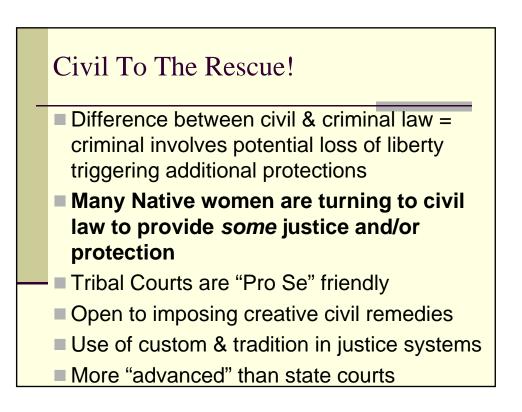


#### Tulsa Law Review

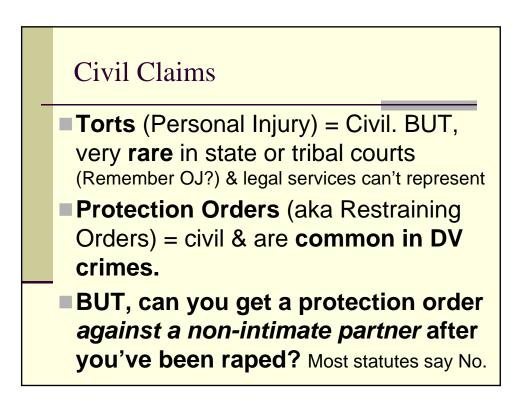
#### CREATIVE CIVIL REMEDIES AGAINST NON-INDIAN OFFENDERS IN INDIAN COUNTRY\* Hallie Bongar White\*\* Kelly Gaines Stoner\*\*\* The Honorable James G. White\*\*\*

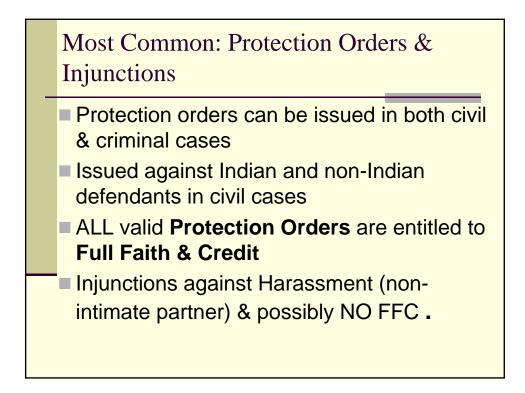
#### I. INTRODUCTION

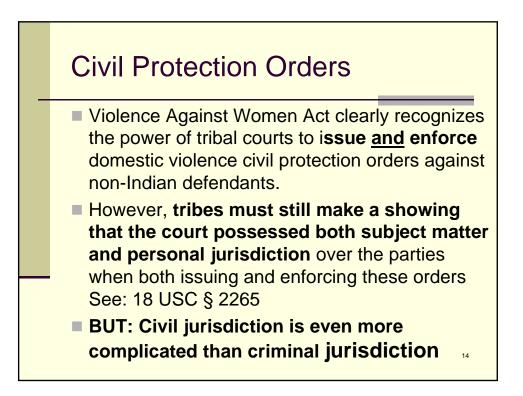
Indiant women suffer the highest rates of domestic violence, stalking, and sexual assault of any population in the United States.<sup>2</sup> The majority of perpetrators of these crimes are non-Indian males.<sup>3</sup> Paradoxically, tribal courts may not currently exercise criminal jurisdiction over non-Indians who commit these crimes in Indian Country.<sup>4</sup> The mantle of tribal sovereignty weighs heavily with the responsibility to protect all persons located on tribal lands. Lack of criminal jurisdiction over non-Indians often dictates that Tribes must look to new and innovative civil legal strategies to address safety and security for their citizens and members, residents, and visitors.

