

DEFENDANTS' RIGHTS

Intertribal Technical-Assistance Working Group on
Special Domestic Violence Criminal Jurisdiction (**VAWA ITWG**)
Webinar Series


September 27, 2013


1:00 – 2:30 p.m. EDT



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Organizer: Nathaniel Scheidemen | Presenter: Nathaniel Scheidemen

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 **Nathaniel Scheidemen**
President & CEO
NS Sales Solutions

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Questions

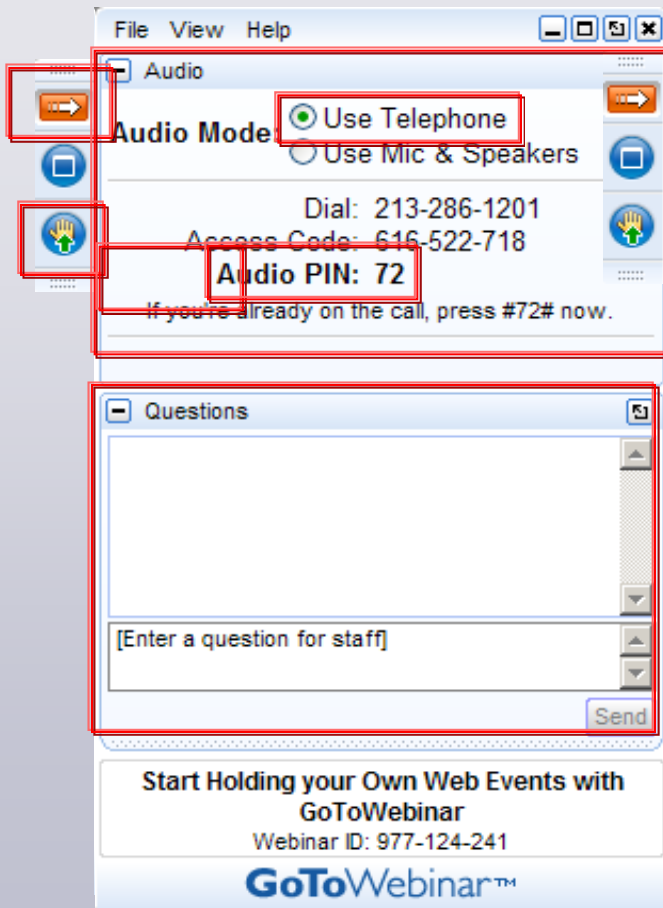
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How to Participate Today



- Open and close your Panel
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- Submit text questions
- Raise your hand
- Q&A during 2nd half of today's session
- Everyone will receive an email within 24 hours with a link to a survey about today's session
- Recorded webinar will be made available

Today's Roadmap

- Overview of the ITWG Webinar Series on Defendants' Rights
- Introduction of Panelists and T/TA Facilitators
- Statutory Requirements: Protection of Defendants' Rights
- Begin Webinar Series: Defendants' Rights Part I

Competency of Defenders & Timing of Appointment

- Federal Resources
- Questions

Overview of VAWA ITWG Webinar Series on Defendants' Rights

- Webinar 1 - Overview: Competency, Standards for Defenders & Timing of Appointment
- Webinar 2 - Conflict Counsel: Models for Quality Assurance/Training for Conflict Attorneys
- Webinar 3 – Who Qualifies: Indigency Standards and How to Define
- Webinar 4 – Best Practices: Investigation Services and Caseload Standards

VAWA ITWG Webinar Series: Defendants' Rights (Part I)

- Today's PANELISTS:

Ron Whitener, Director, Tribal Court Public Defense Clinic, University of Washington

Levon Henry, Executive Director, DNA-People's Legal Services

Maha Jweied, Senior Counsel, Access to Justice Initiative, Department of Justice

- FACILITATORS:

National Congress of American Indians

Tribal Law & Policy Institute

National Council of Juvenile and Family Court Judges

Statutory Requirements

25 USC § 1304(d) – Rights of defendants

In a criminal proceeding in which a participating tribe exercises special domestic violence criminal jurisdiction, the participating tribe shall provide to the defendant

...

