly non-Indian, have encountered cultural differences in working with Native American crime victims.

This curriculum and video will present some of the realities of the delivery of services to Native victims by victim assistance programs with the goal of increasing understanding of how VAIC programs may differ from similar non-Indian programs. Any discussion of Native programs must begin with the caveat that all tribes are different and that there is no single correct way to deal with all Indian persons and/or programs. Non-Indian personnel working within Indian Country must educate themselves regarding the Indian Nations in their jurisdiction.

In this curriculum and video the term Native Americans and American Indians are used interchangeably. Both terms are used to describe the Native American, American Indian, Alaska Native and Eskimo populations.





## Upon the Back of a Turtle there are many stories...

Storytelling was the form of transmittal for how things were and why things happened. There were winter stories and summer stories, stories for days that the rains fell, and stories for early mornings. Creation stories were told and retold many times in the growing years. The telling of the tale was not only to re-create the beginning of the tribe but the stories would have different significance as children matured through the developmental stages. Storytelling gathered families together to share recreation time and to improve listening and oratory skills. Stories provided the answers to when, where, how, and how come.

Non-Indian youth have Dr. Seuss, Charlie Brown and other stories to grow and mature by. Indian youth have turtle stories, songs, and games they listen to as they mature from youth into adulthood. Each turtle story has a lesson and is used as a teaching tool for American Indian youth. "Upon the Back of a Turtle" video is a representation of cultural differences in the way Native teachings are still used today.





7<sup>th</sup> Indian Nations Conference

# Juveniles in the Federal Court System

Arvo Mikkanen, JD

Tulsa, Oklahoma 1999



## 7<sup>th</sup> Indian Nations Conference

### **"Juveniles in the Federal Court System"**

**Arvo Mikkanen, JD**

#### **Learning Objectives:**

1. Explain federal juvenile procedures.
2. Describe federal offenses which may apply to juveniles.

This workshop will focus on explaining how juveniles are handled in Federal Court when they engage in delinquent or criminal conduct. The procedure for investigating juvenile offenses and unique concerns involved with offenders under 18 will be explained.







***DOMESTIC VIOLENCE IN INDIAN COUNTRY:  
INTERVENTION & PREVENTION***

***Legal Issues in Domestic Violence Cases***

**Arvo Q. Mikkanen, Assistant United States Attorney &  
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**The positions, analysis, and views presented are those of the speaker only and do not reflect the official position or policies of the U.S. Department of Justice or the Office of the United States Attorney for the Western District of Oklahoma**



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# *DOMESTIC VIOLENCE IN INDIAN COUNTRY: INTERVENTION & PREVENTION*

## *Legal Issues in Domestic Violence Cases*

### **I. OVERVIEW OF FEDERAL INDIAN LAW:**

Federal Indian law is the body of federal law that concerns the unique status and rights of Indian tribes and individual Indians or Native Americans in our legal system. Federal Indian law includes many different categories including jurisdiction, taxation, environmental regulation, civil rights, housing, hunting & fishing, gaming, domestic relations, property, constitutional law, criminal law, and civil-regulatory law, to name a few.

