

# **APPENDIX P:**

POWERPOINT SLIDES AND A SHORT PAPER  
ON NATIVE AMERICAN WOMEN AND SEXUAL  
ASSAULT

Prepared by  
Sarah Deer, Esq.  
Staff Attorney  
Tribal Law & Policy Institute  
Los Angeles, California

**Sexual Assault and Native Women**

Sarah Deer  
Staff Attorney  
Tribal Law and Policy Institute

---

---

---

---

---

---

---

**Sexual Assault and Indigenous Nations**

- n Historical Background
- n Jurisdictional Matters
- n Impact
- n Solutions

---

---

---

---

---

---

---

**Historical Response**

- n Historically, tribal nations had full jurisdiction over all crimes - including rape and sexual assault
- n Evidence indicates that investigation and prosecution were thorough and victim-centered.

---

---

---

---

---

---

---

### **Creek Rape Law - 1824**

“And be it farther enacted if any person or persons should undertake to force woman and did it by force, it shall be left to woman what punishment she should satisfied with to whip or pay what she say it be law.”

---

---

---

---

---

---

---

---

### **Jurisdictional Issues**

- n Major Crimes Act
- n Public Law 280 and related laws
- n Indian Civil Rights Act
- n Oliphant v. Suquamish Indian Tribe

---

---

---

---

---

---

---

---

### **Major Crimes Act**

- n 18 U.S.C. 1153 (1885)
- n Federal jurisdiction over Major Crimes in Indian Country (includes sex offenses)
- n Did not eliminate concurrent tribal jurisdiction

---

---

---

---

---

---

---

---

**Public Law 280  
and related laws**

- n 18 U.S.C. 1162 (1953)
- n Transferred federal jurisdiction in Indian Country to some states
- n No tribal consent
- n Unfunded mandate
- n Did not eliminate concurrent tribal jurisdiction

---

---

---

---

---

---

---

---

**Indian Civil Rights Act**

- n 25 U.S.C. 1302(7)
- n Limitation of sentencing to 1 year, a \$5000 fine or both

---

---

---

---

---

---

---

---

**Oliphant v. Suquamish**

- n 435 U.S. 191 (1978)
- n Eliminated tribal criminal jurisdiction over non-Indians

---

---

---

---

---

---

---

---

## STATISTICS

### Department of Justice, 1999 & 2000

- Higher rate of rape and sexual assault than any other group;
- 34.1% of American Indian/Alaska Native women will be raped during their lifetime;
- About 9 in 10 American Indian victims of rape or sexual assault were estimated to have had assailants who were white or black.

---

---

---

---

---

---

---

---

### Nature of Rape Against Indigenous Women

- The following tables were developed by Ronet Bachman, Ph.D (Univ. Delaware)
- Analysis of data from the National Crime Victimization Survey
- Averages from 1992-2001 data (9 years)

---

---

---

---

---

---

---

---

### Average annual rates of rape and sexual assault victimization by race

Average Annual Rate per 1,000 persons

All races	1.9
White	1.9
African American	3.1
Asian American	1.2
American Indian	7.2

---

---

---

---

---

---

---

---

Average annual percent of rape in which the victim was **hit** by offender

Percent in Which Victim was Hit

All races	74%
White	73%
African American	81%
Asian American	66%
<b>American Indian</b>	<b>93%</b>

---

---

---

---

---

---

---

Average annual percent in which the victim sustained injuries

Percent in Which Victim was Injured

All races	30%
White	30%
African American	26%
Asian American	28%
<b>American Indian</b>	<b>50%</b>

---

---

---

---

---

---

---

Average annual percent of sexual assault victimization in which the offender had a weapon

Percent In Which Offender Had Weapon

All races	11%
White	11%
African American	11%
Asian American	8%
<b>American Indian</b>	<b>38%</b>

---

---

---

---

---

---

---

**Impact on Survivor  
Generally**

- Unsure of jurisdiction
- Not certain which law enforcement entity should be responding
- Perception that there is not community responsibility for crime
- Delays in investigation
- Traveling further for court
- Theoretically two prosecutions

