

Judicial Council Podcast

Trafficking of Native American People: What the State Justice System Needs to know

American Indian and Alaskan Natives are about 2% of the U.S. population.

HOWEVER, according to the National Criminal Justice Training Center, in 2020. . .40% of victims of sex trafficking identified as American Indian or Alaska Native women.

This is a Judicial Council of California podcast. I'm your host, Mervyn Degaños.

So why are Indigenous people disproportionately trafficked? And how can we change that?

To find out, we'll speak to survivors of trafficking and learn how ANYONE working in the justice system can help fix this problem.

You'll hear from two survivors.

The first was trafficked as a child

Cari: As a child, always understanding that there was something terribly wrong with me.

This is Cari Herthel. but she was born with a different name.

Cari: I was born as Judy Ann Garcia in 1953. My father was a pimp and my mother was a prostitute.

Cari, like her parents, is Esselen, Rumsen, Chalon. These are first peoples of California. Cari is the current Esselen Vice Chair.

For thousands of years the Esselen lived throughout the Big Sur coast, but no lands were ever set aside for them and they are not recognized as a tribe by the federal government.

When Cari was born, her parents were squatters living on the Monterey peninsula; land her ancestors lived on for over 6,000 years.

Cari doesn't remember living with her parents. Shortly after her birth, police removed her from them for child endangerment.

Cari and her siblings went into an emergency shelter and eventually were placed in the dependency system.

Cari ended up in foster care with two women. Those women worked as brokers with Cari's parents to put the kids up for adoption in exchange for money.

Cari: We were sold. You know, I was born into that story of human trafficking

It was always clear to Cari that she was not the biological daughter of the parents who raised her.

Cari: Because it had been discussed. I knew I was adopted.

Despite that, her adoptive parents never connected Cari to her Indigenous roots.

Even as an infant, though, . . . Cari felt a connection to her hidden past.

Cari: I would not allow people next. . . near me unless they sang. And that's very Indigenous. Where does that come from? That is a remembering. That is a knowing of who I am. I was connected, but in a spirit connected. And I always felt that as a child.

Even when she stumbled across her relatives, her adoptive parents denied her the truth.

Cari: And I would ask questions but my adoptive mother would just lie.

There was another adopted child in that home of which was very valued in being told the truth of her heritage.

That child was white.

When Cari was 6 or 7, her adoptive mother got divorced and eventually remarried a man with a son who sometimes babysat her.

Cari: I clearly remember going in to her and begging her not to have my step-brother baby sit me because he was sexually abusing me. And she never wanted to hear that story again. And in fact, I should be grateful as an adoptive child for having the family that I have.

I was not safe with that family. I was not safe.

By the time she was in middle school Cari started going to parties, drinking, and getting high. Looking back, she was self-medicating from a childhood of neglect and sexual abuse.

At one of those parties, she met a man.

Cari: My trafficker was 30 years old. And he began to groom me by listening to me and giving me attention when I would get drunk or stoned.

It was powerful to have an adult listen to her.

Cari believed she was in a romantic relationship and did what she could to help her trafficker's business of selling drugs.

Her trafficker encouraged her to run away with him.

They hitchhiked up and down the west coast. . .He sold drugs, often to biker gangs in dive bars and house parties.

Cari: He would pass me around like a commodity. Like bringing a bottle of wine to a party. There were other girls that were used in the same tradition. It was almost like a sporting event of sex with Hells Angels. And so there was no um selling. It was more that I was used as a commodity in his business activity of drugs.

Sometimes he had her work as a day laborer on farms up and down the coast.

Cari: I belonged to him. I belonged to him. I believed I was in a relationship. And these were things that I did to support his business.

The whole time her trafficker made sure Cari was high.

Often, during this time Cari ran into adults, authorities, and even law enforcement, but no one seemed concerned about their relationship.

Cari: Never questioned um or bothered to understand that I shouldn't have been with this man.

Even when others found out that Cari was being exploited, they did nothing.

For example, her trafficker's sister was a police officer in Southern California.

Cari: We went to her house. It was like the perfect hiding place, right?

But looking back it was like, well, she must have known her brother was like trafficking. And she actually had me doing labor trafficking when we were there. Because in order for us to remain there, um you know, I had work as a caregiver to her children, to this I mean, she really used us being there and never questioned or never asked me any questions about why I was there.

