

Sex Offender Registration and Notification Act

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TOPICS FOR TODAY

- Explain Federal Statutes related to sex offenses
- Explain the federal system
- Explain USAO handling of Failure to Register cases

CROW DOG AND SPOTTED TAIL

Crow Dog



Spotted Tail



BACKGROUND OF THE CASE

- Crow Dog and Spotted Tail were members of Brule Sioux Tribe living on the Rosebud Reservation.
 - Crow Dog killed Spotted Tail after a long simmering feud over tribal leadership
 - Crow Dog was tried in accordance with tribal custom and tradition
 - Crow Dog's people gave Spotted Tail's people restitution in the form of:
 - \$600
 - Eight horses
 - One blanket
- Unsatisfied with the tribal verdict, federal authorities from the Dakota Territory kidnapped Crow Dog and put him on trial in federal court
- Crow Dog was found guilty of murder and sentenced to hang
- While in prison, he filed a Writ of Habeas Corpus with the US Supreme Court, which was granted

EX PARTE CROW DOG, 109 U.S. 556 (1883)

- The 1868 treaty of Ft. Laramie stated that:
 - “if bad men among the Indians shall commit a wrong ... the Indians agree that they will, deliver up the wrongdoer to the United States”
- However, this provision was drafted to apply to non-Indians on the reservation
- As to an Indian-on-Indian crime on the reservation, the Court concluded the Ft. Laramie Treaty left exclusive jurisdiction to the tribe
- The federal government therefore had no jurisdiction over Crow Dog and he was released

CONGRESS RESPONDS

- Congress was not happy about the Crow Dog decision, and as a result, passed the Indian Major Crimes Act of 1885
 - 18 U.S.C. § 1153.
- The MCA grants the federal government criminal jurisdiction over an enumerated list of crimes committed by an Indian against an Indian
- The original list had 7 major crimes, today it has expanded to many more

STATUTES GRANTING FEDERAL JURISDICTION

- **General Crimes Act - 18 USC § 1152** —
 - Federal jurisdiction where the offender is non-Indian and the victim is Indian, OR where the offender is Indian and the victim is non-Indian, **and**
 - The crime is not enumerated under the Major Crimes Act, **and**
 - The Indian Offender has not already been punished by the tribe for the crime
- **Assimilative Crimes Act - 18 USC § 13** —
 - Where there is no applicable substantive federal crime, the law of the state in which the crime occurred may be incorporated into the § 1152 prosecution

Major Crimes – Not Sex Crimes

- The Major Crimes Act, 18 U.S.C. 1153 provides for federal criminal jurisdiction over certain enumerated “major” crimes where the offender is an Indian.
- Murder
- Manslaughter
- Kidnapping
- Maiming
- Assault resulting in seriously bodily injury
- Felony child abuse or neglect
- Arson
- Burglary
- Robbery

Sex Abuse Crimes

- Aggravated Sexual Abuse/Force
 - Title 18 U.S.C. § 1153, 2241(a)
- Aggravated Sexual Abuse/Child
 - Title 18 U.S.C. § 1153, 2241(c)
- Sexual Abuse/Threat
 - Title 18 U.S.C. § 1153, 2242(1)
- Sexual Abuse/Incapacitated or Handicapped Victim
 - Title 18 U.S.C. § 1153, 2241(a)

Failure to Register as a Sex Offender

18 U.S.C. § 2250

- **First**, the defendant is a person required to register under SORNA;
- **Second**, the defendant is a sex offender by reason of a conviction under federal or tribal law; and,
- **Third**, the defendant knowingly failed to register or update a registration.

The term “sex offender” means an individual who was convicted of a sex offense.

Judicial Process

- Grand Jury
- Indictment
- Arraignment
- Plea Agreement
- Sentencing – No Parole in Federal Court
- Depositions (Not Happening in Federal Court)
- Subpoenas
- Direct Examination
- Cross-examination
- Objections

Sometimes Trials are Necessary



Trial Is Theater—But Without Acting

- To be an effective witness, **you need to understand the entire trial process**, specifically your part of the process.
- To **motivate** the judge or jury to listen to you as a witness, you must understand how to **effectively** and **persuasively** present your testimony.