---

---

---

---

---

---

---

**Impact on Survivor  
Generally**

- Vulnerable to rape by non-Indians
- Tribal courts cannot sentence rapist to more than one year (for each criminal act)
- Jurisdictional questions impact probation/parole
- Affects all Native women - not just those residing on reservation

---

---

---

---

---

---

---

**Impact on Victims  
P.L. 280**

- Federal aid dropped to tribal nations
- Few resources for criminal justice
- Many Indian nations in 280 states still do not have functioning criminal justice systems
- "Lawlessness" in Indian country
- Mistrust/Hostility between State and Tribal Authorities

---

---

---

---

---

---

---

## Solutions

- n Enlist leadership/advice from Native women
- n Identify jurisdictional issues - judicial leadership can be key
- n Develop Memoranda of Understanding specific to sexual assault
- n Develop State/Tribal Judicial Task Force

---

---

---

---

---

---

---

## Other Factors:

- n Understand the impact of forced removal and/or relocation in your area
- n Understand that survivors from other marginalized groups may bring additional historical trauma.
- n Learn about ICWA and its application

---

---

---

---

---

---

---

## RESOURCES

Mending the Sacred Hoop  
Sacred Circle  
Clan Star  
Tribal Law and Policy Institute  
Southwest Center for Law and Policy  
Indian Law Clinic - University of Colorado

---

---

---

---

---

---

---





---

---

---

---

---

---

---

NATIVE AMERICAN WOMEN AND SEXUAL ASSAULT:  
An Introduction to the Issues

Sarah Deer, J.D. and Carrie A. Martell, M.A.  
Tribal Law and Policy Institute

American Indian and Alaska Native<sup>1</sup> women are victimized at a much higher rate than any other group of women in the United States. Studies on the rate of sexual assault in the last ten years that considered race or ethnicity found that American Indian and Alaska Native women suffer a rate of sexual violence at least two to three times higher than any other group of women in the United States.

This short paper is intended to provide a brief introduction to some of the unique factors and issues facing Native women who are survivors of sexual assault. Due to the wide variety of tribal cultures in the United States (there are over 550 federally-recognized and over 100 federally non-recognized tribes), it is impossible to address all aspects and nuances of this complex issue. The goal of this brief overview is that it will inspire further discussion and research on the different tribal communities or individuals you work with.

#### HISTORICAL CONTEXT

Any thorough examination of sexual assault and Native women should include an historical analysis. "The use of rape and sexual assault as a weapon against indigenous peoples is deeply imbedded in the history of imperialism and domination." There are many theories about the reason for the high rate of sexual assault committed against Native women. Notably, most experts tend to agree that sexual assault was extremely rare in tribal communities prior to contact with European cultures. When it occurred, tribal governments responded swiftly and appropriately to protect their female citizens. In fact, many tribal nations had laws and cultural norms that sought retribution for tribal women who were raped. The Creek rape law of 1824 states, "and be it farther enacted if any person or persons should undertake to force woman and did it by force, it shall be left to woman what punishment she should satisfied with to whip or pay what she say it be law."<sup>2</sup> Communities used a victim-centered approach to deal with violence against Native women when it did occur.

In contrast, rape was a common weapon of war used by colonial governments against Native women for hundreds of years. For example, in November 1493 Christopher Columbus kidnapped six Native women in Hispaniola for his crew for the sole purpose of

---

<sup>1</sup> There are a wide variety of opinions as to the appropriate terminology for indigenous peoples in the United States. Most federal law uses the term "Indian", but this term has fallen out of favor with some academics, who often prefer "Native American." Most tribal citizens prefer to be identified by their tribal identity (e.g., Navajo, Tlingit, Lakota, Mohawk). In this paper, the terms "Native," "Indian," and "tribal" are used interchangeably.

<sup>2</sup> Deer, Sarah. "Toward an Indigenous Jurisprudence of Rape." *The Kansas Journal of Law and Public Policy*. Vol. XIV (1) Fall 2004.

raping them. Today, it can be difficult for some Native survivors of sexual assault to separate the immediate experience of rape from the larger experience of colonization and forced assimilation. Contemporary sexual assaults can be seen as a continuation of the colonization process, wherein identity and spirituality are fundamentally undermined. A Native woman who is raped may not separate her victimization from the violence perpetrated against other women in her family. She may know that her grand mother was raped or possibly other females cousins. The impact on her community due to generational trauma cannot be distinguished from the immediate pain she is feeling when she steps into court.