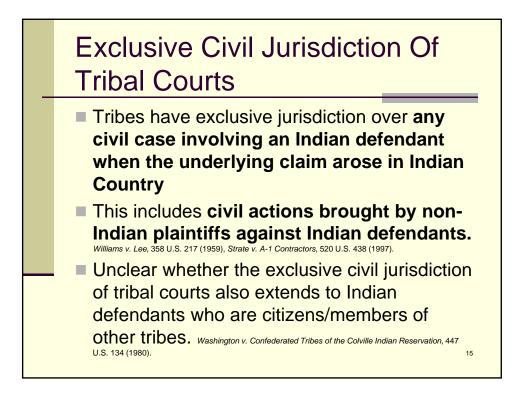


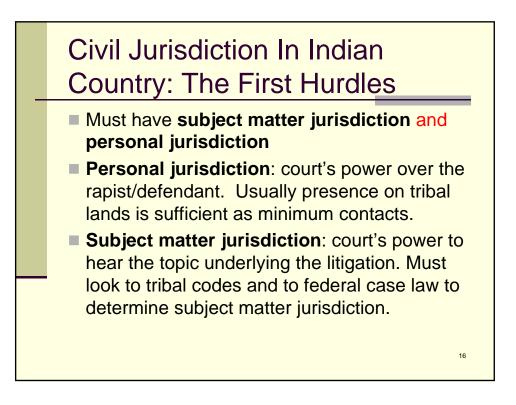












#### **PERSONAL JURISDICTION**

Montana v. United States, 450 U.S. 544 (1981)

Tribal court must have **personal jurisdiction** over the **defendant**:

**a.)** the defendant has **"minimum contacts"** with the tribe (e.g. committed SA on tribal lands, is present on tribal lands, is doing business on tribal lands, etc.) **OR** 

**b**.) the defendant has **consented to the jurisdiction** of the court **or waived** any objections to the exercise of personal jurisdiction in this matter by:

1.) voluntarily appearing before the tribal court or

2.) filing a motion, response, answer, or pleading in tribal court



#### Tribal court must also have <u>subject matter</u> jurisdiction

1.) Act giving rise to the issue (SA) occurred within the territorial jurisdiction of the tribal court and either:

a.) defendant is a member of <u>the</u> tribe or eligible for membership with that tribe

<u>OR</u>

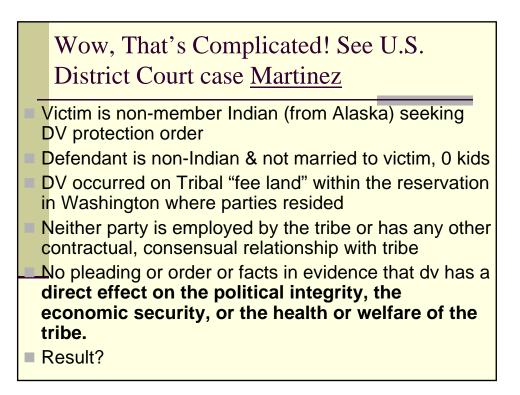
#### Subject Matter Jurisdiction cont'd

b.) defendant is a <u>member of another tribe</u> <u>OR</u> is a <u>non-Indian</u>

AND

1) the defendant had entered into a **consensual** relationship with the tribe or its members through commercial dealing, contracts, leases or "other arrangements" (e.g. is married to a tribal member, has a child in common with a tribal member, is employed by the tribe, etc.) <u>OR</u>

2) the alleged conduct or violation threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe



#### CURE?

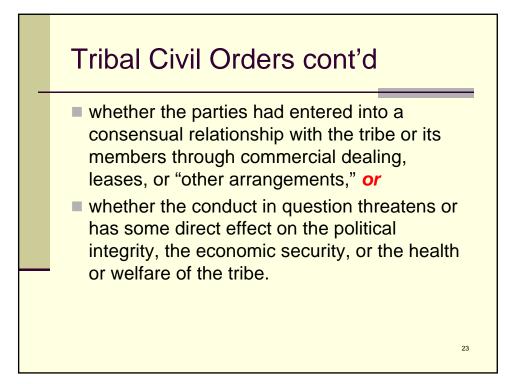
Have a witness (Advocate? Law enforcement? Elder?) testify that sexual violence has a direct effect on the political integrity, the economic security, or the health or welfare of the tribe <u>AND</u>

## Tribal Civil Orders Should Directly Address...

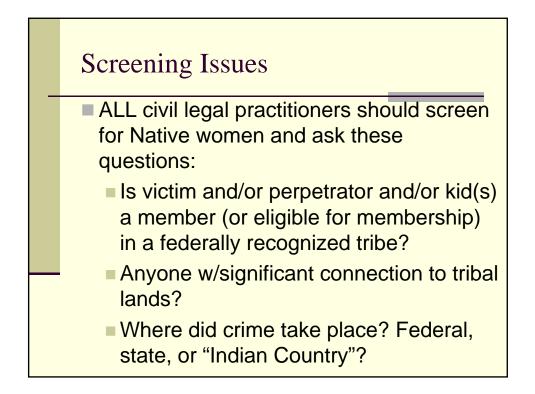
- whether the Due Process requirements of the Indian Civil Rights Act 25 U.S.C Sec. 1301 et seq. of notice and opportunity to be heard have been complied with; and
- whether the defendant is a citizen/member of the tribe, a non-Indian, or a citizen/member of another tribe; and
- whether the incident giving rise to the civil litigation occurred on tribal land, on fee land, or on non-tribal rights-of-way; and