2. if a term of imprisonment of any length may be imposed, all rights described in section 202(c) [25 USC 1302(c)];

25 USC § 1302(c) – Rights of defendants

- 1. provide to the defendant the right to effective assistance of counsel at least equal to that guaranteed by the United States Constitution
- 2. At the expense of the tribal government, provide an indigent defendant the assistance of a defense attorney licensed to practice law by any jurisdiction in the U.S. that applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys...

Public defense and its Importance to Tribal Sovereignty

- Native defendants and their families' perceptions of fairness
- Practice of not providing public defense used as a bullet point to Congressional recognition of tribal sovereignty
- U.S. Supreme Court in *Lara* stated the lack of right to counsel as a concern weighing against recognition of tribal court jurisdiction
- Public defense increases likelihood of defendants/juvenile status court-involved buy-in

Competency – 25 U.S.C. § 1302(c)

1. Provide to the defendant the right to effective assistance of counsel at least equal to that guaranteed by the U.S. Constitution; and
2. At the expense of the tribal government, provide an indigent defendant the assistance of a defense attorney licensed to practice law by any jurisdiction in the U.S. that applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys...

Standards for Defenders

- “effective assistance of counsel” as a constitutional minimum standard (*Strickland v. Washington*, 466 U.S. 668(1984))
 1. Trial counsel performance was inadequate in light of prevailing professional norms at the time of trial;
 2. The ineffective performance resulted in a fundamentally unfair or unreliable result;
 3. The right to effective assistance includes the right to be represented by an attorney who is free from conflicts of interest
 4. The right does not guarantee perfect representation, only a reasonably competent attorney (*Harrington v. Richter*, 131 S.Ct 770 (2011))

Timing of Appointment

- Constitutional right to counsel attaches after the time that judicial proceedings have been initiated against them whether by formal charge, preliminary hearing, indictment, information or arraignment. *Brewer v. Williams*, 430 U.S. 387 (1977)
- Right does not attach when a person is otherwise represented prior to charging, or is represented on unrelated charges
- Note that this doesn't affect a potential right to not be questioned if right to counsel is invoked prior to charging

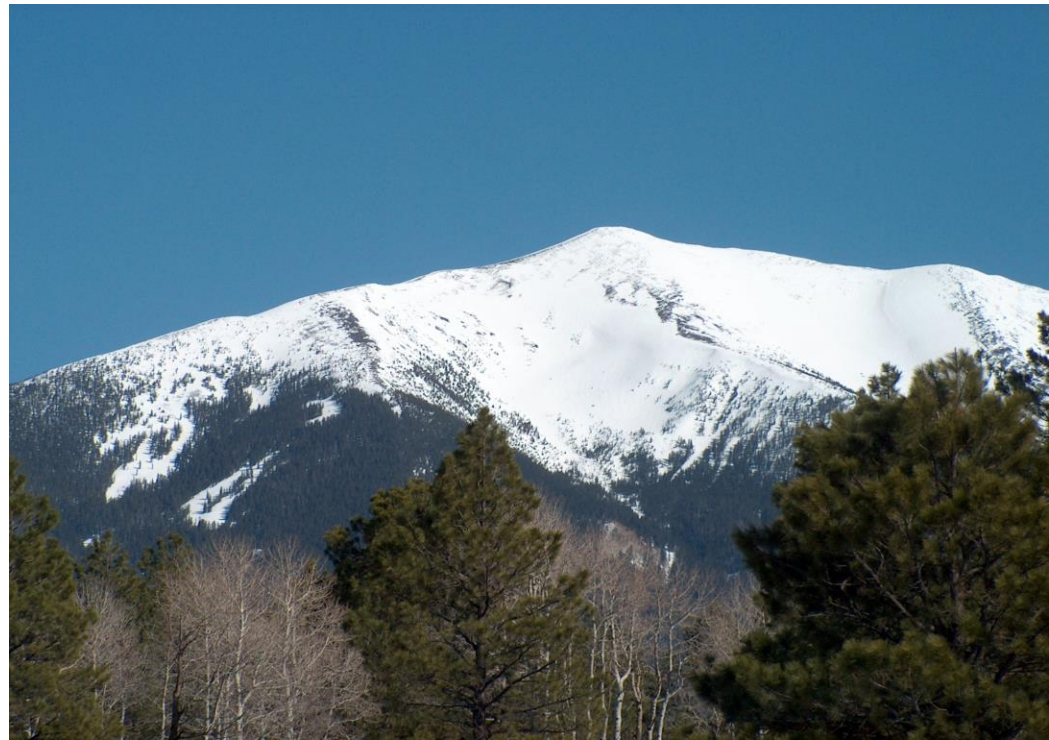
PRACTICAL APPLICATIONS

Tribal Public Defender Services



PUBLIC DEFENDER MODELS

- Tribally supported
- Contract services
- Conflict Counsel
- Law School Clinic Programs

