National Judicial Opioid Task Force

Tribal Cultural Competency Information for Judges

The purpose of this publication is to provide basic information to state judges and court employees who interact with members of American Indian/Alaska Native (AI/AN) communities in their courts. It is intended to serve as a general briefing to enhance AI/AN cultural competence. Most of the content was originally developed and published by the U.S. Substance Abuse and Health Services Administration in the form of a "Culture Card" for use by federal contractors (See DHHS Publication No. SMA 08-4354) and is used with permission. The original language was drafted and reviewed by many AI/AN professionals and community members across the U.S. Additions and revisions were adopted by the National Judicial Opioid Task Force in an effort to support collaboration between state and tribal courts in support of best practices and successful outcomes for members of AI/AN communities suffering from opioid use disorders.

Tribal Sovereignty

There are more than 570 federally recognized AI/AN tribes in the U.S. Over half of these are Alaska Native villages. Additionally, there are more than 240 non-federally recognized tribes; many are recognized by their states and are seeking federal recognition. There is a unique legal and political relationship between the federal government and Indian tribes and a special legal relationship with Alaska Native Corporations. As sovereign nations, tribal governments have the right to hold elections, determine their own citizenship (enrollment), and to consult directly with the U.S. government on policy, regulations, legislation, and funding. Tribal governments can create and enforce laws that are stricter or more lenient than state laws, but they are not subservient to state law. State laws cannot be applied where they interfere with the right of a tribe to make its own laws or where it would interfere with any federal interest. Criminal legal jurisdiction issues are very complex, depend on a variety of factors, and must be assessed based on the specific law as applied to a specific tribe. In general, the federal law applies.

Regional and Cultural Differences

Prior to European contact, AI/AN communities lived throughout North America. Federal policies led to voluntary and forced relocation from familiar territory to the current-day reservation system for many tribes. When the reservation system was formed in the late 1800s, some bands and tribes were forced to live together. In some instances, these groups were related linguistically and culturally; in others, they were not closely related and may even have been historic enemies. While there is great diversity across and within tribes, there are within-region similarities based on adaptation to ecology, climate, and geography, including traditional foods and linguistic and cultural affiliations. Differences in cultural groups are closely related to regional differences and may be distinguished by their language or spiritual belief systems. They are also a result of the diversity of historic homelands across the nation and migration patterns of tribal groups. Cultures developed in adaptation to their natural environment and the influence of trade and interaction with non-Indians and other AI/AN groups. Urban Indian communities can be found in most major metropolitan areas. These populations are represented by members of a large number of different tribes and cultures that have different degrees of traditional culture

and adaptation to Western culture norms. They form a sense of community through social interaction and activities, but are often "invisible," geographically disbursed, and multi-racial.

Communication Styles

Nonverbal Messages

AI/AN people communicate a great deal through non-verbal gestures. Careful observation is necessary to avoid misinterpretation of non-verbal behavior. AI/AN people may look down to show respect or deference to elders or ignore an individual to show disagreement or displeasure. A gentle handshake is often seen as a sign of respect, not weakness. Pointing with one's finger is interpreted as rude behavior in many tribes.

Humor

AI/AN people may convey truths or difficult messages through humor and might cover great pain with smiles or jokes. It is important to listen closely to humor, as it may be seen as invasive to ask for too much direct clarification about sensitive topics. It is a common conception that "laughter is good medicine" and is a way to cope. The use of humor and teasing to show affection or offer corrective advice is also common.

Indirect Communication

It is often considered unacceptable for an AI/AN person to criticize another directly. This is important to understand, especially when children and youth are asked to speak out against or testify against another person. It may be considered disloyal or disrespectful to speak negatively about the other person. There is a common belief that people who have acted wrongly will pay for their acts in one way or another, although the method may not be through the legal system.

Storytelling

Getting messages across through telling a story (traditional teachings and personal stories) is very common and sometimes in contrast with the "get to the point" frame of mind in non-AI/AN society.

Cultural Customs

Specific cultural customs among AI/AN groups may vary significantly, even within a single community. Customs are influenced by ethnicity, origin, language, religious/ spiritual beliefs, socioeconomic status, sexual orientation, age, marital status, ancestry, history, gender identity, and geography. Cultural customs are often seen explicitly such as food, dress, dance, ceremony, drumming, song, stories, symbols, and other visible manifestations. Such outward cultural customs are a reflection of a much more ingrained and implicit culture that is not easily seen or verbalized. AI/AN worldviews tend to be relationship- and place-based, as opposed to the Western focus on individuality and time. Deeply held values, general world view, patterns of communication, and interaction are often the differences that affect relationships. A common practice of a group or individual that represents thoughts, core values, and beliefs may be described by community members as "the way we do things" in a particular tribe, community, clan, or family. This includes decision-making processes. Respectful questions about cultural customs are generally welcomed, yet not always answered directly. Many AI/AN people have learned to "walk in two worlds" and will observe the cultural practices of their AI/AN traditions when in those settings, and will observe other cultural practices when in dominant culture settings. Sharing food is a way of welcoming visitors, similar to offering a handshake. Food is usually offered at community meetings and other gatherings as a way to build relationships.

Spirituality

A strong respect for spirituality, whether traditional (prior to European contact), Christian (resulting from European contact), or a combination of both, is common among all AI/AN communities and often forms a sense of group unity. Many AI/AN communities have a strong church community and organized religion that is integrated within their culture. Traditional spirituality and practices are integrated into AI/AN cultures and day-to-day living. Traditional spirituality and/or organized religions are usually community-oriented, rather than individual-oriented. Spirituality, world view, and the meaning of life are very diverse concepts among regions, tribes, and/or individuals. Specific practices such as ceremonies, prayers, and religious protocols will vary among AI/AN communities. A blend of traditions, traditional spiritual practices, and/or mainstream faiths may coexist. Many AI/AN spiritual beliefs and practices are considered sacred and are not to be shared publicly or with outsiders. Until passage of the Indian Religious Freedom Act in 1978, many traditional AI/AN practices were illegal and kept secret. Social/health problems and their solutions are often seen as spiritually based and as part of a holistic world view of balance between mind, body, spirit, and the environment.