A fair judiciary will recognize Native women in the decision making process, and will consider the use of rape as a systemic means to control the population historically, as well as an acknowledgement that most tribal cultures had strong provisions against rape. Each tribal nation has a unique history and culture which provide strong foundations for a contemporary response, and it is important for judges to acknowledge this in their work.

#### CONTEMPORARY ISSUES

Rape and sexual assault committed against Native women have unique attributes and factors, most of which have not been studied adequately. Analysis of data from the National Crime Victimization Survey indicates that:

- Native women are more likely than non-Native women to be raped by a member of another race. Interracial rape is more prevalent for Native women where the assailant is usually Caucasian or African American.
- Rape committed against Native women more often includes additional physical violence, such as hitting.
- Native women are more likely than other groups of women to be sexual assaulted with a weapon.
- Most of the rapes against Native women that are reported to law enforcement are actually reported by a third party rather than the victim herself.
- There is also a strong correlation between sexual trauma experienced by Native women and later sexually risky behavior.

#### Jurisdictional Issues

- In addition, Native victims of crime often face challenging jurisdictional problems that are unlike those faced by any other victims. Originally, tribal governments, as sovereign nations, had full criminal and civil authority over all matters arising within their territory. Over the last 120 years, however, this jurisdiction has been curtailed by a combination of federal laws and U.S. Supreme Court decisions. Today, there are significant limitations placed on tribal courts in criminal matters. Because of these barriers and restrictions, many tribal governments do not actively prosecute sexual assault crimes. Therefore, a sexual assault which occurs on tribal lands is usually investigated and prosecuted by state or federal officials. The Major Crimes Act (18 U.S.C. 1153) was enacted by Congress in 1885. It

gave the federal government jurisdiction over major crimes in Indian Country between Indians. Sex offenses were later added to the enumerated crimes. However, the Major Crimes Act did not eliminate tribal jurisdiction over sex crimes, therefore tribes can still prosecute these crimes in addition to US Attorneys.

- Tribal courts have no jurisdiction over non-Indians. The Supreme Court ruled in *Oliphant v. Suquamish* (1978) that tribal governments can only prosecute Indians for criminal violations. Therefore, if a non-Indian commits a sexual assault in Indian country, the case can only be prosecuted in state court or federal court (depending on the reservation).
- Tribal courts are limited in their ability to sentence convicted offenders. The Indian Civil Rights Act (another federal law) limits penalties in tribal court to one year in jail and/or a \$5,000 fine for each offense. Thus, tribal courts are prevented from imposing more than 365 days incarceration for a crime, even in cases of sexual assault.
- Public Law 280 (18 U.S.C. 1162) enacted in 1953 transferred federal jurisdiction in Indian Country to some states without tribal consent. Although state jurisdiction in no way eliminated concurrent tribal jurisdiction, the mandate was unfunded so neither states nor tribes were provided with money to support their court systems.

#### **How do Native women come before my Court?**

- Many tribal courts have extremely limited resources for law enforcement, prosecution, and corrections. As a result, it can be difficult for tribal governments to adequately investigate and prosecute serious crimes which occur on tribal lands. Many tribal governments work in partnership with state and/or federal officials in order to effectively respond to such crimes.
- Some tribes may not have Tribal Courts due to the lack of funding in PL-280 states or limited resources. Therefore, Native women may have to go the state or federal courts as to hold their offender accountable.
- The majority of Native women live off reservation in urban settings around the Country. Therefore, sexual assault cases will fall under state and/or county jurisdiction.
- In PL-280 states, state or county courts have concurrent jurisdiction over reservations. Those courts may decide to hear a sexual assault case involving Native women.
- In other non PL-280 states, the U.S. Attorney may decide to prosecute a sexual assault case based on the Major Crimes Act.
- If the perpetrator is non-Indian, which is a majority of sexual assault cases against Native women, the Tribal Court cannot take the case, therefore if prosecuted, it will end up in a local or federal jurisdiction.