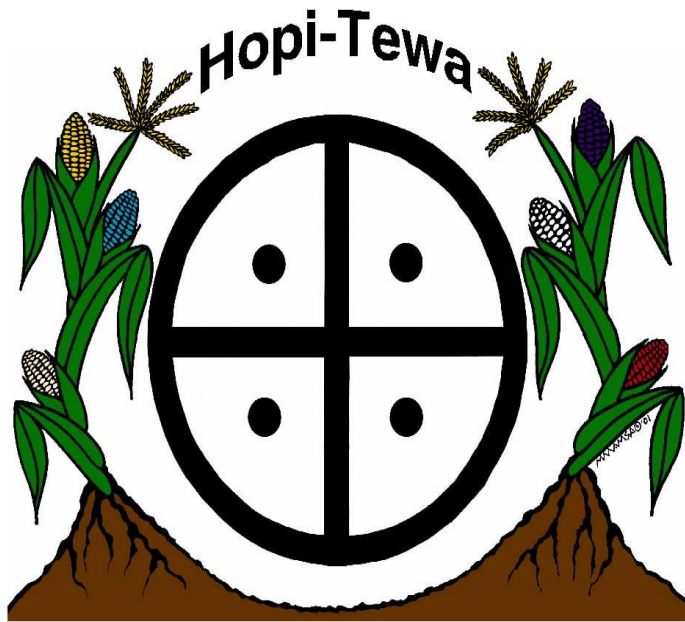


INDIAN LEGAL SERVICES

- Indian Legal Services program – 25 across the country – organized under the National Association of Indian Legal Services (NAILS)
- Supported by the Legal Services Corporation, Wash. DC
- LSC regulations prohibit legal services programs from providing criminal representation, except in Tribal Courts
- Indian Legal Service programs work on civil cases; however, a majority do receive USDOJ funding to work in the criminal arena, including direct representation or assisting with code updates



DNA LEGAL SERVICES – HOPI PD



HOPI CRIMINAL COURT

- Adopted TLOA on September 28, 2012
- Appointed Counsel on proof of indigency
- Hopi Public Defender Office & Conflict Counsel
 - Appointment process
- Attorney representation:
 - Dangerous offenses – 3 year/\$15,000
 - Serious offenses – 2 year/\$10,000
- Advocate representation:
 - Offense – 1 year/\$5,000
 - Minor – 6 mos./\$2,500
 - Petty – 3 mos./\$1,250

Federal Resources to Support Tribal Criminal Defense

- **Access to Justice Initiative – U.S. Department of Justice**



Attorney General Eric Holder

“Let me assure you ... that this is not a passing issue for the Justice Department. I have asked the entire Department to focus on indigent defense issues with a sense of urgency and a commitment to developing and implementing the solutions we need. As many of you know, we recently took an historic step to make access to justice a permanent part of the Department’s work, with a focused effort by our leadership offices to ensure that this issue gets the attention it deserves.”

- June 19, 2010, Wilmington, North Carolina





THE ACCESS *to* JUSTICE INITIATIVE

<http://www.justice.gov/atj/>

DOJ & DOI Funding & Programs that Support Tribal Defense Related Activities

Funding Programs

Tribal Criminal and Civil Legal Assistance Program (TCCLA)

https://www.bja.gov/ProgramDetails.aspx?Program_ID=102

Tribal Courts Assistance Program (TCAP)

https://www.bja.gov/ProgramDetails.aspx?Program_ID=89

(folded into the Coordinated Tribal Assistance Solicitation

<http://www.justice.gov/tribal/ctas2013/solicitation-document.pdf>)