On-duty police also misidentified her and were unhelpful.

Cari: Even when my trafficker was busted for the sales of narcotics, they didn't know what to do with me.

Cari's trafficker was busted at a party. His brother was with Cari, driving to that party when the cops pulled them over. They brought the brother and Cari in for questioning.

At the station, Cari didn't have useful information for the police. She was a kid who'd been on heavy narcotics for years.

The police didn't know what to do with her. They called her adopted mom. It had been two-and-a-half years since Cari and her mother had spoken.

Cari: And she wasn't interested. Um at that point she felt that I deserved everything that I had created.

In fact, the police and her mother agreed that being caught in a drug sting was Cari's fault.

Cari: That was the thing that my mother and the police officers all put on me. That I was the criminal. I was the criminal. Uh, you know, that child prostitute. I was the criminal. And that impacted my identity for the rest of my life. I was completely labeled at that point within the system.

Cari was not offered any support or services.

To the authorities she was just a runaway.

Cari's step-sister took her in. Years of hard drugs, labor, and abuse had pummeled Cari's body.

Cari: I was told I would never have children. I had multiple venereal diseases. I was in sad, sad shape.

Without any help from the system, Cari slowly got better.

But Cari's relationship with her trafficker didn't end when he was busted.

It took some time for her to finally get away from him for good.

Cari: I moved him out of the way because I found as I got older, now you know I'm 18, I'm 19, and I discovered that I know I can get more on my own than my trafficker.

Cari: I had it down by then. Of exactly how to get what I wanted of value for myself. Take care of my needs through my body. Through my body.

Cari went through a couple of marriages and had 3 sons. She was still partying and commodifying her body in order to maintain her lifestyle. She was still doing drugs.

Then, Cari hit rock bottom. She overdosed while driving in a car with her child.

That's what it took. This time, sobriety stuck.

It's right here that you'd have your Hollywood ending—freeze frame, the music swells, credits roll. .

But it's more complicated than that.

It took nearly 20 years until Cari really started healing.

It was someone in the justice system who changed her life.

But we'll get back to Cari's story, shortly.

Listening to Cari's story, you have to ask: WHY is trafficking in Indigenous communities so invisible? What can people in the justice system do to help?

I called up one of the foremost experts on violence against Indigenous people.

Annita: My name is Annita Lucchesi and I am a Cheyenne descendant.

Annita is also the Director of Research and Outreach of Sovereign Bodies Institute.

When I talked to Annita, she was at home with four dogs. Two belong to her sister.

Annita: We have Shunka (ph) the sleeping min pin. Seecha (ph) she's a dachshund-pit mix and we have Chance the deaf Boston terrier.

Narrator: Oh wow.

Annita: And, uh, Peaches, the pug who's missing so many teeth that her tongue hangs out of her mouth all the time. So they're a Motley crew.

You'll be hearing from the dogs throughout the interview.

Annita also is the founder of Sovereign Bodies Institute. SBI began as an organization focused on data collection and community-engaged research, in particular, gender and sexual violence in Indigenous communities.

Today, SBI has branched out into much more.

Before Annita established the Sovereign Bodies Institute, there was little information on trafficking and murder in Indigenous communities. There were statistics, but if you asked people in tribal communities, the official federal statistics were not accurate.

In some ways the system has no incentive to track these statistics. If you don't track victims' indigenous status, there's no evidence that the justice system is failing this population.

Today, Sovereign Bodies has what is likely the most comprehensive database of missing or murdered indigenous women and two-spirit people in the world.

Annita herself is a survivor of trafficking and abuse.

That is what led her to start writing down information about these cases.

Annita: There was no morning where I woke up and was like, I want to make a database today. Um, it just kind of happened and I was still recovering from the abuse. Most of the bones in my left hand were broken.

Um and so the first couple of hundred entries of the database I typed with a broken hand. Um, and that's just kind of the spirit of the work. Like it started in Panera because I couldn't afford wifi at home.

I started it and couldn't stop. Um, like just felt called to do it.

