

Trafficking in Indian Country Part I

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MECP supports state and local law enforcement officers, child protection personnel, prosecutors, medical providers, child advocacy center professionals, and other criminal justice practitioners in developing and strengthening their responses to child victimization.

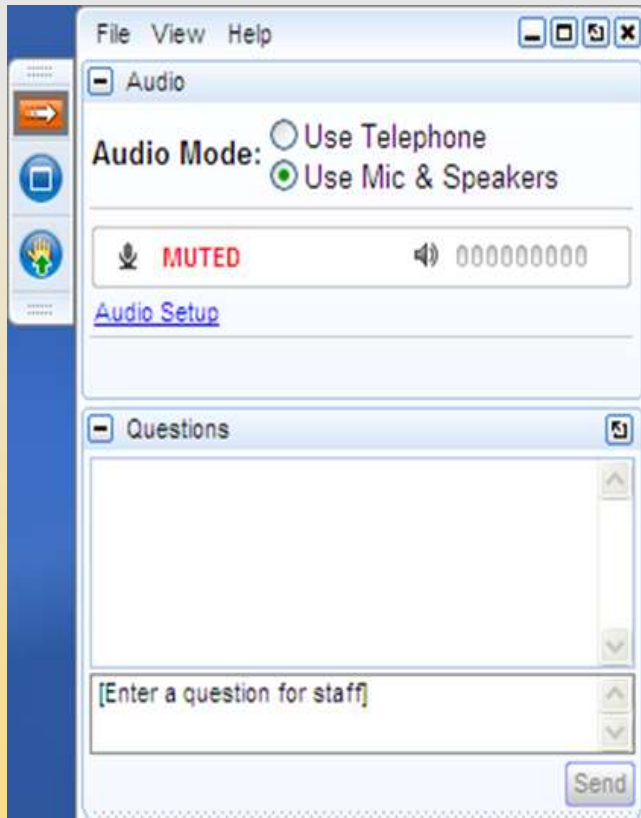
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Webinar Objectives

At the conclusion of this webinar, participants will be able to:

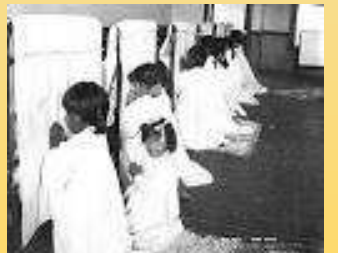
- Develop a knowledge of the cultural considerations for working with Tribal Communities
- Develop a knowledge of jurisdictional considerations for working in Indian Country
- Develop a knowledge of the barriers when addressing issues related to trafficking in Indian Country.

Generational/Historical Trauma

- Cumulative emotional and psychological wounding over the lifespan across generations, originating from a massive group trauma
- Effects of this trauma include: depression, unsettled emotional trauma, poverty, alcohol abuse, significant problems of child abuse and domestic violence.
- Native Americans for over 500 years have endured physical emotional, social and spiritual annihilation from European Colonist policy which has developed a “Historic Distrust”

Historic Distrust

- Establishing Trust may be difficult
 - Due to European Infectious Diseases
 - Treaties made by the US Government and Tribes were broken
- From the 1800–1960s – “Assimilation Process”
 - Children were forcibly removed from their families to attend schools far from home where they were punished for speaking their language and practicing their spiritual ways
 - Physical and sexual abuse by staff was widespread



Native American Assimilation



Historic Distrust

- In the 1960s – Federal “Termination Policy”
 - Ended the government to government relationship with more than 100 Federally Recognized Tribes
 - Discontinued Federal Support
 - Loss of land held in Trust
 - Loss of Tribal Identity
 - In the 1980s and 1990s, most Tribes were able to re-establish Federal recognition through the Congressional process

INDIAN LAND FOR SALE

GET A HOME

OF
YOUR OWN



EASY PAYMENTS



PERFECT TITLE



POSSESSION

WITHIN

THIRTY DAYS

FINE LANDS IN THE WEST

IRRIGATED
IRRIGABLE

GRAZING

AGRICULTURAL
DRY FARMING

IN 1910 THE DEPARTMENT OF THE INTERIOR SOLD UNDER SEALED BIDS ALLOTTED INDIAN LAND AS FOLLOWS:

Location	Acres	Average Price per Acre	Location	Acres	Average Price per Acre
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Historic Distrust

- 1950's and 1960's – “Federal Relocation Act”
 - Moved families to urban areas, promising jobs, housing, and a “new life”
 - Those who stayed formed the core of the growing urban Indian Populations
 - Families returned home to their reservations
 - Today, many families travel between their home communities and urban communities to pursue education and job opportunities.

Historic Distrust

- Churches and Missionaries
 - Converted Native Americans to their religions
 - Labeled traditional cultural practices such as songs, dances, dress and artwork as “evil”.
 - Today, there is a diverse mix of Christian beliefs and traditional spirituality within each Tribal Community.