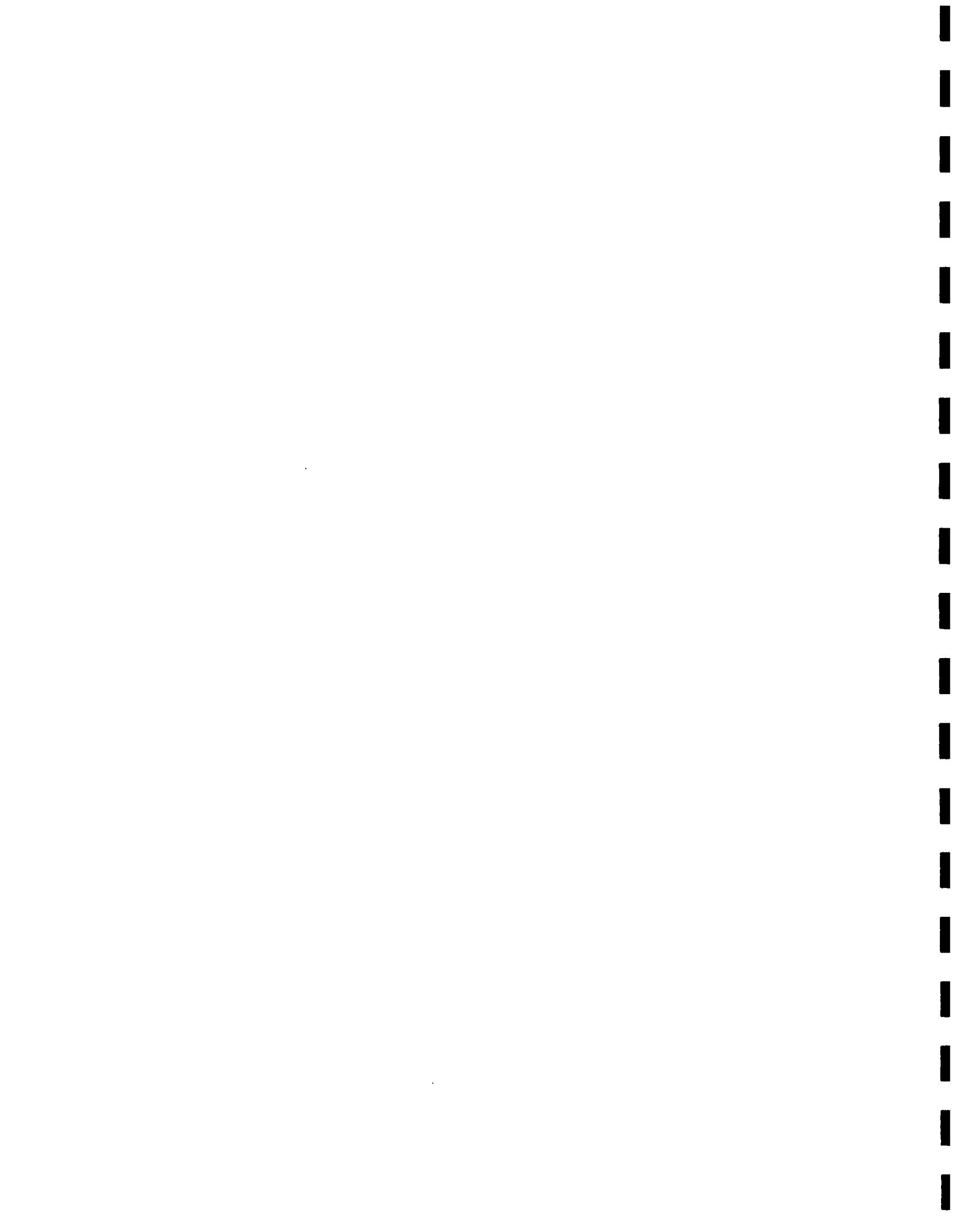
#### **A. SOME BASIC CONCEPTS AND DEFINITIONS:**

##### **1. LEGAL STATUS OF INDIAN NATIONS OR TRIBES:**

- a) Indian nations or tribes are governments, not just collections of individuals.
- b) Under case law, Indian nations retain the powers of a foreign nation except those extinguished by Congress, by treaty, or which are "inconsistent with the dependent status of the tribes."
- c) Tribal nations retain jurisdiction or governmental authority over those lands remaining which are designated as "Indian country."
- d) Tribes may continue to exercise powers of a sovereign. Under the doctrine of tribal sovereignty an Indian tribe, may exercise the following powers, among others:
  - 1) Form a government
  - 2) Determine tribal membership (or citizenship)
  - 3) Regulate tribal property
  - 4) Regulate individually owned property
  - 5) Tax Indians & non-Indians
  - 6) Maintain law & order and court systems
  - 7) Regulate activities of non-Indians
  - 8) Regulate domestic relations
  - 9) Regulate commerce and trade

A tribe generally retains other sovereign powers, consistent with its status as a "domestic dependent nation" unless its powers have been specifically divested by treaty or Act of Congress.

- e) The power exercised by an Indian tribe does not flow from the United States or the State government, but rather originates from the inherent sovereignty of the tribe.



## 2. THE DEFINITION OF "INDIAN COUNTRY"

The lands over which tribal and federal jurisdiction generally control, and over which the Indian nation may exercise its sovereign authority. As a general matter, state jurisdiction over Indian country lands is limited or restricted depending upon the type of matter involved and the identity/citizenship over whom the jurisdiction is being asserted.