Couldn't focus on anything else. Um, and there was never a moment where it was like, okay, it's good enough now I can be done or I can take a break. And then as time went on and it became so important to families to keep it going. That's when I realized it was so much bigger than just like an Excel spreadsheet that I was doing in my spare time.

Annita looks where others don't bother. What she finds is neglect and handwashing from the justice system all across North America.

The stories behind these numbers are shocking. But it's all too common in tribal communities; places that have been dismissed by the justice system and, like Cari, are blamed for their victimization when they reach out for help.

Neglect takes many forms. Complicated jurisdictional issues make it easy to deprioritize cases.

Often, authorities take the easy way out when evaluating a victim. They replay the long history of dismissing complex, human circumstances as being "just the way those people are."

Annita: They'll decide. Well, this woman was an alcoholic. Um, she's probably covered in bruises because she fell down drunk so many times and her head injury is probably just from falling backwards drunk. Um, nevermind the fact that she told the nurses that she had been recently assaulted by her partner, that there's a history of documented abuse, um, or that her bruises are inconsistent with falling. Um, we're just going to write it off. To me, that's the most racist loophole imaginable, given all the stereotypes about indigenous people and alcohol.

And oftentimes that decision comes from not really giving full credence to information from the victim's family, um, or uh, not even bothering to talk to the victim's family at all. Um, and oftentimes they have information or if they've seen the abuse or they have information that might explain some of the injuries and the bruising, um, that, uh, the kind of like, to me, it feels very like a very colonial practice of like, well, you know, it's easier to write this off as this, so we're just going to do it that way.

Um, and somehow the burden of proof is to prove that it was a murder rather than to prove it wasn't.

Sometimes, people in the system reinforce centuries of self-serving prejudice—that Indigenous people’s human rights are contingent.

It’s a story that says Indigenous people aren’t valuable human beings unless they are useful to “civilized society.”

Annita has seen this many times.

Annita: The judge told this girl, um, the world doesn't need another uneducated Indian. If you're not going to go to high school and you're not going to get your diploma, you're a waste of our time and the world doesn't need you.

And I just could not fathom a judge telling any child. The world doesn't need you. Um, or if you're, if, if, if you, if you don't get your diploma, you're worth nothing.

Like I was so furious and of course, like I'm there in the background. I can't just interrupt the judge and be like, “That’s messed up, man.” But, um, you know, I talked, I tried to talk to the girl afterwards and be like, you know, don't listen to that judge. He doesn't know what he's talking about.

Annita knows the failures of this system intimately. She herself has been dehumanized.

Annita: There was multiple times where I was being abused on the side of the road. Um, and like trying to flag cars down for help. And no one stopped for me and no one called police. Um, and I was like crying and begging, and that feeling of not being worth stopping for, um, it, it really, it changes you. And especially to do that to. . . I can't imagine if I went through that as a child or as a teenager.

Annita’s and Cari’s stories are both a small part of a longer, historical pattern. One of betrayal and neglect.

Indigenous peoples’ relationship to authorities could be rightfully summarized as hundreds of years of the system working against them. Promises of peace, dignity, and sovereignty of their land. . all are inevitably broken.

They are historical traumatic events like the Trail of Tears or boarding schools where many Indian children and families were removed by force, abused, neglected, separated from their families and killed.

But every tribal nation has their history of generational trauma.

Cari’s ancestors, the Esselen, are one example.

The Esselen people lived for over 6,000 years in what we now call the Big Sur coastal area. In the 1700’s, Spanish missionary Junipero Serra and his missionaries traveled up and down the California coast, converting Native Americans to Catholicism.

They forced the Esselen and other tribes out of their homes and into missions—torturing and enslaving them. The native people were trafficked for their labor and, ostensibly, for their souls. They were moved up and down the coast, tracing similar paths to the ones Cari and her trafficker did centuries later.

In the shadow of the coastal mountains they used to call home, the Esselen died from overwork and disease. It's hard to determine exact numbers, but some research indicates that half of native children born in California missions died before age 4 and only 2 out of 10 lived to become teenagers.

Conveniently, the missionaries' methods made it easier for the Spanish to claim the land for themselves.

When California became a state in 1850, the Esselen were not in a position to secure treaties or recognition from the U.S. government. This is no doubt in part because Spanish missionization had so decimated the Esselen.