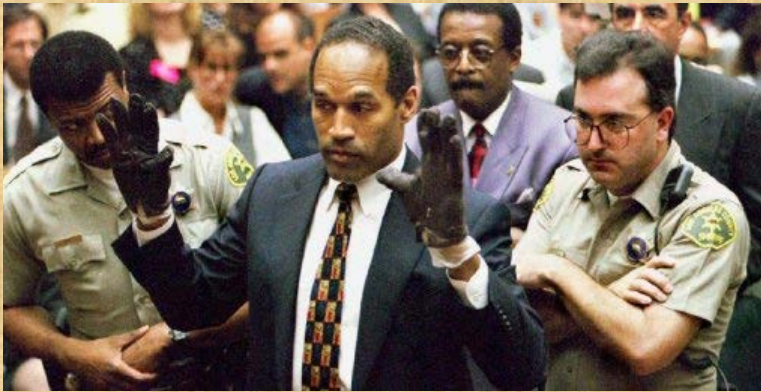
Tips for Testifying

- Prepare for trial when it arrives
 - Speak with prosecutor (I usually speak two times with witness. The first time is for me. The second time is for you.)
 - Give yourself plenty of time to prepare
 - Remain objective and accurate
 - Look at the jury when speaking
 - Avoid technical jargon
 - Never oversell or appear to slight the facts
 - Answer questions from both parties without a bias
 - Be clear and concise – explain but do not overelaborate
 - Do not look at the prosecutor on cross-examination

The Trial Process

- Jury selection – Voir Dire
- Opening Statements – Outline of the Evidence
- Prosecution’s presentation of witnesses
 - Direct examination (by prosecutor)
 - Who, What, When, Where, Why, and How?
 - Cross-examination (by defense)
 - Forcing an answer of “yes” or “no.”
 - Redirect (by prosecutor)
 - No new information can be presented
 - Can only clarify from direct and cross
- Defense’s presentation of witnesses
- Closing Arguments
- Jury Verdict

Evidence: Physical and Testimony



Physical - Chain of Custody

The chain of custody establishes the alleged evidence is the evidence that was at the crime scene.

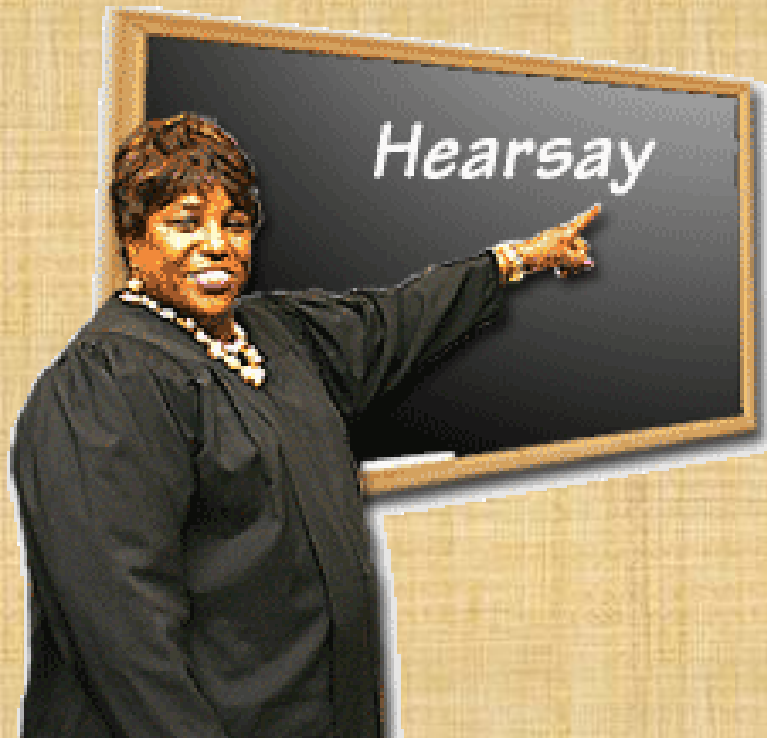
- Drugs
- Money
- Murder Weapon (if not readily apparent)
- DNA Swabs

Readily apparent does not require chain of custody.

Testimony: Hearsay

Out of Court Statement + Truth of the Matter Asserted

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Constitutional Violations

- Fourth Amendment (Searches and Seizures)
- Fifth Amendment (*Miranda v. Arizona*)
 - Custody + Interrogation = *Miranda*
 - You have the right to remain silent
 - Anything you do say will be used against you in court.
 - You have the right to have an attorney.
 - If you cannot afford an attorney, one will be appointed for you free of charge.
 - *Miranda*
 - In 1963, Ernesto Miranda was alleged to have raped an 18-year old.
 - After two hours of interrogation, Miranda confessed.
 - The jury convicted, and Miranda appealed to the United States Supreme Court.
 - The prosecution retried and convicted Miranda based on his statement to the neighbor that he committed the crime.
 - Miranda became famous – police wanted him to sign their Miranda cards.
 - Miranda was stabbed to death in a bar altercation a few years after his parole.

Timing

- Federal court has much shorter times to bring defendants to trial
 - 70 days for Speedy Trial Clock
 - Subpoenas can be a quick turnaround
- Federal court trials are much shorter in time
 - Three-month murder in state court versus five-day trial in federal court
- Testimony – Approximately one hour as SANE Nurse

Submission of Cases to U.S. Attorney's Office

Process for submission

- Work with U.S. Marshals Service
- Case is submitted to USAO
- AUSA assigned to prosecute
- Presented to grand jury
- Trial and sentencing process begin

Points of contact

- AUSA is assigned to each reservation