Indian Country

- Important areas to consider
 - Jurisdiction
 - Culture



Jurisdiction



Indian Country (Defined)

- Except as otherwise provided in section 1154 & 1156 of title 18 of the USC the term “Indian Country”, will be used to describe (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 borders of the United States whether within the original or subsequently acquired territory thereof, and whether or within or without the limits of the state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

What does this mean?

What the term “Indian Country” basically means: Any lands that are part of an Indian community or reservation that is federally recognized by the U.S. Government, Department of the Interior, Bureau of Indian Affairs.



Jurisdiction in Indian Country

- Most Tribal courts retain jurisdiction over any Indian person involved in a minor offense punishable by no more than 365 days in jail, basically it is a misdemeanor court.
- Serious Offenses with Indian involvement are prosecuted in the Federal Courts.
- Incidents that have no Indian involvement fall under the jurisdiction of the state courts.

Jurisdiction in Indian Country

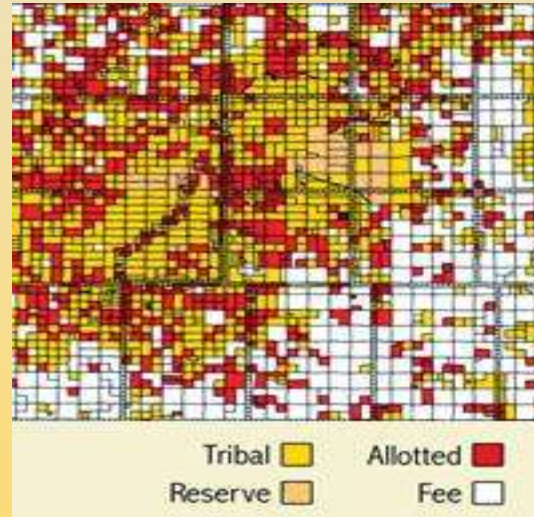
- Public Law 280
- This Act transfers criminal jurisdiction from federal government to state government. Allows state officers to come into Indian Country within that state and enforce most criminal statutes on anyone.
 - California
 - Minnesota (except Red Lake Nation)
 - Nebraska
 - Oregon (except Warm Springs Reservation)
 - Wisconsin (except the Menominee Indian Reservation)
 - Alaska

Jurisdiction in Indian Country

- Checker boarding
 - Indian lands were alienated as a result of the General Allotment Act of 1887. Lands were sold or transferred to non-Indian parties but remained within Indian Reservation boundaries.
 - As a result, trust lands, fee lands, and lands owned by Tribes, individual Indians and non-Indians are mixed together on the reservation, creating a checkerboard pattern.

Jurisdiction in Indian Country

- Checker boarding
 - As Tribal Law Enforcement the jurisdiction piece becomes a challenge as it now can include other governing bodies such as county, state, federal and Tribal Governments which can create economic uncertainty, racial tension, and community clashes within or near the reservation.



Definition of “Indian” Federal Guidelines

- An Indian is any person who is a member of an Indian tribe
- Is eligible for membership in an Indian tribe
- Is recognized by the Secretary of the Interior or who is an Alaskan Native and a member of a Regional Corporation

How is one eligible for membership?

- “A significant degree of Indian blood”
- Most tribes require a blood quantum of 25% or more to be considered for membership. (One Tribe, One relinquishment)
- However some tribes in the Eastern US require smaller amounts.
- Some tribes rely on genealogy– family history Members are required to provide documents connecting them to an enrolled lineal ancestor. Based on lineal descent the tribe has no minimum blood quantum (EG. Oklahoma Tribes)

How does a Police Officer determine membership?

- If “Indian” status becomes relevant in a contact or in an investigation the Officer should ask if the person is Indian.
- If the person answers “yes” the Officer should then ask what tribe? Are you an enrolled member?
- If the person acts as though they don’t know what you are talking about chances are they probably are not an enrolled member.



Determining Jurisdiction in Indian Country

Two simple questions to ask yourself are:

1. **WHO** is involved in the crime?

And

2. **WHAT** is the offense?

3 Types of Jurisdiction when working in Indian Country

- Tribal
- State
- Federal



Indian Civil Rights Act of 1968

- Affords Indian members a separate set of constitutional rights while in Indian Country.
- Indian people cannot be removed from Indian Country without voluntary consent or Court Order issued by either a Federal or Tribal Court. (Extradition Process)
- To do so violates an Indian's civil rights which can cause arrests to be overturned or cases to be dismissed.
- Additionally said violations can lead to civil actions being taken against an Officer or his/her agency.

Jurisdiction Case Scenario

- While on patrol a Tribal police officer locates a young girl on the side of the road, the child is all of 16 years old and she is non-Indian and not a member of the Tribe
- The child tells the officer she has been raped
- The Tribal officer completes a pre-interview to determine if defendant was Indian, she advises she was
- The Officer then proceeds to take her to the police station on the reservation where she can be interviewed by an investigator

Jurisdiction Case Scenario

- While in the interview with the investigator, the victim states she is a runaway and met and acquaintance who lived on the reservation
- On this night she was at a bar in town and a subject bought her drinks then took her to his camper, where she saw several men and women engaging in sex
- At this point one of the men forced himself on her and raped her
- The investigator clarified and asked the victim if any of the men who raped her were Indian
- The victim answered “no”

Why does this matter?