What could the Esselen offer or threaten that would demand the attention of the newest colonizers?

Under the American regime, the Esselen were subject to the same exploitation and abuse as other native populations but unlike the recognized tribes, the Esselen had no land to call their own. They became squatters in their homeland.

Up through today, the tribe has repeatedly petitioned for federal recognition, but the government says they have not met the criteria.

Criteria that includes showing that a tribe has “maintained political influence or authority over its members as an autonomous entity since 1900” which is nearly impossible for small tribes which were hunted down if they showed political cohesion.

In 2019, however, the Esselen finally secured land of their own through a state grant to purchase land from a private seller.

Securing a home isn't going to erase centuries of generational trauma or instantly rebuild trust in the system.

But their story shows that Annita AND Cari's stories aren't just isolated incidents.

For Annita, even when the justice system functioned as intended, when it arrested her trafficker, the system undermined her safety.

The system put Annita in danger.

Annita: And never made me safer. Um, and even when he would get like parole violations and, you know, just get locked up for like two weeks, um, I always felt more

unsafe when he like, when he wasn't available because he was abusing me, but he was also protecting me from other people that could have really hurt me.

Um, so, uh, to be, to be trafficked and to be on the streets alone is sometimes even scarier. And I think a lot of people don't realize that that kind of relationship between your traffickers. Um, you know, I was deeply in love with him. Like he was my partner. Um, so it wasn't like somebody who kidnapped me from a Walmart parking lot.

Um, it was, um, you know, somebody that I trusted

The justice system and its enforcement officers overlooked real victims. And this is just one story among over 4,000 thousand that Annita and the Sovereign Bodies Institute have documented.

In her work with Sovereign Bodies, Annita met a medical examiner in Montana. When he learned of their work, he came to a vigil, and laid flowers for victims with their families. He talked to people and showed that he cared.

Then, most importantly, he followed up with action.

Annita: And we were able to sit down with him and actually, um, review some of the cases and some of the autopsies of, of the family's, uh, loved ones, um, and get some more information that was helpful to the families, but also helpful to the medical examiner. Um, and there was two, uh, case reviews that we went through, where there was actually, um, things that were done wrong in the autopsies, um, that were done by his predecessor. Um, and that he was actually willing to admit like, yeah, this report says that there's this and that injury is not present on these remains. Um, and so that was really powerful.

Um, and it was really encouraging to have somebody in the system actually willing to dialogue with us and take what we're seeing seriously about what. . .you know, have you looked at this or have you tried this, um. And and want to build our skills up and explain like, okay, this is how an autopsy works. These are the things we look for. To have somebody actually wanting to build our knowledge and comfort families rather than look at us as like an inconvenience or a challenge was a wholly new experience.

Unfortunately, that medical examiner, he retired in the summer of 2021.

Annita and other indigenous people just want to be treated as fully human. That hope is reflected in how SBI treats the numbers in their database.

Annita: Um and the database is kind of a manifestation of that promise that, you know, all of their stories will be remembered and will be be part of that fight. Um, I'm an auntie who describes the women as, um, uh, like women warriors. They gave their lives so that we could fight for safety for other women and girls. And that's what the database is.

To her the data is sacred and is there to serve Indian Country. It was created by them and they are protective of it.

The data is so unique, the FBI and other federal agencies have repeatedly asked for it.

So far, the Sovereign Bodies Institute has refused.

Why?

Mervyn: Why help someone who is not actually exhibited any, uh, desire to help you in any meaningful way?

Annita: Yeah. I mean, come to us with respect. Um, the FBI shouldn't be entitled to anything from native people. Um, and so. If you're gonna come to us to work with us on this issue. We would love that, but show up, ready to work, show up, ready to see us as partners and leaders in the work. And that's something agencies like the FBI just don't do.

That might seem extreme, but there's history here. When SBI's "highly-sought-after" data does come out, it's often dismissed by the very people who want access to it.

Annita: Every time we release a new report, there's a law enforcement agency that says, "That data's not right. Um, that can't possibly be real. Their criticism of us isn't real." Um, and, uh, that's okay. They can do that. Um, but, um, it doesn't ultimately, I think it kind of backfires on them.