- a) The federal statute defining Indian country is 18 United States Code, Section 1151 (a), (b), & (c):

Except as otherwise provided in sections 1154 and 1156 of this title, the term "Indian country," as used in this chapter, means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

## 3. "INDIAN" AS A LEGAL STATUS

The special status or rights of Indians are derived from their status as *citizens or members* of an Indian nation, not just from their racial status of having Indian blood.

- a) With a few exceptions, membership in a federally recognized Indian tribe is based upon the tribe's own laws and constitution.

- 1) The tribe retains the right to determine its members or who may be citizens
- 2) Tribal membership or citizenship is usually a prerequisite to a party receiving services from the tribe
- 3) The tribal membership/citizenship status of an individual may also have jurisdictional consequences

- e.g. a tribe may not be able to assert criminal jurisdiction over (be able to arrest, charge or punish) a non-Indian

- e.g. an order of the Court of Indian Offenses cannot be imposed against a non-Indian unless they have stipulated to the jurisdiction of the court under 25 C.F.R. § 11.103 (a).

- b) Indians maintain a "triple citizenship" being a citizen of a state, and Indian nation, and the United States, all at the same time.

- 1) The fact that an Indian may have rights as a tribal member does not deprive them of other rights they may possess as citizens of the State of Oklahoma or the United States.





## II. OBTAINING RESTRAINING ORDERS AND CIVIL JUDICIAL RELIEF THROUGH THE TRIBAL COURT SYSTEMS

Generally, since state courts do not have authority over Indian country lands or in matters where the parties involved reside within Indian country, it may be necessary to obtain restraining orders or seek other judicial relief to protect persons from violence through the tribal court systems.

### 1. BACKGROUND OF THE TRIBAL COURT SYSTEMS IN OKLAHOMA:

- a) most court systems are relatively new (established within the last ten or fifteen years)
  - although tribes in Oklahoma had sophisticated tribal courts prior to statehood, those courts have not been re-established until recent times
  - most tribal courts in Oklahoma have been established following the decision in *State v. Littlechief*, where the state and federal courts determined that Oklahoma does not have jurisdiction over felony crimes committed by Indians on Indian allotments classified as Indian country under 18 U.S.C. § 1151(c).
- b) some tribes have not yet enacted comprehensive codes of laws and rules of procedure concerning the presentation of matters in the tribal court
  - the tribal codes which have been adopted usually set forth the particular requirements for such matters as obtaining a tribal court restraining order, defining the criminal offenses for the tribe, or the procedure to use in handling the case before the court.
  - tribes without their own tribal code may rely on the tribal code (laws) of another jurisdiction (e.g. another tribe, the state, the United States)
- c) most tribal courts operate on a part-time basis and may have court from as often as 2 times a week to as infrequently as once a month
- d) most tribal courts have practicing attorneys who serve as judges and are available at the court only on a part time basis
- d) obtaining protective orders or restraining orders may require additional steps when compared with the state court systems due to the part time nature of the court systems
- e) few, if any tribes, have enacted "Victim Protection Order" or ("VPO") statutes or procedures, thus, most orders for the protection of individuals are issued under the court's general authority to issue restraining orders



2. AN OVERVIEW OF THE TWO TRIBAL COURT SYSTEMS OPERATING IN OKLAHOMA: THE COURTS OF INDIAN OFFENSES & THE TRIBAL COURTS

a) The Courts of Indian Offenses (also known as "CFR Courts"):

- 1) operated by the Bureau of Indian Affairs for those tribes without sufficient funds to have their own court system
- 2) laws applied include the federal regulations found in Title 25, Part 11 of the Code of Federal Regulations, state law, tribal law, and federal law, as well as locally adopted court rules of procedure and administrative orders
- 3) judges are part-time employees who are attorneys
- 4) each court is served by a court clerk, who is responsible for filings and record maintenance

The Anadarko Area Courts:

trial courts:

*Anadarko Agency Court of Indian Offenses, Anadarko, OK:  
Indian country under the jurisdiction of the Kiowa, Comanche, Apache,  
Wichita, Caddo, Western Delaware, Fort Sill Apache Tribes*

*Pawnee Agency Court of Indian Offenses, Ponca City, OK:  
Indian country under the jurisdiction of the Tonkawa and Ponca Tribes*

appeals court:

*Court of Indian Offenses - Appellate Division, Anadarko, OK :  
Hears appeals from the Anadarko Agency and Pawnee Agency Courts of  
Indian Offenses*

The Muskogee Area Courts:

trial courts:

*Seminole Agency Court of Indian Offenses, Seminole (Mikasukey Mission), OK:  
Indian country under the jurisdiction of the Seminole Nation:*

*Miami Agency Court of Indian Offenses, Miami, OK:  
Indian country under the jurisdiction of the Seneca-Cayuga, Miami, Modoc,  
Eastern Shawnee, Ottawa, Peoria, Quapaw, Wyandotte Tribes.*

*Chickasaw Agency Court of Indian Offenses, Ada, OK:  
Indian country under the jurisdiction of the Chickasaw and Choctaw Nations.*



appeals court:

Court of Indian Offenses - Appellate Division:

Hears appeals from the Seminole, Miami, and Chickasaw Agency Courts of Indian Offenses

b) The Tribal Courts:

- 1) operated by the Indian tribe itself pursuant to its own laws
- 2) laws applied include tribal law, state law, and federal law, as well as locally adopted court rules of procedure and administrative orders
- 3) most judges are part-time employees who are attorneys
- 4) each court is served by a court clerk, who is responsible for filings and record maintenance

Tribes currently operating tribal courts:

*Comanche (child welfare only)*  
*Cheyenne-Arapaho,*  
*Sac & Fox,*  
*Absentee Shawnee,*  
*Iowa,*  
*Citizen Band Potawatomi,*  
*Kickapoo,*  
*Kaw,*  
*Otoe-Missouria,*  
*Osage,*  
*Cherokee,*  
*(Muskogee) Creek,*  
*Cherokee.*

**3. PROCEDURE TO OBTAIN A COURT ORDER TO PROTECT INDIVIDUALS FROM DOMESTIC VIOLENCE IN INDIAN COUNTRY**

a) Procedure in Tribal Court:

1. *Determine the status of the land where the parties reside -Is it Indian country?*

- if NO, then victim protection order should be sought through state court, which would have subject matter and personal jurisdiction over the matter.
- If YES, then restraining order should be sought through tribal court which would have subject matter and personal jurisdiction over the matter



2. *Determine which tribe has governmental authority over that land (in which tribe's original reservation boundaries is the land located?).*

- this usually will determine which tribal court has jurisdiction over the land.

3. *Determine the status of the individual(s) to be restrained. (Indian or non-Indian?)*

- If the tribe is served by a Court of Indian Offenses, and individual to be restrained is a non-Indian, a party must allege and prove that the defendant has stipulated to the jurisdiction of the court. See 25 C.F.R § 11.103 (a).
- If the tribe is served by a tribal court and the defendant is a non-Indian, check the tribal codes to confirm that non-Indians are subject to tribal court jurisdiction. In most cases they should be subject to the civil authority of the tribal court, even if they are non-Indian or are non-tribal members.

4. *Determine the court's filing procedures.*

- Contact the tribal court or the Court of Indian Offenses for the tribe that has jurisdiction over the property to determine the filing procedures, to find out when court will next be held, whether judge can sign order faxed to him or her, filing fees, etc.

5. *Prepare a petition for a restraining order or victim protection order.*

- The petition should be prepared in compliance with the court's procedural codes and rules, which may require an affidavit, signature of a notary, or signature of the petition by the court clerk (check whether the court will accept a fill in the blank form). The petition should adequately describe the facts, circumstances, and specific reasons why that the order should be issued.

6. *File petition with filing fee.*

- Completed petition should be filed in the appropriate court and a filing fee paid (if one is required). Service on the opposing parties must be made in accordance with tribal court procedural rules (e.g. service by law enforcement, process server, mail, etc.).





7. *Determine if order can be issued immediately "ex parte" (without the other side present or having responded).*

- Most courts, if advised of the emergency nature of the request, will be able to immediately issue a TRO or protection order. Check with the court clerk about getting immediate relief and make sure to describe the circumstances and need for the order clearly in the petition and any attached affidavits. Many courts will transmit the petition by facsimile to the tribal judge who can issue the order immediately and set a date for a full hearing.

8. *Be prepared with witnesses and exhibits for the Hearing.*

- In most cases, a hearing will be set within a week or two after the date that the TRO or protection order is issued, at which time the court will hear additional evidence from both sides to determine whether the restraining order or injunction will be made permanent, remain in place or be allowed to expire.