- If the girl's rapist was an enrolled member of the Native American Tribe, the investigator has every right to continue
- As the victim struggles through her interview and recalls her story the men who raped her are white and Hispanic
- The right to investigate and prosecute now belongs to the state
- The victim is now taken off the reservation and the county deputy is called to take over

Oliphant v Suquamish

- A 1978 Supreme Court case which stripped Tribes of the right to arrest and prosecute non-Indians who commit crimes on Indian land
- If both the victim and perpetrator are non-Indian, a county or state office must make an arrest
- If the perpetrator is non-Indian and the victim is an enrolled member, only a federally certified agent has the right
- Some Tribes may have their officers certified both through a state academy and also through a federal academy
- If both parties are Tribal members, the US Attorney will assume the case, being that most Tribal Courts are misdemeanor courts

Jurisdiction Barriers

- Makes prosecuting crimes committed in Indian Country very difficult
- In 2011, the U.S. Justice Department did not prosecute 65 percent of rape cases reported on reservations
- In April of 2012 the Senate added a provision to the VAWA act which would allow Tribes to prosecute non-Indians, however the bill was opposed and viewed as a dangerous expansion of Tribal independence
- Long history of crimes “slipping through the cracks”

Tribal Law and Order Act of 2010

- Major step in improving enforcement and justice in Indian Country
- Gives Tribes power to pass increased sentences in order to incarcerate defendants longer
- Provided greater resources for Tribal Law Enforcement agencies
- US Attorneys were encouraged to hire special assistants
- Encouraged more Native American women to come forward
- Many of the perpetrators were identified as non-Indians who moved onto a reservation, due to employment opportunities creating a larger population and more crime



Native American Culture

Tribal Community

- Sovereign Nation
- Self-Government which is unique to each Tribe
- Economic Base
- Distinct Language and history
- Land base

Property Based



Tribal Sovereignty

- Presently there are more than 560 Federally Recognized Tribes in the US. (245 seeking)
- Tribal governments can create and enforce laws that are stricter or more lenient than State laws.
- The Indian Self-Determination Act gives the authority to Tribal governments to contract programs and services carried out by the Federal Government such as Bureau of Indian Affairs or Indian Health Services.

Family Dynamics

- “Be Aware of Dynamics Don’t Assume”
- Extended Family Concepts
 - Multiple Families in one home or area
 - Children are generally considered everyone’s responsibility
 - Family references may be confusing “cousin/brother” –
Biological Parents vs. Guardian
 - Each Tribe has a distinct clan
- Nuclear Family Concepts predominantly exist with “Urban Indians”

Cultural Identity

- It is important to know that each Native American has experienced their cultural connection in a unique way.
- Many Native American families are multicultural and will adapt to their surrounding culture.
- Where are you from?

The Role of Elders

- Play a significant role in Tribal Communities
- It is customary to show respect by allowing elders to speak first.
- In group settings, members will ask for the elder's permission to speak publicly.
- Storytelling– teaching and advice.



Cultural Attitudes

- Generally Taboo if discussed
 - No “birds and bees” discussion
 - No teasing, chastising, making fun of
- May be incorporated into Traditional Ceremonies
 - Sunrise Ceremony (Apache Puberty)
 - Kinaalda Ceremony (Navajo Puberty)

Spirituality

- Many Tribal communities have a strong church community and organized religion that is integrated within their culture.
- Spirituality, world view, and the meaning of life are very diverse concepts among Tribes.
- Specific practices such as ceremonies, prayers, and religious protocols will vary among Tribal communities.
- It is a common practice to open and close meetings with a prayer.

Communication Styles

- Nonverbal messages–
 - Native Americans communicate a great deal through non-verbal gestures– May look down to show respect or reverence to elders.
 - A gentle handshake is often seen as a sign of respect, not weakness.
 - Sharing of food is a way of welcoming visitors.
- Storytelling–
 - Getting messages across through telling a story is very common among Native Americans.

Native American Housing

- Remember each reservation is unique and will have housing accommodations that are different .



Traditional Navajo Hogan

Navajo Hogan



Traditional Gila River Home



Pima-Maricopa Home



Pueblo Home



Native American Cultural Etiquette

- Observe all posted rules and regulations if any
- When you are on Indian Land you are subject to Indian Laws
- Be respectful
- Be genuine
- Ask if uncertain

References

- Excerpts from the “Federal Criminal Law and Jurisdiction – A Manual for the Arizona Tribal Police” produced by Jose’ de Jesus Rivera, United States Attorney, District of Arizona.
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- “Maritime, Territorial and Indian Jurisdiction” via the Criminal Resource Manual 662.
- Nevada v. Hicks Abstract 533 US 353 (2001) via OYEZ US Supreme Court Multimedia
- “Tiller’s Guide to Indian Country”, BowArrow, Publishing 2005.
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Trafficking in Indian Country Part II

August 28, 2014

2:00 PM –3:00 PM EST

Register here:

<http://mecptraining.org/tribaltraffickingseries/>