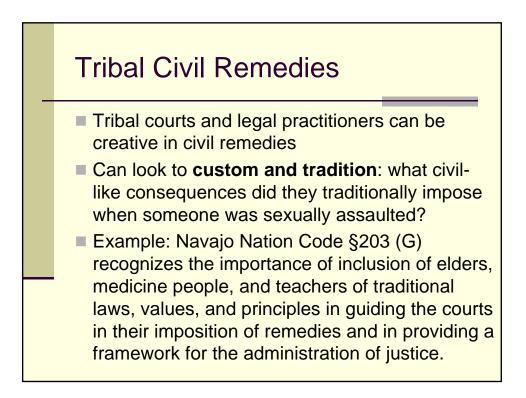
22

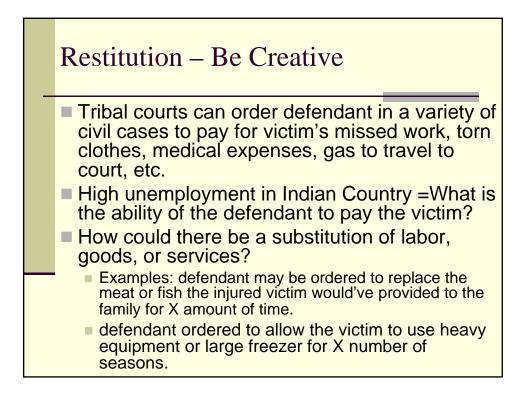
21

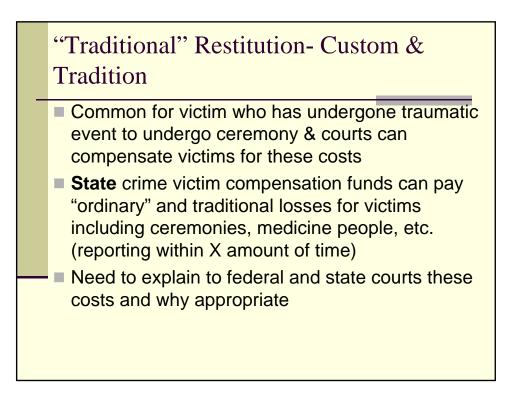


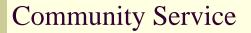




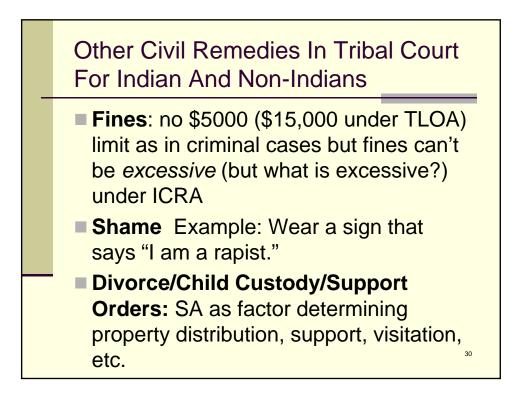






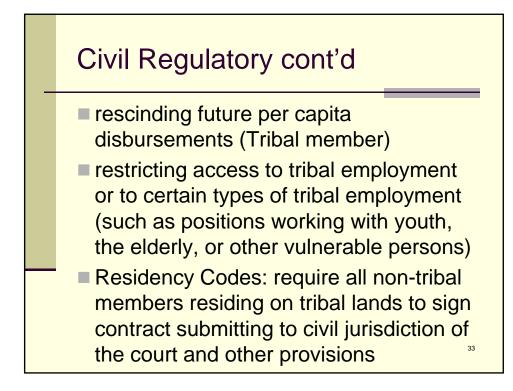


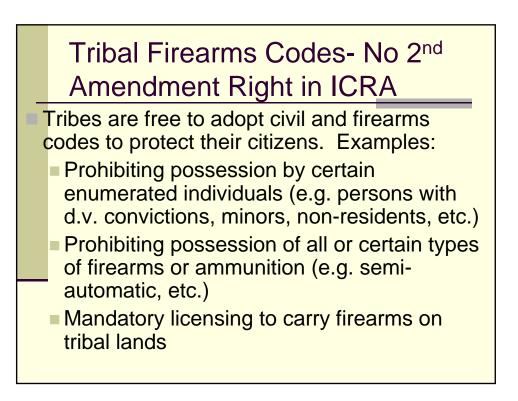
Can be the usual: pick up trash along highway, shelve books at library, or could be more meaningful or traditional work that benefits the community and shows remorse.
Hunt and provide meat for elderly
Chop wood or clear grounds for ceremonies, etc.