9. *Determine the lands where the order will be in effect.*

- Tribally obtained TRO or victim protection order is only valid within the Indian country under the jurisdiction of the tribal court or Court of Indian Offenses that issued it

10. *Enforcement of order.*

- Violation of a properly issued restraining order or victim protection order may subject the defendant to contempt of court proceedings or criminal charges for disobedience of a lawful order of the court.

#### 4. ENFORCEMENT OF STATE COURT ISSUED V.P.O. WITHIN INDIAN COUNTRY AND TRIBALLY ISSUED T.R.O. IN STATE JURISDICTION:

a) New "Crime Bill" Full Faith & Credit Provisions, Title 18, Chapter 110A, § 2265:

The recently enacted "Crime Bill" legislation Full Faith & Credit Provision mandates that under federal law Indian tribes and states honor each other's protective orders and treat them the same as if it were issued from that own jurisdiction's court

- in order to have it enforced, the court issuing the order must:



1) have jurisdiction over the parties and matter under the law of the tribe or the state, and

2) reasonable notice and opportunity to be heard must be given to the person against whom the order is sought. If the order is issued "ex parte" (without notice to the party against whom it is issued) that party must be provided notice and an opportunity to be heard as provided for by the state or tribal law, and in any event within a reasonable time after the order is issued, sufficient to protect that party's due process rights.

b) Procedure under Rule 30 of the Rules of the District Court for Oklahoma - Full Faith & Credit

Provides for full faith and credit to tribal court judgments by a state court if the tribe grants full faith and credit to the state's judgments.

Procedure involves filing of the tribal judgment in state court, paying the filing fee for enforcing a foreign judgment, serving the opposing party, and waiting 20 days for order to become effective if the opposing party does not object.

## II. LAW ENFORCEMENT & PROSECUTION OF DOMESTIC VIOLENCE CASES IN INDIAN COUNTRY

### A. HOW TO CONTACT LAW ENFORCEMENT FOR OFFENSES OCCURRING WITHIN INDIAN COUNTRY:

1. Call Tribal Police:

*Comanche, Cheyenne-Arapaho, Sac & Fox, Absentee Shawnee, Iowa, Citizen Band Potawatomi, Kickapoo, Tonkawa, Pawnee, Kaw, Ponca, Choctaw, Cherokee, Muscogee (Creek)*

2. Call BIA Police:

*Kiowa, Apache, Wichita, Caddo, Delaware, Ft. Sill Apache, Seminole, Chickasaw, Seneca-Cayuga, Miami, Modoc, Eastern Shawnee, Ottawa, Peoria, Quapaw, Wyandotte, Osage*

3. Call local FBI office if major crime occurs (murder, manslaughter, kidnapping, maiming, sexual abuse, rape, incest, assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury, arson, burglary, robbery, etc.):

4. Call local law enforcement (sheriff's office) who can contact tribal or



BIA officers by radio

#### B. TRIBAL PROSECUTION IN INDIAN COUNTRY

1. Jurisdiction Limited to Indians,  
Tribes cannot prosecute non-Indians in tribal court.
2. Criminal offenses determined by tribal codes or the Code of Federal Regulations for tribes served by Courts of Indian Offenses
3. Tribal courts prosecute misdemeanors primarily
4. Tribal punishments are limited to no greater than 1 year in jail or a \$ 5,000. fine (for Courts of Indian Offenses, 6 months in jail and \$ 500. fine)
5. Cases are generally investigated by tribal police or BIA criminal investigator and presented by tribal prosecutor or tribal Attorney General

#### C. STATE PROSECUTION IN INDIAN COUNTRY

1. States may prosecute non-Indians when crimes are committed against non-Indians
2. Absent an Act of Congress granting a state jurisdiction in Indian country, states have no jurisdiction over Indians in Indian country for either misdemeanor or felony offenses

#### D. FEDERAL PROSECUTION IN INDIAN COUNTRY

1. Federal courts primarily prosecute felonies (major crimes) that occur within Indian country
2. Federal prosecution of Indians in Indian Country is primarily through application of the Major Crimes Act (murder, manslaughter, kidnapping, maiming, sexual abuse, rape, incest, assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury, arson, burglary, robbery, etc.):
3. Other specialized offenses may be basis for federal prosecution (e.g. embezzlement statutes, child pornography laws, prohibition against certain types of gaming, etc.)
4. Federal courts may also prosecute non-Indians where there is an Indian victim under the provisions of the General Crimes Act which incorporates state law and applies it to Indian country
5. Numerous federal offenses may be applicable in domestic violence cases



- a. Felonies resulting in injury or death (e.g. murder, manslaughter, assault resulting in serious bodily injury, etc.)
- b. Felonies constituting sexual offenses (e.g. rape, statutory rape, sexual abuse, etc.)