#### **Impacts on Native women survivors**

- Native women may not know which law enforcement to report their sexual assault too.
- Native women may be frustrated and unsure about the jurisdictional issues regarding their case.
- They may be dealing with two different prosecutorial systems (e.g. tribal and state, or tribal and federal due to concurrent jurisdictions).
- They may feel that the Court system is not addressing or ignoring their case due to delays.
- They may feel that the Tribal community is not being responsible in their case due to the lack of resources to prosecute and ICRA standards imposed.
- Some tribal governments experience difficulty in getting federal or state agencies to respond to crimes of sexual assault on tribal lands and women may feel their cases are being neglected
- Urban and reservation Native women may not want to report their case because they fear having to tell their story before a non-Native judge who does not believe them.

#### **Suggestions for Judges**

- Respect tribal sovereignty and let it serve as a foundation for the decisions that you make when hearing cases concerning Native women. Tribal nations have their own laws, government, and culture. Recognize that Native women are citizens of **sovereign** nations in addition to being a member of a marginalized (minority) group.
- Be aware that part of the healing process for Native women may include returning to homelands (sacred mountains, landmarks, etc.) or participating in ceremonies. This may be critical to the reclamation of self and spirit. Take these issues into consideration when rendering a judgment based on compensation or restitution. The victim may ask for financial assistance to return home or to pay for costs associated with healing ceremonies.
- However, do not forget that Native women are not a homogenous group; some may seek financial assistance for more traditional costs, such as western psychotherapists, or other mental and medical health services. Be respectful of individual choices and needs and do not assume that simply because the victim is Native that she will want to return to the reservation to participate in ceremonies. Many Native women live in urban centers and have different levels of association and family ties with reservations communities.
- Silence can be considered healing and soothing in some Native cultures. Do not mistake quietness for an inability to tell the truth. As it is difficult for all victims of sexual assault to talk about their experiences, Native women may experience the additional fear of bringing shame upon their family and community by talking openly about their experiences in Court.

- ❑ Be sensitive to cultural and language barriers that may exist for Native women survivors of violence. Do not let your own personal stereotypes of Native women influence your decision making process. Also, consider cultural differences, such as the fact that looking at someone directly may be a sign of disrespect in Native communities, not a sign that she is lying or that she is distrustful.
- ❑ Seek out Native women for advice regarding working with Native women in your courtroom and how to treat them fairly. Native women leaders can also help you to better understand jurisdictional issues and the challenges they face in the courtroom.
- ❑ Develop a State/Tribal Sexual Assault task force to work on these issues within your state. Even if you do not have reservations in your state, remember that there are a lot of urban Native women who still reside there. Also, each state was formed on the homelands of at least one tribal nation. Do some research on the tribes that were forcibly removed from your state to get a better understanding of your history.
- ❑ Contact Native women's advocacy organizations, shelters, and coalitions, and ask about training opportunities.
- ❑ In urban areas, contact a local Indian center for more information.

## RESOURCES

Sarah Deer, *Sovereignty of the Soul: Exploring the Intersection of Federal Indian Law and Rape Law Reform*, 38 SUFFOLK L. REV. 445 (2005).

Sarah Deer, *Toward an Indigenous Jurisprudence of Rape*, 14 KANSAS J. L. & PUB. POL'Y 121 (2004).

Eduardo Duran & Bonnie Duran, *NATIVE AMERICAN POSTCOLONIAL PSYCHOLOGY* (State U. of N.Y., 1995).

Lawrence A. Greenfelt & Steven K. Smith, U.S. Dep't of Justice, *American Indian and Crime* (1999).

Carol Maicki, *Cultural Competency and Native Women: A Guide for Non-Natives who Advocate for Battered Women and Rape Victims*, available from Sacred Circle, 1-877-RED-ROAD

Jane M. Simoni, Shalini Sehgal, & Karina L. Walters, *Triangle of Risk: Urban American Indian Women's Sexual Trauma, Injection Drug Use, and HIV Sexual Risk Behaviors*, 8 AIDS & BEHAV. 33 (2004).

Andrea Smith, *Not an Indian Tradition: The Sexual Colonization of Native Peoples*, 18 HYPATIA 70 (2003).

Patricia Tjaden & Nancy Thoennes, U.S. Dep't. of Justice, *Full Report on the Prevalence, Incidence, and Consequences of Violence Against Women* (2000).