The authorities find reasons to dismiss the data, sometimes reasoning that it's "just anecdotal."

As Annita sees it, the authorities are threatened by the data. The database is an exhibit of the system's failures.

AND there's a logical reason why her data contradicts the narrative put out by larger, more well-funded agencies. She gets the data others can't because she focuses on respect for the victims and their families.

Annita: Like for me as a survivor, I think one of the most radical things you can tell a survivor is, "I believe you."

Um, and that's a life-changing phrase to tell somebody. And so to structure a whole organization, which is, you know, what we try to do at SBI to structure a whole organization around. That phrase, "I believe you," is a total shift from the way law enforcement and the court system respond to violence?

We don't have time to deal with people who don't believe in us or people who don't believe survivors. We've got too much stuff to do.

These days Annita is working on her PhD.

Annita: The database and all of the work that I do at SBI is entirely separate from my work as a PhD student. Um, yeah. Like not even the same topic, because I don't want the university to feel like they have any sense of ownership over it.

Mervyn: Wow. Because it would be so simple to just roll it. Cause that would be. .there's your dissertation right there.

Annita: I would have been done years ago. Yeah. Wow.

Mervyn: Wow. And that, I mean, that goes back to that idea of self-determination.

Annita: Yeah. The only people who, who own that data are the families whose loved ones are represented in it.

The task of archiving all these stories in the face of skepticism and dismissal, can be daunting especially because Anita feels a responsibility to the families of victims

She started the work typing with a hand broken by her trafficker using free wifi at a Panera. Now, she's a leading voice in shedding light on gender and sexual violence in Indian Country. It's a remarkable journey.

Annita: Sometimes it feels like, and this is kind of silly, but like, okay. One of my favorite cult movies is Legally Blonde and you know, she's got that line about like, they're like, "You got into Harvard?" And she's like, "What? Like, it's hard." Like, I feel like a lot of our work can kind of be seen that way of like people talking about collecting data and how hard it is. Serving victims in a trauma-informed way and how hard it is. And like, it's not that hard. There's common sense things. We're already doing it,

So what is the system's Elle Woods moment? What "common sense stuff" could judges and court staff do to better serve tribal communities?

One place to start is believing victims,

Annita: Even when we do everything right, and we get away and we report it and we're brave enough to testify that it really doesn't matter. Um, because we're not going to be believed. Or even when we are believed there's no system that's going to keep us safe. Um, Or, or meaningfully hold, hold perpetrators accountable.

Annita asks that everyone in the system be seen as a human being and be treated with compassion. . .even the perpetrators.

It's something Annita lives by, even when she thinks about her own trafficker.

Annita: I refuse to see someone who's been victimized as much as he has to the point where it's turned him into an abuser. I refuse to see that person as human garbage. Um, I feel like being treated as human garbage myself, there's nobody that deserves to be treated like they're not a human being .

When judges asked me questions like, you know what they can do, or especially, I think there's a lot of judges out there who are passionate about issues like missing and murdered native women, but feel like they don't necessarily see those cases, um, in their dockets and what I would say to them is that.

I think the ripple effect that creates that violence is bigger than what we imagine it to be and there are decisions that we make, even in things like, um, juvenile justice cases or, um, you know, in his instance, he was a runaway, um, who got put on probation for running away from abusive family. Like what if we did that differently?

What if we didn't treat people like criminals and instead gave them the means to heal. Um, so that they don't become adults that hurt people in even worse ways.

Annita's goal is to direct people to resources based on their cultural background, particularly if they are Indigenous.

Judges can also look to see what the community offers. What resources have not yet been tapped by the system from the tribe or tribal community? How can a judge be better plugged into the tribal community's needs?

For staff, that can mean knowing the range of services available for Indigenous people and asking victims, "What would be most healing for you?" In some cases that could mean restorative forms of justice or addressing the needs for protection from others besides the perpetrator.

When it comes to DA victim services one could evaluate the screening process - How are they screening? Is there a way to flag resources available at the tribe?

But it's not just after-the-fact intervention.

Mervyn: Is there something that they can do beforehand before they show up with the trauma?