John R. Justice Student Loan Repayment Program

https://www.bja.gov/ProgramDetails.aspx?Program_ID=65

BIA Funding of 184 Tribal Courts through PL 638 Contracts

BIA One-Time Funding to Tribal Courts

BIA Specific Funding post Tribal Court Review Process (if corrective action plan details defender deficiencies)

BIA Tribal Court Trial Advocacy Training Program

<http://www.bia.gov/WhoWeAre/BIA/OJS/ojs-services/ojs-tjs/index.htm>

DOJ Grants for which Allocating Funds for Indigent Defense is a Priority or Stated Purpose

Grant
Byrne/ Justice Assistance Grant https://www.bja.gov/ProgramDetails.aspx?Program_ID=59 NCJA Webinars: Strengthening Indigent Defense: Understanding State and Federal Resources (Jan. 22, 2013) http://www.ncja.org/webinars-events/ncjabja-webinar-series/webinar-archives#strengthening Expanding Stakeholder Involvement: Promoting Inclusive System Planning http://www.ncja.org/webinars-events/ncjabja-webinar-series/webinar-archives#expanding
Juvenile Accountability Block Grant http://www.ojjdp.gov/programs/ProgSummary.asp?pi=1
Juvenile Title II Formula Grant Program http://www.ojjdp.gov/programs/ProgSummary.asp?pi=16&ti=&si=&kw=&PreviousPage=ProgResults
Coordinated Tribal Assistance Solicitation http://www.justice.gov/tribal/ctas2013/solicitation-document.pdf

For More Information:

Maha Jweied

Senior Counsel

Access to Justice

Initiative

U.S. Department of
Justice

Maha.Jweied@usdoj.gov



Resources

- NCJA Webinar, Defender Initiatives in Indian Country (June 11, 2013):
<http://www.ncja.org/webinars-events/state-tribal-collaboration-webinar-series>
- DOJ Courts and Indigent Defense Resource Guide
<http://www.justice.gov/atj/resource-publication-4-17-12-rev.pdf>
- Bureau of Justice Assistance Overview of TCCLA Program
https://www.bja.gov/Publications/TCCLA_Overview.pdf
- Grant Information from the Access to Justice Initiative
<http://www.justice.gov/atj/grant-info.html>
- DOJ Funded Indigent Defense Publications
<http://www.justice.gov/atj/idp/>
- Bureau of Justice Statistics: 2012 National Survey of Tribal Court Systems
<https://www.tribalcourtsurvey.org/>

For More Information:

Additional Resources

- Bronx Defenders' Center for Holistic Defense
<http://www.bronxdefenders.org/our-work/center-holistic-defense>
- NIJ/ATJ Expert Working Group Report: International Perspectives on Indigent Defense
<https://ncjrs.gov/pdffiles1/nij/236022.pdf>
- GAO Report on Indigent Defense (2012)
<http://www.gao.gov/assets/600/590736.pdf>
- GAO Report, Tribal Law and Order Act: None of the Surveyed Tribes Reported Exercising the New Sentencing Authority, and the Department of Justice Could Clarify Tribal Eligibility for Certain Grant Funds GAO-12-658R, May 30, 2012 <http://gao.gov/assets/600/591213.pdf>
- OJJDP Newsletter - Innovative Approaches to Juvenile Indigent Defense
<https://www.ncjrs.gov/pdffiles/171151.pdf>

For More Information:

- ATJ Selected Blogs
- Bringing All Criminal Justice Stakeholders to the Table
<http://blogs.justice.gov/main/archives/2055>
- Addressing Juvenile Justice Concerns in Response to Shelby County
<http://blogs.justice.gov/main/archives/2423>
- Department of Justice Prioritizes Improving Legal Representation for Indigent Defense
<http://blogs.justice.gov/main/archives/1822>
- Public Service Careers & Student Loan Debt: What You Should Know
<http://blogs.justice.gov/main/archives/2189>
- Adoption of First International Principles and Guidelines on Indigent Defense
<http://blogs.justice.gov/main/archives/2236>
- Constructive Alternatives to Criminalization
<http://blogs.justice.gov/main/archives/1822>

Questions?

- Future Webinars:
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- Webinar 3 – Who Qualifies: Indigency Standards and How to Define
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