6. New federal Crime Bill provisions that relate to domestic violence:

a) Offense for Crossing State Line or Entry Into/Out of Indian Country in Violation of a Victim Protection Order, Sec. 2262(1)

- person who crosses state line or enters/leaves Indian country with the intent to engage in conduct that

- 1) violates a protection order issued for protection against injury, threats or harassment or,
- 2) would violate the protection order in the jurisdiction where it was issued, and
- 3) person actually engages in such conduct

b) Offense for Causing the Crossing of a State Line or Entry Into/Out of Indian Country in Violation of a Victim Protection Order, Sec. 2262(2)

- person who causes a spouse/intimate partner to cross a state line or enter/leave Indian country by force, coercion, duress or fraud and in the course of/as a result of such conduct:

- 1) intentionally commits an act that injures the person's spouse/intimate partner in violation of a protection order issued by a state for protection against injury, threats or harassment or,
- 2) would violate the protection order in the jurisdiction where it was issued, and
- 3) person actually engages in such conduct

7. Confidentiality During Investigation & Prosecution - "Is anything being done?"

- a) Secrecy of Grand Jury Proceedings
- b) Confidentiality required for investigative purposes
- c) Special Confidentiality rules for juvenile offenders





### III. SPECIAL CONCERNS RELATING TO HEALTH CARE PERSONNEL IN DOMESTIC VIOLENCE CASES

#### A. FEDERAL REPORTING REQUIREMENTS

##### 1) Child Abuse

##### a) Memoranda of Understanding Concerning Reporting & Investigation of Child Abuse in Indian Country in Oklahoma

1- procedure for reporting cases of child abuse to tribal police, FBI, & Child Protection Team

2- aimed at enhancing possibility for prosecution

##### b) Statutory Requirements

1- 18 U.S.C. § 1169 - Misdemeanor Federal Offenses for failing to immediately report "reasonable suspicion" of child abuse in Indian country

2- 18 U.S.C. § 2258 - Misdemeanor Federal Offenses for failing to immediately report child abuse on federal land or in federally operated or contracted facility

3- 25 U.S.C. § 3201 - Sets forth notification procedures requiring immediate reporting of child abuse in Indian country, followed up by report within 36 hours

#### B. EXAMS AND USE OF MEDICAL EVIDENCE IN PROSECUTING CASES

##### 1) Medical evidence of rape, battering, sexual assault, or injury is CRITICAL in enhancing the possibility for successful prosecution

##### a) Medical Exams should be done AS SOON AS PRACTICABLE after offense has been reported or has occurred

1- sexual abuse rarely leaves lasting medical evidence

2- injuries to mucous membranes heal quickly (in a matter of days)

3- good physical evidence may eliminate need for trial that would otherwise require victim to go through the difficulty of preparation and testimony

##### b) Rape Kits, when used by properly trained personnel,

##### c) Clothing, garments, blood or semen stains, hair samples, etc. should be



saved for investigators and possible analysis or DNA testing

- d) Interviewing of children should be coordinated with law enforcement investigating case to avoid problem of multiple interviews that may contain conflicting facts
- e) Photographs, videotapes, or other detailed recording of injuries or extent of trauma may be utilized to provide a better chance for a successful prosecution

2) Availability of Medical personnel to testify about injuries is CRITICAL to enhance the possibility for successful prosecution

- a) reluctance to "get involved" due to burdensome work schedule and fear of having to appear in court interferes with obligation to protect individuals
- b) use of trained nurse practitioners for rape kits and exams may alleviate problems due to physician's unavailability

C. COUNSELING AS PART OF THE HEALING PROCESS

- 1) Providing mental health care and counseling as soon as practicable is an important element in the healing process
- 2) Counseling can help mend the psychological scars for persons affected by domestic violence

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