Annita: Um, that's a tough one, you know, I think, uh, like, Indigenous people are really good at word of mouth, like better connected than most. Um, and, uh, like I was joking with a friend the other day cause she was like, don't act up in California cause someone in Florida is going to hear about it. Um, that's how small Indian Country is. So I think it's important to just every case you work with every family or every victim you work with, like really give it your all because that person will go share back with their family or their community, what their experience was.

And unfortunately for decades, if not centuries our experience with the justice system and with law enforcement that we share back to our community is discrimination,

violence, and abuse. Um, so really working hard to change that experience with every person that you come into contact with, um, does make a difference.

Annita's advice to treat every person in the system as worthy of dignity means every actor in the system can have a positive impact.

Annita: Um, so I think, I know I'm repeating myself here, but really for judges and court staff, the most important thing you can do is to have that patience and that compassion and to not give up on somebody.

How Someone in the System Helped Cari Heal - Simple words

This brings us back to Cari's story.

Cari had been dismissed as a rescue, labeled a troublesome runaway, and a prostitute, She had been torn from her past. Been born Judy Ann Garcia and renamed Cari Louise Jones.

Police, child welfare, the lawyers who facilitated her adoption, the brokers who sold Cari to her adoptive parents, the system as a whole—they all failed to see Cari when she was a victim in need of assistance.

But, in 2008, someone in that same system nudged Cari into a different trajectory.

Cari had been 18 years clean and sober. She was even working with survivors of trafficking to help them heal.

But she carried with her the trauma of her past.

California had just changed the law to ease criminalization of sex trafficking survivors. Cari was attending a presentation by a police officer about the changes to the law. She asked a question and, as part of that, explained a bit of her experience.

That police officer, he listened, then said something that changed Cari's life.

Cari: Police officer looked at me and said, "It is impossible for a child to make these choices." And I looked at him and said, "You've just altered my life by telling me the truth under this law." And he sat with me afterwards and explained to me what nobody had ever told me.

And it was in that moment that I understood the value of law.

So rather than being criminalized, this police officer had given me hope under the law, had given me back my life under the law. Had given me back my dignity by

looking at me and saying, “You’ve done nothing wrong”. This is the law and that changed me for the rest of my life.

He made that poison into medicine.

For the first time—decades of shame and self-blame, —she felt like someone in law enforcement finally listened to her and saw her for who she was.

Not as a perpetrator, but as a victim.

Cari: That’s a very different reality than what I’d been given in recovery. I thought I had made bad choices and that was not the case at all.

The conversation with the police officer wasn’t the end of a healing process. For Cari, it was the beginning.

Cari: That day is my memory started coming back. And so, I had to go through all that. The pain of remembering because I had, I had blocked it, I had blocked my own healing because I was so shameful even in recovery that I was that kind of woman.

Cari has been dealing with all the ripple effects of hundreds of years of colonization that inflicted violence, trafficking, and death.

Hundreds of years of consciously and unconsciously dehumanizing Indigenous people to justify taking their land and sovereignty.

The labeling ran so deep that Cari had accepted that she was a woman who made bad choices. That is, until someone in the system helped set her free.

In the face of all that, I asked Cari what she called herself; who was she?

Cari: I have multiple identities.

It’s complicated. But when she attends ceremony, she goes by her birth name, for her ancestors.

Cari: I still am Judy Ann Garcia.

Being here, after centuries of her ancestors being driven from their land, missionized, being told by the government they don’t officially exist, it’s has been a long journey for Cari.

But finally, today, the system invited her here to speak and to hear her advice on how it can do better in the future.

Cari: An opportunity to address and talk about. . .about this to whom am I speaking to. I laugh with my ancestors. How is that possible? How is that possible?

But this is exactly what must happen; the listening to one another. You asked me to come and I'm talking. And I would like to listen to you at how you're making change.

If you'd like to learn more about Sovereign Bodies Institute, you can visit sovereignbodies.org. That's Sovereign dash Bodies dot org. Or search Sovereign Bodies Institute on your preferred search engine.

You can also find more resources at the Judicial Council of California website. Or contact the Judicial Council directly.

This podcast is a production of the Judicial Council of California. It was edited by David Weinberg and produced by me, Mervyn Degañes. Music by Chris Zabriskie and Kevin Macleod.

Thanks for listening.