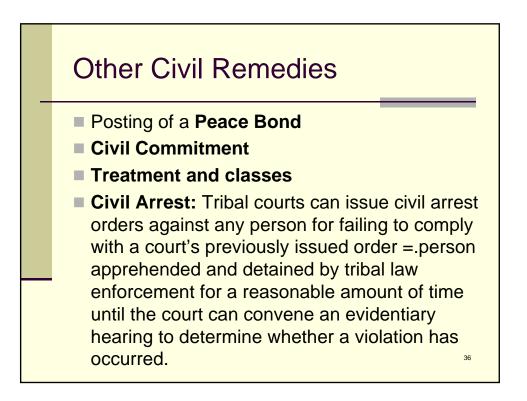






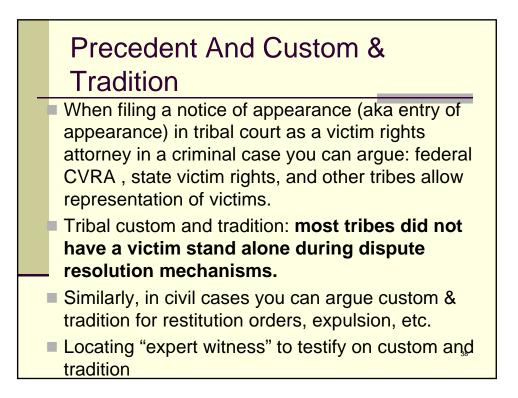






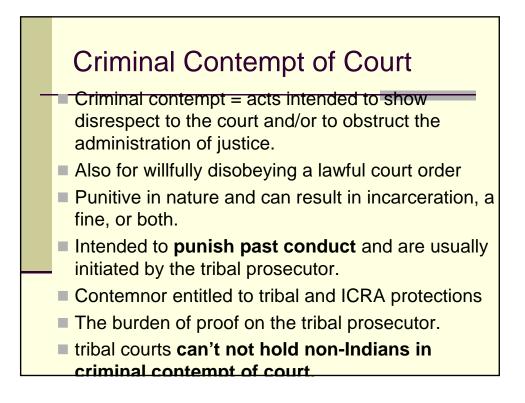
### Victim Rights In Indian Country Criminal Cases

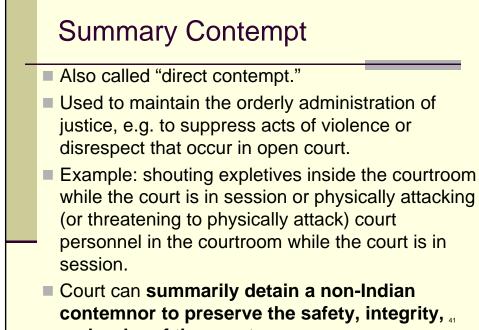
- Crime Victim Rights Act = federal law providing enumerated victim rights, including the right to counsel in criminal matters.
- Most states have crime victim rights laws
- Few tribes have crime victim rights codes
- You will be a trailblazer and will have to explain to the court why you should be allowed to represent the victim in criminal proceedings as her attorney

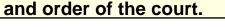


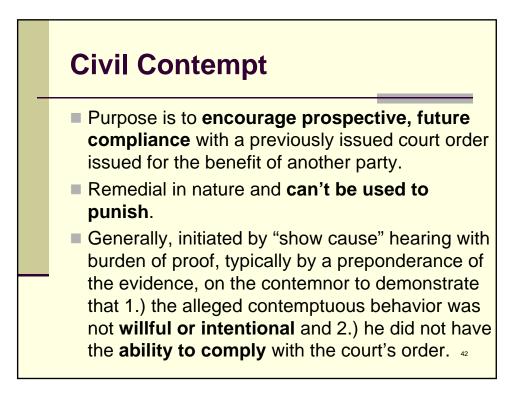
# **Contempt of Court** – Tribal Courts

- All courts have the inherent power to punish those persons who have shown disrespect to the individual judge or to the judicial system or
- to those who have engaged in behaviors which are intended to disrupt the administration of justice.
- Courts also have the power to take actions to encourage persons to comply with orders previously issued by the court.
- 3 types of contempt: criminal, summary and civil









## Civil Contempt

- Tribal courts may hold non-Indians, noncitizen/member Indians, and citizens/members in civil contempt of court.
- Although civil contempt may result in detention, the proceedings are civil in nature and do not trigger the same right to counsel or due process safeguards as in criminal contempt proceedings.
- Before any civil contemnor may be held in detention, the court must make a finding that the contemnor willingly or intentionally violated the court's order and that he had the ability to comply with the order.