Cultural Identity

When interacting with individuals who identify themselves as AI/AN, it is important to understand that each person has experienced their cultural connection in a unique way. An individual's own personal and family history will determine their cultural identity and practices, which may change throughout their lifespan as they are exposed to different experiences. The variation of cultural identity in AI/AN people can be viewed as a continuum that ranges between one who views himself or herself as "traditional" and lives their traditional culture daily, to one who views himself or herself as "Indian" or "Native," but has little knowledge or interest in their traditional cultural practices. Many AI/AN families are multicultural and adapt to their surrounding culture. From the 1950s to the 1970s, the federal government, adoption agencies, state child welfare programs, and churches adopted out thousands of AI/AN children to non-AI/AN families. The Indian Child Welfare Act was passed in 1978 to end this practice. There are many AI/AN children and adults who were raised with little awareness or knowledge of their traditional culture; they may now be seeking a connection with their homelands, traditional culture, and unknown relatives. When asked "Where are you from?" most AI/AN people will identify the name of their tribe/village and/or the location of their traditional or family homeland. This is often a key to self-identity. It is important to remember that most Alaska Natives do not refer to themselves as "Indians." Age is another cultural identity consideration. Elders can be very traditional while younger people can either be multicultural or non-traditional. In many communities, leaders and elders are worried about the loss of the use of the traditional language among children and young adults. Still, in other communities, young people are eagerly practicing the language and other cultural traditions and inspiring older generations who may have felt shame in their identity growing up as AI/AN. Historical trauma and grief events, such as boarding schools or adoption outside of the tribe, may play a dramatic role in shaping attitudes, sense of identity, and levels of trust.

Role of Veterans and Elders

Elders play a significant role in tribal communities. The experience and wisdom they have gained throughout their lifetime, along with their historical knowledge of the community, are considered valuable in decision-making processes. It is customary in many tribal communities to show respect by allowing elders to speak first, not interrupting, and allowing time for opinions and thoughts to be expressed: Long pauses are common. In group settings, people will often ask the elder's permission to speak publicly or will first defer to an elder to offer an answer. Elders often offer their teaching or advice in ways that are indirect, such as through storytelling. It is disrespectful to openly argue or disagree with an elder. AI/AN communities historically have high rates of

enlistment in the military service. Often, both the community and the veteran display pride for military service. Veterans are also given special respect similar to that of elders for having accepted the role of protector and experienced personal sacrifice. AI/AN community members recognize publicly the service of the veteran in formal and informal settings. AI/AN community members who are veterans are honored at ceremonies and pow wows, and by special songs and dances. They have a special role in the community, so veterans and their families are shown respect by public acknowledgment and inclusion in public events.

Health and Wellness

Concepts of health and wellness are broad. The foundations of these concepts are living in a harmonious balance with all elements, as well as balance and harmony of spirit, mind, body, and the environment. AI/ANs define what health and wellness is to them, which may be very different from how Western medicine defines health and wellness. Many health and wellness issues are not unique to AI/AN communities but are statistically higher than in the general population. Among most AI/AN communities, 50 percent or more of the population is under 21 years of age. Health disparities exist with limited access to culturally appropriate health care in most AI/AN communities. Opioid overdose rates in AI/AN communities are higher than other racial and ethnic populations. Treatment barriers include limited resources, access to rural populations, stigma and fear. Suicide is the second leading cause of death among AI/AN people age 10-34. The highest rates are among males between the ages of 24 and 34 and 15 and 24, respectively. While many AI/AN communities experience alcohol abuse, AI/ANs also have the highest rate of complete abstinence. Prevention and intervention efforts must include supporting/enhancing strengths of the community resources as well as individual and family clinical interventions. Care should be taken in the assessment process to consider cultural differences in symptoms and health concepts when making a specific diagnosis or drawing conclusions about the presenting problem or bio-psychological history. Every effort should be made to consult with local cultural advisors for questions about symptomology and treatment options.

Historic Distrust

Establishing trust with members of an AI/AN community may be difficult. Many tribal communities were devastated due to the introduction of European infectious illnesses and many treaties made by the U.S. government with tribal nations were broken. From the 1800s through the 1960s, government and church boarding schools were used to assimilate AI/AN people. Children were removed from their families to attend schools far from home where they were punished for speaking their language and practicing spiritual ways in a stated effort to "kill the Indian, save the child." Many children died from infectious diseases and suffered physical and sexual abuse. The U.S. "Termination Policy" in the 1950s and 1960s ended the government-to-government relationship with more than 100 tribes. The result was disastrous for those tribes due to discontinued federal support, loss of land held in trust, and loss of tribal identity. Many tribes were able to re-establish federal recognition in the 1980s and 1990s but not all rights have been fully restored. The U.S. "Relocation Policy" in the 1950s and 1960s sought to move AI/AN families to urban areas, promising jobs, housing, and a "new life." Those that struggled and stayed formed the core of the growing Urban Indian populations. Ultimately, many families returned home to their reservation or home community. Today, many families and individuals travel between their home community and urban communities for periods of time to pursue education and job opportunities. Churches and missionaries have a long history of converting AI/AN people to their religions, and in the process often 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 many AI/AN communities.

Conference of Chief Justices 1949 · COSCA Conference of State Court Administrators · SJI State Justice Institute · NCSC National Center for State Courts